

**EXPLANATORY MEMORANDUM TO**  
**THE MENTAL HEALTH ACT 2007 (COMMENCEMENT No. 6 AND AFTER-CARE UNDER SUPERVISION: SAVINGS, MODIFICATIONS AND TRANSITIONAL PROVISIONS) ORDER 2008**

**2008 No. 1210 (C.52)**

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. **Description**

2.1 The Mental Health Act 2007 abolishes after-care under supervision (a system for managing patient care in a community setting) because it is superseded by new provisions for supervised community treatment, which are inserted into the Mental Health Act 1983 by the 2007 Act. This Order sets out arrangements to be followed for dealing with patients who are on after-care under supervision at the time the relevant provisions of the 2007 Act come into force (3 November 2008).

2.2 The responsible medical officer for each patient affected must decide the best option for the future care and treatment of the patient under the amended Mental Health Act 1983. The decision must be made when the patient's current period of after-care under supervision expires, or if that is due to end after 3 May 2009, by that date at the latest.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

4. **Legislative Background**

4.1 Section 36 of the Mental Health Act 2007 repeals the sections of the Mental Health Act 1983 which relate to after-care under supervision. Section 57 of the 2007 Act provides that an Order for the commencement of section 36 may provide for that section not to apply to a patient on after-care under supervision at the time of commencement. This therefore permits patients on after-care under supervision at that time to continue to be subject to its provisions for a transitional period. Section 57 permits the Order to require arrangements to be put in place for the patients affected to be examined and for decisions to be taken as to the best option for their future care and treatment. It also enables provisions of the 1983 Act, including those relating to supervised community treatment, to be modified in their application to these patients.

4.2 Section 57 of the 2007 Act therefore provides the enabling power for the Order. In line with the provisions of that section the Order requires action

to be taken to examine patients on after-care under supervision when section 36 comes into force, and to determine the right option for each patient. The Order keeps the relevant provisions of the 1983 Act in force for a temporary period to enable after-care under supervision to continue during the transitional period. It also modifies the provisions relating to supervised community treatment so that they can apply to patients who have been on after-care under supervision immediately beforehand (as opposed to being detained in hospital for treatment as is required for all other patients).

## **5. Territorial Extent and Application**

5.1 This instrument applies to England and Wales.

## **6. European Convention on Human Rights**

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

7.1 After-care under supervision has been in place since 1996 but uptake has remained low. This is thought to be largely because the system lacks the powers to make it work as intended. The introduction of supervised community treatment by the Mental Health Act 2007 (which amends the Mental Health Act 1983) addresses these problems by making available a new way to manage the treatment and care of patients in the community, backed by powers to recall the patient to hospital and detain the patient again if necessary. With the arrival of supervised community treatment there is no further need for after-care under supervision, which is therefore repealed.

7.2 The Government's intention is that patients on after-care under supervision when the new Act comes into force should be able to benefit from the new provisions of the Act, rather than simply be discharged from compulsory powers as a result of the removal of the legal basis for their care. The arrangements set out in the order make it possible for these patients to go onto the most appropriate option for them. They may be recommended for guardianship, placed onto supervised community treatment, or recommended for detention under the Act if the examination shows that they appear to need assessment or treatment in hospital. All these options are subject to the normal stringent criteria of the Act (except that the criteria for supervised community treatment are modified so that patients do not have to be detained in hospital first). Patients will be discharged altogether if they do not meet the criteria for any other system of care under the amended Act, or if action is not taken within 14 days of the responsible medical officer's decision.

7.3 The number of patients who will be affected by the Order is thought to be small. The numbers of patients who went onto after-care under supervision in England and Wales in 2006/7 was 638, a figure similar to the previous year (647). It is not known however how many patients are on after-care under supervision at any one time.

7. 4 Consultation on the draft Order took place as part of the Department of Health's consultation on the draft secondary legislation arising from the Mental Health Act 2007. The consultation ran from 25 October 2007 to 24 January 2008, and was supported by a number of consultation events. Little interest was expressed in the draft Order and there were only a very few responses. The general feeling among those who did respond was that the transitional period should last for up to six months, rather than the three months which was originally proposed. The Order therefore allows a maximum of six months (to 3 May 2009) in accordance with the outcome of the consultation.

8. **Impact**

8.1 An Impact Assessment has not been prepared for this instrument as it has no impact on the private or voluntary sectors.

9. **Contact**

Janet Whybrow at the Department of Health Tel: 0207 972 4301 or e-mail: [janet.whybrow@dh.gsi.gov.uk](mailto:janet.whybrow@dh.gsi.gov.uk) can answer any queries regarding the instrument.