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

# MENTAL HEALTH ACT 2007

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## EXPLANATORY NOTES

### COMMENTARY

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

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

#### Overview

107. The supervised community treatment (SCT) provisions will allow some patients with a mental disorder to live in the community whilst still being subject to powers under the 1983 Act. Only those patients who are detained in hospital for treatment will be eligible to be considered for SCT. In order for a patient to be placed on SCT, various criteria need to be met. An AMHP also needs to agree that SCT is appropriate. Patients who are on SCT will be subject to conditions whilst living in the community. Most conditions will depend on individual circumstances but must be for the purpose of ensuring the patient receives medical treatment, or to prevent risk of harm to the patient or others. Such conditions will form part of the patient's community treatment order (CTO) which is made by the RC. Patients on SCT may be recalled to hospital for treatment should this become necessary. Afterwards they may then resume living in the community or, if they need to be treated as an in-patient again, their RC may revoke the CTO and the patient will remain in hospital for the time being.

108. SCT differs from after-care under supervision, which it will replace, in that it will allow patients who do not need to continue receiving treatment in hospital to be discharged into the community, but with powers of recall to hospital if necessary. It is different from leave of absence under section 17 of the 1983 Act, which remains suitable for a patient as a means to give shorter term leave from hospital as part of the patient's overall management as a hospital patient.

#### *Section 32: Community treatment orders, etc*

109. Section 32 inserts new sections 17A-17G which set out how CTOs are to be made, and how they will work.

110. Under new section 17A, the RC may make a CTO for a patient detained under section 3, or for a patient who is not subject to restrictions under Part 3 of the 1983 Act (i.e. to a restriction order, a restriction direction or a limitation direction), if they are satisfied that the relevant criteria are met. An AMHP must agree that the criteria are met and also that a CTO is appropriate for that patient. The CTO, and the AMHP's agreement to it, will be in writing.

111. The criteria that the patient must meet - in order to be suitable for SCT - are specified within section 17A(5). The patient must need medical treatment for their mental disorder for their own health or safety, or for the protection of others. It must be possible for the patient to receive the treatment they need without having to be in hospital, provided that the patient can be recalled to hospital for treatment should this become necessary. When deciding if it is necessary to be able to recall the patient to hospital, the

RC must consider the risk that the patient's condition will deteriorate after discharge from hospital, as a result, for example, of their refusing or neglecting to receive the treatment they need. In considering that risk, the RC must have regard to the patient's history of mental disorder and any other relevant factors. Appropriate medical treatment for the patient must be available in the community. Patients who are subject to a CTO are referred to in the legislation as "community patients".

112. Section 17B requires that CTOs specify conditions to which a community patient will be subject. There are two mandatory conditions that the patient must be available for medical examinations, firstly as required for the purposes of determining whether the CTO should be extended, and secondly to allow a SOAD to make a Part 4A certificate. Otherwise, conditions must be necessary or appropriate to ensure that the patient receives medical treatment, or to prevent harm to the patient's health or safety, or to protect others. The RC and an AMHP must agree the conditions. The RC may vary the conditions, or suspend any of them.

113. Other than the conditions about availability for examination, the conditions specified under section 17B are not in themselves enforceable but, if a patient fails to comply with any condition, the RC may take that into account when considering if it is necessary to use the recall power (section 17B(6)). However, if the criteria for recall are met, the recall power may still be exercised even if the patient is complying with the conditions (section 17B(7)). See also section 17E.

114. Section 17C specifies the duration of a CTO. A patient's CTO will end either if the period of the CTO runs out and the CTO is not extended, or the patient is discharged from the powers of the 1983 Act. It will also end if the RC revokes the CTO following the patient's recall to hospital under section 17F or, for Part 3 patients, if the CTO was time-specific and runs out.

115. Section 17D sets out the effect of a CTO on certain other provisions of the 1983 Act. The application for admission for treatment under which the patient was detained remains in force, but the hospital managers' authority to detain the patient under section 6(2) is suspended whilst the patient remains a community patient. The authority to detain the patient will not expire while it is suspended. However, when a patient's CTO ends, the patient will be discharged absolutely from SCT. Should an application for admission for treatment still remain in force, this will also end.

116. Section 17D(2)(b) provides that where the 1983 Act mentions patients who are "detained" or "liable to be detained", this does not include community patients. Where it is intended that a provision should apply to community patients, the 1983 Act is amended by the 2007 Act to make this clear. In addition, references in other legislation to patients who are detained, or liable to be detained, do not include community patients.

117. Section 17E provides that a community patient may be recalled to hospital if the RC decides that the patient needs to receive treatment for his or her mental disorder in a hospital and that, without this treatment, there would be a risk of harm to the patient's health or safety, or to other people. The recall notice will trigger the hospital managers' authority to re-detain the patient (section 17E(6)). A community patient may be recalled even if the patient is in hospital at the time. This could happen, for example, if the patient goes to hospital but then refuses the treatment that the RC considers is needed, and the patient, or someone else, would be at risk if the patient were not to receive that treatment.

118. Under section 17E(2), there is also a power to recall a patient to hospital if the patient fails to comply with the condition under section 17B(3) that specifies that patients must make themselves available for examination. This allows the RC to examine a patient to assess whether a patient's CTO should be extended and also allows a SOAD to examine the patient in order to meet the certificate requirement in new sections 64B and 64E of the 1983 Act (see section 35 below).

119. Section 17F sets out the powers which apply to a patient who is recalled to hospital under section 17E. If the RC decides that the patient meets the 1983 Act's criteria for detention for treatment in hospital (set out in section 3(2)), the RC may, subject to an AMHP's agreement that it is appropriate, revoke the patient's CTO under section 17F(4). The RC can only recall a patient for a maximum of 72 hours without revoking the CTO. Therefore, the RC may release a recalled patient from detention at any time within the first 72 hours, provided the CTO has not been otherwise revoked. On release, the patient continues to remain subject to the CTO.

120. Section 17G provides that when a CTO is revoked (so that the patient is no longer a community patient), the authority to detain the patient under section 6(2) applies (unless the patient is a Part 3 patient), exactly as if the patient had never been a community patient. In addition, all the 1983 Act's provisions apply to the patient as they did when the patient was first admitted to hospital for treatment before the CTO was made (unless the 1983 Act provides otherwise).

121. Section 32 also inserts new sections 20A and 20B which set out how long CTOs will last, and how they can be extended. A new CTO will initially last for 6 months from the date when the order was made. The order can then be extended for a further 6 months and, following that, it can be extended for periods of one year at a time. For an order to be extended under section 20A, the RC must examine the patient and furnish a report to the hospital managers confirming that the conditions, as set out in section 20A(6), are met. The RC must apply exactly the same considerations as when the CTO was first made, so that the RC must again 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 RC must have regard to the patient's history of mental disorder and any other relevant factors. The RC can only make a report to extend the CTO if the grounds for the CTO still apply. An AMHP must agree that the criteria for extension of the CTO are satisfied, and that it is appropriate to extend the CTO, before the report can be made.

### *Section 33: Relationship with leave of absence*

122. Section 33 makes provision in respect of the relationship of SCT with other powers in the 1983 Act. It amends the provisions in the 1983 Act which authorise leave of absence from hospital (section 17). Before granting longer term leave of over 7 consecutive days (or where leave is extended so the total leave granted exceeds 7 consecutive days) a RC must consider whether SCT is the more appropriate way of managing the patient in the community.

### *Section 34: Consent to treatment*

123. Section 34 replaces section 56 of the 1983 Act which sets out the patients to whom Part 4 of that Act, which deals with consent to treatment, applies. In addition to detained patients, informal patients under 18 years of age will be subject to new section 58A of the 1983 Act (see section 27 above). A community patient is not subject to the provisions of Part 4 of the 1983 Act (except section 57 which applies to any patient) unless recalled to hospital for treatment.

124. On recall to hospital, a patient may be given treatment which would otherwise require a certificate under section 58 or 58A of the 1983 Act ("section 58-type treatment" and "section 58A-type treatment") on the basis of a certificate given by a SOAD under the new Part 4A of the 1983 Act (see section 35 below) if that certificate specifies the treatment as being appropriate in these circumstances. If the certificate does not specify any such treatment, then (if it is section 58-type or section 58A-type treatment) it cannot be given on recall unless or until its administration is permitted under Part 4 of the 1983 Act.

125. However, if a certificate covering section 58(1)(b) treatment was in place before the CTO was made, and covers the patient's current treatment needs, there is no need for a

new section 58 certificate on recall. If the period from the time the patient first received medication is less than three months then a new certificate under section 58 will not be required until that three month period has elapsed.

126. If a patient's CTO is revoked, so that the patient is once again detained in hospital for treatment, treatment can be given on the basis of a Part 4A certificate only until a section 58 or section 58A certificate can be arranged.

127. A section 58 or section 58A certificate is not required in circumstances where:

- discontinuing the treatment or the plan of treatment at that point would cause serious suffering to the patient as provided for under new section 62A(6);
- the treatment is immediately necessary: immediately necessary treatment can be given under section 62 (which applies by virtue of the application of Part 4 of the Act);
- in the case of administration of medicine, the patient is still within the period before which a certificate is required i.e. either one month has not elapsed from the time when the CTO was made or the three month period from when medication was first given to the patient, as provided for in section 58(1)(b) has not elapsed.

128. A Part 4A certificate will not provide authority to give section 58A type treatment to a patient who has capacity or competence to consent but who refuses consent when recalled or when the community treatment order is revoked.

### *Section 35: Authority to treat*

129. Section 35 introduces a new Part 4A into the 1983 Act to regulate the treatment of community patients whilst in the community i.e. when they are not recalled to hospital. New section 64B gives the authority to treat in the community adult patients who have the capacity to consent. Community patients aged 16 or over with capacity to consent to treatment can only be treated in the community if they do consent to their treatment.

130. Community patients aged 16 or over who lack the capacity to consent to treatment can be treated in the community provided that the treatment is authorised under new section 64D or, where relevant, a donee of a lasting power of attorney (an "attorney" or deputy appointed under the Mental Capacity Act 2005, or the Court of Protection, consents to treatment on their behalf. Section 64D also sets out that force cannot be used to administer treatment if the patient objects to that treatment. If the patient does not object to treatment, force is permitted and that may be in cases where, for example, the patient is suffering from tremor and physical force is needed as a practical measure to administer the treatment. The factors to be considered by a practitioner in determining whether a patient objects to treatment are outlined in new section 64J. If the treatment conflicts with a valid and applicable advance decision made under the MCA, it cannot be given to the patient.

131. Children aged under 16 can also be made subject to a CTO. As with adults who have capacity, treatment cannot be given to a child in the community who is competent to consent and does not consent to it. New section 64F provides the authority to treat a child who lacks competence in the community. Similar conditions must be met in order to treat a child lacking competence as for an adult who lacks capacity (although the conditions do not hinge on concepts in the MCA since powers under that Act cannot in general be exercised in relation to children under 16).

132. Only in emergencies can force be used to give treatment to patients who lack capacity or to children who lack competence against their objections. New section 64G sets out how and when treatment can be given in these situations. Force can be used to give treatment only if it is immediately necessary, needs to be given to prevent harm to the patient, and is a proportionate response to the likelihood of the patient suffering harm and to the seriousness of the harm. The emergency circumstances in which section 58A type

treatment can be given to patients who lack capacity or children who lack competence are more limited than the circumstances in which other treatment can be given in emergencies.

133. All community patients receiving the type of treatment which falls under section 58 or 58A of the 1983 Act must have that treatment certified by a SOAD in accordance with the provisions of Part 4A. For treatment specified in section 58(1)(b), i.e. medication, a certificate is not required immediately, but must be in place after a certain period. This period is one month from when a patient leaves hospital or three months from when the medication was first given to the patient (whether that medication was given in the community or in hospital), whichever is later. The SOAD must certify in writing that it is appropriate for the treatment to be given.

134. The SOAD may specify within the certificate that certain treatment can be given to the patient only if certain conditions are satisfied: so, for example, the SOAD could specify that a particular antipsychotic and dosage can only be given in the community if the patient retains capacity to consent to it. The SOAD can also specify whether and if so what treatments can be given to the patient on recall to hospital and the circumstances in which the treatment can be given. For example, the SOAD can specify, if appropriate, that an antipsychotic can be given to the patient on recall without the patient's consent.

135. Under new section 64B, it is not necessary to meet the certificate requirement before treatment can be given in emergencies to a patient in the community where that patient consents to treatment or, for patients who lack capacity, where an attorney, deputy or the Court of Protection consents to it on the patient's behalf.

136. The following table summarises when patients can be treated in the community and the safeguards that are in place for the review of section 58-type and section 58A type treatment:

| | *Patients 16 and over with capacity to consent AND patients under 16 with competence* | *Patients 16 and over without capacity to consent* | *Patients under 16 without competence to consent* |
|---|---|---|---|
| SCT patient in the community PART 4A regulates treatment | • Patient must consent to treatment<br>• Authority to treat patient under s64B (adults) or s64E (children)<br>• For s58 or s58A type treatment there must be a SOAD certificate | • Can treat if an attorney or deputy or the Court of Protection consents under s64B<br>• Can treat a patient under s64D provided patient does not object to treatment or it is not necessary to use force (unless | • Can treat a patient under s64E provided patient does not object to treatment or it is not necessary to use force<br>• Can be treated in emergencies with force but only if |
| 1<br>For medication (s58 1(b) a SOAD certificate must be in place one month from when a patient leaves hospital or three months from when the medication was first given to the patient. | | | |
| 2<br>Unlike section 58 type treatment, section 58A treatment cannot be given under section 62A to patients with capacity or competence to consent if they do not consent to that treatment. | | | |
| 3<br>Where an SCT patient's CTO is revoked, treatment can be given if the Part 4A certificate requirement is met, but only pending compliance with s58 or s58A | | | |

| | *Patients 16 and over with capacity to consent AND patients under 16 with competence* | *Patients 16 and over without capacity to consent* | *Patients under 16 without competence to consent* |
|---|---|---|---|
| | in place before treatment can be given[1].<br>• But certificate requirement need not be complied with where treatment is immediately necessary | the treatment conflicts with decision of an attorney, deputy or Court of Protection or advance decision)<br>• Can be treated in emergencies with force but only if it is immediately necessary and the use of force is proportionate under s64G<br>• For s58 or s58A type treatment there must be a SOAD certificate in place before treatment can be given[1]<br>• But it is not necessary to comply with the certificate requirement where treatment is immediately necessary or under section s64G | it is proportionate under s64F<br>• For s58 or 58A type treatment there must be a SOAD certificate in place before treatment can be given[1]<br>• But it is not necessary to comply with the certificate requirement where treatment is immediately necessary or under section s64G |
| SCT patient on recall to hospital or where | Section 58 or 58A[1] type treatment can be given under s62A where:<br>• SOAD certificate is in place certifying that it is | Section 58 or 58A type treatment can be given under s62A where:<br>• SOAD certificate is in place certifying that it is appropriate to give the treatment[3] | Section 58 or 58A type treatment can be given under s62A where:<br>• SOAD certificate is in place certifying that it is appropriate to give the treatment[3] |

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| | *Patients 16 and over with capacity to consent AND patients under 16 with competence* | *Patients 16 and over without capacity to consent* | *Patients under 16 without competence to consent* |
|---|---|---|---|
| SCT is revoked PART 4 regulates treatment | appropriate to give the treatment[1]<br>or<br>• For medication regulated by s58 (1) (b) the patient is still within the period before which a certificate is required[1]<br>or<br>• Discontinuing the treatment or plan of treatment would cause serious suffering to the patient under s62A (5)<br>or<br>Treatment is immediately necessary under s62<br>If none of the above is satisfied s58 or s58A requirements must be met | or<br>• For medication regulated by s58 (1) (b) the patient is still within the period before which a certificate is required[1]<br>or<br>• Discontinuing the treatment or plan of treatment would cause serious suffering to the patient under s62A (5)<br>or<br>Treatment is immediately necessary under s62<br>If none of the above is satisfied s58 or s58A requirements must be met | or<br>• For medication regulated by s58 (1) (b) the patient is still within the period before which a certificate is required[1]<br>or<br>• Discontinuing the treatment or plan of treatment would cause serious suffering to the patient under s62A (5)<br>or<br>Treatment is immediately necessary under s62<br>If none of the above is satisfied s58 or s58A requirements must be met |
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### *Section 36: Repeal of provisions for after-care under supervision*

137. SCT replaces the regime of supervised after-care. The supervised after-care provisions (sections 25A to 25J of the 1983 Act) are repealed by section 36. Section 57 of the 2007 Act allows the Secretary of State to make provision by order under section 56 for transitional arrangements for persons subject to after-care under supervision at the time of the repeal of sections 25A to 25J.

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### *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.
- 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 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.

### *Schedule 4: Supervised community treatment: amendments to other Acts*

152. Schedule 4 to the Act makes a number of amendments to the Administration of Justice Act 1960, the Criminal Appeal Act 1968, the Courts-Martial (Appeals) Act 1968 and the Juries Act 1974 that are necessary as a result of the introduction of SCT.