

Coronavirus and the Mental Health Act

The Coronavirus Act 2020 aims to streamline MHA processes and extend deadlines in order to ease pressure on the system.

When the relevant provisions of the Coronavirus Act 2020 are in force, they will impact on the following sections of the MHA 1983

Section 2 and 3 – admission for assessment or treatment

An application by an AMHP may be founded on the recommendation of one registered medical practitioner if the usual requirements (two recommendations) would be impractical or involve undesirable delay.

- The one recommendation must comply with the usual requirements of a recommendation. This is an amendment in quantity not quality of report.
- Application must state include an opinion on why a second recommendation would be impractical or involve delay.
- The provisions in relation to the practicalities of two recommendations (eg joint recommendations) are amended accordingly.
- There is no requirement for the single assessor to have previous acquaintance with the patient but they must be s12 approved.
- If within 14 days it appears to the managers that the recommendation is insufficient to warrant detention the application will be deemed to have been sufficient if a fresh medial recommendation if obtained and provided to the managers within 14 days.
- Section 4 – emergency admission would be suspended so practitioners need to use the s2 or s3 forms and not s4.

Section 5 – application in respect of patient already in hospital

- Patients detained under section 5(2) may be detained in hospital for a period of 120 hours (up from 72 hours) from the time when the report is provided to the managers.
- Under s5(4) if it appears that the patient should be immediately restrained from leaving the hospital and it is not practical to secure the immediate attendance of a practitioner for the purpose of a report, the patient can be held for a period of 12 hours (up from 6 hours) to allow the provision of such a report.

Section 58 – treatment requiring consent or a second opinion

- The Approved Clinician may give the certificate for appropriateness of treatment without consent if he/she considered that complying with the usual SOAD requirement 58(3)(b) is impractical or would involve undesirable delay.
- The second opinion certificate (whether provided by the approved clinical or SOAD) needs consultation with only one other (down from two) if consultation with two would be impractical or involve undesirable delay.
- The person consulted must have been professionally concerned with the patient's medical treatment and must not be a nurse, a registered medical practitioner, the Responsible Clinician or the Approved clinician.

Sections 135 and 136 – warrant to search for and remove patients and removal of mentally disordered persons without a warrant

- Periods of detention are extended from 24 hours to 36 hours.
- Where patients should be taken, especially if they show signs of infection with Covid 19, is a matter for local discussion and agreement.

Part III – Patients concerned in criminal proceedings or under sentence

- The powers of the courts for the detention of accused or convicted person in hospital under sections 36, 37, 38, 45A(3) and 51(5) are simplified such that they can also rely on the recommendation of a single registered medical practitioner.
- Under sections 47 and 48, the Secretary of State may also give a transfer direction of a prisoner in hospital on the basis of one medical recommendation.
- Time periods are also amended for sections 35 and 36 dealing with the period of remand to hospital.

General points

- Care will have to be taken that the emergency measures have actually been triggered/not rescinded as they will only be implemented nationally under certain conditions. At the time of writing, although the Act is law, the provisions in relation to the MHA are not yet in force.
- This only applies to the law of England
- Continue to use the MHA forms but amends them in line with the modifications
- Extended periods of time will only apply for detentions commenced in the emergency period. The extended periods will continue to apply after the emergency period if commenced before its end.
- If it is possible to adhere to normal practice (i.e. it will not be impractical or cause undesirable delay) you should do.
- Try to think of innovative ways of assessing patients who might have Covid-19. Would it be possible to set up an intercom system? Be in sight through a window but use a phone to communicate?

Separate but related news

It has been announced that Mental Health Tribunals will sit with just the Judge unless decided differently and the Tribunal will be trying to make decisions on paper where it can.