

# **MENTAL HEALTH ACT 2007**

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## **EXPLANATORY NOTES**

### **COMMENTARY**

#### **Part 1 – Amendments to Mental Health Act 1983**

##### *Chapter 2 - Professional Roles*

##### **Overview**

46. **Chapter 2** provides for roles which are central to the operation of the 1983 Act potentially to be performed by a wider range of professionals than at present. In particular, it replaces the role of the “responsible medical officer” (RMO) with that of the “responsible clinician” (RC) and the role of the “approved social worker” (ASW) with that of the “approved mental health professional” (AMHP).
47. Under the 1983 Act, the RMO is the registered medical practitioner in charge of the treatment of the patient. As such, the RMO has various designated functions, including deciding when patients can be discharged and allowed out on leave. The identity of the RMO is a question of fact in the circumstances (except in respect of guardianship where the RMO is the person appointed as such by the local social services authority (LSSA)). In practice, RMOs are usually consultant psychiatrists.
48. By contrast, the RC may be any practitioner who has been approved for that purpose (an “approved clinician” (AC) – see below). Approval need not be restricted to medical practitioners, and may be extended to practitioners from other professions, such as nursing, psychology, occupational therapy and social work. RCs will take over most of the functions of RMOs, although some functions currently reserved to RMOs may be taken instead by another AC, not just the RC. RCs will also have certain new functions in relation to SCT (see section 32 below).
49. Similarly, Chapter 2 replaces the ASW with the AMHP. Under section 114 of the 1983 Act, an LSSA is required to appoint a sufficient number of ASWs to carry out key functions. These include making applications to admit patients for assessment, treatment or guardianship.
50. AMHPs will take on the functions of the ASWs, including the function of making applications for admission and detention in hospital under Part 2 of the 1983 Act. Like RCs, they are also to have certain new functions in relation to SCT (see section 32 below). As well as social workers, a wider group of professionals, for example nurses, occupational therapists and psychologists, will potentially be eligible for approval as AMHPs as long as individuals have the right skills, experience and training. The appropriate national authority will set out approval criteria in regulations (see section 18 below).

##### *Section 9: Amendments to Part 2 of 1983 Act*

51. **Section 9** makes a number of amendments to Part 2 of the 1983 Act (compulsory admission to hospital and guardianship) to substitute the RC for the RMO. It defines the

RC, where the patient is liable to be detained or a community patient, as the AC with overall responsibility for the patient's case. Where the patient is subject to guardianship, the RC is defined as the AC authorised by the responsible local social services authority to act (either generally or in any particular case or for any particular purpose) as the RC.

52. The RC will be responsible for renewing a patient's detention. Section 9 will insert a provision into section 20 of the 1983 Act requiring the RC to gain the agreement of another person that the conditions for renewal are met before furnishing a renewal report. The other person must have been professionally concerned with the patient's medical treatment and be of a different profession to the responsible clinician.
53. **Section 9** also amends section 5(2) and (3) of the 1983 Act so that an AC, in addition to a registered medical practitioner, may hold an inpatient for up to 72 hours from the time a report is furnished to the hospital managers if the AC thinks an application for admission under the Act should be made.

### ***Section 10: Amendments to Part 3 of 1983 Act***

54. **Section 10** makes similar amendments to Part 3 of the 1983 Act (patients concerned in criminal proceedings etc). It also provides that certain functions currently restricted to registered medical practitioners (who need not be RMOs) will in future be exercisable as well, or instead, by ACs. For example, it will be possible for an AC as well as any registered medical practitioner to be responsible for the report on the medical condition of a person remanded to hospital for that purpose under section 35 of the 1983 Act. Section 10 of the 2007 Act does not, however, change the requirements for courts to have evidence from registered medical practitioners before deciding to impose a hospital order or make other orders or remands under Part 3.

### ***Section 11: Further amendments to Part 3 of 1983 Act***

55. **Section 11** makes further similar amendments to Part 3 of the 1983 Act (patients concerned in criminal proceedings etc). As well as replacing references to RMOs with RCs, it provides that certain functions restricted to registered medical practitioners may be exercised instead by ACs. For example, under section 50(1), the Secretary of State (in effect the Secretary of State for Justice) will be able to return a patient subject to a restricted transfer direction under section 47 to prison, or exercise certain powers in relation to the person's release, if he or she is notified either by the patient's RC or another AC (rather than only another registered medical practitioner) that the patient no longer needs treatment in hospital or appropriate treatment is no longer available.

### ***Section 12: Amendments to Part 4 of 1983 Act***

56. **Section 12** makes similar amendments to Part 4 of the 1983 Act (consent to treatment). In particular, it amends sections 57, 58 and 63. Section 57 concerns treatment that requires the patient's consent and a second opinion (such as "psychosurgery"). Section 58 concerns treatment requiring the patient's consent or a second opinion. Section 63 covers treatment that can be imposed without the patient's consent (such as medication within the first 3 months and nursing care).
57. The section amends the provisions of Part 4 so that the AC or other person in charge of the treatment in question has the functions previously held by the RMO, for example signing a certificate to say that a patient is capable and willing to consent to the treatment. In the majority of cases the AC in charge of the treatment will be the patient's RC, but where, for example, the RC is not qualified to make decisions about a particular treatment (e.g. medication if the RC is not a doctor or a nurse prescriber) then another appropriately qualified professional will be in charge of that treatment, with the RC continuing to retain overall responsibility for the patient's case.
58. **Section 12** also makes provision about who may perform functions under Part 4. In particular, it recognises that some patients receiving treatment under section 57 (e.g.

informal patients) will not have a responsible clinician or an approved clinician in charge of their treatment. Section 12 also amends Part 4 of the 1983 Act so that the patient's RC (if they have one) and the person in charge of their treatment (if they are a different person) are excluded from being the registered medical practitioner to give the second opinion required by sections 57 and 58 (the SOAD). It also prevents these professionals from being one of the persons the SOAD has a statutory duty to consult. This is to ensure that there is an independent assessment of whether treatment should be given.

### ***Section 13: Amendments to Part 5 of 1983 Act***

59. **Section 13** makes similar amendments to Part 5 of the 1983 Act (Mental Health Review Tribunals). For example, it amends sections 67(2) and 76(1) so that an AC as well as a registered medical practitioner can visit and examine the patient for the purposes of a tribunal reference and tribunal application under those provisions.

### ***Section 14: Amendments to other provisions of 1983 Act***

60. **Section 14** makes related amendments to other provisions of the 1983 Act. It amends section 118 so that the Code of Practice will also be for the guidance of ACs. It also inserts into section 145 a definition of an AC. The Secretary of State and the Welsh Ministers will have the function of approving persons to be approved clinicians in relation to England and Wales respectively. It is expected that this function will be delegated to appropriate NHS bodies. The professions whose members may be approved and the type of skill and experience required will be set out in directions issued by the Secretary of State and the Welsh Ministers respectively.

### ***Section 15: Amendments to other Acts***

61. **Section 15** makes consequential amendments to the Army Act 1955, the Air Force Act 1955, the Naval Discipline Act 1957, the Criminal Procedure (Insanity) Act 1964 and the Armed Forces Act 2006 to replace the term "responsible medical officer" with the term "responsible clinician", where it is mentioned in those Acts.

### ***Section 16: Certain registered medical practitioners to be treated as approved under section 12 of 1983 Act***

62. **Section 16** amends section 12 of the 1983 Act so that a registered medical practitioner who has been approved as an AC is also approved for the purposes of section 12. Under section 12 of the 1983 Act, at least one of the two doctors recommending detention must be a practitioner who has been approved by the Secretary of State as having special experience in the diagnosis or treatment of mental disorder (in relation to Wales the function of approving practitioners is exercisable by the Welsh Ministers). It is expected that the competencies a registered medical practitioner will require in order to be approved as an AC will be such that they will have the "special experience in the diagnosis or treatment of mental disorder" required for section 12 approval. ACs who are not registered medical practitioners will not be deemed to be section 12 approved.

### ***Section 17: Regulations as to approvals in relation to England and Wales***

63. **Section 17** inserts a new section 142A into the 1983 Act, which gives the Secretary of State, jointly with Welsh Ministers, the power to set out in regulations the circumstances in which approval in England under section 12 of the 1983 Act and approval as an AC should be considered to mean approval in Wales as well, and vice versa.

### ***Section 18: Approved mental health professionals***

64. **Section 18** substitutes section 114 of the 1983 Act. It replaces the role of ASWs with that of AMHPs. This will mean that a wider group of professionals, such as nurses, occupational therapists and chartered psychologists will be able to carry out the ASW's

functions as long as individuals have the right skills, experience and training, and are approved by an LSSA to do so. A registered medical practitioner is specifically prohibited from being approved to act as an AMHP. This means that there will be a mix of professional perspectives at the point in time when a decision is being made regarding a patient's detention. This does not prevent all those involved from being employed by the NHS, but the skills and training required of AMHPs aim to ensure that they provide an independent social perspective.

65. The definition of an ASW in section 145(1) of the 1983 Act is replaced by the definition of an AMHP in section 114 (see paragraph 11 of Schedule 2). Unlike with ASWs, there is now no requirement that an AMHP be an officer (employee) of an LSSA.
66. LSSAs will approve AMHPs. Before doing so they must be satisfied that the individual has appropriate competence in dealing with persons who are suffering from mental disorder and complies with regulations setting out conditions for approval, factors as to competency, and requirements for training.
67. There will be separate regulations for England and Wales, which may contain different approval criteria. Therefore, an AMHP approved by an LSSA in England may only act on behalf of an English LSSA, and an AMHP approved by a Welsh LSSA may only act on behalf of a Welsh LSSA. This means a Welsh LSSA cannot arrange for an English-approved AMHP to act on their behalf and vice versa. However, it does not mean that a Welsh-approved AMHP cannot make an application to admit a patient in England or convey a patient in England and vice versa. It is also possible for an AMHP with the appropriate competencies to be approved in both territories.

#### ***Section 19: Approval of courses etc for approved mental health professionals***

68. **Section 19** inserts a new section 114A into the 1983 Act in relation to the approval of courses for AMHPs. This allows the General Social Care Council (GSCC) and the Care Council for Wales (CCfW), which are the statutory bodies set up to regulate the social work profession, to approve courses for the training of English and Welsh AMHPs respectively, regardless of the trainees' profession. To ensure that AMHPs from different professional backgrounds continue to be regulated by their own professional bodies, section 114A(4) states that the functions of an approved mental health professional shall not be considered to be "relevant social work" for the purposes of Part 4 of the Care Standards Act 2000. Part 4 of the Care Standards Act 2000 requires the GSCC and CCfW to provide codes of practice for social care workers, which includes "a person who engages in relevant social work". "Relevant social work" is defined as "social work which is required in connection with any health, education or social services provided by any person". Making clear that AMHP functions are not "relevant social work" for the purposes of Part 4 of the Care Standards Act means that the GSCC's and CCfW's codes of practice do not apply to AMHPs who are not social workers.

#### ***Section 20: Amendments to section 62 of Care Standards Act 2000***

69. Although AMHP functions are not to be considered "relevant social work" for the purposes of Part 4 of the Care Standards Act 2000, section 20 provides that the GSCC's and CCfW's codes of practice will continue to apply to social workers when carrying out AMHP functions.

#### ***Section 21: Approved mental health professionals: further amendments and Schedule 2***

70. **Section 21** introduces Schedule 2 which makes further amendments to the 1983 Act in relation to ASWs.
71. ASWs are responsible for assessing whether an application for a patient's admission under Part 2 of the 1983 Act should be made (unless the application is made by the

patient's nearest relative). They arrange and co-ordinate the assessment, taking into account all factors to determine if detention in hospital is the best option for a patient or if there is a less restrictive alternative. The 2007 Act allows assessments for admission to be undertaken by an AMHP, who might, for example, be a nurse, occupational therapist or chartered psychologist, as well as a social worker.

72. [Paragraph 5](#) of Schedule 2 amongst other things amends section 13(1) of the 1983 Act so that LSSAs who have reason to think that an application for admission to hospital or a guardianship application may need to be made in respect of a patient within their area shall have a duty to arrange for an AMHP to consider the patient's case on their behalf. Where a patient is detained for assessment under section 2, and the LSSA that arranged for an AMHP to consider that admission has reason to think that an application for treatment may be needed under section 3, new subsections (1B) and (1C) of section 13 place a duty on that LSSA to arrange for an AMHP to consider the patient's case on their behalf even where the patient is no longer in the area of that authority. The duties under sections 13(1), (1B) and (1C) do not prevent another LSSA from arranging for an AMHP to consider a patient's case. Subsection (5) of section 13, as amended by paragraph 5(6) of Schedule 2, makes clear that any other LSSA also has the power to do so. The effect of the amendments to section 13 is to provide for LSSAs to continue to have a role in ensuring that there is an adequate AMHP service, whether they choose to run the AMHP service themselves or enter into agreements with other LSSAs and/or NHS organisations to do so.
73. Because AMHPs will no longer always be employed by a LSSA, section 145 of the 1983 Act is amended to provide in new subsection (1AC) that references to an AMHP in the 1983 Act are generally to be read as an AMHP carrying out their functions on behalf of a LSSA. This is to retain the link between the AMHP and an LSSA even though the AMHP no longer needs to be employed by an LSSA.

### ***Section 22: Conflicts of interest***

74. [Section 22](#) introduces a power to enable regulations to be made by the Secretary of State in respect of England and the Welsh Ministers in respect of Wales setting out when, because of a potential conflict of interest:
- an AMHP may not make an application for admission to hospital or guardianship under section 2, 3 or 7 of the 1983 Act; or
  - a medical practitioner may not provide a medical recommendation accompanying such an application.
75. The power replaces the provisions of section 12(3) to (7) of the 1983 Act, which set out when a medical practitioner may not provide a medical recommendation in support of an application, because of their position either in relation to the applicant, the patient or the other practitioner providing a medical recommendation.