

Covid-19 – Mental Health Law Briefing 01/04/20

The purpose of this document is to provide staff with a summary of the key changes to mental health law and practice arising as a result of the Covid-19 pandemic. This is a fast-changing field and so the Head of Mental Health Law will provide further briefings in due course, for any questions or concerns in the meantime please contact 020 8702 4709 or michael.chalmers@nhs.net.

Temporary changes to the Mental Health Act (not yet in force)

The Coronavirus Act provides for [changes](#) to the Mental Health Act which may come into force in the future by ministerial order, NHS England has indicated that this will only happen if and when patient safety is deemed to be at considerable risk. The headlines are:

- only one medical recommendation required for Approved Mental Health Professional applications, most court orders and transfer directions
- time limits of certain sections extended – 5(2) to 120 hours, 5(4) to 12 hours, 135(1) and 136 to 36 hours (extendable for a further 12)
- time limits for the admission of patients to hospital following the making of a court order or transfer direction have been extended or, in many cases, abolished
- Approved Clinicians in charge of treatment may issue s.58 certificates for medication for patients who are not capable or not consenting

Legal guidance from NHS England for mental health and learning disability services

NHS England has produced [guidance](#) concerning the impact of COVID-19 on the use of the Mental Health Act and supporting systems to safeguard the legal rights of people receiving mental health, learning disabilities and specialised commissioned mental health services. It covers:

- operational considerations for the MHA
- the Mental Capacity Act 2005
- the Care Act 2014
- restraint and restrictive practice
- specific considerations for specialised mental health services
- specific considerations for learning disability and autism services
- specific considerations for mental health and the criminal justice system (much of which has already been superseded by Ministry of Justice guidance below)

Guidance for forensic services from the Ministry of Justice

The Ministry of Justice's Mental Health Casework Section has issued Covid-19 [guidance](#), and a new [urgent transfer request form](#), for forensic services. It covers:

- arrangements for the supervision of conditionally discharged patients
- guidance on emergency transfers
- revised arrangements for the provision of statutory reports

Mental Health Tribunal

The Mental Health Tribunal has issued [guidance](#) to the Royal College of Psychiatrists on the new system of remote tribunal hearings, and in particular how clinical teams can help ensure that they proceed efficiently:

1. Please submit written reports for Section 2 hearings the day before the hearing is scheduled. This means the judge can obtain specialist advice and the patient's representative can take instructions before the hearing so that adjournments, which also use up clinical time, can be avoided.
2. Please advise the judge if you think that the patient will be unable to stay in the room for the hearing or needs to give their evidence first.
3. Do tell the judge whether the patient is able to remain in hospital as a voluntary patient. The tribunal are aware in many areas this is no longer possible so questions about this may not be relevant.
4. Do emphasise any limitations of your evidence. The tribunal is aware that patients are being moved more frequently so clinical teams may have less knowledge of patients.
5. Please focus on the statutory criteria
6. You may wish to suggest that any discharge is delayed for follow-up by home treatment or community team to be arranged.
7. Do give your evidence by phone from a private area where you cannot be overheard.

Hospital Managers Hearings

All hospital managers hearings remain postponed until further notice, the Trust's ethics committee will shortly be considering the circumstances under which hearings might be restarted, and any temporary changes to hearings procedure that might be necessary to ensure the safety of patients and staff during the Covid-19 emergency.