



# Mental Health Act 2007

## 2007 CHAPTER 12

### PART 1

#### AMENDMENTS TO MENTAL HEALTH ACT 1983

### CHAPTER 1

#### CHANGES TO KEY PROVISIONS

#### *Mental disorder*

### **1 Removal of categories of mental disorder**

- (1) Section 1(2) of the 1983 Act (key definitions) is amended as set out in subsections (2) and (3).
- (2) For the definitions of “mental disorder” and “mentally disordered” substitute—

““mental disorder” means any disorder or disability of the mind; and  
“mentally disordered” shall be construed accordingly;”.
- (3) The following definitions are omitted—
  - (a) those of “severe mental impairment” and “severely mentally impaired”,
  - (b) those of “mental impairment” and “mentally impaired”, and
  - (c) that of “psychopathic disorder”.
- (4) Schedule 1 (which contains further amendments to the 1983 Act and amendments to other Acts) has effect.

*Status: Point in time view as at 03/11/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Mental Health Act 2007, Chapter 1. (See end of Document for details)*

### **Commencement Information**

- II** S. 1 not in force at Royal Assent see s. 56(1); s. 1(4) in force for specified purposes at 3.11.2008 by S.I. 2008/1210, arts. 1(1)(b), 2(a) (with arts. 4, 5); s. 1 in force insofar as not already in force at 3.11.2008 by S.I. 2008/1900, arts. 1(1), 2(a) (with art. 3, Sch.)

## **2 Learning disability**

(1) Section 1 of the 1983 Act (application of Act) is amended as follows.

(2) After subsection (2) insert—

“(2A) But a person with learning disability shall not be considered by reason of that disability to be—

- (a) suffering from mental disorder for the purposes of the provisions mentioned in subsection (2B) below; or
- (b) requiring treatment in hospital for mental disorder for the purposes of sections 17E and 50 to 53 below,

unless that disability is associated with abnormally aggressive or seriously irresponsible conduct on his part.

(2B) The provisions are—

- (a) sections 3, 7, 17A, 20 and 20A below;
- (b) sections 35 to 38, 45A, 47, 48 and 51 below; and
- (c) section 72(1)(b) and (c) and (4) below.”

(3) After subsection (3) insert—

“(4) In subsection (2A) above, “learning disability” means a state of arrested or incomplete development of the mind which includes significant impairment of intelligence and social functioning.”

## **3 Changes to exclusions from operation of 1983 Act**

In section 1 of the 1983 Act (application of Act), for subsection (3) substitute—

“(3) Dependence on alcohol or drugs is not considered to be a disorder or disability of the mind for the purposes of subsection (2) above.”

### *Tests for detention etc*

## **4 Replacement of “treatability” and “care” tests with appropriate treatment test**

(1) The 1983 Act is amended as follows.

(2) In section 3 (admission for treatment)—

- (a) in subsection (2), omit paragraph (b) (and the word “and” at the end of that paragraph),
- (b) in that subsection, after paragraph (c) insert “; and
- (d) appropriate medical treatment is available for him.”, and
- (c) in subsection (3)(a), for “(b)” substitute “(d)”.

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- (3) In that section, after subsection (3) insert—
- “(4) In this Act, references to appropriate medical treatment, in relation to a person suffering from mental disorder, are references to medical treatment which is appropriate in his case, taking into account the nature and degree of the mental disorder and all other circumstances of his case.”
- (4) In section 20 (renewal of authority to detain), in subsection (4)—
- (a) omit paragraph (b) (and the word “and” at the end of that paragraph),
- (b) after paragraph (c) insert “and
- (d) appropriate medical treatment is available for him.”, and
- (c) omit the words from “but, in the case of mental illness” to the end.
- (5) In section 37(2) (conditions for exercise of powers of court to order hospital admission or guardianship), in paragraph (a)(i), for the words from “, in the case of psychopathic disorder” to the end substitute “ appropriate medical treatment is available for him; or ”.
- (6) In section 45A(2) (conditions for exercise of powers of court to direct hospital admission), for paragraph (c) substitute—
- “(c) that appropriate medical treatment is available for him.”
- (7) In section 47(1) (conditions for exercise of Secretary of State's powers to direct removal to hospital), in paragraph (b), for the words from “and, in the case of psychopathic disorder” to the end substitute “; and
- (c) that appropriate medical treatment is available for him;”.
- (8) In section 72—
- (a) in subsection (1)(b) (powers of tribunal to direct discharge of patient not liable to be detained under section 2), after sub-paragraph (ii) insert—
- “(iia) that appropriate medical treatment is available for him; or”, and
- (b) omit subsection (2).
- (9) In section 73(1) (powers of tribunal to direct discharge of restricted patients), in paragraph (a), for “or (ii)” substitute “, (ii) or (iia) ”.
- (10) In section 145 (interpretation), after subsection (1AA) insert—
- “(1AB) References in this Act to appropriate medical treatment shall be construed in accordance with section 3(4) above.”

## **5 Further cases in which appropriate treatment test is to apply**

- (1) The 1983 Act is amended as follows.
- (2) In section 36(1) (remand to hospital for treatment) after paragraph (a) (inserted by Schedule 1 to this Act) insert “and
- (b) appropriate medical treatment is available for him.”
- (3) In section 48(1) (removal to hospital of immigration detainees etc) after paragraph (b) (inserted by Schedule 1 to this Act) insert “and
- (c) appropriate medical treatment is available for him;”.

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- (4) In section 51(6)(a) (further power to make hospital order) after sub-paragraph (i) (inserted by Schedule 1 to this Act) insert “and  
 (ii) appropriate medical treatment is available for him; and”.

*Medical treatment*

**6 Appropriate treatment test in Part 4 of 1983 Act**

- (1) Part 4 of the 1983 Act (consent to treatment) is amended as follows.
- (2) In the following provisions, for the words from “, having regard to” to the end substitute “ it is appropriate for the treatment to be given. ”
- (a) section 57(2)(b) (certification of second opinion where treatment requires consent and a second opinion), and
- (b) section 58(3)(b) (certification of second opinion where treatment requires consent or a second opinion).
- (3) In section 64 (supplementary provisions for Part 4), after subsection (2) insert—
- “(3) For the purposes of this Part of this Act, it is appropriate for treatment to be given to a patient if the treatment is appropriate in his case, taking into account the nature and degree of the mental disorder from which he is suffering and all other circumstances of his case.”

**7 Change in definition of “medical treatment”**

- (1) Section 145 of the 1983 Act is amended as follows.
- (2) In subsection (1), in the definition of “medical treatment”, for the words from “and also” to the end substitute “ psychological intervention and specialist mental health habilitation, rehabilitation and care (but see also subsection (4) below); ”.
- (3) After subsection (3) insert—
- “(4) Any reference in this Act to medical treatment, in relation to mental disorder, shall be construed as a reference to medical treatment the purpose of which is to alleviate, or prevent a worsening of, the disorder or one or more of its symptoms or manifestations.”

*Fundamental principles*

**8 The fundamental principles**

After section 118(2) of the 1983 Act (code of practice) insert—

- “(2A) The code shall include a statement of the principles which the Secretary of State thinks should inform decisions under this Act.
- (2B) In preparing the statement of principles the Secretary of State shall, in particular, ensure that each of the following matters is addressed—
- (a) respect for patients' past and present wishes and feelings,

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- (b) respect for diversity generally including, in particular, diversity of religion, culture and sexual orientation (within the meaning of section 35 of the Equality Act 2006),
  - (c) minimising restrictions on liberty,
  - (d) involvement of patients in planning, developing and delivering care and treatment appropriate to them,
  - (e) avoidance of unlawful discrimination,
  - (f) effectiveness of treatment,
  - (g) views of carers and other interested parties,
  - (h) patient wellbeing and safety, and
  - (i) public safety.
- (2C) The Secretary of State shall also have regard to the desirability of ensuring—
- (a) the efficient use of resources, and
  - (b) the equitable distribution of services.
- (2D) In performing functions under this Act persons mentioned in subsection (1)(a) or (b) shall have regard to the code.”

**Status:**

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