Health and Social Care Integration Directorate
Re-shaping Care and Mental Health Division

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The Scottish Government

All Responsible Medical Officers with responsibility for restricted patients

DELIVERING
A GAMES LEGACY FOR SCOTLAND

Chief Executives, NHS Boards
Chief Executive, State Hospital
Chief Executive, The Ayr Clinic
Chief Executive, Graham Anderson House
Chief Executive, Surehaven Glasgow
Medical Director, Forensic Mental Health Services Managed Care Network
Chief Executive, Mental Health Tribunal for Scotland
Director, Mental Welfare Commission for Scotland

20 August 2012

Dear Colleague

NEW QUALITY GOVERNANCE PROCESS FOR ANNUAL REPORTS ON RESTRICTED PATIENTS

I am writing to advise you of a change which will take place with the aim of improving the consistency in the quality of annual reports and support the safer quality ambition.

The Memorandum of Procedure on Restricted Patients (May 2010) contains a template (www.scotland.gov.uk/Publications/2010/06/04095331/35) for annual reports giving a structure to the body of the report and the conclusions which address the legal tests contained in section 193 of the Mental Health (Care and Treatment) (Scotland) Act 2003. For ease a copy of the annual report *pro forma* is attached. The Memorandum of Procedure training events underlined the importance of ensuring that the Responsible Medical Officer's (RMO) view on section 193 test is included in the annual report, with a supporting justification. The majority of annual reports are of a high quality and adhere carefully to the guidance contained within the Memorandum of Procedure.

There are a small number of annual reports which are not aligned to the template contained with the Memorandum of Procedure and where the RMO's opinion is either unclear, or where the opinion is not supported by any justification in the body of the report or the conclusion. This new governance arrangement is primarily targeted to address this small number of reports.

With the aim of improving the quality of annual reports, an RMO will be informed if his/her annual report is considered by the SG Restricted Patient Team (RPT) not to meet the standards outlined in the Memorandum of Procedure. A letter will initially be sent to the RMO recommending that the report be amended, allowing a 4 week period for any changes

to take place. If, at the end of this period, the report is unaltered or continues, in the view of the RPT, not to meet the required standards, the Directorate will write to the Medical Director informing them of this. The standard of RMOs annual reports is important given that Ministers are a party to cases referred to the Tribunal. A well-crafted annual report can assist the Scottish Government Legal Department and the Mental Health Tribunal for Scotland to discharge their duty in the event of 2 year reviews and appeals arising at other times.

We would also like to take this opportunity to remind RMOs to have available, at least 4 weeks prior to a Mental Health Tribunal hearing, an up-to-date risk assessment and management plan ie an assessment that has been updated within the last year. We are increasingly finding that Tribunals are adjourned on the day of the hearing because either there is not an updated risk assessment available or it has been lodged within 7 days of the Tribunal hearing, resulting in the patient's agent seeking an adjournment on the day. This also supports the Scottish Patient Safety Mental Health Programme by supporting the routine implementation of risk assessment and effective risk management.

We value greatly our excellent relationships with consultants and the multi-disciplinary team and are keen to work closely with you. We appreciate the amount of effort and work put in by RMOs along with the multi-disciplinary teams in managing restricted patients. We are not here to tell medical professionals how to do their jobs but rather set out the guidance which we hope will aid professionals in the management of restricted patients, which makes all our jobs easier.

We look forward to continuing to build on our excellent relationship and to continue to work together with you and your teams constructively. I am happy to discuss.

Yours faithfully

GEOFF HUGGINS
Deputy Director

RMO ANNUAL REPORT PRO FORMA

1. Patient Details

Name

Date of birth

Hospital number

Legal status

Index Offence details

Date of original section

Date of renewal

Date of MHTS hearing

MAPPA level

2. Diagnosis and Treatment

Current diagnosis/es including any axis 2 diagnosis ie personality disorder

Current mental state and any changes since last report

Current activities

Progress since last report

Details of treatment including psychological interventions and response to treatment

Compliance

Changes in circumstances

Response to suspension of detention or conditions of discharge
(if appropriate)

3. Risk Management

Date of most recent update of the Risk Management Plan

Details of any amber or red incidents/contingency plans since last report

Any other adverse incidents since last report

Any change to level of risk to patient or others and action taken

Any media/victim issues since last report

Any issues regarding drugs/alcohol since last report

Dates and results of alcohol/drug testing (if relevant)

CPA documentation including care plan

Opinions and Recommendations

4. [Patient's name] does/does not have mental disorder.

[If yes specify the nature of mental disorder(s)]

5. As a result of [patient's name] mental disorder, it is/is not necessary, in order to protect any other person from serious harm for

- the patient to be detained in hospital for medical treatment or
- the patient to be detained in hospital whether or not for medical treatment.

[Please specify nature of serious harm, who the potential victim may be and how detention in hospital reduces or minimises the risk of serious harm. Refer to HCR-20/CPA documentation if relevant.]

6. Medical treatment is/is not available for [patient's name] which would be likely to:

(i) prevent the mental disorder worsening; or
(ii) alleviate any of the symptoms, or effects, of the disorder.

[Please specify the nature and the effect of the treatment provided.]

7. If [patient's name] was not provided with such medical treatment there would/would not be a significant risk –

(i) to the health, safety or welfare of the patient; or

(ii) to the safety of any other person.

[Specify the nature of any significant risk to the health, safety or welfare of the patient and specify the nature of any significant risk to the safety of any other person. Refer to HCR-20/CPA documents.]

8. It does/does not continue to be necessary for [patient's name] to be subject to the compulsion order.

[Specify the reasons why.]

9. It does/does not continue to be necessary for the patient to be subject to a restriction order.

[Comment on the relevance of the index offence, patient's antecedents, the risk of serious harm to the public if [patient's name] is at large and on the features of the restriction order which are relevant to [patient's name].*

10. It is/is not necessary for [patient's name] to be detained in hospital.

[Specify why you believe that to be the case. Refer to risk factors, treatment, testing out and any other relevant considerations. Comment on whether you support or do not support a Conditional Discharge]

Level of Security

11. [Patient's name] does/does not require to be detained under conditions of special security that can only be provided in the State Hospital.

[Specify why with reference to risk posed by [patient's name] and the environmental, procedural and relation features of security which are relevant to the detention of [patient's name].]

12. [Patient's name] requires [medium/low] level of security.

[Specify the reasons for that opinion and the features of that security which are necessary in order to manage the patient and the risk.]

Responsible Medical Officer

* See attached note on purpose and effect of restriction order

Continuing Necessity of Restriction Order

1. In considering the continuing necessity of the restriction order (in terms of s193(5)(b)(ii)) the Tribunal must consider the extent to which the original criteria for imposition remain relevant, as well as the nature and effect of the restriction order on the patient's current (and future) circumstances.

Criteria for imposition

2. In respect of Compulsion Order and Restriction Order patients, Section 59 of the Criminal Procedure (Scotland) Act 1995 allows a restriction order to be imposed where, (a) having regard to the nature of the offence with which he is charged; (b) the antecedents of the person; (c) **the risk that as a result of his mental disorder he would commit offences if set at large; it is necessary for the protection of the public from serious harm to do so.**

Nature and Effect

3. The nature and effect of a restriction order is to give a supervising and monitoring role to the Scottish Ministers in the public interest, because of the circumstances in which the order is made. The patient is subject to this public interest supervision and monitoring, in addition to supervision by the RMO. The nature and effects of a restriction order are as follows:

(a) Where a patient is subject only to a compulsion order, that order lasts only 6 months, unless renewed by the RMO. It can therefore be revoked by the RMO acting (or failing to act) alone. A restriction order continues the compulsion order without limit of time, and means that it can only be revoked by the Mental Health Tribunal. Removing the restriction order at this stage does not allow future RMOs the choice of maintaining the patient on a restriction order with the resultant safeguards this provides. It also shifts the onus and responsibility of renewing the patient's compulsion order, which is likely to be required indefinitely, onto the RMO (present and future) alone.

(b) A restriction order also prevents the patient being released from compulsion (either within a hospital or community setting) without a decision of the Mental Health Tribunal after a hearing at which the Scottish Ministers have the right to make representations (Section 193(8) and (9) of the 2003 Act); for example it prevents the RMO and/or Mental Welfare Commission being able to terminate the compulsion order (and accordingly detention) unilaterally either deliberately (Sections 141 and 143) or by omitting to refer the case to the Tribunal for an extension to the compulsion order under Section 167.

(c) Decisions about transfer of the patient (for example to lower security hospitals) and suspension of detention (for example for testing out in the community) are subject to scrutiny and approval of the Scottish Ministers (see Sections 218 and 224 of the 2003 Act). The Scottish Ministers may revoke the suspension of detention. The restriction order will not prevent the patient from progressing to conditions of lower security or on to the community, but it will mean that Scottish Ministers will be involved in that decision making process.

(d) A restriction order also involves the Scottish Ministers in monitoring the patient on a continuing basis (reports from RMOs and MHOs) and referring the case to the Tribunal at appropriate intervals (see Part 10 and especially Section 188 of the 2003 Act).

(e) Restricted patients are subject to 'MAPPA', multi agency public protection arrangements. Under Sections 10 and 11 of the Management of Offenders etc (Scotland)

Act 2005 (A13), a statutory function is placed on police, local authorities, health services, and Scottish Ministers to establish joint arrangements for assessing the risk from mentally disordered offenders. As a result it is mandatory for all restricted patients to be subject to the Care Programme Approach to managing risk, which means that there is multidisciplinary input to care programmes.

(f) Patients subject to a restriction order must be conditionally discharged when it is no longer necessary to detain them in hospital. Conditional discharge allows supervision, assessment and monitoring in the public interest at a time when patients are coming into increasing contact with the community. Scottish Ministers would be consulted on the conditions of discharge suggested by the multi disciplinary care team and may vary conditions of discharge as appropriate either strengthening the conditions or reducing the conditions. Reporting on restricted patients conditionally discharges is initially on a monthly basis by the RMO, MHO and FCPN.

4. The Scottish Ministers expect a period of testing out prior to conditional discharge. This would generally involve a period of unescorted suspension of detention before moving on to overnight testing building up from one night to four overnights over a 4 month period.

5. The majority of patients who receive compulsion orders do not receive restrictions. The sentencing court can only subject the patient to the special restrictions set out in Part 10 of the 2003 Act if satisfied "**that it is necessary for the protection of the public from serious harm so to do. This test is not about whether detention in hospital is required** (the "serious harm requiring detention in hospital, whether or not for medical treatment" test found in sections 183(6)(b)(i), 184(5)(b)(i) and 193(5)(b)(i)), but rather about whether or not the restriction order remains necessary (the second leg of the test for revocation, found in sections 183(6)(b)(ii), 184(5)(b)(ii) and 193(5)(b)(ii)).

6. Under the Mental Health (Scotland) Act 1984 there was no right of appeal to the Sheriff to revoke the restriction order and only the Scottish Ministers had this power. The 2003 Act reversed this position. (It remains the position in England and Wales where there is no appeal right to the Mental Health Tribunal to revoke the restriction order, the power rests with the Secretary of State). The focus for the Tribunal, as it was for Ministers under the 1984 Act, in consideration of revoking the restriction order is entirely on risk.

7. The Scottish Ministers would not generally oppose the revocation of the restriction order in cases where there is a recommendation to revoke the compulsion order and the patient has demonstrated an extended period of compliance, insight into the illness and offending behaviour, consideration of the severity of the index offence, no incidents over a prolonged period, an ability to abstain from drugs/alcohol and engagement with the clinical team.

8. The Scottish Ministers have agreed to revocation of the restriction order exceptionally in respect of patients detained in hospital where the patient suffers from a severe and enduring mental illness which makes it probable he will remain in hospital for the remainder of his/her life. In these cases there is no prospect of rehabilitation to the community in the foreseeable future for these patients. However, the expectation is that the patient will have been free of acts of violence for several years. The Scottish Ministers have also not opposed the revocation of the restriction order where the risk has been to the patient and not to the public

9. Ultimately the decision whether or not to revoke the restriction order is one that rests with the Mental Health Tribunal.