

*Status: Point in time view as at 03/11/2008.*

*Changes to legislation: There are currently no known outstanding effects for the Mental Health Act 2007, SCHEDULE 10. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 10

Section 53

#### TRANSITIONAL PROVISIONS AND SAVINGS

##### *Interpretation*

- 1 (1) This Schedule is to be read as follows.
- (2) Reference to an enactment is to an enactment contained in this Act, unless otherwise stated.
- (3) Reference to an enactment contained in the 1983 Act includes reference to that enactment as applied by section 40(4) of that Act (patients concerned in criminal proceedings or under sentence).

##### *Authority to detain etc*

- 2 (1) The provisions mentioned in sub-paragraph (4) do not affect—
  - (a) the authority for the detention or guardianship of a person who is liable to be detained or subject to guardianship under the 1983 Act immediately before the date on which those provisions come into force,
  - (b) the 1983 Act in relation to any application, order or direction for admission or removal to a hospital, or any guardianship application or order, made under that Act before that date or the exercise, before that date, of any power to remand,
  - (c) the power to make on or after that date an application for the admission of a person to a hospital, or a guardianship application, where all the recommendations on which the application is to be founded are signed before that date, or
  - (d) the authority for the detention or guardianship of a person in pursuance of such an application.
- (2) But those provisions do apply to the following events occurring on or after that date—
  - (a) any renewal of the authority for the person's detention or guardianship,
  - (b) any consideration of his case by [<sup>F1</sup>the First-tier Tribunal or the Mental Health Review Tribunal for Wales]<sup>F1</sup>, and
  - (c) any decision about the exercise of any power to discharge him from detention or guardianship.
- (3) Sub-paragraph (2)(b) is subject to paragraph 4.
- (4) The provisions are—
  - (a) section 1 and Schedule 1 (removal of categories of mental disorder),
  - (b) section 2 (special provision for persons with learning disability),
  - (c) section 3 (exclusions),

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- (d) section 4 (replacement of “treatability” and “care” tests with appropriate treatment test),
- (e) section 5 (addition of appropriate treatment test),
- (f) section 7 (definition of “medical treatment”), and
- (g) the repeals in Schedule 11 which are consequential on any of those sections or that Schedule.

#### Textual Amendments

- F1** Words in [Sch. 10 para. 2\(2\)\(b\)](#) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 9(1), [Sch. 3 para. 223](#)

#### *Consent to treatment*

- 3 (1) The amendments made by section 6 (appropriate treatment test in Part 4 of the 1983 Act) do not affect the application of a certificate under section 57(2)(b) or 58(3)(b) of the 1983 Act given before the date on which the amendments come into force.
- (2) The amendments made by sections 27 and 28 (electro-convulsive therapy, etc.) do not affect the application of a certificate under subsection (3) of section 58 of the 1983 Act which—
- (a) relates to electro-convulsive therapy (by virtue of regulations under subsection (1)(a) of that section), and
  - (b) is given before the date on which those amendments come into force.
- (3) But any certificate under section 58(3)(b) of the 1983 Act that the patient has not consented to electro-convulsive therapy ceases to apply when those amendments come into force.

#### *Reclassification of patients*

- 4 The amendment made by paragraph 13 of Schedule 1 and the repeal in Schedule 11 of section 66(1)(d) and (fb) of the 1983 Act (which concern a patient's right to apply to a Mental Health Review Tribunal following a report about the form of his mental disorder) do not affect any right to apply in consequence of a report furnished before the date on which the amendment and repeal come into force.

#### *Supervised community treatment*

- 5 Section 32 and the amendments and repeals in Schedules 3 and 11 which are consequential on that section apply to a patient who is liable to be detained under the 1983 Act immediately before the date on which that section and those amendments and repeals come into force, as they apply to a patient who becomes so liable on or after that date.

#### *Nearest relative*

- 6 (1) Subsections (2), (3) and (4)(b) of section 23 (extension of power to appoint acting nearest relative) do not apply to the making of an order under section 29 of the 1983 Act on or after the date on which those provisions come into force, if the application for the order was made before that date.

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- (2) Subsections (6) and (7) of section 24 (duration of orders appointing nearest relative) do not affect—
- (a) any order made under section 29 of the 1983 Act before the date on which those subsections come into force, or
  - (b) any order made under that section on or after that date if the application for it was made before that date.
- (3) But subsections (2)(a), (4) and (5) of section 24 (applications for discharge and variation) do apply in relation to an order mentioned in sub-paragraph (2)(a) or (b).
- (4) Section 25 (restriction of nearest relative's right to apply to tribunal) does not apply in relation to an order mentioned in sub-paragraph (2)(a) or (b).
- 7 (1) If, by virtue of section 26 (civil partners) coming into force, a person ceases to be a patient's nearest relative, this does not affect—
- (a) any application to a Mental Health Review Tribunal under the 1983 Act made by that person, but not determined or withdrawn, before the date on which that section comes into force,
  - (b) any notice under section 25 of that Act given by that person before that date, or
  - (c) any application to a county court under section 30(1) of that Act made by that person, but not determined or withdrawn, before that date.
- (2) But section 26 does apply to the determination on or after that date of any application under section 29 or 30 of the 1983 Act made before that date.

*Independent mental health advocates*

- 8 (1) Section 30—
- (a) applies to a patient who is liable to be detained under the 1983 Act immediately before the commencement date as it applies to a patient who becomes so liable on or after that date;
  - (b) applies to a patient who is subject to guardianship under that Act immediately before the commencement date as it applies to a patient who becomes so subject on or after that date;
  - (c) applies to a patient who is a community patient under that Act immediately before the commencement date as it applies to a patient who becomes a community patient on or after that date.
- (2) For the purposes of the provisions inserted by that section, a patient is to be treated as a qualifying patient within section 130C(3) of the 1983 Act if—
- (a) not being a formal patient, he discussed before the commencement date with a registered medical practitioner or approved clinician the possibility of being given a form of treatment to which section 57 of that Act applies, and
  - (b) sub-paragraph (4) or (5) applies in relation to him.
- (3) A patient is also to be treated for those purposes as a qualifying patient within section 130C(3) of the 1983 Act if—
- (a) not having attained the age of 18 years and not being a formal patient, he discussed before the commencement date with a registered medical practitioner or approved clinician the possibility of being given a form of treatment to which section 58A of that Act applies, and

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- (b) sub-paragraph (4) or (5) applies in relation to him.
- (4) This sub-paragraph applies in relation to the patient if, immediately before the commencement date, he has yet to be informed whether or not the treatment is proposed in his case.
- (5) This sub-paragraph applies in relation to the patient if, immediately before the commencement date—
- (a) he has been informed that the treatment is proposed in his case,
  - (b) the proposal has not been withdrawn, and
  - (c) the treatment has not been completed or discontinued.
- (6) A qualifying patient in relation to whom sub-paragraph (4) applies and who is informed on or after the commencement date that the treatment is proposed in his case, or in relation to whom sub-paragraph (5) applies, remains a qualifying patient until—
- (a) the proposal is withdrawn, or
  - (b) the treatment is completed or discontinued.
- (7) In relation to a patient who is a qualifying patient within section 130C(3) of the 1983 Act by virtue of this paragraph, the responsible person under section 130D of that Act is to be the person with overall responsibility for the patient's case (and subsection (2)(e) of that section is to be read accordingly).
- (8) Sub-paragraph (9) applies in relation to a patient—
- (a) who is a qualifying patient within section 130C(2) of the 1983 Act by virtue of being a formal patient immediately before the commencement date, or
  - (b) who is a qualifying patient within section 130C(3) of that Act by virtue of this paragraph.
- (9) The steps to be taken under subsection (1) of section 130D of that Act are to be taken on, or as soon as practicable after, the commencement date (and subsection (3) of that section is to be read accordingly).
- (10) In this paragraph—
- “approved clinician” has the same meaning as in the 1983 Act,
- “the commencement date” means the date on which section 30 comes into force, and
- “formal patient” means a patient who is—
- (a) liable to be detained under the 1983 Act (otherwise than by virtue of section 4, 5(2) or (4), 135 or 136 of that Act),
  - (b) subject to guardianship under that Act, or
  - (c) a community patient under that Act.

*Applications and references to Mental Health Review Tribunal*

- 9 (1) The amendments made by section 37 apply in relation to a patient who is liable to be detained under the 1983 Act immediately before the date on which the amendments come into force as they apply in relation to one who becomes so liable on or after that date.
- (2) The repeal in paragraph 20(b) of Schedule 3 of the reference in section 69(2)(b) of the 1983 Act to section 45B(2) of that Act (which concerns the right of a patient

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subject to a hospital direction to apply to a Mental Health Review Tribunal in the period of six months beginning with the date of the direction) does not affect any right to apply by virtue of a hospital direction dated before the date on which the repeal comes into force.

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