

# **MENTAL HEALTH ACT 2007**

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## **EXPLANATORY NOTES**

### **COMMENTARY**

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

#### *Chapter 4 – Supervised Community Treatment*

#### *Schedule 3: Supervised community treatment: further amendments to 1983 Act*

138. *Schedule 3* sets out the detailed amendments to the 1983 Act which are needed to enable the introduction of SCT. The ones of particular note are described below.
139. In relation to absence without leave, under a new subsection (2A) of section 18 of the 1983 Act a community patient who has been recalled to hospital can be taken into custody and returned to the hospital. Any AMHP, officer on the staff of the hospital, a constable, or anyone authorised in writing by the RC or hospital managers may exercise this power. New subsection (7) of section 18 provides that a reference to a patient's being "returned" to a place where they are required to be means that the patient can be taken there for the first time as well as returned after absconding. This covers all patients under the 1983 Act, so that those subject to guardianship are covered in addition to community patients, rectifying a loophole in the guardianship provisions.
140. A community patient cannot be taken into custody after his or her CTO ceases to be in force, or six months have elapsed since the patient was first absent without leave, whichever is the later. (This mirrors the provisions for detained patients and those subject to guardianship.) The authority to take such a patient into custody will therefore last until at least six months after the first day of absence.
141. If extension of a community patient's CTO does not take effect before the patient's first day of absence without leave, then the period during which the patient can be taken into custody is not extended by the extension of the order.
142. Sections 21, 21A and 21B are amended to make provision relating to community patients absent without leave. If a community patient:
- is absent without leave on the day the patient's CTO would have expired, or during the preceding week, the CTO is extended for a week after the patient returns or is returned to hospital.
  - is absent without leave on the day when the 72 hour period for recall is up, the 72-hour period effectively begins again when the patient is taken into custody, or returns voluntarily to the hospital, subject to the time limits as for detained patients.
  - returns or is returned to hospital within 28 days of the first day of his or her absence without leave, the RC has a week after the patient's return to carry out the examination and make his or her report for the extension of the CTO, if the CTO would have otherwise expired.

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- returns, or is returned, to hospital more than 28 days after the patient was first absent without leave, the RC has a week after the patient's return to examine the patient, and, if the RC decides that the patient meets the criteria for SCT, prepare a report for the hospital managers extending the CTO.
143. Section 22 of the 1983 Act is amended so that community patients, like those detained for treatment, who are imprisoned for more than six months (or for successive periods exceeding six months in total) are no longer subject to the Act upon their release.
144. Community patients can be absolutely discharged from SCT (and therefore liability to recall to hospital), under amended section 23 of the 1983 Act, by the RC, hospital managers of the responsible hospital or by the NR, in the same way as patients can be discharged from detention.
145. In order to advise a NR about making an order for the discharge of a community patient under amended section 24 of the 1983 Act, any registered medical practitioner can visit or examine the patient and access records relating to the patient, just as for detained patients.
146. The restriction on discharge by a NR applies to community patients in the same way as it does to detained patients. The NR must give 72 hours notice in writing to the managers if they wish to make the order and the RC can bar the order for discharge from taking effect, if a report is made that certifies that the patient is likely to act in a dangerous manner if discharged from SCT.
147. A community patient may apply to the MHRT, under amended section 66 of the 1983 Act, when a CTO is made, when it is revoked, when it is extended after six months or a year (as appropriate) and when an order is extended after the patient has been absent without leave for more than 28 days. A NR may also apply to the MHRT if the NR makes a discharge order which is not put into effect because the RC reports that the patient would be likely to act in a dangerous manner if discharged; or if he or she is displaced by a court order as allowed under section 29(1)(c) or (d) of the 1983 Act. The hospital managers must refer a patient to the MHRT if a CTO is revoked.
148. In the case of community patients who were under a hospital order before being made subject to a CTO, the power under section 66 of the 1983 Act to apply to a Tribunal when a CTO is made or revoked cannot be exercised until six months after the date of the hospital order. The NR of such a patient may apply to the MHRT whenever the patient has a right to apply. The Secretary of State can refer a case of a community patient to the MHRT, in the same way as for detained patients.
149. The MHRT must direct the discharge of a community patient under amended section 72(1) of the 1983 Act if the MHRT is not satisfied as to any of the following:
- the patient needs medical treatment for mental disorder for his or her own health or safety, or for the protection of others.
  - it is necessary for the responsible clinician to be able to recall the patient to hospital. (In determining this point the tribunal must consider the risk that the patient's condition will deteriorate in the community, as a result, for example, of their refusing or neglecting to receive the treatment they need. In considering that risk the tribunal must have regard to the patient's history of mental disorder and any other relevant factors.)
  - appropriate medical treatment is available for the patient.
150. The MHRT has a new power (section 72(3A) of the 1983 Act) in respect of a patient detained under section 3 of that Act, or subject to a hospital order or direction. The MHRT may recommend that the RC consider if a CTO for the patient should be made, where it does not discharge such a patient. When considering whether to discharge a

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patient the MHRT need not direct the discharge of a patient just because the MHRT thinks SCT might be appropriate for the patient.

151. The special procedures in section 141 of the 1983 Act to be followed if an MP (or a member of the National Assembly for Wales, Scottish Parliament or Northern Ireland Assembly) is detained on the grounds of mental disorder do not apply to community patients.