

# MENTAL HEALTH ACT 2007

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## EXPLANATORY NOTES

### BACKGROUND AND SUMMARY

#### *Background*

4. The legislation governing the compulsory treatment of certain people who have a mental disorder is the Mental Health Act 1983 (the 1983 Act). The main purpose of the 2007 Act is to amend the 1983 Act. It is also being used to introduce “deprivation of liberty safeguards” through amending the Mental Capacity Act 2005 (MCA); and to extend the rights of victims by amending the Domestic Violence, Crime and Victims Act 2004.
5. The 1983 Act is largely concerned with the circumstances in which a person with a mental disorder can be detained for treatment for that disorder without his or her consent. It also sets out the processes that must be followed and the safeguards for patients, to ensure that they are not inappropriately detained or treated without their consent. The main purpose of the legislation is to ensure that people with serious mental disorders which threaten their health or safety or the safety of the public can be treated irrespective of their consent where it is necessary to prevent them from harming themselves or others.
6. The changes in relation to the MCA are in response to the 2004 European Court of Human Rights judgment (*HL v UK (Application No.45508/99)*) (the “Bournewood judgment”) involving an autistic man who was kept at Bournewood Hospital by doctors against the wishes of his carers. The European Court of Human Rights found that admission to and retention in hospital of HL under the common law of necessity amounted to a breach of Article 5(1) ECHR (deprivation of liberty) and of Article 5(4) (right to have lawfulness of detention reviewed by a court).

#### *Summary*

7. The following are the main changes to the 1983 Act made by the 2007 Act:
  - **definition of mental disorder:** it changes the way the 1983 Act defines mental disorder, so that a single definition applies throughout the Act, and abolishes references to categories of disorder. These amendments complement the changes to the criteria for detention.
  - **criteria for detention:** it introduces a new “appropriate medical treatment” test which will apply to all the longer-term powers of detention. As a result, it will not be possible for patients to be compulsorily detained or their detention continued unless medical treatment which is appropriate to the patient’s mental disorder and all other circumstances of the case is available to that patient. At the same time, the so-called “treatability test” will be abolished.
  - **professional roles:** it is broadening the group of practitioners who can take on the functions currently performed by the approved social worker (ASW) and responsible medical officer (RMO).

*These notes refer to the Mental Health Act 2007  
(c.12) which received Royal Assent on 19 July 2007*

- **nearest relative (NR):** it gives to patients the right to make an application to displace their NR and enables county courts to displace a NR where there are reasonable grounds for doing so. The provisions for determining the NR will be amended to include civil partners amongst the list of relatives.
  - **supervised community treatment (SCT):** it introduces SCT for patients following a period of detention in hospital. It is expected that this will allow a small number of patients with a mental disorder to live in the community whilst subject to certain conditions under the 1983 Act, to ensure they continue with the medical treatment that they need. Currently some patients leave hospital and do not continue with their treatment, their health deteriorates and they require detention again – the so-called “revolving door”.
  - **Mental Health Review Tribunal (MHRT):** it introduces an order-making power to reduce the time before a case has to be referred to the MHRT by the hospital managers. It also introduces a single Tribunal for England, the one in Wales remaining in being.
  - **age-appropriate services:** it requires hospital managers to ensure that patients aged under 18 admitted to hospital for mental disorder are accommodated in an environment that is suitable for their age (subject to their needs).
  - **advocacy:** it places a duty on the appropriate national authority to make arrangements for help to be provided by independent mental health advocates.
  - **electro-convulsive therapy:** it introduces new safeguards for patients.
8. The changes to the MCA provide for procedures to authorise the deprivation of liberty of a person resident in a hospital or care home who lacks capacity to consent. The MCA principles of supporting a person to make a decision when possible, and acting at all times in the person’s best interests and in the least restrictive manner, will apply to all decision-making in operating the procedures.
9. The changes to the Domestic Violence, Crime and Victims Act 2004 introduce new rights for victims of mentally disordered offenders who are not subject to restrictions.