

Status: Point in time view as at 03/11/2008.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 2. (See end of Document for details)

SCHEDULES

SCHEDULE 2

Section 21

APPROVED MENTAL HEALTH PROFESSIONALS: FURTHER AMENDMENTS TO 1983 ACT

1 The 1983 Act is amended as follows.

Commencement Information

- I1** Sch. 2 para. 1 not in force at Royal Assent see s. 56(1); Sch. 2 para. 1 in force for E. at 3.11.2008 by S.I. 2008/1900, art. 2(d); Sch. 2 para. 1 in force insofar as not already in force for W. at 3.11.2008 by S.I. 2008/2561, art. 2(b)

- 2 In the following provisions, for “approved social worker” substitute “ approved mental health professional ”
- section 4(2) (admission for assessment in cases of emergency), and
 - section 8(1)(c) (effect of guardianship application).

Commencement Information

- I2** Sch. 2 para. 2 not in force at Royal Assent see s. 56(1); Sch. 2 para. 2 in force for E. at 3.11.2008 by S.I. 2008/1900, art. 2(d); Sch. 2 para. 2 in force insofar as not already in force for W. at 3.11.2008 by S.I. 2008/2561, art. 2(b)

- 3 (1) Section 10 (transfer of guardianship) is amended as follows.
- (2) In subsection (3), for “approved social worker” substitute “ approved mental health professional acting on behalf of the local social services authority ”.
- (3) After subsection (4) insert—
- “(5) In this section “the local social services authority”, in relation to a person (other than a local social services authority) who is the guardian of a patient, means the local social services authority for the area in which that person resides (or resided immediately before his death).”

Commencement Information

- I3** Sch. 2 para. 3 not in force at Royal Assent see s. 56(1); Sch. 2 para. 3 in force for E. at 3.11.2008 by S.I. 2008/1900, art. 2(d); Sch. 2 para. 3 in force insofar as not already in force for W. at 3.11.2008 by S.I. 2008/2561, art. 2(b)

- 4 (1) Section 11 (general provisions as to applications) is amended as follows.
- (2) In subsection (1), for “approved social worker” substitute “ approved mental health professional ”.

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(3) In subsection (3), for “approved social worker, that social worker” substitute “approved mental health professional, that professional”.

(4) For subsection (4) substitute—

“(4) An approved mental health professional may not make an application for admission for treatment or a guardianship application in respect of a patient in either of the following cases—

- (a) the nearest relative of the patient has notified that professional, or the local social services authority on whose behalf the professional is acting, that he objects to the application being made; or
- (b) that professional has not consulted the person (if any) appearing to be the nearest relative of the patient, but the requirement to consult that person does not apply if it appears to the professional that in the circumstances such consultation is not reasonably practicable or would involve unreasonable delay.”

Commencement Information

I4 Sch. 2 para. 4 not in force at Royal Assent see s. 56(1); Sch. 2 para. 4 in force for E. at 3.11.2008 by S.I. 2008/1900, art. 2(d); Sch. 2 para. 4 in force insofar as not already in force for W. at 3.11.2008 by S.I. 2008/2561, art. 2(b)

5 (1) Section 13 (the title to which becomes “Duty of approved mental health professionals to make applications for admission or guardianship”) is amended as follows.

(2) For subsection (1) substitute—

“(1) If a local social services authority 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, they shall make arrangements for an approved mental health professional to consider the patient's case on their behalf.

(1A) If that professional is—

- (a) satisfied that such an application ought to be made in respect of the patient; and
- (b) of the opinion, having regard to any wishes expressed by relatives of the patient or any other relevant circumstances, that it is necessary or proper for the application to be made by him,

he shall make the application.

(1B) Subsection (1C) below applies where—

- (a) a local social services authority makes arrangements under subsection (1) above in respect of a patient;
- (b) an application for admission for assessment is made under subsection (1A) above in respect of the patient;
- (c) while the patient is liable to be detained in pursuance of that application, the authority have reason to think that an application for admission for treatment may need to be made in respect of the patient; and
- (d) the patient is not within the area of the authority.

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(1C) Where this subsection applies, subsection (1) above shall be construed as requiring the authority to make arrangements under that subsection in place of the authority mentioned there.”

(3) In subsection (2), for “approved social worker” substitute “ approved mental health professional ”.

(4) For subsection (3) substitute—

“(3) An application under subsection (1A) above may be made outside the area of the local social services authority on whose behalf the approved mental health professional is considering the patient's case.”

(5) In subsection (4)—

(a) for the words from “direct” to “above” substitute “ make arrangements under subsection (1) above for an approved mental health professional to consider the patient's case ”, and

(b) for “that approved social worker” substitute “ that professional ”.

(6) In subsection (5)—

(a) for “approved social worker”, in each place, substitute “ approved mental health professional ”, and

(b) after “the power of” insert “ a local social services authority to make arrangements with an approved mental health professional to consider a patient's case or of ”.

Commencement Information

I5 Sch. 2 para. 5 not in force at Royal Assent see s. 56(1); Sch. 2 para. 5 in force for E. at 3.11.2008 by S.I. 2008/1900, art. 2(d); Sch. 2 para. 5 in force insofar as not already in force for W. at 3.11.2008 by S.I. 2008/2561, art. 2(b)

6 In section 14 (social reports), for “a social worker” substitute “ an approved mental health professional ”.

Commencement Information

I6 Sch. 2 para. 6 not in force at Royal Assent see s. 56(1); Sch. 2 para. 6 in force for E. at 3.11.2008 by S.I. 2008/1900, art. 2(d); Sch. 2 para. 6 in force insofar as not already in force for W. at 3.11.2008 by S.I. 2008/2561, art. 2(b)

7 In the following provisions, for “approved social worker” substitute “ approved mental health professional ”

(a) section 18(1) (return of patients absent without leave),

(b) section 21B(3)(b) (consultation before furnishing report),

(c) section 29(2)(c) (application for appointment of acting nearest relative),

(d) section 30(2) (application for variation of orders under section 29),

(e) section 40(1)(a) (power to convey patient),

(f) section 87(1) (power to take Northern Ireland patient into custody),

(g) section 88(3) (power to take England and Wales patient into custody), in the first place it occurs, and

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- (h) section 89(1) (power to take Channel Islands or Isle of Man patient into custody).

Commencement Information

- I7** Sch. 2 para. 7 not in force at Royal Assent see s. 56(1); Sch. 2 para. 7 in force for E. at 3.11.2008 by S.I. 2008/1900, art. 2(d); Sch. 2 para. 7 in force insofar as not already in force for W. at 3.11.2008 by S.I. 2008/2561, art. 2(b)

- 8 For section 115 substitute—

“115 Powers of entry and inspection

- (1) An approved mental health professional may at all reasonable times enter and inspect any premises (other than a hospital) in which a mentally disordered patient is living, if he has reasonable cause to believe that the patient is not under proper care.
- (2) The power under subsection (1) above shall be exercisable only after the professional has produced, if asked to do so, some duly authenticated document showing that he is an approved mental health professional.”

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- I8** Sch. 2 para. 8 not in force at Royal Assent see s. 56(1); Sch. 2 para. 8 in force for E. at 3.11.2008 by S.I. 2008/1900, art. 2(d); Sch. 2 para. 8 in force insofar as not already in force for W. at 3.11.2008 by S.I. 2008/2561, art. 2(b)

- 9 In section 118(1)(a) (application of code of practice), for “approved social workers” substitute “ approved mental health professionals ”.

Commencement Information

- I9** Sch. 2 para. 9 not in force at Royal Assent see s. 56(1); Sch. 2 para. 9 in force for E. at 3.11.2008 by S.I. 2008/1900, art. 2(d); Sch. 2 para. 9 in force insofar as not already in force for W. at 3.11.2008 by S.I. 2008/2561, art. 2(b)

- 10 In the following provisions, for “approved social worker” substitute “ approved mental health professional ”
- (a) section 135(1) and (4) (warrant to search for and remove patient),
- (b) section 136(2) (detention of person removed to a place of safety), and
- (c) section 138(1)(a) (retaking of patients escaping from custody).

Commencement Information

- I10** Sch. 2 para. 10 not in force at Royal Assent see s. 56(1); Sch. 2 para. 10 in force for E. at 3.11.2008 by S.I. 2008/1900, art. 2(d); Sch. 2 para. 10 in force insofar as not already in force for W. at 3.11.2008 by S.I. 2008/2561, art. 2(b)

- 11 (1) Section 145 (interpretation) is amended as follows.

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- (2) In subsection (1), for the definition of “approved social worker” substitute—
- ““approved mental health professional” has the meaning given in section 114 above;”.
- (3) After subsection (1AB) (inserted by section 4 of this Act) insert—
- “(1AC) References in this Act to an approved mental health professional shall be construed as references to an approved mental health professional acting on behalf of a local social services authority, unless the context otherwise requires.”

Commencement Information

- I11** Sch. 2 para. 11 not in force at Royal Assent see s. 56(1); Sch. 2 para. 11 in force for E. at 3.11.2008 by S.I. 2008/1900, art. 2(d); Sch. 2 para. 11 in force insofar as not already in force for W. at 3.11.2008 by S.I. 2008/2561, art. 2(b)

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