

MENTAL HEALTH ACT 2007

EXPLANATORY NOTES

COMMENTARY

Part 1 – Amendments to Mental Health Act 1983

Chapter 1 – Changes to Key Provisions

Section 3: Changes to exclusions from operation of 1983 Act

23. Section 1(3) of the 1983 Act currently says that the definition of mental disorder shall not be construed as implying that a person may be dealt with under the 1983 Act as suffering from mental disorder “by reason only of promiscuity or other immoral conduct, sexual deviancy or dependence on alcohol or drugs.” Section 3 substitutes for this a single exclusion stating that dependence on alcohol or drugs is not considered to be a disorder or disability of the mind (ie a mental disorder) for the purposes of section 1(2) of the 1983 Act (the definition of mental disorder).
24. Clinically, neither promiscuity nor “other immoral conduct” by itself is regarded as a mental disorder, so the deletion of that exclusion makes no practical difference. Similarly, sexual orientation (homo-, hetero- and bi-sexuality) alone is not regarded as a mental disorder. However, there are disorders of sexual preference which are recognised clinically as mental disorders. Some of these disorders might be considered “sexual deviance” in the terms of the current exclusion (for example paraphilias like fetishism or paedophilia.) On that basis, the amendment would bring such disorders within the scope of the 1983 Act.
25. The use of alcohol or drugs is not, by itself, regarded clinically as a disorder or disability of the mind (although the effects of such use may be). However, dependence on alcohol and drugs is regarded as a mental disorder.
26. The effect of the exclusion inserted by this section is that no action can be taken under the 1983 Act in relation to people simply because they are dependent on alcohol or drugs (including opiates, psycho-stimulants or some solvents), even though in other contexts their dependence would be considered clinically to be a mental disorder.
27. It does not mean that such people are excluded entirely from the scope of the 1983 Act. A person who is dependent on alcohol or drugs may also suffer from another disorder which warrants action under the 1983 Act (including a disorder which arises out of their dependence or use of alcohol and drugs or which is related to it). Nor does it mean that people may never be treated without consent under the 1983 Act for alcohol or drug dependence. Like treatment for any other condition which is not itself a mental disorder, treatment for dependence may be given under the 1983 Act if it forms part of treatment for a condition which is a mental disorder for the purposes of the 1983 Act (see section 7 below for the definition of medical treatment).

Criteria for detention under the 1983 Act: overview

28. [Sections 4](#) and [5](#) amend the criteria for detention in Parts 2 and 3 of the 1983 Act (see also the amendments made by section 7 *subsection (3)*). A person can be detained under the 1983 Act only where certain criteria are met. Different criteria apply to detention for different purposes. Detention of civil patients is dealt with in Part 2 of the 1983 Act. Admission for assessment can be for up to 28 days and cannot be renewed (although in limited circumstances it can be extended under section 29 of the 1983 Act pending resolution of proceedings to appoint an acting nearest relative for a patient). Admission for treatment is for up to 6 months in the first place, and can be renewed periodically thereafter. The criteria for admission for assessment are in section 2 of the 1983 Act, the criteria for admission for treatment in section 3. Part 3 of the 1983 Act contains various powers for the courts to order the detention in hospital of people involved in criminal proceedings, either while the proceedings are in progress or as an alternative to punishment. It also contains powers for the Secretary of State (in practice the Secretary of State for Justice) to transfer prisoners to hospital for treatment. The criteria in each case are set out in the relevant section.
29. Where a patient is detained for treatment under section 3 or under Part 3, the detention must be renewed periodically. Criteria for this renewal are in section 20 of the 1983 Act. Patients detained for assessment under section 2 or for treatment under section 3 and under certain powers in Part 3 may apply to the MHRT for discharge. The criteria the MHRT must use when deciding the application are set out in sections 72-74 of the 1983 Act.