

EXPLANATORY MEMORANDUM TO
THE MENTAL HEALTH ACT 2007 (COMMENCEMENT NO. 5 AND
TRANSITIONAL PROVISIONS) ORDER 2008

2008 No. 800 (C.39)

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 This instrument brings into force on 30 April 2008, section 44 of the Mental Health Act 2007 (the 2007 Act) which amends sections 135 and 136 of the Mental Health Act 1983 (the 1983 Act) in relation to places of safety. A place of safety for this purpose is defined in section 135(6) of the 1983 Act and includes a hospital, a care home and a police station.

2.2 The amendments enable a person detained at a place of safety to be transferred to one or more places of safety, subject to the overall time limit for detention of 72 hours, whereas at present the 1983 Act does not permit any such transfer, even where it is in the best interests of the patient.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Background

4.1 This Instrument is part of the implementation of the Mental Health Act 2007, which amends the Mental Health Act 1983.

4.2 Section 44 of the 2007 Act was introduced as a Government amendment to the Bill, which was moved at Lords Report to address concerns expressed during debate at Lords Committee that the current inability to move a person from one place of safety to another is inflexible and means that a person detained at, for example, a police station, has to be kept there even though a hospital bed might be available for them.

4.3 Because it was such a widely welcomed measure the Government wishes to bring section 44 into force ahead of the main body of measures in the 2007 Act. This creates a need for transitional provisions to provide that references in section 44 to an “approved mental health professional” should be read as references to an “approved social worker” until we bring the bulk of the 2007 Act’s provisions into effect, including those that replace the approved social worker with the new professional role of approved mental health professional. This will ensure that approved social

workers, as well as police officers, can be involved in making transfers between places of safety from the outset.

5. Territorial Extent and Application

This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy Background

7.1 It is widely agreed that, although it may sometimes be necessary to use a police station as a place of safety, it is often not the best place for this purpose. Allowing people to be moved from one place of safety to another will help to reduce the reliance on police cells and give the police, the NHS and social services greater flexibility to make arrangements and agree protocols for the short-term detention of a person at a place of safety. It will enable more of the people who are detained under these sections of the 1983 Act to be assessed in a more suitable environment.

Consultation

7.2 A proposal to permit people to be taken from one place of safety to another was included (in clauses 227 to 230) in the Draft Mental Health Bill which was presented to Parliament in September 2004. That draft Bill had itself been the result of a great deal of previous consultation. The whole Bill was subjected to pre-legislative scrutiny but this proposal attracted no comment in the 23 March 2005 report of the Joint Committee on the Draft Mental Health Bill. It did not, however, initially feature in the Mental Health Bill 2006 (the 2006 Bill) which the Government subsequently introduced in the House of Lords to amend the 1983 Act. In the light of representations made during the early stages of the 2006 Bill's passage through the Lords, the Government was persuaded to bring forward an amendment to include the measure in that Bill at Lords Report.

7.3 This instrument merely commences the section that makes the amendment, with a transitional provision because other relevant provisions of the Act are not yet in force. There has therefore been no further consultation. We have, however, consulted on guidance on this which will be included in the revised Mental Health Act 1983 Code of Practice. The consultation closed on 24 January 2008 and we are currently considering the comments received.

Guidance

7.4 The Department of Health intends to notify the NHS and social care organisations of the implementation of section 44 of the 2007 Act through the regular bulletin issued by the Chief Executive of the NHS ("The Week") which will include a

link to the relevant information on the Department of Health website. It will also draw this information to the attention of relevant independent sector organisations. The Home Office intends to inform the police by means of a Home Office Circular addressed to chief police officers in England and Wales. We understand that the Welsh Assembly Government will also issue guidance to NHS and social care bodies in Wales.

8. Impact

8.1 An impact assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies. Any net cost or saving to the public purse will be minimal.

9. Contact

Clive Marritt at the Department of Health (tel. 020 7972 4492 or e-mail: clive.marritt@dh.gsi.gov.uk) can answer any queries about the instrument.