



Ministry of Health (Mental Health) Regulations 2013


Tom Marsters

Queen's Representative

Order in Executive Council

At Avarua, Rarotonga this 2nd day of October, 2013

Present:

His Excellency the Queen's Representative in Executive Council

Pursuant to section 39 of the Ministry of Health Act 2013, His Excellency the Queen's Representative, acting on the advice and with the consent of the Executive Council, makes the following regulations—

Contents

1	Title	2
2	Commencement	2
3	Interpretation	2
4	Objectives of these Regulations	4
Part 1		
Voluntary Care, Support and Treatment		
5	Voluntary care, support and treatment	4
6	Preference to be given to care, support and treatment within family and community	5
Part 2		
Involuntary Initial Assessment		
7	Criteria for Involuntary Initial Assessment to be done	5
8	Involuntary Initial Assessment	5
9	Action following involuntary assessment	6
Part 3		
Community Treatment Orders		
10	Criteria for a Community Treatment Order	6
11	Community Treatment Orders	7
12	Compliance with a Community Treatment Order	7
Part 4		
Inpatient Treatment Orders		
13	Criteria for an Inpatient Treatment Order	8

14	Inpatient Treatment Orders	8
15	Compliance with an Inpatient Treatment Order	9
16	Leave of absence	9
17	Return of person subject to an Inpatient Treatment Order	9
18	Offences concerning removal of a person from a Treatment Centre	10
Part 5		
Review of Orders		
19	Person to be given statement and explanation of rights etc	10
20	Court may review Orders	10
21	Powers and procedures of the Court	11
Part 6		
Administration of Property etc.		
22	Criteria for an Administration Order	11
23	Administration Orders	12
24	Powers and duties of an appointed Administrator	12
25	Restrictions on powers of person subject to an Administration Order	13
26	Remuneration for Administrators	13
27	Review of Administration Orders	13
28	Administrator may apply to the Court for directions etc	13
Part 7		
Miscellaneous		
29	Keeping and production of records	14
30	Requests made to Police	14
31	Offences against these Regulations	14

Regulations

- 1 Title**
These regulations are the Ministry of Health (Mental Health) Regulations 2013.
- 2 Commencement**
These regulations come into force on the day after the date on which these regulations are made.
- 3 Interpretation**
 - (1) In these regulations, unless the context otherwise requires,—
 - Administrator** means a person appointed under an Administration Order pursuant to regulation 25
 - Administration Order** means an Order made by a Court under regulation 25
 - Chief Mental Health Officer** means a health care professional appointed by the Head of Ministry in writing, who has a specialist mental health qualification or experience to be able to supervise and manage mental health services in the Ministry, and who must act under the direction and control of the Head of Ministry
 - Community Treatment Order** means an order authorised to be made under regulation 12
 - Estate** of a person includes all the real and personal property of the person, and any interest held by the person in such property
 - Head of Ministry** means the Head of the Ministry of Health

Inpatient Treatment Order means an order authorised to be made under regulation 15

Mental health care professional includes the Chief Mental Health Officer and any of the following—

- (a) any registered medical practitioner authorised in writing by the Head of Ministry or Chief Mental Health Officer;
- (b) any registered nurse authorised in writing by the Head of Ministry or Chief Mental Health Officer;
- (c) any psychologist or social worker authorised in writing by the Head of Ministry or Chief Mental Health Officer

Mental disorder means, subject to sub-regulation (2), a medical condition that is characterised by a significant disturbance of thought, mood, perception or memory, and includes any mental illness

Mental Incapacity means intellectual impairment, mental disorder, medical disorder, brain injury, physical disability or dementia such that, by reason of the impairment, illness, disorder, injury, disability or dementia, a person is unable to make or communicate reasonable judgments in respect of all or any of the matters relating to the person or the person's circumstances or property

Minister means the Minister responsible for health

Ministry means the Ministry of Health

Registrar means a duly appointed Registrar of a Court

Treatment Centre means any premises, place or service designated by the Minister by written Order, to provide secure care, support, treatment or protection for a person subject to an Inpatient Treatment Order.

(2) No person is to be considered mentally ill by reason only of one or more of the following—

- (a) that the person expresses or refuses or fails to express a particular political opinion or belief;
- (b) that the person expresses or refuses or fails to express a particular religious opinion or belief;
- (c) that the person expresses or refuses or fails to express a particular philosophy;
- (d) that the person expresses or refuses or fails to express a particular sexual preference or sexual orientation;
- (e) that the person engages in or refuses or fails to engage in a particular political activity;
- (f) that the person engages in or refuses or fails to engage in a particular religious activity;
- (g) that the person engages in sexual promiscuity;
- (h) that the person engages in immoral conduct;
- (i) that the person engages in illegal conduct;
- (j) that the person is intellectually disabled;
- (k) that the person takes drugs or alcohol;
- (l) that the person has an antisocial personality;
- (m) that the person has a particular economic or social status or is a member of a particular cultural or racial group.

(3) Sub-regulation (2)(k) does not prevent the serious temporary or permanent physiological, biochemical or psychological effects of drugs or alcohol taking from being regarded as an indication that a person has a mental disorder.

4 Objectives of these Regulations

All persons who perform or exercise any function, power, duty or responsibility under these Regulations, must have regard to the following objectives and principles—

- (a) to ensure that persons with a mental disorder receive the best possible care, support and, when required, treatment and protection;
- (b) to support families and communities when they are providing care and support for a person with a mental disorder;
- (c) to minimise the restrictions upon the liberty of persons with a mental disorder, and interference in their rights, dignity and self respect, so far as is consistent with their proper care, support, treatment and protection, and the protection of other persons;
- (d) to work towards ameliorating the adverse effects of mental disorders upon persons suffering from them, and their families and communities;
- (e) to rationalise and co-ordinate services for persons with mental disorders, and their families and communities;
- (f) to assist and encourage non-government organisations to provide care, support and other services for persons with mental disorders, and their families and communities;
- (g) to assist and encourage the development of services designed to reduce the incidence and adverse impacts of mental illness and disorders;
- (h) to promote informed public opinion, discussion and understanding of mental health issues;
- (i) to eliminate discrimination against, and abuse, mistreatment and neglect of persons with mental disorders;
- (j) to promote a high standard of training of those responsible for the care, support, treatment and protection of persons with mental disorders; and
- (k) to promote and facilitate effective research into issues of mental health.

Part 1

Voluntary Care, Support and Treatment

5 Voluntary care, support and treatment

- (1) When providing care, support, treatment or protection for persons with a mental disorder, all persons who perform or exercise any function, power, duty or responsibility under these Regulations give preference to arrangements which provide care, support, treatment or protection—
 - (a) on a voluntary basis; and
 - (b) within the family of the person with the mental disorder, or community in which that person lives.
- (2) For the purposes of these Regulations “voluntary basis” means that the person with a mental disorder is provided with care, support, treatment and protection only if all of the following are met—
 - (a) the person is given information and explanation about the care, support, treatment or protection in a language and manner which the person is capable of understanding;

- (b) the range of available options and choices for the care, support, treatment or protection are made available to the person, and information about the options and choices, and the right to choose which options and choices, is provided to the person:
- (c) the person with the mental disorder is sufficiently competent to freely and voluntarily agree to or refuse the care, support, treatment, or protection that is available and offered to him or her:
- (d) the person's agreement or refusal is respected and given effect to without unreasonable pressure or influence being exerted by any other person.

6 Preference to be given to care, support and treatment within family and community

- (1) Unless the person with a mental disorder cannot be cared for, supported, treated or protected within his or her family, or within the community in which the person lives, all persons providing care, support, treatment or protection of the person in accordance with these Regulations must do so utilising the person's family or community to the fullest extent possible.
- (2) Sub-regulation (1) does not apply if the protection, rights or welfare of other persons requires that alternative arrangements be made for the provision of the care, support, treatment or protection.

**Part 2
Involuntary Initial Assessment**

7 Criteria for Involuntary Initial Assessment to be done

For the purposes of this Part, an involuntary initial assessment of a person may only be undertaken if all of the following apply—

- (a) the person must appear to have a mental disorder:
- (b) the person must appear to be unwilling or unable to be assessed on a voluntary basis:
- (c) the person must appear to require care, support, treatment or protection in his or her own interests, or for the protection of any other person.

8 Involuntary Initial Assessment

- (1) If a concerned person believes in good faith that a person meets the criteria under regulation 7, the concerned person may arrange for the person to be assessed by a mental health care professional on a voluntary basis in the person's place of residence or any other place that the person is willing to attend.
- (2) If the person is—
 - (a) unable or unwilling to be assessed on a voluntary basis under sub-regulation (1); or
 - (b) a mental health care professional is unavailable or unable to assess the person at the person's place of residence or other place the person is willing to attend—

the concerned person may arrange for the person to be assessed without the person's consent at the person's place of residence or at a health care facility or some other suitable place.

- (3) For the purposes of an assessment under this regulation, a mental health care professional or a member of the Police Service has authority to do any of the following—
 - (a) apprehend and transport the person to the proposed place of assessment;
 - (b) request a member or members of the Police Service to provide assistance for the apprehension, transportation, restraint and assessment of the person;
 - (c) under supervision and direction of a health care professional, restrain the person.
- (4) Any apprehension, transportation or restraint under sub-regulation (3) must be carried out humanely, and with the minimum of force required in the circumstances.
- (5) An assessment under this Part may include either or both of the following—
 - (a) detention of the person being assessed for up to a maximum period of 72 hours commencing from the time that the person first presents to the mental health care professional for assessment;
 - (b) such health care treatment (including treatment for an apparent physical or mental condition or disorder) that the mental health care professional undertaking the assessment believes the person urgently requires to preserve the person's life, health or safety, or to protect any other person.

9 Action following involuntary assessment

Following an assessment under this Part, the mental health care professional must—

- (a) if the person being assessed fails to meet the criteria for a Community Treatment Order under regulation 10 - release the person and arrange for the person to be transported to the his or her place of residence, or other place reasonably requested by the person, and provide such treatment and support on a voluntary basis as is available and beneficial;
- (b) if the person being assessed meets the criteria under regulation 10 - make a Community Treatment Order for the person in accordance with the provisions of Part 4;
- (c) if the person being assessed meets the criteria for an Inpatient Treatment Order under regulation 13 - make arrangements for an Inpatient Treatment Order to be made in accordance with the provisions of Part 5;
- (d) if a person is released under paragraph (a), and the mental health care professional forms the opinion that the person requires care, support, treatment or protection in the interests of the person or for the protection of any other person.

Part 3

Community Treatment Orders

10 Criteria for a Community Treatment Order

A Community Treatment Order may be made under this Part for a person if all of the following are applicable—

- (a) the person must be assessed to have a mental disorder;
- (b) the person is unwilling or unable to receive care, support, treatment or protection for the mental disorder on a voluntary basis;

- (3) For the purposes of an assessment under this regulation, a mental health care professional or a member of the Police Service has authority to do any of the following—
 - (a) apprehend and transport the person to the proposed place of assessment;
 - (b) request a member or members of the Police Service to provide assistance for the apprehension, transportation, restraint and assessment of the person;
 - (c) under supervision and direction of a health care professional, restrain the person.
 - (4) Any apprehension, transportation or restraint under sub-regulation (3) must be carried out humanely, and with the minimum of force required in the circumstances.
 - (5) An assessment under this Part may include either or both of the following—
 - (a) detention of the person being assessed for up to a maximum period of 72 hours commencing from the time that the person first presents to the mental health care professional for assessment;
 - (b) such health care treatment (including treatment for an apparent physical or mental condition or disorder) that the mental health care professional undertaking the assessment believes the person urgently requires to preserve the person's life, health or safety, or to protect any other person.
- 9 Action following involuntary assessment**
Following an assessment under this Part, the mental health care professional must—
- (a) if the person being assessed fails to meet the criteria for a Community Treatment Order under regulation 10 - release the person and arrange for the person to be transported to the his or her place of residence, or other place reasonably requested by the person, and provide such treatment and support on a voluntary basis as is available and beneficial;
 - (b) if the person being assessed meets the criteria under regulation 10 - make a Community Treatment Order for the person in accordance with the provisions of Part 4;
 - (c) if the person being assessed meets the criteria for an Inpatient Treatment Order under regulation 13 - make arrangements for an Inpatient Treatment Order to be made in accordance with the provisions of Part 5;
 - (d) if a person is released under paragraph (a), and the mental health care professional forms the opinion that the person requires care, support, treatment or protection in the interests of the person or for the protection of any other person.

Part 3

Community Treatment Orders

10 Criteria for a Community Treatment Order

A Community Treatment Order may be made under this Part for a person if all of the following are applicable—

- (a) the person must be assessed to have a mental disorder;
- (b) the person is unwilling or unable to receive care, support, treatment or protection for the mental disorder on a voluntary basis:

- (c) as a result of the mental disorder the person requires care, support, treatment or protection in the interests of the person, or to protect any other person:
- (d) the care, support, treatment or protection required for the person is available, and cannot be effectively provided in a less restrictive manner than under a Community Treatment Order.

11 Community Treatment Orders

- (1) A Community Treatment Order may be made by a mental health care professional in order to require any of the following of the person to whom it is to relate—
 - (a) to receive the care, support, treatment or protection which any authorised health care professional may require from time to time:
 - (b) to reside at a specified place:
 - (c) to refrain from using or consuming alcohol, specified drugs or other substances:
 - (d) to attend at a nominated medical or health care facility or rehabilitation service, therapist, place of therapy, educational institution, vocational course or activity:
 - (e) to comply with such other terms and conditions as an authorised health care professional may require from time to time.
- (2) A Community Treatment Order may be issued for a period not exceeding 12 months and prior to the expiry of the Order, and following a further assessment of the person, may be renewed for a further period or periods not exceeding 12 months.
- (3) A Community Treatment Order must be in a form approved by the Head of Ministry.
- (4) Subject to sub-regulation (2) and following an assessment of the person subject to the Order, a mental health care professional may vary the duration, terms and conditions of a Community Treatment Order.
- (5) A Community Treatment Order must be revoked by a mental health care professional if the person subject to the Order has been examined by the mental health care professional, and that mental health care professional believes that the person no longer meets the criteria under regulation 10.
- (6) Subject to sub-regulation (8) and despite anything in this regulation, a Community Treatment Order made by a mental health care profession must be referred to the Chief Mental Health Officer or the Head of Ministry for approval within 24 hours of the Community Treatment Order being made.
- (7) If a Community Treatment Order is not approved under sub-regulation (6), that Order is deemed to have lapsed 72 hours after the time that the order was made.
- (8) Despite anything in this regulation, the Chief Mental Health Officer may revoke or vary any Community Treatment Order at any time it is in force, if he or she considers it appropriate to do so in the circumstances.

12 Compliance with a Community Treatment Order

- (1) A person who is subject to a Community Treatment Order—
 - (a) must make every possible attempt to comply with the order; and
 - (b) may be given care, support, treatment or protection despite the absence or refusal of consent by the person.

- (2) If a person who is subject to a Community Treatment Order is unable or unwilling to comply with the Order, a mental health care professional may require the person subject to the Order to attend upon a nominated health care professional or at a health facility for further assessment.
- (3) When acting under sub-regulation (2), the mental health care professional may request a police officer to apprehend and transport the person to the nominated health care professional or place.

Part 4

Inpatient Treatment Orders

13 Criteria for an Inpatient Treatment Order

An Inpatient Treatment Order may be made under this Part for a person if all of the following are applicable—

- (a) the person must be assessed to have a mental disorder;
- (b) the person is unwilling or unable to receive care, support, treatment or protection for the mental disorder on a voluntary basis;
- (c) as a result of the mental disorder the person requires care, support, treatment or protection in the interests of the person, or to protect any other person;
- (d) the care, support, treatment or protection required for the person is available, and cannot be effectively provided in a less restrictive manner (including but not limited to a Community Treatment Order) than under an Inpatient Treatment Order.

14 Inpatient Treatment Orders

- (1) An Inpatient Treatment Order may be made by a mental health care professional in order to require any of the following of the person to whom it is to relate—
 - (a) to receive the care, support, treatment or protection which any duly directed health care professional may require from time to time;
 - (b) subject to this Part, to be detained and remain an inpatient at a Treatment Centre nominated in the Order, or such other Treatment Centre nominated by the Chief Mental Health Officer or the Head of Ministry;
 - (c) attend at a nominated medical or health care facility, or rehabilitation service, therapist, place of therapy, educational institution, vocational course or activity;
 - (d) to comply with such other terms and conditions as a mental health care professional may require from time to time.
- (2) An Inpatient Treatment Order may be issued for a period not exceeding 6 weeks and prior to the expiry of the Order, and following a further examination of the person by a mental health care professional, the Order may be renewed for a further period or periods not exceeding 6 weeks.
- (3) An Inpatient Treatment Order must be in a form approved by the Head of Ministry.
- (4) Subject to sub-regulation (2), and following an assessment of the person subject to the Order, a mental health care professional may vary the duration, or terms and conditions of the Inpatient Treatment Order.

- (5) An Inpatient Treatment Order must be revoked by a mental health care professional if the person subject to the Order has been examined by the mental health care professional, and he or she believes that the person no longer meets the criteria under regulation 13.
- (6) A mental health care professional who makes an Inpatient Treatment Order must file a copy of the order with the Head of Ministry within 2 working days of the Order being made.
- (7) Subject to sub-regulation (9) and despite anything in this regulation, an Inpatient Treatment Order made by a mental health care professional must be referred to the Chief Mental Health Officer or the Head of Ministry for approval within 24 hours of the Inpatient Treatment Order being made.
- (8) If an Inpatient Treatment Order is not approved under sub-regulation (7), that Order is deemed to have lapsed 72 hours after the time that the order was made.
- (9) Despite anything in this regulation, the Chief Mental Health Officer may revoke or vary any Inpatient Treatment Order at any time it is in force, if he or she considers it appropriate to do so in the circumstances.

15 Compliance with an Inpatient Treatment Order

A person subject to an Inpatient Treatment—

- (a) must make every possible attempt to comply with the Order; and
- (b) may be given care, support, treatment or protection despite the absence or refusal of consent by the person.

16 Leave of absence

- (1) A mental health care professional may authorise a person who is subject to an Inpatient Treatment Order to leave a Treatment Centre for approved purposes for a period not exceeding 5 days.
- (2) Leave of absence may be granted under this regulation subject to such terms and conditions as the mental health care professional thinks fit.
- (3) The Head of Ministry, the Chief Mental Health Officer or the mental health care professional who granted leave of absence each have authority to cancel any leave of absence granted under this regulation.

17 Return of person subject to an Inpatient Treatment Order

If a person subject to an Inpatient Treatment Order—

- (a) is absent from the Treatment Centre without the consent of a duly directed health care professional; or
- (b) fails to return to the Treatment Centre—
 - (i) within the period of any leave of absence granted under regulation 16; or
 - (ii) immediately upon any cancellation of leave of absence granted under regulation 16—

a mental health care professional or any member of the Police Service may apprehend and return the person to the Treatment Centre, using such force as is reasonably necessary in the circumstance.

- 18 Offences concerning removal of a person from a Treatment Centre**
A person who, without lawful excuse, does any of the following—
- (a) removes or attempts to remove a person subject to an Inpatient Treatment Order from a Treatment Centre;
 - (b) assists or attempts to assist a person subject to an Inpatient Treatment Order to leave a Treatment Centre;
 - (c) harbours or attempts to harbour a person subject to an Inpatient Treatment Order when such person is absent from the Treatment Centre without the permission of a mental health care professional;
 - (d) hinders or attempts to hinder a health care professional or member of the Police Service in exercising any power or authority under regulation 17—
commits an offence punishable by a fine not exceeding \$1000 or imprisonment not exceeding 3 months, or both.

Part 5 Review of Orders

- 19 Person to be given statement and explanation of rights etc**
If a person is made subject to a Community Treatment Order or Inpatient Treatment Order, the mental health care professional who made the Order must give or cause to be given to that person all of the following—
- (a) a copy of the Order;
 - (b) a written statement of the person's rights in a form approved by the Head of Ministry;
 - (c) a copy of any relevant application for review of the Order;
 - (d) subject to available resources, an explanation in a language, style and manner which the person is most likely to understand of all of the following—
 - (i) the Order;
 - (ii) the reasons why the Order has been made;
 - (iii) what the Order requires of the person;
 - (iv) the person's rights to seek review of the Order under this Part.
- 20 Court may review Orders**
- (1) A person subject to a Community Treatment Order or Inpatients Treatment Order, or any other person who satisfies the Court that they have a proper interest in the matter, may with the leave of the Court, apply during the currency of the Order to the Court for a review of the Order.
 - (2) An application for a review under sub-regulation (1) must be—
 - (a) in a form acceptable to the Court;
 - (b) processed by a mental health care professional who becomes aware of a request for a review by the person subject to the Order, or by any other person with a bona fide interest in the person's welfare;
 - (c) filed with the Registrar.
 - (3) When a Court considers the question of leave to hear a review under this regulation, regard should be had to all circumstances of the applicant's case, including but not limited to—

18 Offences concerning removal of a person from a Treatment Centre

A person who, without lawful excuse, does any of the following—

- (a) removes or attempts to remove a person subject to an Inpatient Treatment Order from a Treatment Centre;
- (b) assists or attempts to assist a person subject to an Inpatient Treatment Order to leave a Treatment Centre;
- (c) harbours or attempts to harbour a person subject to an Inpatient Treatment Order when such person is absent from the Treatment Centre without the permission of a mental health care professional;
- (d) hinders or attempts to hinder a health care professional or member of the Police Service in exercising any power or authority under regulation 17—

commits an offence punishable by a fine not exceeding \$1000 or imprisonment not exceeding 3 months, or both.

**Part 5
Review of Orders**

19 Person to be given statement and explanation of rights etc

If a person is made subject to a Community Treatment Order or Inpatient Treatment Order, the mental health care professional who made the Order must give or cause to be given to that person all of the following—

- (a) a copy of the Order;
- (b) a written statement of the person's rights in a form approved by the Head of Ministry;
- (c) a copy of any relevant application for review of the Order;
- (d) subject to available resources, an explanation in a language, style and manner which the person is most likely to understand of all of the following—
 - (i) the Order;
 - (ii) the reasons why the Order has been made;
 - (iii) what the Order requires of the person;
 - (iv) the person's rights to seek review of the Order under this Part.

20 Court may review Orders

- (1) A person subject to a Community Treatment Order or Inpatients Treatment Order, or any other person who satisfies the Court that they have a proper interest in the matter, may with the leave of the Court, apply during the currency of the Order to the Court for a review of the Order.
- (2) An application for a review under sub-regulation (1) must be—
 - (a) in a form acceptable to the Court;
 - (b) processed by a mental health care professional who becomes aware of a request for a review by the person subject to the Order, or by any other person with a bona fide interest in the person's welfare;
 - (c) filed with the Registrar.
- (3) When a Court considers the question of leave to hear a review under this regulation, regard should be had to all circumstances of the applicant's case, including but not limited to—

- (a) the number of applications that the person has made for a review during the currency of the Order; and
- (b) the number of hearings already held for the person subject to the Order.
- (4) Upon hearing a review, the Court must revoke the Order if the Court is satisfied that either of the following apply—
 - (a) the person subject to the Order does not meet the relevant prescribed criteria for the making of the Order;
 - (b) the Order is no longer required in all of the circumstances.
- (5) Despite anything in this regulation, any person applying for a review under this regulation may have only one complete hearing of the matter unless the Court decides that there are exceptional circumstances in which a further hearing of an application for review under this regulation should be reconsidered by it.
- (6) In this regulation, “processed” means providing all necessary assistance required by a person subject to an Order under these Regulations to complete an application for review, and includes assistance with the filing of the application with the Court and, subject to available resources, transportation to and from the Court during the time of the hearing of the review.

21 Powers and procedures of the Court

- (1) When conducting a review under this Part, the Court—
 - (a) has all of the powers which the Court has concerning the conduct of any civil proceedings;
 - (b) may act according to equity and good conscience without regard to legal technicalities or forms;
 - (c) may conduct proceedings in as informal a manner as is determined to be appropriate by the Court;
 - (d) is not bound by strict rules or practice as to evidence, but may inform itself in relation to any matter in such manner as the Court thinks fit;
 - (e) may sit in any suitable place or venue.
- (2) Evidence before the Court in any review conducted under this Part cannot be used in any civil or criminal proceedings, other than any of the following proceedings—
 - (a) for an offence against these Regulations;
 - (b) for contempt of court;
 - (c) perjury committed during any hearing of the Court relating to the Order.

Part 6

Administration of Property etc.

22 Criteria for an Administration Order

An Administration Order may be made under this Part for a person if all of the following are applicable—

- (a) the person has a mental disorder or mental incapacity;
- (b) as a result of the mental disorder or mental incapacity the person is unable to make reasonable judgements in respect to all or any part of the person’s estate by reason of the disorder or incapacity;
- (c) the person is in need of an administrator to administer the whole or part of the person’s estate.

23 Administration Orders

- (1) If on the application to the Court by the Head of Ministry, or any other person who satisfies the Court that they have a proper interest in the matter, it appears to the Court that the person subject to the application meets the criteria under regulation 22, the Court may make an Administration Order for the person in accordance with the provisions of this Part.
- (2) An Administration Order—
- (a) is an order made by the Court to appoint the Registrar or other suitable person as Administrator to administer either the whole or part of person's estate;
 - (b) may be made for a period not exceeding 1 year unless the Court is of the opinion that this time period should be extended;
 - (c) may be made subject to such terms and conditions as the Court thinks fit, including such reporting and accountability requirements for the appointed Administrator as the Court may determine from time to time.

24 Powers and duties of an appointed Administrator

- (1) Subject to the terms of an Administration Order made under regulation 23, an Administrator must do all of the following—
- (a) act in the best interests of the person who is the subject of the Order;
 - (b) take into account, as far as is possible, the wishes of the person subject to the Order, where such wish is made known by the person before the person suffered the mental disorder;
 - (c) take possession and care of, recover, collect, preserve and administer the property and estate of the person subject to the Order and generally manage the affairs of the person (including but not limited to financial and legal affairs), and exercise all rights (statutory or otherwise) which the person might exercise if the person had legal capacity;
 - (d) in the name and on behalf of the person, generally do all acts and exercise all powers with respect to the estate of the person as effectually and in the same manner as the person could have done if the person were not under a legal disability;
 - (e) properly and lawfully exercise such additional powers and duties over the person's estate as the Court may give the Administrator from time to time.
- (2) These Regulations does not confer on an Administrator power to do any of the following—
- (a) to execute a will in the name of a person who is subject to an Administration Order;
 - (b) to legally bind a person to an agreement relating to the marriage or divorce of a person who is subject to an Administration Order, without a specific Court order to do so;
 - (c) to provide consent to the adoption of a person who is subject to an Administration Order by another person without a specific Court order to do so; or
 - (d) to provide consent to the adoption of any children of a person who is subject to an Administration Order by another person without a specific Court order to do so.

23 Administration Orders

- (1) If on the application to the Court by the Head of Ministry, or any other person who satisfies the Court that they have a proper interest in the matter, it appears to the Court that the person subject to the application meets the criteria under regulation 22, the Court may make an Administration Order for the person in accordance with the provisions of this Part.
- (2) An Administration Order—
- (a) is an order made by the Court to appoint the Registrar or other suitable person as Administrator to administer either the whole or part of person's estate;
 - (b) may be made for a period not exceeding 1 year unless the Court is of the opinion that this time period should be extended;
 - (c) may be made subject to such terms and conditions as the Court thinks fit, including such reporting and accountability requirements for the appointed Administrator as the Court may determine from time to time.

24 Powers and duties of an appointed Administrator

- (1) Subject to the terms of an Administration Order made under regulation 23, an Administrator must do all of the following—
- (a) act in the best interests of the person who is the subject of the Order;
 - (b) take into account, as far as is possible, the wishes of the person subject to the Order, where such wish is made known by the person before the person suffered the mental disorder;
 - (c) take possession and care of, recover, collect, preserve and administer the property and estate of the person subject to the Order and generally manage the affairs of the person (including but not limited to financial and legal affairs), and exercise all rights (statutory or otherwise) which the person might exercise if the person had legal capacity;
 - (d) in the name and on behalf of the person, generally do all acts and exercise all powers with respect to the estate of the person as effectually and in the same manner as the person could have done if the person were not under a legal disability;
 - (e) properly and lawfully exercise such additional powers and duties over the person's estate as the Court may give the Administrator from time to time.
- (2) These Regulations does not confer on an Administrator power to do any of the following—
- (a) to execute a will in the name of a person who is subject to an Administration Order;
 - (b) to legally bind a person to an agreement relating to the marriage or divorce of a person who is subject to an Administration Order, without a specific Court order to do so;
 - (c) to provide consent to the adoption of a person who is subject to an Administration Order by another person without a specific Court order to do so; or
 - (d) to provide consent to the adoption of any children of a person who is subject to an Administration Order by another person without a specific Court order to do so.

25 Restrictions on powers of person subject to an Administration Order

- (1) While an Administration Order is in effect, the person who is subject to the Order is deemed incapable of the following—
 - (a) dealing with, transferring, alienating or charging their money or property or any part of it;
 - (b) becoming liable under any contract, without an order of the Court or the written consent of the Administrator.
- (2) The restrictions under sub-regulation (1) apply subject to any term or condition of the Order to the contrary.
- (3) Every dealing, transfer, alienation or charge by any person in respect of any part of a person's estate which is under the control of the Administrator is void and of no effect, and the money or property the subject of the dealing, transfer, alienation or charge is recoverable by the Administrator in any court of competent jurisdiction.
- (4) For the purpose of this regulation the acceptance of payment of the whole or any part of a debt, or an agreement to forego the recovery of a debt, is deemed to be a dealing relating to property.

26 Remuneration for Administrators

- (1) Despite any other law, an Administrator must not receive any fee, remuneration or other reward from the estate of a person who is subject to an Administration Order, or from any other person, for acting as Administrator.
- (2) Sub-regulation (1) does not apply if the Court otherwise makes provision for payment or reimbursement of the Administrator in the Administration Order, or any subsequent amendment to its terms and conditions.

27 Review of Administration Orders

- (1) The Court must be requested to conduct a review of an Administration Order prior to the expiry of the Order, and may conduct a review at any time—
 - (a) on the Court's own initiative; or
 - (b) on the application of the person who is subject to the Order; or
 - (c) on application by any other person who satisfies the Court that they have a proper interest in the matter.
- (2) Upon completing a review under this regulation, the Court—
 - (a) must revoke the Administration Order if the Court is satisfied that—
 - (i) the person subject to the Order no longer meets the criteria under regulation 22; and
 - (ii) the Order is no longer required in all of the circumstances;
 - (b) in the event that the Order is not revoked under paragraph (a), the Court may amend, vary, continue or replace the Order, subject to any conditions or requirements the Court thinks fit, provided that any further Administration Order made by the Court—
 - (i) must be made for a further period not exceeding 3 years; and
 - (ii) is subject to review in accordance with the provisions of this regulation.

28 Administrator may apply to the Court for directions etc

- (1) An Administrator may apply to the Court from time to time for—

- (a) directions as to any matter concerning the estate of the person who is subject to the Administration Order, or concerning any other matter touching upon the Administration Order; or
 - (b) such additional or other powers as the Administrator may require.
- (2) Upon hearing an application under sub-regulation (1) the Court may give such directions or make such orders as the Court thinks fit.
 - (3) An Administrator subject to any direction or order made by the Court under this regulation must comply accordingly.

Part 7
Miscellaneous

29 Keeping and production of records


Any person who performs any function or exercises any power under these Regulations must keep such records as the Head of Ministry may require from time to time, and must provide the records for inspection and copying as the Head of Ministry directs.

30 Requests made to Police

Where any provision in these Regulations provides for a request to be made to the Police, such request must be acted upon by the Police in accordance with the tenor of the request made if the person making the request is lawfully performing any function or exercising any power under these Regulations.

31 Offences against these Regulations

- (1) A person who makes any false or misleading statement in any matter under or concerning these Regulations commits an offence and is liable upon conviction to a fine not exceeding \$1,000 or imprisonment not exceeding 3 months, or both.
- (2) A person who is subject to a Community Treatment Order or Inpatients Treatment Order under these Regulations and who fails, refuses or neglects to comply with any condition, requirement or direction imposed or given under the authority of that Order commits an offence and is liable upon conviction to a fine not exceeding \$10,000 or imprisonment not exceeding 12 months, or both.
- (3) A person who breaches any provision of these Regulations for which no other offence is provided commits an offence and is liable upon conviction to a fine not exceeding \$5,000 or imprisonment not exceeding 6 months, or both.


Clerk of the Executive Council

These regulations are administered by the Ministry of Health.
These regulations were made on the 2nd day of October 2013.