



# Mental Health Act 2007

## 2007 CHAPTER 12

### PART 1

#### AMENDMENTS TO MENTAL HEALTH ACT 1983

VALID FROM 03/11/2008

#### CHAPTER 1

##### CHANGES TO KEY PROVISIONS

##### *Mental disorder*

#### **1 Removal of categories of mental disorder**

- (1) Section 1(2) of the 1983 Act (key definitions) is amended as set out in subsections (2) and (3).
- (2) For the definitions of “mental disorder” and “mentally disordered” substitute—

““mental disorder” means any disorder or disability of the mind; and  
“mentally disordered” shall be construed accordingly;”.
- (3) The following definitions are omitted—
  - (a) those of “severe mental impairment” and “severely mentally impaired”,
  - (b) those of “mental impairment” and “mentally impaired”, and
  - (c) that of “psychopathic disorder”.
- (4) Schedule 1 (which contains further amendments to the 1983 Act and amendments to other Acts) has effect.

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

### **Commencement Information**

- II** S. 1 not in force at Royal Assent see s. 56(1); s. 1(4) in force for specified purposes at 3.11.2008 by S.I. 2008/1210, arts. 1(1)(b), 2(a) (with arts. 4, 5); s. 1 in force insofar as not already in force at 3.11.2008 by S.I. 2008/1900, arts. 1(1), 2(a) (with art. 3, Sch.)

## **2 Learning disability**

(1) Section 1 of the 1983 Act (application of Act) is amended as follows.

(2) After subsection (2) insert—

“(2A) But a person with learning disability shall not be considered by reason of that disability to be—

- (a) suffering from mental disorder for the purposes of the provisions mentioned in subsection (2B) below; or
- (b) requiring treatment in hospital for mental disorder for the purposes of sections 17E and 50 to 53 below,

unless that disability is associated with abnormally aggressive or seriously irresponsible conduct on his part.

(2B) The provisions are—

- (a) sections 3, 7, 17A, 20 and 20A below;
- (b) sections 35 to 38, 45A, 47, 48 and 51 below; and
- (c) section 72(1)(b) and (c) and (4) below.”

(3) After subsection (3) insert—

“(4) In subsection (2A) above, “learning disability” means a state of arrested or incomplete development of the mind which includes significant impairment of intelligence and social functioning.”

## **3 Changes to exclusions from operation of 1983 Act**

In section 1 of the 1983 Act (application of Act), for subsection (3) substitute—

“(3) Dependence on alcohol or drugs is not considered to be a disorder or disability of the mind for the purposes of subsection (2) above.”

### *Tests for detention etc*

## **4 Replacement of “treatability” and “care” tests with appropriate treatment test**

(1) The 1983 Act is amended as follows.

(2) In section 3 (admission for treatment)—

- (a) in subsection (2), omit paragraph (b) (and the word “and” at the end of that paragraph),
- (b) in that subsection, after paragraph (c) insert “; and
- (d) appropriate medical treatment is available for him.”, and

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- (c) in subsection (3)(a), for “(b)” substitute “ (d) ”.
- (3) In that section, after subsection (3) insert—
- “(4) In this Act, references to appropriate medical treatment, in relation to a person suffering from mental disorder, are references to medical treatment which is appropriate in his case, taking into account the nature and degree of the mental disorder and all other circumstances of his case.”
- (4) In section 20 (renewal of authority to detain), in subsection (4)—
- (a) omit paragraph (b) (and the word “and” at the end of that paragraph),
- (b) after paragraph (c) insert “and
- (d) appropriate medical treatment is available for him.”, and
- (c) omit the words from “but, in the case of mental illness” to the end.
- (5) In section 37(2) (conditions for exercise of powers of court to order hospital admission or guardianship), in paragraph (a)(i), for the words from “, in the case of psychopathic disorder” to the end substitute “ appropriate medical treatment is available for him; or ”.
- (6) In section 45A(2) (conditions for exercise of powers of court to direct hospital admission), for paragraph (c) substitute—
- “(c) that appropriate medical treatment is available for him.”
- (7) In section 47(1) (conditions for exercise of Secretary of State's powers to direct removal to hospital), in paragraph (b), for the words from “and, in the case of psychopathic disorder” to the end substitute “; and
- (c) that appropriate medical treatment is available for him;”.
- (8) In section 72—
- (a) in subsection (1)(b) (powers of tribunal to direct discharge of patient not liable to be detained under section 2), after sub-paragraph (ii) insert—
- “(iia) that appropriate medical treatment is available for him; or”, and
- (b) omit subsection (2).
- (9) In section 73(1) (powers of tribunal to direct discharge of restricted patients), in paragraph (a), for “or (ii)” substitute “, (ii) or (iia) ”.
- (10) In section 145 (interpretation), after subsection (1AA) insert—
- “(1AB) References in this Act to appropriate medical treatment shall be construed in accordance with section 3(4) above.”

## **5 Further cases in which appropriate treatment test is to apply**

- (1) The 1983 Act is amended as follows.
- (2) In section 36(1) (remand to hospital for treatment) after paragraph (a) (inserted by Schedule 1 to this Act) insert “and
- (b) appropriate medical treatment is available for him.”
- (3) In section 48(1) (removal to hospital of immigration detainees etc) after paragraph (b) (inserted by Schedule 1 to this Act) insert “and
- (c) appropriate medical treatment is available for him;”.

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- (4) In section 51(6)(a) (further power to make hospital order) after sub-paragraph (i) (inserted by Schedule 1 to this Act) insert “and  
 (ii) appropriate medical treatment is available for him; and”.

*Medical treatment*

**6 Appropriate treatment test in Part 4 of 1983 Act**

- (1) Part 4 of the 1983 Act (consent to treatment) is amended as follows.
- (2) In the following provisions, for the words from “, having regard to” to the end substitute “ it is appropriate for the treatment to be given. ”
- (a) section 57(2)(b) (certification of second opinion where treatment requires consent and a second opinion), and
- (b) section 58(3)(b) (certification of second opinion where treatment requires consent or a second opinion).
- (3) In section 64 (supplementary provisions for Part 4), after subsection (2) insert—
- “(3) For the purposes of this Part of this Act, it is appropriate for treatment to be given to a patient if the treatment is appropriate in his case, taking into account the nature and degree of the mental disorder from which he is suffering and all other circumstances of his case.”

**7 Change in definition of “medical treatment”**

- (1) Section 145 of the 1983 Act is amended as follows.
- (2) In subsection (1), in the definition of “medical treatment”, for the words from “and also” to the end substitute “ psychological intervention and specialist mental health habilitation, rehabilitation and care (but see also subsection (4) below); ”.
- (3) After subsection (3) insert—
- “(4) Any reference in this Act to medical treatment, in relation to mental disorder, shall be construed as a reference to medical treatment the purpose of which is to alleviate, or prevent a worsening of, the disorder or one or more of its symptoms or manifestations.”

*Fundamental principles*

**8 The fundamental principles**

After section 118(2) of the 1983 Act (code of practice) insert—

- “(2A) The code shall include a statement of the principles which the Secretary of State thinks should inform decisions under this Act.
- (2B) In preparing the statement of principles the Secretary of State shall, in particular, ensure that each of the following matters is addressed—
- (a) respect for patients' past and present wishes and feelings,

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- (b) respect for diversity generally including, in particular, diversity of religion, culture and sexual orientation (within the meaning of section 35 of the Equality Act 2006),
  - (c) minimising restrictions on liberty,
  - (d) involvement of patients in planning, developing and delivering care and treatment appropriate to them,
  - (e) avoidance of unlawful discrimination,
  - (f) effectiveness of treatment,
  - (g) views of carers and other interested parties,
  - (h) patient wellbeing and safety, and
  - (i) public safety.
- (2C) The Secretary of State shall also have regard to the desirability of ensuring—
- (a) the efficient use of resources, and
  - (b) the equitable distribution of services.
- (2D) In performing functions under this Act persons mentioned in subsection (1) (a) or (b) shall have regard to the code.”

## CHAPTER 2

### PROFESSIONAL ROLES

VALID FROM 03/11/2008

#### *Approved clinicians and responsible clinicians*

### **9 Amendments to Part 2 of 1983 Act**

- (1) Part 2 of the 1983 Act (compulsory admission to hospital and guardianship) is amended as follows.
- (2) In section 5 (application in respect of patient already in hospital)—
- (a) in subsection (2), after “registered medical practitioner” insert “ or approved clinician ”,
  - (b) for subsection (3) substitute—
    - “(3) The registered medical practitioner or approved clinician in charge of the treatment of a patient in a hospital may nominate one (but not more than one) person to act for him under subsection (2) above in his absence.
- (3A) For the purposes of subsection (3) above—
- (a) the registered medical practitioner may nominate another registered medical practitioner, or an approved clinician, on the staff of the hospital; and
  - (b) the approved clinician may nominate another approved clinician, or a registered medical practitioner, on the staff of the hospital.”, and

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- (c) in subsection (4), after “a practitioner”, in each place, insert “ or clinician ”.
- (3) In section 17 (leave of absence)—
- (a) in subsection (1)—
- (i) for “responsible medical officer” substitute “ responsible clinician ”, and
- (ii) for “that officer” substitute “ that clinician ”,
- (b) in subsection (3), for “responsible medical officer” substitute “ responsible clinician ”, and
- (c) in subsection (4)—
- (i) for “responsible medical officer” substitute “ responsible clinician ”, and
- (ii) for “that officer” substitute “ that clinician ”.
- (4) In section 20 (duration of authority)—
- (a) in subsections (3) and (5), for “responsible medical officer” substitute “ responsible clinician ”,
- (b) after subsection (5) insert—
- “(5A) But the responsible clinician may not furnish a report under subsection (3) above unless a person—
- (a) who has been professionally concerned with the patient's medical treatment; but
- (b) who belongs to a profession other than that to which the responsible clinician belongs,
- states in writing that he agrees that the conditions set out in subsection (4) above are satisfied.”,
- (c) in subsection (6), for “appropriate medical officer” substitute “ appropriate practitioner ”, and
- (d) omit subsection (10).
- (5) In section 21B (patients who are taken into custody or return after more than 28 days)—
- (a) in subsections (2) and (3), for “appropriate medical officer” substitute “ appropriate practitioner ”, and
- (b) in subsection (10), omit the definition of “appropriate medical officer”.
- (6) In section 23(2) (persons who may apply for discharge of patient), in paragraphs (a) and (b), for “responsible medical officer” substitute “ responsible clinician ”.
- (7) In section 24 (visiting and examination of patients), in each place, after “registered medical practitioner” insert “ or approved clinician ”.
- (8) In section 25(1) (restrictions on discharge by nearest relative)—
- (a) for “responsible medical officer” substitute “ responsible clinician ”, and
- (b) for “that officer” substitute “ that clinician ”.
- (9) In section 34 (interpretation of Part 2 of the 1983 Act), in subsection (1), insert the following definition at the appropriate place—
- ““the appropriate practitioner” means—

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- (a) in the case of a patient who is subject to the guardianship of a person other than a local social services authority, the nominated medical attendant of the patient; and
- (b) in any other case, the responsible clinician;”.

(10) In that subsection, for the definition of “the responsible medical officer” substitute—

““the responsible clinician” means—

- (a) in relation to a patient liable to be detained by virtue of an application for admission for assessment or an application for admission for treatment, or a community patient, the approved clinician with overall responsibility for the patient's case;
- (b) in relation to a patient subject to guardianship, the approved clinician authorised by the responsible local social services authority to act (either generally or in any particular case or for any particular purpose) as the responsible clinician;”.

## **10 Amendments to Part 3 of 1983 Act**

- (1) Part 3 of the 1983 Act (patients concerned in criminal proceedings) is amended as follows.
- (2) In section 35 (remand to hospital for report)—
  - (a) in subsections (4) and (5), for “registered medical practitioner” substitute “ approved clinician ”, and
  - (b) in subsection (8), after “registered medical practitioner” insert “ or approved clinician ”.
- (3) In section 36 (remand to hospital for treatment)—
  - (a) in subsection (3), for “registered medical practitioner who would be in charge of his treatment” substitute “ approved clinician who would have overall responsibility for his case ”,
  - (b) in subsection (4), for “responsible medical officer” substitute “ responsible clinician ”, and
  - (c) in subsection (7), after “registered medical practitioner” insert “ or approved clinician ”.
- (4) In section 37 (hospital and guardianship orders), in subsection (4), for “registered medical practitioner who would be in charge of his treatment” substitute “ approved clinician who would have overall responsibility for his case ”.
- (5) In section 38 (interim hospital orders)—
  - (a) in subsection (4), for “registered medical practitioner who would be in charge of his treatment” substitute “ approved clinician who would have overall responsibility for his case ”, and
  - (b) in subsection (5), for “responsible medical officer”, in each place, substitute “ responsible clinician ”.
- (6) In section 41 (power of courts to restrict discharge from hospital), in subsections (3) (c) and (6), for “responsible medical officer” substitute “ responsible clinician ”.
- (7) In section 44(2) (person who is to give evidence in connection with committal to hospital), for “registered medical practitioner who would be in charge of the

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offender's treatment” substitute “ approved clinician who would have overall responsibility for the offender's case ”.

- (8) In section 45A(5) (person who is to give evidence in connection with hospital or limitation direction), for “registered medical practitioner who would be in charge of his treatment” substitute “ approved clinician who would have overall responsibility for his case ”.
- (9) In the following provisions, for “responsible medical officer” substitute “ responsible clinician ”
- (a) section 45B(3) (requirement to produce report on person subject to hospital and limitation directions), and
  - (b) section 49(3) (requirement to produce report on person subject to restriction direction).

## **11 Further amendments to Part 3 of 1983 Act**

- (1) Part 3 of the 1983 Act (patients concerned in criminal proceedings) is further amended as follows.
- (2) In section 50(1) (powers of Secretary of State in respect of prisoners under sentence) —
- (a) for “responsible medical officer” substitute “ responsible clinician ”, and
  - (b) for “registered medical practitioner” substitute “ approved clinician ”.
- (3) In section 51 (further provisions as to detained persons)—
- (a) in subsection (3)—
    - (i) for “responsible medical officer” substitute “ responsible clinician ”, and
    - (ii) for “registered medical practitioner” substitute “ approved clinician ”, and
  - (b) in subsection (4), for “responsible medical officer” substitute “ responsible clinician ”.
- (4) In section 52 (further provisions as to persons remanded by magistrates' courts), in subsections (5) and (7), for “responsible medical officer” substitute “ responsible clinician ”.
- (5) In section 53(2) (powers of Secretary of State in respect of civil prisoners and persons detained under the Immigration Acts)—
- (a) for “responsible medical officer” substitute “ responsible clinician ”, and
  - (b) for “registered medical practitioner” substitute “ approved clinician ”.
- (6) In section 54 (requirements as to medical evidence), for subsection (2) substitute—
- “(2) For the purposes of any provision of this Part of this Act under which a court may act on the written evidence of any person, a report in writing purporting to be signed by that person may, subject to the provisions of this section, be received in evidence without proof of the following—
- (a) the signature of the person; or
  - (b) his having the requisite qualifications or approval or authority or being of the requisite description to give the report.



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(2A) But the court may require the signatory of any such report to be called to give oral evidence.”

(7) In section 55 (interpretation of Part 3), for the definition of “responsible medical officer” in subsection (1) substitute—

““responsible clinician”, in relation to a person liable to be detained in a hospital within the meaning of Part 2 of this Act, means the approved clinician with overall responsibility for the patient's case.”

(8) In Part 2 of Schedule 1 (modifications in relation to patients subject to special restrictions), in paragraph 3—

(a) in paragraph (b), for “ “the responsible medical officer” and after the words “that officer”” substitute “ “the responsible clinician” and after the words “that clinician” ”, and

(b) in paragraph (c), for “ “by the responsible medical officer”” substitute “by the responsible clinician” .

## **12 Amendments to Part 4 of 1983 Act**

(1) Part 4 of the 1983 Act (consent to treatment) is amended as follows.

(2) In section 57 (requirements as to certification for treatment requiring consent and a second opinion)—

(a) in subsection (2)(a), for “responsible medical officer” substitute “responsible clinician (if there is one) or the person in charge of the treatment in question ”, and

(b) in subsection (3), for the words from “, and of those persons” to the end substitute “but, of those persons—

(a) one shall be a nurse and the other shall be neither a nurse nor a registered medical practitioner; and

(b) neither shall be the responsible clinician (if there is one) or the person in charge of the treatment in question.”

(3) In section 58 (requirements as to certification for treatment requiring consent or a second opinion)—

(a) in subsection (3)—

(i) in paragraph (a), for “responsible medical officer” substitute “approved clinician in charge of it ”, and

(ii) in paragraph (b), for “responsible medical officer” substitute “responsible clinician or the approved clinician in charge of the treatment in question ”, and

(b) in subsection (4), for the words from “, and of those persons” to the end substitute “but, of those persons—

(a) one shall be a nurse and the other shall be neither a nurse nor a registered medical practitioner; and

(b) neither shall be the responsible clinician or the approved clinician in charge of the treatment in question.”

(4) In section 61 (review of treatment)—

(a) in subsection (1)—

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- (i) for “by the responsible medical officer” substitute “by the approved clinician in charge of the treatment”, and
- (ii) in paragraph (a), for “responsible medical officer” substitute “responsible clinician”,
- (b) in subsection (2)(b), for “responsible medical officer” substitute “responsible clinician”,
- (c) in subsection (3), omit the words “to the responsible medical officer”, and
- (d) after that subsection insert—

“(3A) The notice under subsection (3) above shall be given to the approved clinician in charge of the treatment.”

- (5) In section 62(2) (exception to discontinuance of treatment), for “responsible medical officer” substitute “approved clinician in charge of the treatment”.
- (6) In section 63 (treatment not requiring consent), for “responsible medical officer” substitute “approved clinician in charge of the treatment”.
- (7) In section 64 (supplementary provisions for Part 4)—
  - (a) in subsection (1), for the words from “the responsible” to “treatment” substitute “the responsible clinician” means the approved clinician with overall responsibility for the case”, and
  - (b) after that subsection insert—

“(1A) References in this Part of this Act to the approved clinician in charge of a patient's treatment shall, where the treatment in question is a form of treatment to which section 57 above applies, be construed as references to the person in charge of the treatment.”

### **13 Amendments to Part 5 of 1983 Act**

- (1) Part 5 of the 1983 Act (Mental Health Review Tribunals) is amended as follows.
- (2) In the following provisions, after “registered medical practitioner” insert “or approved clinician”
  - (a) section 67(2) (power to visit and examine patient for the purposes of a tribunal reference), and
  - (b) section 76(1) (power to visit and examine patient for the purposes of a tribunal application).
- (3) In section 79 (interpretation of Part 5), in subsection (6), for “, and “the responsible medical officer” means the responsible medical officer,” substitute “, and “the responsible clinician” means the responsible clinician,”.

### **14 Amendments to other provisions of 1983 Act**

- (1) The 1983 Act is amended as follows.
- (2) In section 118 (code of practice), in subsection (1)(a), after “registered medical practitioners” insert “, approved clinicians”.
- (3) In the following provisions, after “registered medical practitioner” insert “or approved clinician”

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- (a) section 120(4)(a) (right of person authorised by Secretary of State etc to visit patients), and
  - (b) section 121(5)(a) (right of person authorised by Mental Health Act Commission to visit patients).
- (4) In section 134 (correspondence of patients), in subsection (1), for “registered medical practitioner in charge of the treatment of the patient” substitute “ approved clinician with overall responsibility for the patient's case ”.
- (5) In section 145 (general interpretation), in subsection (1), insert the following definition at the appropriate place—
- ““approved clinician” means a person approved by the Secretary of State (in relation to England) or by the Welsh Ministers (in relation to Wales) to act as an approved clinician for the purposes of this Act;”.

## 15 Amendments to other Acts

- (1) In section 116B(5) of the Army Act 1955 (3 & 4 Eliz. 2 c. 18) (provision for person subject to hospital order and restriction order to be remitted for trial, etc)—
- (a) for “the responsible medical officer” substitute “ the responsible clinician ”, and
  - (b) for the words from “In this subsection” to the end substitute— “ In this subsection “responsible clinician” means the responsible clinician within the meaning of Part 3 of the 1983 Act. ”
- (2) In section 116B(5) of the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) (provision for person subject to hospital order and restriction order to be remitted for trial, etc)—
- (a) for “the responsible medical officer” substitute “ the responsible clinician ”, and
  - (b) for the words from “In this subsection” to the end substitute— “ In this subsection “responsible clinician” means the responsible clinician within the meaning of Part 3 of the 1983 Act. ”
- (3) In section 63B(5) of the Naval Discipline Act 1957 (c. 53) (provision for person subject to hospital order and restriction order to be remitted for trial, etc)—
- (a) for “the responsible medical officer” substitute “ the responsible clinician ”, and
  - (b) for the words from “In this subsection” to the end substitute— “ In this subsection “responsible clinician” means the responsible clinician within the meaning of Part 3 of the 1983 Act. ”
- (4) In section 5A(4) of the Criminal Procedure (Insanity) Act 1964 (c. 84) (provision for person subject to hospital order and restriction order to be remitted for trial, etc), for “the responsible medical officer” substitute “ the responsible clinician ”.
- (5) In section 171 of the Armed Forces Act 2006 (c. 52) (remission for trial)—
- (a) in subsection (1), for “the responsible medical officer” substitute “ the responsible clinician ”, and
  - (b) in subsection (4) for the definition of “the responsible medical officer” substitute—
- ““the responsible clinician” means the responsible clinician within the meaning of Part 3 of the Mental Health Act 1983.”

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- (6) On the commencement of the repeal of an enactment mentioned in subsection (1), (2) or (3) by the Armed Forces Act 2006, that subsection shall also cease to have effect.

**16 Certain registered medical practitioners to be treated as approved under section 12 of 1983 Act**

In section 12 of the 1983 Act (general provisions as to medical recommendations), after subsection (2) insert—

“(2A) A registered medical practitioner who is an approved clinician shall be treated as also approved for the purposes of this section under subsection (2) above as having special experience as mentioned there.”

**17 Regulations as to approvals in relation to England and Wales**

After section 142 of the 1983 Act, insert—

**“142A Regulations as to approvals in relation to England and Wales**

The Secretary of State jointly with the Welsh Ministers may by regulations make provision as to the circumstances in which—

- (a) a practitioner approved for the purposes of section 12 above, or
- (b) a person approved to act as an approved clinician for the purposes of this Act,

approved in relation to England is to be treated, by virtue of his approval, as approved in relation to Wales too, and vice versa.”

*Approved mental health professionals*

**18 Approved mental health professionals**

For section 114 of the 1983 Act (appointment of approved social workers) and the cross-heading immediately above it substitute—

*“Approved mental health professionals*

**114 Approval by local social services authority**

- (1) A local social services authority may approve a person to act as an approved mental health professional for the purposes of this Act.
- (2) But a local social services authority may not approve a registered medical practitioner to act as an approved mental health professional.
- (3) Before approving a person under subsection (1) above, a local social services authority shall be satisfied that he has appropriate competence in dealing with persons who are suffering from mental disorder.
- (4) The appropriate national authority may by regulations make provision in connection with the giving of approvals under subsection (1) above.

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- (5) The provision which may be made by regulations under subsection (4) above includes, in particular, provision as to—
- (a) the period for which approvals under subsection (1) above have effect;
  - (b) the courses to be undertaken by persons before such approvals are to be given and during the period for which such approvals have effect;
  - (c) the conditions subject to which such approvals are to be given; and
  - (d) the factors to be taken into account in determining whether persons have appropriate competence as mentioned in subsection (3) above.
- (6) Provision made by virtue of subsection (5)(b) above may relate to courses approved or provided by such person as may be specified in the regulations (as well as to courses approved under section 114A below).
- (7) An approval by virtue of subsection (6) above may be in respect of a course in general or in respect of a course in relation to a particular person.
- (8) The power to make regulations under subsection (4) above includes power to make different provision for different cases or areas.
- (9) In this section “the appropriate national authority” means—
- (a) in relation to persons who are or wish to become approved to act as approved mental health professionals by a local social services authority whose area is in England, the Secretary of State;
  - (b) in relation to persons who are or wish to become approved to act as approved mental health professionals by a local social services authority whose area is in Wales, the Welsh Ministers.
- (10) In this Act “approved mental health professional” means—
- (a) in relation to acting on behalf of a local social services authority whose area is in England, a person approved under subsection (1) above by any local social services authority whose area is in England, and
  - (b) in relation to acting on behalf of a local social services authority whose area is in Wales, a person approved under that subsection by any local social services authority whose area is in Wales.”

#### Commencement Information

- I2** S. 18 not in force at Royal Assent see s. 56(1); s. 18 in force for specified purposes at 1.4.2008 by S.I. 2008/745, arts. 2(a), 3(b); s. 18 in force insofar as not already in force for E. at 3.11.2008 by S.I. 2008/1900, art. 2(c) (with art. 3, Sch.); s. 18 in force insofar as not already in force at 3.11.2008 by S.I. 2008/2561, art. 2(a) (with art. 3, Sch.)

## 19 Approval of courses etc for approved mental health professionals

After section 114 of the 1983 Act insert—

### “114A Approval of courses etc for approved mental health professionals

- (1) The relevant Council may, in accordance with rules made by it, approve courses for persons who are or wish to become approved mental health professionals.
- (2) For that purpose—

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- (a) subsections (2) to (4)(a) and (7) of section 63 of the Care Standards Act 2000 apply as they apply to approvals given, rules made and courses approved under that section; and
  - (b) sections 66 and 71 of that Act apply accordingly.
- (3) In subsection (1), “the relevant Council” means—
- (a) in relation to persons who are or wish to become approved to act as approved mental health professionals by a local social services authority whose area is in England, the General Social Care Council;
  - (b) in relation to persons who are or wish to become approved to act as approved mental health professionals by a local social services authority whose area is in Wales, the Care Council for Wales.
- (4) The functions of an approved mental health professional shall not be considered to be relevant social work for the purposes of Part 4 of the Care Standards Act 2000.
- (5) The General Social Care Council and the Care Council for Wales may also carry out, or assist other persons in carrying out, research into matters relevant to training for approved mental health professionals.”

## 20 Amendment to section 62 of Care Standards Act 2000

In section 62 of the Care Standards Act 2000 (c. 14) (codes of practice), after subsection (1) insert—

“(1A) The codes may also lay down standards of conduct and practice expected of social workers when carrying out the functions of an approved mental health professional (as defined in section 114 of the Mental Health Act 1983).”

VALID FROM 03/11/2008

## 21 Approved mental health professionals: further amendments

Schedule 2 (which contains amendments in connection with section 18) has effect.

### Commencement Information

- I3** S. 21 not in force at Royal Assent see s. 56(1); s. 21 in force for specified purposes for E. at 3.11.2008 by S.I. 2008/1900, art. 2(d); s. 21 in force for specified purposes insofar as not already in force for W. at 3.11.2008 by S.I. 2008/2561, art. 2(b) (with art. 3, Sch.)

### *Conflicts of interest in professional roles*

## 22 Conflicts of interest

- (1) The 1983 Act is amended as follows.
- (2) In section 11 (general provisions as to applications), after subsection (1) insert—

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“(1A) No application mentioned in subsection (1) above shall be made by an approved mental health professional if the circumstances are such that there would be a potential conflict of interest for the purposes of regulations under section 12A below.”

(3) In section 12 (general provisions as to medical recommendations), in subsection (1), after “this Part of this Act” insert “ or a guardianship application ”.

(4) In that section, for subsections (3) to (7) substitute—

“(3) No medical recommendation shall be given for the purposes of an application mentioned in subsection (1) above if the circumstances are such that there would be a potential conflict of interest for the purposes of regulations under section 12A below.”

(5) After that section insert—

#### “12A Conflicts of interest

(1) The appropriate national authority may make regulations as to the circumstances in which there would be a potential conflict of interest such that—

- (a) an approved mental health professional shall not make an application mentioned in section 11(1) above;
- (b) a registered medical practitioner shall not give a recommendation for the purposes of an application mentioned in section 12(1) above.

(2) Regulations under subsection (1) above may make—

- (a) provision for the prohibitions in paragraphs (a) and (b) of that subsection to be subject to specified exceptions;
- (b) different provision for different cases; and
- (c) transitional, consequential, incidental or supplemental provision.

(3) In subsection (1) above, “the appropriate national authority” means—

- (a) in relation to applications in which admission is sought to a hospital in England or to guardianship applications in respect of which the area of the relevant local social services authority is in England, the Secretary of State;
- (b) in relation to applications in which admission is sought to a hospital in Wales or to guardianship applications in respect of which the area of the relevant local social services authority is in Wales, the Welsh Ministers.

(4) References in this section to the relevant local social services authority, in relation to a guardianship application, are references to the local social services authority named in the application as guardian or (as the case may be) the local social services authority for the area in which the person so named resides.”

(6) In section 13 (duty to make applications for admission or guardianship), in subsection (5), after “section 11(4) above” insert “ or of regulations under section 12A above ”.

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### Commencement Information

- I4** S. 22 not in force at Royal Assent see s. 56(1); s. 22(5) in force at 1.4.2008 by S.I. 2008/745, art. 3(c); s. 22 in force insofar as not already in force at 3.11.2008 by S.I. 2008/1900, art. 2(e) (with art. 3, Sch.)

## CHAPTER 3

### SAFEGUARDS FOR PATIENTS

#### *Patient's nearest relative*

VALID FROM 03/11/2008

### **23 Extension of power to appoint acting nearest relative**

- (1) Section 29 of the 1983 Act (appointment by court of acting nearest relative) is amended as follows.
- (2) In subsection (1), for the words from “the applicant” to the end substitute “the person specified in the order”.
- (3) After subsection (1) insert—
  - “(1A) If the court decides to make an order on an application under subsection (1) above, the following rules have effect for the purposes of specifying a person in the order—
    - (a) if a person is nominated in the application to act as the patient's nearest relative and that person is, in the opinion of the court, a suitable person to act as such and is willing to do so, the court shall specify that person (or, if there are two or more such persons, such one of them as the court thinks fit);
    - (b) otherwise, the court shall specify such person as is, in its opinion, a suitable person to act as the patient's nearest relative and is willing to do so.”
- (4) In subsection (2)—
  - (a) after “on the application of—” insert—
    - “(za) the patient;”, and
  - (b) omit the words from “but in relation to” to the end.
- (5) In subsection (3)—
  - (a) in paragraph (c) omit the word “or” at the end of the paragraph, and
  - (b) after paragraph (d) insert “; or
    - (e) that the nearest relative of the patient is otherwise not a suitable person to act as such.”
- (6) In subsection (5), for “(3)(a) or (b)” substitute “(3)(a), (b) or (e)”.



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VALID FROM 03/11/2008

## 24 Discharge and variation of orders appointing nearest relative

- (1) Section 30 of the 1983 Act (discharge and variation of orders under section 29) is amended as follows.
- (2) In subsection (1)—
  - (a) in paragraph (a), after “in any case, by” insert “ the patient or ”, and
  - (b) in paragraph (b), for “or paragraph (b)” substitute “ , (b) or (e) ”.
- (3) After that subsection insert—

“(1A) But, in the case of an order made on the ground specified in paragraph (e) of section 29(3) above, an application may not be made under subsection (1) (b) above by the person who was the nearest relative of the patient when the order was made except with leave of the county court.”
- (4) In subsection (2)—
  - (a) after “or on the application of” insert “ the patient or of ”, and
  - (b) for the words from “for the first-mentioned person” to the end substitute “ another person for the person having those functions ”.
- (5) After that subsection insert—

“(2A) If the court decides to vary an order on an application under subsection (2) above, the following rules have effect for the purposes of substituting another person—

  - (a) if a person is nominated in the application to act as the patient's nearest relative and that person is, in the opinion of the court, a suitable person to act as such and is willing to do so, the court shall specify that person (or, if there are two or more such persons, such one of them as the court thinks fit);
  - (b) otherwise, the court shall specify such person as is, in its opinion, a suitable person to act as the patient's nearest relative and is willing to do so.”
- (6) In subsection (4), for the words from “An order under” to “period is specified” substitute “ An order made on the ground specified in paragraph (c) or (d) of section 29(3) above shall, unless previously discharged under subsection (1) above, cease to have effect as follows ”.
- (7) After subsection (4A) (inserted by Schedule 3 to this Act) insert—

“(4B) An order made on the ground specified in paragraph (a), (b) or (e) of section 29(3) above shall—

  - (a) if a period was specified under section 29(5) above, cease to have effect on expiry of that period, unless previously discharged under subsection (1) above;
  - (b) if no such period was specified, remain in force until it is discharged under subsection (1) above.”

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## 25      **Restriction of nearest relative's right to apply to tribunal**

In section 66 of the 1983 Act (applications to tribunal), in subsection (1)(h) after “section 29 above” insert “ on the ground specified in paragraph (c) or (d) of subsection (3) of that section ”.

## 26      **Civil partners**

- (1) Section 26 of the 1983 Act (definition of “relative” and “nearest relative”) is amended as set out in subsections (2) to (5).
- (2) In subsection (1)(a), after “wife” insert “ or civil partner ”.
- (3) In subsection (5)—
  - (a) in paragraph (b) after “wife” insert “ or civil partner ”, and
  - (b) in paragraph (c) after “wife,” insert “ civil partner, ”.
- (4) In subsection (6)—
  - (a) for “and “wife” include a person who is living with the patient as the patient's husband or wife” substitute “ “ , “wife” and “civil partner” include a person who is living with the patient as the patient's husband or wife or as if they were civil partners” , and
  - (b) for “unless the husband or wife” substitute “ or a patient in a civil partnership unless the husband, wife or civil partner ”.
- (5) In subsection (7)(b), for “unless the husband or wife” substitute “ or a patient in a civil partnership unless the husband, wife or civil partner ”.
- (6) In section 27 of the 1983 Act (children and young persons in care), after “wife” insert “ or civil partner ”.

VALID FROM 03/11/2008

### *Consent to treatment*

## 27      **Electro-convulsive therapy, etc.**

After section 58 of the 1983 Act insert—

### **“58A Electro-convulsive therapy, etc.**

- (1) This section applies to the following forms of medical treatment for mental disorder—
  - (a) electro-convulsive therapy; and
  - (b) such other forms of treatment as may be specified for the purposes of this section by regulations made by the appropriate national authority.

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- (2) Subject to section 62 below, a patient shall be not be given any form of treatment to which this section applies unless he falls within subsection (3), (4) or (5) below.
- (3) A patient falls within this subsection if—
  - (a) he has attained the age of 18 years;
  - (b) he has consented to the treatment in question; and
  - (c) either the approved clinician in charge of it or a registered medical practitioner appointed as mentioned in section 58(3) above has certified in writing that the patient is capable of understanding the nature, purpose and likely effects of the treatment and has consented to it.
- (4) A patient falls within this subsection if—
  - (a) he has not attained the age of 18 years; but
  - (b) he has consented to the treatment in question; and
  - (c) a registered medical practitioner appointed as aforesaid (not being the approved clinician in charge of the treatment) has certified in writing—
    - (i) that the patient is capable of understanding the nature, purpose and likely effects of the treatment and has consented to it; and
    - (ii) that it is appropriate for the treatment to be given.
- (5) A patient falls within this subsection if a registered medical practitioner appointed as aforesaid (not being the responsible clinician (if there is one) or the approved clinician in charge of the treatment in question) has certified in writing—
  - (a) that the patient is not capable of understanding the nature, purpose and likely effects of the treatment; but
  - (b) that it is appropriate for the treatment to be given; and
  - (c) that giving him the treatment would not conflict with—
    - (i) an advance decision which the registered medical practitioner concerned is satisfied is valid and applicable; or
    - (ii) a decision made by a donee or deputy or by the Court of Protection.
- (6) Before giving a certificate under subsection (5) above the registered medical practitioner concerned shall consult two other persons who have been professionally concerned with the patient's medical treatment but, of those persons—
  - (a) one shall be a nurse and the other shall be neither a nurse nor a registered medical practitioner; and
  - (b) neither shall be the responsible clinician (if there is one) or the approved clinician in charge of the treatment in question.
- (7) This section shall not by itself confer sufficient authority for a patient who falls within section 56(5) above to be given a form of treatment to which this section applies if he is not capable of understanding the nature, purpose and likely effects of the treatment (and cannot therefore consent to it).

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(8) Before making any regulations for the purposes of this section, the appropriate national authority shall consult such bodies as appear to it to be concerned.

(9) In this section—

- (a) a reference to an advance decision is to an advance decision (within the meaning of the Mental Capacity Act 2005) made by the patient;
- (b) “valid and applicable”, in relation to such a decision, means valid and applicable to the treatment in question in accordance with section 25 of that Act;
- (c) a reference to a donee is to a donee of a lasting power of attorney (within the meaning of section 9 of that Act) created by the patient, where the donee is acting within the scope of his authority and in accordance with that Act; and
- (d) a reference to a deputy is to a deputy appointed for the patient by the Court of Protection under section 16 of that Act, where the deputy is acting within the scope of his authority and in accordance with that Act.

(10) In this section, “the appropriate national authority” means—

- (a) in a case where the treatment in question would, if given, be given in England, the Secretary of State;
- (b) in a case where the treatment in question would, if given, be given in Wales, the Welsh Ministers.”

PROSPECTIVE

## 28 Section 27: supplemental

(1) Part 4 of the 1983 Act (consent to treatment) is amended as follows.

(2) In section 58 (treatment requiring consent or a second opinion)—

- (a) in subsection (1)(b), after “section 57 above” insert “ or section 58A(1)(b) below ”, and
- (b) in subsection (3)(b), before “has not consented to it” insert “ being so capable ”.

(3) In section 59 (plans of treatment), for “or 58” substitute “ , 58 or 58A ”.

(4) In section 60 (withdrawal of consent), for “or 58”, substitute “ , 58 or 58A ”.

(5) In section 61 (review of treatment)—

- (a) in subsection (1), for “or 58(3)(b)” substitute “ , 58(3)(b) or 58A(4) or (5) ”, and
- (b) in subsection (3)—
  - (i) for “or 58(3)(b)” substitute “ , 58(3)(b) or 58A(4) or (5) ”, and
  - (ii) for “and 58” substitute “ , 58 and 58A ”.

(6) In section 62 (urgent treatment), after subsection (1) insert—

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“(1A) Section 58A above, in so far as it relates to electro-convulsive therapy by virtue of subsection (1)(a) of that section, shall not apply to any treatment which falls within paragraph (a) or (b) of subsection (1) above.

(1B) Section 58A above, in so far as it relates to a form of treatment specified by virtue of subsection (1)(b) of that section, shall not apply to any treatment which falls within such of paragraphs (a) to (d) of subsection (1) above as may be specified in regulations under that section.

(1C) For the purposes of subsection (1B) above, the regulations—

- (a) may make different provision for different cases (and may, in particular, make different provision for different forms of treatment);
- (b) may make provision which applies subject to specified exceptions; and
- (c) may include transitional, consequential, incidental or supplemental provision.”

(7) In that section, in subsection (2), for “or 58” substitute “ , 58 or 58A ”.

(8) In section 63 (treatment not requiring consent), for “, not being treatment falling within section 57 or 58 above,” substitute “, not being a form of treatment to which section 57, 58 or 58A above applies,”.

(9) In section 64 (supplementary provisions), after subsection (1A) (inserted by section 12 of this Act) insert—

“(1B) References in this Part of this Act to the approved clinician in charge of a patient's treatment shall, where the treatment in question is a form of treatment to which section 58A above applies and the patient falls within section 56(5) above, be construed as references to the person in charge of the treatment.

(1C) Regulations made by virtue of section 32(2)(d) above apply for the purposes of this Part as they apply for the purposes of Part 2 of this Act.”

(10) In section 28 of the Mental Capacity Act 2005 (c. 9) (Mental Health Act matters), after subsection (1) insert—

“(1A) Subsection (1) does not apply in relation to any form of treatment to which section 58A of that Act (electro-convulsive therapy, etc.) applies if the patient comes within subsection (7) of that section (informal patient under 18 who cannot give consent).”

## **29 Withdrawal of consent**

(1) Section 60 of the 1983 Act (withdrawal of consent) is amended as follows.

(2) After subsection (1) insert—

“(1A) Subsection (1B) below applies where—

- (a) the consent of a patient to any treatment has been given for the purposes of section 57, 58 or 58A above; but

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- (b) before the completion of the treatment, the patient ceases to be capable of understanding its nature, purpose and likely effects.
- (1B) The patient shall, subject to section 62 below, be treated as having withdrawn his consent, and those sections shall then apply as if the remainder of the treatment were a separate form of treatment.
- (1C) Subsection (1D) below applies where—
  - (a) a certificate has been given under section 58 or 58A above that a patient is not capable of understanding the nature, purpose and likely effects of the treatment to which the certificate applies; but
  - (b) before the completion of the treatment, the patient becomes capable of understanding its nature, purpose and likely effects.
- (1D) The certificate shall, subject to section 62 below, cease to apply to the treatment and those sections shall then apply as if the remainder of the treatment were a separate form of treatment.”
- (3) In subsection (2), for “subsection (1)” substitute “ subsections (1) to (1D) ”.

### *Advocacy*

## **30 Independent mental health advocates**

- (1) Part 10 of the 1983 Act (miscellaneous and supplementary) is amended as follows.
- (2) Before section 131 insert—

### **“130A Independent mental health advocates**

- (1) The appropriate national authority shall make such arrangements as it considers reasonable to enable persons (“independent mental health advocates”) to be available to help qualifying patients.
- (2) The appropriate national authority may by regulations make provision as to the appointment of persons as independent mental health advocates.
- (3) The regulations may, in particular, provide—
  - (a) that a person may act as an independent mental health advocate only in such circumstances, or only subject to such conditions, as may be specified in the regulations;
  - (b) for the appointment of a person as an independent mental health advocate to be subject to approval in accordance with the regulations.
- (4) In making arrangements under this section, the appropriate national authority shall have regard to the principle that any help available to a patient under the arrangements should, so far as practicable, be provided by a person who is independent of any person who is professionally concerned with the patient's medical treatment.
- (5) For the purposes of subsection (4) above, a person is not to be regarded as professionally concerned with a patient's medical treatment merely because he is representing him in accordance with arrangements—

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- (a) under section 35 of the Mental Capacity Act 2005; or
  - (b) of a description specified in regulations under this section.
- (6) Arrangements under this section may include provision for payments to be made to, or in relation to, persons carrying out functions in accordance with the arrangements.
- (7) Regulations under this section—
- (a) may make different provision for different cases;
  - (b) may make provision which applies subject to specified exceptions;
  - (c) may include transitional, consequential, incidental or supplemental provision.

### 130B Arrangements under section 130A

- (1) The help available to a qualifying patient under arrangements under section 130A above shall include help in obtaining information about and understanding—
- (a) the provisions of this Act by virtue of which he is a qualifying patient;
  - (b) any conditions or restrictions to which he is subject by virtue of this Act;
  - (c) what (if any) medical treatment is given to him or is proposed or discussed in his case;
  - (d) why it is given, proposed or discussed;
  - (e) the authority under which it is, or would be, given; and
  - (f) the requirements of this Act which apply, or would apply, in connection with the giving of the treatment to him.
- (2) The help available under the arrangements to a qualifying patient shall also include—
- (a) help in obtaining information about and understanding any rights which may be exercised under this Act by or in relation to him; and
  - (b) help (by way of representation or otherwise) in exercising those rights.
- (3) For the purpose of providing help to a patient in accordance with the arrangements, an independent mental health advocate may—
- (a) visit and interview the patient in private;
  - (b) visit and interview any person who is professionally concerned with his medical treatment;
  - (c) require the production of and inspect any records relating to his detention or treatment in any hospital or registered establishment or to any after-care services provided for him under section 117 above;
  - (d) require the production of and inspect any records of, or held by, a local social services authority which relate to him.
- (4) But an independent mental health advocate is not entitled to the production of, or to inspect, records in reliance on subsection (3)(c) or (d) above unless—
- (a) in a case where the patient has capacity or is competent to consent, he does consent; or

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- (b) in any other case, the production or inspection would not conflict with a decision made by a donee or deputy or the Court of Protection and the person holding the records, having regard to such matters as may be prescribed in regulations under section 130A above, considers that—
  - (i) the records may be relevant to the help to be provided by the advocate; and
  - (ii) the production or inspection is appropriate.
- (5) For the purpose of providing help to a patient in accordance with the arrangements, an independent mental health advocate shall comply with any reasonable request made to him by any of the following for him to visit and interview the patient—
  - (a) the person (if any) appearing to the advocate to be the patient's nearest relative;
  - (b) the responsible clinician for the purposes of this Act;
  - (c) an approved mental health professional.
- (6) But nothing in this Act prevents the patient from declining to be provided with help under the arrangements.
- (7) In subsection (4) above—
  - (a) the reference to a patient who has capacity is to be read in accordance with the Mental Capacity Act 2005;
  - (b) the reference to a donee is to a donee of a lasting power of attorney (within the meaning of section 9 of that Act) created by the patient, where the donee is acting within the scope of his authority and in accordance with that Act;
  - (c) the reference to a deputy is to a deputy appointed for the patient by the Court of Protection under section 16 of that Act, where the deputy is acting within the scope of his authority and in accordance with that Act.

### 130C Section 130A: supplemental

- (1) This section applies for the purposes of section 130A above.
- (2) A patient is a qualifying patient if he is—
  - (a) liable to be detained under this Act (otherwise than by virtue of section 4 or 5(2) or (4) above or section 135 or 136 below);
  - (b) subject to guardianship under this Act; or
  - (c) a community patient.
- (3) A patient is also a qualifying patient if—
  - (a) not being a qualifying patient falling within subsection (2) above, he discusses with a registered medical practitioner or approved clinician the possibility of being given a form of treatment to which section 57 above applies; or
  - (b) not having attained the age of 18 years and not being a qualifying patient falling within subsection (2) above, he discusses with a registered medical practitioner or approved clinician the possibility of being given a form of treatment to which section 58A above applies.



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- (4) Where a patient who is a qualifying patient falling within subsection (3) above is informed that the treatment concerned is proposed in his case, he remains a qualifying patient falling within that subsection until—
  - (a) the proposal is withdrawn; or
  - (b) the treatment is completed or discontinued.
- (5) References to the appropriate national authority are—
  - (a) in relation to a qualifying patient in England, to the Secretary of State;
  - (b) in relation to a qualifying patient in Wales, to the Welsh Ministers.
- (6) For the purposes of subsection (5) above—
  - (a) a qualifying patient falling within subsection (2)(a) above is to be regarded as being in the territory in which the hospital or registered establishment in which he is liable to be detained is situated;
  - (b) a qualifying patient falling within subsection (2)(b) above is to be regarded as being in the territory in which the area of the responsible local social services authority within the meaning of section 34(3) above is situated;
  - (c) a qualifying patient falling within subsection (2)(c) above is to be regarded as being in the territory in which the responsible hospital is situated;
  - (d) a qualifying patient falling within subsection (3) above is to be regarded as being in the territory determined in accordance with arrangements made for the purposes of this paragraph, and published, by the Secretary of State and the Welsh Ministers.

### **130D Duty to give information about independent mental health advocates**

- (1) The responsible person in relation to a qualifying patient (within the meaning given by section 130C above) shall take such steps as are practicable to ensure that the patient understands—
  - (a) that help is available to him from an independent mental health advocate; and
  - (b) how he can obtain that help.
- (2) In subsection (1) above, “the responsible person” means—
  - (a) in relation to a qualifying patient falling within section 130C(2)(a) above (other than one also falling within paragraph (b) below), the managers of the hospital or registered establishment in which he is liable to be detained;
  - (b) in relation to a qualifying patient falling within section 130C(2)(a) above and conditionally discharged by virtue of section 42(2), 73 or 74 above, the responsible clinician;
  - (c) in relation to a qualifying patient falling within section 130C(2)(b) above, the responsible local social services authority within the meaning of section 34(3) above;
  - (d) in relation to a qualifying patient falling within section 130C(2)(c) above, the managers of the responsible hospital;
  - (e) in relation to a qualifying patient falling within section 130C(3) above, the registered medical practitioner or approved clinician with

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whom the patient first discusses the possibility of being given the treatment concerned.

- (3) The steps to be taken under subsection (1) above shall be taken—
- (a) where the responsible person falls within subsection (2)(a) above, as soon as practicable after the patient becomes liable to be detained;
  - (b) where the responsible person falls within subsection (2)(b) above, as soon as practicable after the conditional discharge;
  - (c) where the responsible person falls within subsection (2)(c) above, as soon as practicable after the patient becomes subject to guardianship;
  - (d) where the responsible person falls within subsection (2)(d) above, as soon as practicable after the patient becomes a community patient;
  - (e) where the responsible person falls within subsection (2)(e) above, while the discussion with the patient is taking place or as soon as practicable thereafter.
- (4) The steps to be taken under subsection (1) above shall include giving the requisite information both orally and in writing.
- (5) The responsible person in relation to a qualifying patient falling within section 130C(2) above (other than a patient liable to be detained by virtue of Part 3 of this Act) shall, except where the patient otherwise requests, take such steps as are practicable to furnish the person (if any) appearing to the responsible person to be the patient's nearest relative with a copy of any information given to the patient in writing under subsection (1) above.
- (6) The steps to be taken under subsection (5) above shall be taken when the information concerned is given to the patient or within a reasonable time thereafter.”

- (3) In section 134 (patients' correspondence), in subsection (3A), for paragraph (b) substitute—

“(b) “independent advocacy services” means services provided under—

- (i) arrangements under section 130A above;
- (ii) arrangements under section 248 of the National Health Service Act 2006 or section 187 of the National Health Service (Wales) Act 2006; or
- (iii) arrangements of a description prescribed as mentioned in paragraph (a) above.”

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#### **Commencement Information**

**I5** S. 30 not in force at Royal Assent see s. 56(1); s. 30(2)(3) in force for specified purposes at 1.4.2008 by S.I. 2008/745, arts. 2(b), 3(d); s. 30 in force insofar as not already in force for W. at 3.11.2008 by S.I. 2008/2561, art. 2(c) (with art. 3, Sch.); s. 30 in force insofar as not already in force for E. at 1.4.2009 by S.I. 2009/139, art. 2(a)

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VALID FROM 03/11/2008

*Accommodation, etc.*

**31 Accommodation, etc.**

- (1) The 1983 Act is amended as follows.
- (2) In section 39 (power of court to request information about hospitals), after subsection (1) insert—
  - “(1A) In relation to a person who has not attained the age of 18 years, subsection (1) above shall have effect as if the reference to the making of a hospital order included a reference to a remand under section 35 or 36 above or the making of an order under section 44 below.
  - (1B) Where the person concerned has not attained the age of 18 years, the information which may be requested under subsection (1) above includes, in particular, information about the availability of accommodation or facilities designed so as to be specially suitable for patients who have not attained the age of 18 years.”
- (3) After section 131 insert—

**“131A Accommodation, etc. for children**

- (1) This section applies in respect of any patient who has not attained the age of 18 years and who—
    - (a) is liable to be detained in a hospital under this Act; or
    - (b) is admitted to, or remains in, a hospital in pursuance of such arrangements as are mentioned in section 131(1) above.
  - (2) The managers of the hospital shall ensure that the patient's environment in the hospital is suitable having regard to his age (subject to his needs).
  - (3) For the purpose of deciding how to fulfil the duty under subsection (2) above, the managers shall consult a person who appears to them to have knowledge or experience of cases involving patients who have not attained the age of 18 years which makes him suitable to be consulted.
  - (4) In this section, “hospital” includes a registered establishment.”
- (4) In section 140 (the title to which becomes “Notification of hospitals having arrangements for special cases”), for the words from “for the reception” to the end substitute “—
- (a) for the reception of patients in cases of special urgency;
  - (b) for the provision of accommodation or facilities designed so as to be specially suitable for patients who have not attained the age of 18 years.”

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

### **Commencement Information**

**I6** S. 31 not in force at Royal Assent see s. 56(1); s. 31(1)(2)(4) in force at 3.11.2008 by S.I. 2008/1900, art. 2(h); s. 31(3) in force for E.W. at 1.4.2010 by S.I. 2010/143, art. 2

## **CHAPTER 4**

### SUPERVISED COMMUNITY TREATMENT

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

- (1) The 1983 Act is amended as follows.
- (2) After section 17 insert—

##### **“17A Community treatment orders**

- (1) The responsible clinician may by order in writing discharge a detained patient from hospital subject to his being liable to recall in accordance with section 17E below.
- (2) A detained patient is a patient who is liable to be detained in a hospital in pursuance of an application for admission for treatment.
- (3) An order under subsection (1) above is referred to in this Act as a “community treatment order”.
- (4) The responsible clinician may not make a community treatment order unless—
  - (a) in his opinion, the relevant criteria are met; and
  - (b) an approved mental health professional states in writing—
    - (i) that he agrees with that opinion; and
    - (ii) that it is appropriate to make the order.
- (5) The relevant criteria are—
  - (a) the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment;
  - (b) it is necessary for his health or safety or for the protection of other persons that he should receive such treatment;
  - (c) subject to his being liable to be recalled as mentioned in paragraph (d) below, such treatment can be provided without his continuing to be detained in a hospital;
  - (d) it is necessary that the responsible clinician should be able to exercise the power under section 17E(1) below to recall the patient to hospital; and
  - (e) appropriate medical treatment is available for him.
- (6) In determining whether the criterion in subsection (5)(d) above is met, the responsible clinician shall, in particular, consider, having regard to the patient's history of mental disorder and any other relevant factors, what risk

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there would be of a deterioration of the patient's condition if he were not detained in a hospital (as a result, for example, of his refusing or neglecting to receive the medical treatment he requires for his mental disorder).

(7) In this Act—

“community patient” means a patient in respect of whom a community treatment order is in force;

“the community treatment order”, in relation to such a patient, means the community treatment order in force in respect of him; and

“the responsible hospital”, in relation to such a patient, means the hospital in which he was liable to be detained immediately before the community treatment order was made, subject to section 19A below.

### **17B Conditions**

- (1) A community treatment order shall specify conditions to which the patient is to be subject while the order remains in force.
- (2) But, subject to subsection (3) below, the order may specify conditions only if the responsible clinician, with the agreement of the approved mental health professional mentioned in section 17A(4)(b) above, thinks them necessary or appropriate for one or more of the following purposes—
  - (a) ensuring that the patient receives medical treatment;
  - (b) preventing risk of harm to the patient's health or safety;
  - (c) protecting other persons.
- (3) The order shall specify—
  - (a) a condition that the patient make himself available for examination under section 20A below; and
  - (b) a condition that, if it is proposed to give a certificate under Part 4A of this Act in his case, he make himself available for examination so as to enable the certificate to be given.
- (4) The responsible clinician may from time to time by order in writing vary the conditions specified in a community treatment order.
- (5) He may also suspend any conditions specified in a community treatment order.
- (6) If a community patient fails to comply with a condition specified in the community treatment order by virtue of subsection (2) above, that fact may be taken into account for the purposes of exercising the power of recall under section 17E(1) below.
- (7) But nothing in this section restricts the exercise of that power to cases where there is such a failure.

### **17C Duration of community treatment order**

A community treatment order shall remain in force until—

- (a) the period mentioned in section 20A(1) below (as extended under any provision of this Act) expires, but this is subject to sections 21 and 22 below;

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- (b) the patient is discharged in pursuance of an order under section 23 below or a direction under section 72 below;
  - (c) the application for admission for treatment in respect of the patient otherwise ceases to have effect; or
  - (d) the order is revoked under section 17F below,
- whichever occurs first.

#### **17D Effect of community treatment order**

- (1) The application for admission for treatment in respect of a patient shall not cease to have effect by virtue of his becoming a community patient.
- (2) But while he remains a community patient—
  - (a) the authority of the managers to detain him under section 6(2) above in pursuance of that application shall be suspended; and
  - (b) reference (however expressed) in this or any other Act, or in any subordinate legislation (within the meaning of the Interpretation Act 1978), to patients liable to be detained, or detained, under this Act shall not include him.
- (3) And section 20 below shall not apply to him while he remains a community patient.
- (4) Accordingly, authority for his detention shall not expire during any period in which that authority is suspended by virtue of subsection (2)(a) above.

#### **17E Power to recall to hospital**

- (1) The responsible clinician may recall a community patient to hospital if in his opinion—
  - (a) the patient requires medical treatment in hospital for his mental disorder; and
  - (b) there would be a risk of harm to the health or safety of the patient or to other persons if the patient were not recalled to hospital for that purpose.
- (2) The responsible clinician may also recall a community patient to hospital if the patient fails to comply with a condition specified under section 17B(3) above.
- (3) The hospital to which a patient is recalled need not be the responsible hospital.
- (4) Nothing in this section prevents a patient from being recalled to a hospital even though he is already in the hospital at the time when the power of recall is exercised; references to recalling him shall be construed accordingly.
- (5) The power of recall under subsections (1) and (2) above shall be exercisable by notice in writing to the patient.
- (6) A notice under this section recalling a patient to hospital shall be sufficient authority for the managers of that hospital to detain the patient there in accordance with the provisions of this Act.

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### **17F Powers in respect of recalled patients**

- (1) This section applies to a community patient who is detained in a hospital by virtue of a notice recalling him there under section 17E above.
- (2) The patient may be transferred to another hospital in such circumstances and subject to such conditions as may be prescribed in regulations made by the Secretary of State (if the hospital in which the patient is detained is in England) or the Welsh Ministers (if that hospital is in Wales).
- (3) If he is so transferred to another hospital, he shall be treated for the purposes of this section (and section 17E above) as if the notice under that section were a notice recalling him to that other hospital and as if he had been detained there from the time when his detention in hospital by virtue of the notice first began.
- (4) The responsible clinician may by order in writing revoke the community treatment order if—
  - (a) in his opinion, the conditions mentioned in section 3(2) above are satisfied in respect of the patient; and
  - (b) an approved mental health professional states in writing—
    - (i) that he agrees with that opinion; and
    - (ii) that it is appropriate to revoke the order.
- (5) The responsible clinician may at any time release the patient under this section, but not after the community treatment order has been revoked.
- (6) If the patient has not been released, nor the community treatment order revoked, by the end of the period of 72 hours, he shall then be released.
- (7) But a patient who is released under this section remains subject to the community treatment order.
- (8) In this section—
  - (a) “the period of 72 hours” means the period of 72 hours beginning with the time when the patient's detention in hospital by virtue of the notice under section 17E above begins; and
  - (b) references to being released shall be construed as references to being released from that detention (and accordingly from being recalled to hospital).

### **17G Effect of revoking community treatment order**

- (1) This section applies if a community treatment order is revoked under section 17F above in respect of a patient.
- (2) Section 6(2) above shall have effect as if the patient had never been discharged from hospital by virtue of the community treatment order.
- (3) The provisions of this or any other Act relating to patients liable to be detained (or detained) in pursuance of an application for admission for treatment shall apply to the patient as they did before the community treatment order was made, unless otherwise provided.

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- (4) If, when the order is revoked, the patient is being detained in a hospital other than the responsible hospital, the provisions of this Part of this Act shall have effect as if—
- (a) the application for admission for treatment in respect of him were an application for admission to that other hospital; and
  - (b) he had been admitted to that other hospital at the time when he was originally admitted in pursuance of the application.
- (5) But, in any case, section 20 below shall have effect as if the patient had been admitted to hospital in pursuance of the application for admission for treatment on the day on which the order is revoked.”
- (3) After section 20 (the cross-heading immediately above which becomes “Duration of authority and discharge”) insert—

**“20A Community treatment period**

- (1) Subject to the provisions of this Part of this Act, a community treatment order shall cease to be in force on expiry of the period of six months beginning with the day on which it was made.
- (2) That period is referred to in this Act as “the community treatment period”.
- (3) The community treatment period may, unless the order has previously ceased to be in force, be extended—
  - (a) from its expiration for a period of six months;
  - (b) from the expiration of any period of extension under paragraph (a) above for a further period of one year,
 and so on for periods of one year at a time.
- (4) Within the period of two months ending on the day on which the order would cease to be in force in default of an extension under this section, it shall be the duty of the responsible clinician—
  - (a) to examine the patient; and
  - (b) if it appears to him that the conditions set out in subsection (6) below are satisfied and if a statement under subsection (8) below is made, to furnish to the managers of the responsible hospital a report to that effect in the prescribed form.
- (5) Where such a report is furnished in respect of the patient, the managers shall, unless they discharge him under section 23 below, cause him to be informed.
- (6) The conditions referred to in subsection (4) above are that—
  - (a) the patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment;
  - (b) it is necessary for his health or safety or for the protection of other persons that he should receive such treatment;
  - (c) subject to his continuing to be liable to be recalled as mentioned in paragraph (d) below, such treatment can be provided without his being detained in a hospital;



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- (d) it is necessary that the responsible clinician should continue to be able to exercise the power under section 17E(1) above to recall the patient to hospital; and
  - (e) appropriate medical treatment is available for him.
- (7) In determining whether the criterion in subsection (6)(d) above is met, the responsible clinician shall, in particular, consider, having regard to the patient's history of mental disorder and any other relevant factors, what risk there would be of a deterioration of the patient's condition if he were to continue not to be detained in a hospital (as a result, for example, of his refusing or neglecting to receive the medical treatment he requires for his mental disorder).
- (8) The statement referred to in subsection (4) above is a statement in writing by an approved mental health professional—
- (a) that it appears to him that the conditions set out in subsection (6) above are satisfied; and
  - (b) that it is appropriate to extend the community treatment period.
- (9) Before furnishing a report under subsection (4) above the responsible clinician shall consult one or more other persons who have been professionally concerned with the patient's medical treatment.
- (10) Where a report is duly furnished under subsection (4) above, the community treatment period shall be thereby extended for the period prescribed in that case by subsection (3) above.

### **20B Effect of expiry of community treatment order**

- (1) A community patient shall be deemed to be discharged absolutely from liability to recall under this Part of this Act, and the application for admission for treatment cease to have effect, on expiry of the community treatment order, if the order has not previously ceased to be in force.
  - (2) For the purposes of subsection (1) above, a community treatment order expires on expiry of the community treatment period as extended under this Part of this Act, but this is subject to sections 21 and 22 below.”
- (4) Schedules 3 and 4 (which contain further amendments) have effect.

#### **Commencement Information**

- I7** S. 32 not in force at Royal Assent see s. 56(1); s. 32(2)(4) in force for specified purposes at 1.4.2008 by S.I. 2008/745, art. 2(c); s. 32(4) in force for specified purposes at 3.11.2008 by S.I. 2008/1210, art. 2(b) (with art. 4); s. 32 in force insofar as not already in force at 3.11.2008 by S.I. 2008/1900, arts. 1(1), 2(i)

VALID FROM 03/11/2008

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

- (1) The 1983 Act is amended as follows.

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- (2) In section 17 (leave of absence from hospital), after subsection (2) insert—
- “(2A) But longer-term leave may not be granted to a patient unless the responsible clinician first considers whether the patient should be dealt with under section 17A instead.
- (2B) For these purposes, longer-term leave is granted to a patient if—
- (a) leave of absence is granted to him under this section either indefinitely or for a specified period of more than seven consecutive days; or
- (b) a specified period is extended under this section such that the total period for which leave of absence will have been granted to him under this section exceeds seven consecutive days.”
- (3) In Part 2 of Schedule 1 (patients subject to special restrictions), in paragraph 3 after paragraph (a) insert—
- “(aa) subsections (2A) and (2B) shall be omitted;”.

VALID FROM 03/11/2008

### 34 Consent to treatment

- (1) Part 4 of the 1983 Act (consent to treatment) is amended as follows.
- (2) For section 56 substitute—
- “56 Patients to whom Part 4 applies**
- (1) Section 57 and, so far as relevant to that section, sections 59 to 62 below apply to any patient.
- (2) Subject to that and to subsection (5) below, this Part of this Act applies to a patient only if he falls within subsection (3) or (4) below.
- (3) A patient falls within this subsection if he is liable to be detained under this Act but not if—
- (a) he is so liable by virtue of an emergency application and the second medical recommendation referred to in section 4(4)(a) above has not been given and received;
- (b) he is so liable by virtue of section 5(2) or (4) or 35 above or section 135 or 136 below or by virtue of a direction for his detention in a place of safety under section 37(4) or 45A(5) above; or
- (c) he has been conditionally discharged under section 42(2) above or section 73 or 74 below and he is not recalled to hospital.
- (4) A patient falls within this subsection if—
- (a) he is a community patient; and
- (b) he is recalled to hospital under section 17E above.
- (5) Section 58A and, so far as relevant to that section, sections 59 to 62 below also apply to any patient who—

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- (a) does not fall within subsection (3) above;
  - (b) is not a community patient; and
  - (c) has not attained the age of 18 years.”
- (3) In section 61 (review of treatment), in subsection (1)—
- (a) before “a report on” insert “, or by virtue of section 62A below in accordance with a Part 4A certificate (within the meaning of that section),”, and
  - (b) in paragraph (a) for “or 21B(2) above renewing the authority for the detention” substitute “, 20A(4) or 21B(2) above in respect ”.
- (4) After section 62 insert—

**“62A Treatment on recall of community patient or revocation of order**

- (1) This section applies where—
- (a) a community patient is recalled to hospital under section 17E above; or
  - (b) a patient is liable to be detained under this Act following the revocation of a community treatment order under section 17F above in respect of him.
- (2) For the purposes of section 58(1)(b) above, the patient is to be treated as if he had remained liable to be detained since the making of the community treatment order.
- (3) But section 58 above does not apply to treatment given to the patient if—
- (a) the certificate requirement is met for the purposes of section 64C or 64E below; or
  - (b) as a result of section 64B(4) or 64E(4) below, the certificate requirement would not apply (were the patient a community patient not recalled to hospital under section 17E above).
- (4) Section 58A above does not apply to treatment given to the patient if there is authority to give the treatment, and the certificate requirement is met, for the purposes of section 64C or 64E below.
- (5) In a case where this section applies, the certificate requirement is met only in so far as—
- (a) the Part 4A certificate expressly provides that it is appropriate for one or more specified forms of treatment to be given to the patient in that case (subject to such conditions as may be specified); or
  - (b) a notice having been given under subsection (5) of section 64H below, treatment is authorised by virtue of subsection (8) of that section.
- (6) Subsection (5)(a) above shall not preclude the continuation of any treatment, or of treatment under any plan, pending compliance with section 58 or 58A above if the approved clinician in charge of the treatment considers that the discontinuance of the treatment, or of the treatment under the plan, would cause serious suffering to the patient.
- (7) In a case where subsection (1)(b) above applies, subsection (3) above only applies pending compliance with section 58 above.

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(8) In subsection (5) above—

“Part 4A certificate” has the meaning given in section 64H below;  
and

“specified”, in relation to a Part 4A certificate, means specified in the certificate.”

### 35 Authority to treat

(1) After Part 4 of the 1983 Act, insert the following Part—

#### “PART 4A

##### TREATMENT OF COMMUNITY PATIENTS NOT RECALLED TO HOSPITAL

#### 64A Meaning of “relevant treatment”

In this Part of this Act “relevant treatment”, in relation to a patient, means medical treatment which—

- (a) is for the mental disorder from which the patient is suffering; and
- (b) is not a form of treatment to which section 57 above applies.

#### 64B Adult community patients

- (1) This section applies to the giving of relevant treatment to a community patient who—
  - (a) is not recalled to hospital under section 17E above; and
  - (b) has attained the age of 16 years.
- (2) The treatment may not be given to the patient unless—
  - (a) there is authority to give it to him; and
  - (b) if it is section 58 type treatment or section 58A type treatment, the certificate requirement is met.
- (3) But the certificate requirement does not apply if—
  - (a) giving the treatment to the patient is authorised in accordance with section 64G below; or
  - (b) the treatment is immediately necessary and—
    - (i) the patient has capacity to consent to it and does consent to it; or
    - (ii) a donee or deputy or the Court of Protection consents to the treatment on the patient's behalf.
- (4) Nor does the certificate requirement apply in so far as the administration of medicine to the patient at any time during the period of one month beginning with the day on which the community treatment order is made is section 58 type treatment.
- (5) The reference in subsection (4) above to the administration of medicine does not include any form of treatment specified under section 58(1)(a) above.

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#### 64C Section 64B: supplemental

- (1) This section has effect for the purposes of section 64B above.
- (2) There is authority to give treatment to a patient if—
  - (a) he has capacity to consent to it and does consent to it;
  - (b) a donee or deputy or the Court of Protection consents to it on his behalf; or
  - (c) giving it to him is authorised in accordance with section 64D or 64G below.
- (3) Relevant treatment is section 58 type treatment or section 58A type treatment if, at the time when it is given to the patient, section 58 or 58A above (respectively) would have applied to it, had the patient remained liable to be detained at that time (rather than being a community patient).
- (4) The certificate requirement is met in respect of treatment to be given to a patient if—
  - (a) a registered medical practitioner appointed for the purposes of Part 4 of this Act (not being the responsible clinician or the person in charge of the treatment) has certified in writing that it is appropriate for the treatment to be given or for the treatment to be given subject to such conditions as may be specified in the certificate; and
  - (b) if conditions are so specified, the conditions are satisfied.
- (5) In a case where the treatment is section 58 type treatment, treatment is immediately necessary if—
  - (a) it is immediately necessary to save the patient's life; or
  - (b) it is immediately necessary to prevent a serious deterioration of the patient's condition and is not irreversible; or
  - (c) it is immediately necessary to alleviate serious suffering by the patient and is not irreversible or hazardous; or
  - (d) it is immediately necessary, represents the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or others and is not irreversible or hazardous.
- (6) In a case where the treatment is section 58A type treatment by virtue of subsection (1)(a) of that section, treatment is immediately necessary if it falls within paragraph (a) or (b) of subsection (5) above.
- (7) In a case where the treatment is section 58A type treatment by virtue of subsection (1)(b) of that section, treatment is immediately necessary if it falls within such of paragraphs (a) to (d) of subsection (5) above as may be specified in regulations under that section.
- (8) For the purposes of subsection (7) above, the regulations—
  - (a) may make different provision for different cases (and may, in particular, make different provision for different forms of treatment);
  - (b) may make provision which applies subject to specified exceptions; and
  - (c) may include transitional, consequential, incidental or supplemental provision.

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- (9) Subsection (3) of section 62 above applies for the purposes of this section as it applies for the purposes of that section.

#### **64D Adult community patients lacking capacity**

- (1) A person is authorised to give relevant treatment to a patient as mentioned in section 64C(2)(c) above if the conditions in subsections (2) to (6) below are met.
- (2) The first condition is that, before giving the treatment, the person takes reasonable steps to establish whether the patient lacks capacity to consent to the treatment.
- (3) The second condition is that, when giving the treatment, he reasonably believes that the patient lacks capacity to consent to it.
- (4) The third condition is that—
  - (a) he has no reason to believe that the patient objects to being given the treatment; or
  - (b) he does have reason to believe that the patient so objects, but it is not necessary to use force against the patient in order to give the treatment.
- (5) The fourth condition is that—
  - (a) he is the person in charge of the treatment and an approved clinician; or
  - (b) the treatment is given under the direction of that clinician.
- (6) The fifth condition is that giving the treatment does not conflict with—
  - (a) an advance decision which he is satisfied is valid and applicable; or
  - (b) a decision made by a donee or deputy or the Court of Protection.
- (7) In this section—
  - (a) reference to an advance decision is to an advance decision (within the meaning of the Mental Capacity Act 2005) made by the patient; and
  - (b) “valid and applicable”, in relation to such a decision, means valid and applicable to the treatment in question in accordance with section 25 of that Act.

#### **64E Child community patients**

- (1) This section applies to the giving of relevant treatment to a community patient who—
  - (a) is not recalled to hospital under section 17E above; and
  - (b) has not attained the age of 16 years.
- (2) The treatment may not be given to the patient unless—
  - (a) there is authority to give it to him; and
  - (b) if it is section 58 type treatment or section 58A type treatment, the certificate requirement is met.
- (3) But the certificate requirement does not apply if—

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

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- (a) giving the treatment to the patient is authorised in accordance with section 64G below; or
  - (b) in a case where the patient is competent to consent to the treatment and does consent to it, the treatment is immediately necessary.
- (4) Nor does the certificate requirement apply in so far as the administration of medicine to the patient at any time during the period of one month beginning with the day on which the community treatment order is made is section 58 type treatment.
- (5) The reference in subsection (4) above to the administration of medicine does not include any form of treatment specified under section 58(1)(a) above.
- (6) For the purposes of subsection (2)(a) above, there is authority to give treatment to a patient if—
- (a) he is competent to consent to it and he does consent to it; or
  - (b) giving it to him is authorised in accordance with section 64F or 64G below.
- (7) Subsections (3) to (9) of section 64C above have effect for the purposes of this section as they have effect for the purposes of section 64B above.
- (8) Regulations made by virtue of section 32(2)(d) above apply for the purposes of this section as they apply for the purposes of Part 2 of this Act.

#### **64F Child community patients lacking competence**

- (1) A person is authorised to give relevant treatment to a patient as mentioned in section 64E(6)(b) above if the conditions in subsections (2) to (5) below are met.
- (2) The first condition is that, before giving the treatment, the person takes reasonable steps to establish whether the patient is competent to consent to the treatment.
- (3) The second condition is that, when giving the treatment, he reasonably believes that the patient is not competent to consent to it.
- (4) The third condition is that—
- (a) he has no reason to believe that the patient objects to being given the treatment; or
  - (b) he does have reason to believe that the patient so objects, but it is not necessary to use force against the patient in order to give the treatment.
- (5) The fourth condition is that—
- (a) he is the person in charge of the treatment and an approved clinician; or
  - (b) the treatment is given under the direction of that clinician.

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### **64G Emergency treatment for patients lacking capacity or competence**

- (1) A person is also authorised to give relevant treatment to a patient as mentioned in section 64C(2)(c) or 64E(6)(b) above if the conditions in subsections (2) to (4) below are met.
- (2) The first condition is that, when giving the treatment, the person reasonably believes that the patient lacks capacity to consent to it or, as the case may be, is not competent to consent to it.
- (3) The second condition is that the treatment is immediately necessary.
- (4) The third condition is that if it is necessary to use force against the patient in order to give the treatment—
  - (a) the treatment needs to be given in order to prevent harm to the patient; and
  - (b) the use of such force is a proportionate response to the likelihood of the patient's suffering harm, and to the seriousness of that harm.
- (5) Subject to subsections (6) to (8) below, treatment is immediately necessary if—
  - (a) it is immediately necessary to save the patient's life; or
  - (b) it is immediately necessary to prevent a serious deterioration of the patient's condition and is not irreversible; or
  - (c) it is immediately necessary to alleviate serious suffering by the patient and is not irreversible or hazardous; or
  - (d) it is immediately necessary, represents the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or others and is not irreversible or hazardous.
- (6) Where the treatment is section 58A type treatment by virtue of subsection (1) (a) of that section, treatment is immediately necessary if it falls within paragraph (a) or (b) of subsection (5) above.
- (7) Where the treatment is section 58A type treatment by virtue of subsection (1) (b) of that section, treatment is immediately necessary if it falls within such of paragraphs (a) to (d) of subsection (5) above as may be specified in regulations under section 58A above.
- (8) For the purposes of subsection (7) above, the regulations—
  - (a) may make different provision for different cases (and may, in particular, make different provision for different forms of treatment);
  - (b) may make provision which applies subject to specified exceptions; and
  - (c) may include transitional, consequential, incidental or supplemental provision.
- (9) Subsection (3) of section 62 above applies for the purposes of this section as it applies for the purposes of that section.



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#### 64H Certificates: supplementary provisions

- (1) A certificate under section 64B(2)(b) or 64E(2)(b) above (a “Part 4A certificate”) may relate to a plan of treatment under which the patient is to be given (whether within a specified period or otherwise) one or more forms of section 58 type treatment or section 58A type treatment.
- (2) A Part 4A certificate shall be in such form as may be prescribed by regulations made by the appropriate national authority.
- (3) Before giving a Part 4A certificate, the registered medical practitioner concerned shall consult two other persons who have been professionally concerned with the patient's medical treatment but, of those persons—
  - (a) at least one shall be a person who is not a registered medical practitioner; and
  - (b) neither shall be the patient's responsible clinician or the person in charge of the treatment in question.
- (4) Where a patient is given treatment in accordance with a Part 4A certificate, a report on the treatment and the patient's condition shall be given by the person in charge of the treatment to the appropriate national authority if required by that authority.
- (5) The appropriate national authority may at any time give notice directing that a Part 4A certificate shall not apply to treatment given to a patient after a date specified in the notice, and the relevant section shall then apply to any such treatment as if that certificate had not been given.
- (6) The relevant section is—
  - (a) if the patient is not recalled to hospital in accordance with section 17E above, section 64B or 64E above;
  - (b) if the patient is so recalled or is liable to be detained under this Act following revocation of the community treatment order under section 17F above—
    - (i) section 58 above, in the case of section 58 type treatment;
    - (ii) section 58A above, in the case of section 58A type treatment;(subject to section 62A(2) above).
- (7) The notice under subsection (5) above shall be given to the person in charge of the treatment in question.
- (8) Subsection (5) above shall not preclude the continuation of any treatment or of treatment under any plan pending compliance with the relevant section if the person in charge of the treatment considers that the discontinuance of the treatment or of treatment under the plan would cause serious suffering to the patient.
- (9) In this section, “the appropriate national authority” means—
  - (a) in relation to community patients in respect of whom the responsible hospital is in England, the Secretary of State;
  - (b) in relation to community patients in respect of whom the responsible hospital is in Wales, the Welsh Ministers.

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**64I Liability for negligence**

Nothing in section 64D, 64F or 64G above excludes a person's civil liability for loss or damage, or his criminal liability, resulting from his negligence in doing anything authorised to be done by that section.

**64J Factors to be considered in determining whether patient objects to treatment**

- (1) In assessing for the purposes of this Part whether he has reason to believe that a patient objects to treatment, a person shall consider all the circumstances so far as they are reasonably ascertainable, including the patient's behaviour, wishes, feelings, views, beliefs and values.
- (2) But circumstances from the past shall be considered only so far as it is still appropriate to consider them.

**64K Interpretation of Part 4A**

- (1) This Part of this Act is to be construed as follows.
  - (2) References to a patient who lacks capacity are to a patient who lacks capacity within the meaning of the Mental Capacity Act 2005.
  - (3) References to a patient who has capacity are to be read accordingly.
  - (4) References to a donee are to a donee of a lasting power of attorney (within the meaning of section 9 of the Mental Capacity Act 2005) created by the patient, where the donee is acting within the scope of his authority and in accordance with that Act.
  - (5) References to a deputy are to a deputy appointed for the patient by the Court of Protection under section 16 of the Mental Capacity Act 2005, where the deputy is acting within the scope of his authority and in accordance with that Act.
  - (6) Reference to the responsible clinician shall be construed as a reference to the responsible clinician within the meaning of Part 2 of this Act.
  - (7) References to a hospital include a registered establishment.
  - (8) Section 64(3) above applies for the purposes of this Part of this Act as it applies for the purposes of Part 4 of this Act.”
- (2) In section 119 of the 1983 Act (practitioners approved for Part 4 and section 118)—
- (a) in subsection (2)—
    - (i) after “those provisions” insert “ or under Part 4A of this Act ”,
    - (ii) in paragraph (a), for “in a registered establishment” substitute “ in a hospital or registered establishment or any community patient in a hospital or establishment of any description or (if access is granted) other place ”, and
    - (iii) in paragraph (b), for “in that home” substitute “ there ”, and
  - (b) after subsection (2) insert—

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“(3) In this section, “establishment of any description” shall be construed in accordance with section 4(8) of the Care Standards Act 2000.”

(3) In section 121 of the 1983 Act (Mental Health Act Commission), in subsection (2)(b) after “61” insert “, 64H(5) ”.

(4) The Mental Capacity Act 2005 (c. 9) is amended as follows.

(5) In section 28 (Mental Health Act matters), after subsection (1A) (inserted by section 28 of this Act) insert—

“(1B) Section 5 does not apply to an act to which section 64B of the Mental Health Act applies (treatment of community patients not recalled to hospital).”

(6) In section 37 (independent mental capacity advocates: provision of serious medical treatment by NHS body), in subsection (2) after “Part 4” insert “ or 4A ”.

#### Commencement Information

**18** S. 35 not in force at Royal Assent see s. 56(1); s. 35 in force for specified purposes at 1.4.2008 by S.I. 2008/745, arts. 2(d), 3(e); s. 35 in force insofar as not already in force at 3.11.2008 by S.I. 2008/1900, arts. 1(1), 2(k)

VALID FROM 03/11/2008

#### 36 Repeal of provisions for after-care under supervision

(1) The 1983 Act is amended as follows.

(2) Sections 25A to 25J (after-care under supervision) are omitted.

(3) In section 66 (applications to tribunals), in subsection (2)(c), for “cases mentioned in paragraphs (c) and (ga)” substitute “ case mentioned in paragraph (c) ”.

(4) In Part 1 of Schedule 1 (application of certain provisions to patients subject to hospital and guardianship orders: patients not subject to special restrictions), in paragraph 1, for “25C” substitute “ 26 ”.

#### Commencement Information

**19** S. 36 not in force at Royal Assent see s. 56(1); s. 36 in force at 3.11.2008 by S.I. 2008/1210, arts. 1(1)(b), 2(c) (with arts. 4, 5)

**Status:** Point in time view as at 01/04/2008. This version of this Act contains provisions that are not valid for this point in time.

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

VALID FROM 03/11/2008

## CHAPTER 5

### MENTAL HEALTH REVIEW TRIBUNALS

#### 37 References

- (1) The 1983 Act is amended as follows.
- (2) In section 21 (special provision as to patients absent without leave), after subsection (2) insert—
  - “(3) Where a patient is absent without leave on the day on which (apart from this section) the managers would be required under section 68 below to refer the patient's case to a Mental Health Review Tribunal, that requirement shall not apply unless and until—
    - (a) the patient is taken into custody under section 18 above and returned to the hospital where he ought to be; or
    - (b) the patient returns himself to the hospital where he ought to be within the period during which he can be taken into custody under section 18 above.”
- (3) For section 68 substitute—

#### “68 Duty of managers of hospitals to refer cases to tribunal

- (1) This section applies in respect of the following patients—
  - (a) a patient who is admitted to a hospital in pursuance of an application for admission for assessment;
  - (b) a patient who is admitted to a hospital in pursuance of an application for admission for treatment;
  - (c) a community patient;
  - (d) a patient whose community treatment order is revoked under section 17F above;
  - (e) a patient who is transferred from guardianship to a hospital in pursuance of regulations made under section 19 above.
- (2) On expiry of the period of six months beginning with the applicable day, the managers of the hospital shall refer the patient's case to a Mental Health Review Tribunal.
- (3) But they shall not do so if during that period—
  - (a) any right has been exercised by or in respect of the patient by virtue of any of paragraphs (b), (ca), (cb), (e), (g) and (h) of section 66(1) above;
  - (b) a reference has been made in respect of the patient under section 67(1) above, not being a reference made while the patient is or was liable to be detained in pursuance of an application for admission for assessment; or

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- (c) a reference has been made in respect of the patient under subsection (7) below.
- (4) A person who applies to a tribunal but subsequently withdraws his application shall be treated for these purposes as not having exercised his right to apply, and if he withdraws his application on a date after expiry of the period mentioned in subsection (2) above, the managers shall refer the patient's case as soon as possible after that date.
- (5) In subsection (2) above, “the applicable day” means—
  - (a) in the case of a patient who is admitted to a hospital in pursuance of an application for admission for assessment, the day on which the patient was so admitted;
  - (b) in the case of a patient who is admitted to a hospital in pursuance of an application for admission for treatment—
    - (i) the day on which the patient was so admitted; or
    - (ii) if, when he was so admitted, he was already liable to be detained in pursuance of an application for admission for assessment, the day on which he was originally admitted in pursuance of the application for admission for assessment;
  - (c) in the case of a community patient or a patient whose community treatment order is revoked under section 17F above, the day mentioned in sub-paragraph (i) or (ii), as the case may be, of paragraph (b) above;
  - (d) in the case of a patient who is transferred from guardianship to a hospital, the day on which he was so transferred.
- (6) The managers of the hospital shall also refer the patient's case to a Mental Health Review Tribunal if a period of more than three years (or, if the patient has not attained the age of 18 years, one year) has elapsed since his case was last considered by such a tribunal, whether on his own application or otherwise.
- (7) If, in the case of a community patient, the community treatment order is revoked under section 17F above, the managers of the hospital shall also refer the patient's case to a Mental Health Review Tribunal as soon as possible after the order is revoked.
- (8) For the purposes of furnishing information for the purposes of a reference under this section, a registered medical practitioner or approved clinician authorised by or on behalf of the patient may at any reasonable time—
  - (a) visit and examine the patient in private; and
  - (b) require the production of and inspect any records relating to the detention or treatment of the patient in any hospital or any after-care services provided for him under section 117 below.
- (9) Reference in this section to the managers of the hospital—
  - (a) in relation to a community patient, is to the managers of the responsible hospital;
  - (b) in relation to any other patient, is to the managers of the hospital in which he is liable to be detained.

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### **68A Power to reduce periods under section 68**

- (1) The appropriate national authority may from time to time by order amend subsection (2) or (6) of section 68 above so as to substitute for a period mentioned there such shorter period as is specified in the order.
- (2) The order may include such transitional, consequential, incidental or supplemental provision as the appropriate national authority thinks fit.
- (3) The order may, in particular, make provision for a case where—
  - (a) a patient in respect of whom subsection (1) of section 68 above applies is, or is about to be, transferred from England to Wales or from Wales to England; and
  - (b) the period by reference to which subsection (2) or (6) of that section operates for the purposes of the patient's case is not the same in one territory as it is in the other.
- (4) A patient is transferred from one territory to the other if—
  - (a) he is transferred from a hospital, or from guardianship, in one territory to a hospital in the other in pursuance of regulations made under section 19 above;
  - (b) he is removed under subsection (3) of that section from a hospital or accommodation in one territory to a hospital or accommodation in the other;
  - (c) he is a community patient responsibility for whom is assigned from a hospital in one territory to a hospital in the other in pursuance of regulations made under section 19A above;
  - (d) on the revocation of a community treatment order in respect of him under section 17F above he is detained in a hospital in the territory other than the one in which the responsible hospital was situated; or
  - (e) he is transferred or removed under section 123 below from a hospital in one territory to a hospital in the other.
- (5) Provision made by virtue of subsection (3) above may require or authorise the managers of a hospital determined in accordance with the order to refer the patient's case to a Mental Health Review Tribunal.
- (6) In so far as making provision by virtue of subsection (3) above, the order—
  - (a) may make different provision for different cases;
  - (b) may make provision which applies subject to specified exceptions.
- (7) Where the appropriate national authority for one territory makes an order under subsection (1) above, the appropriate national authority for the other territory may by order make such provision in consequence of the order as it thinks fit.
- (8) An order made under subsection (7) above may, in particular, make provision for a case within subsection (3) above (and subsections (4) to (6) above shall apply accordingly).
- (9) In this section, “the appropriate national authority” means—
  - (a) in relation to a hospital in England, the Secretary of State;

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(b) in relation to a hospital in Wales, the Welsh Ministers.”

(4) In section 71 (references by Secretary of State concerning restricted patients), after subsection (3) insert—

“(3A) An order under subsection (3) above may include such transitional, consequential, incidental or supplemental provision as the Secretary of State thinks fit.”

(5) In section 143 (general provisions as to regulations, orders and rules)—

(a) in subsection (2)—

(i) after “order made” insert “ by the Secretary of State ”, and

(ii) after “54A” insert “ or 68A(7) ”, and

(b) in subsection (3)—

(i) after “made” insert “ by the Secretary of State ”, and

(ii) for “68(4)” substitute “ 68A(1) ”.

(6) In Part 1 of Schedule 1 to that Act (application of certain provisions to patients subject to hospital and guardianship orders: patients not subject to special restrictions)—

(a) in paragraph 2—

(i) for “and 66” substitute “ , 66 and 68 ”, and

(ii) for “to 9” substitute “ to 10 ”, and

(b) after paragraph 9 insert—

“10

In section 68—

(a) in subsection (1) paragraph (a) shall be omitted; and

(b) subsections (2) to (5) shall apply if the patient falls within paragraph (e) of subsection (1), but not otherwise.”

## 38 Organisation

(1) The 1983 Act is amended as follows.

(2) In section 65 (Mental Health Review Tribunals), for subsections (1) to (1C) substitute—

“(1) There shall be—

(a) a Mental Health Review Tribunal for England; and

(b) a Mental Health Review Tribunal for Wales.

(1A) The purpose of the Mental Health Review Tribunals is to deal with applications and references by and in respect of patients under the provisions of this Act.”

(3) In section 78 (procedure of tribunals)—

(a) in subsections (2)(a) and (k) and (6), for “chairman” substitute “ President ”,

(b) in subsection (2)(a), for “any other” substitute “ the other ”,

(c) in subsections (2)(b) and (4)(b), for “another” substitute “ the other ”,

(d) in subsection (4)(a), for “president” substitute “ chairman ”, and

(e) in subsection (6) omit “, if for any reason he is unable to act.”.

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- (4) In section 79 (interpretation of Part 5), for subsection (7) substitute—
- “(7) For the purposes of this Part of this Act—
- (a) the area of the Mental Health Review Tribunal for England is England; and
- (b) the area of the Mental Health Review Tribunal for Wales is Wales.”
- (5) Schedule 2 (Mental Health Review Tribunals) is amended as set out in subsections (6) to (9).
- (6) For paragraph 3 substitute—
- “3
- (1) The Lord Chancellor shall appoint one of the legal members of the Mental Health Review Tribunal for England to be the President of that tribunal.
- (2) The Lord Chancellor shall appoint one of the legal members of the Mental Health Review Tribunal for Wales to be the President of that tribunal.”
- (7) In paragraph 4—
- (a) for “chairman”, in each place, substitute “ President ”, and
- (b) omit “, if for any reason he is unable to act,”.
- (8) In paragraph 5—
- (a) for “any area” substitute “ one area ”, and
- (b) for “any other” substitute “ the other ”.
- (9) In paragraph 6—
- (a) for “chairman”, in each place, substitute “ President ”, and
- (b) for “president”, in each place, substitute “ chairman ”.

## CHAPTER 6

### CROSS-BORDER PATIENTS

#### 39 Cross-border arrangements

- (1) At the end of section 17 of the 1983 Act (leave of absence) insert—
- “(6) Subsection (7) below applies to a person who is granted leave by or by virtue of a provision—
- (a) in force in Scotland, Northern Ireland, any of the Channel Islands or the Isle of Man; and
- (b) corresponding to subsection (1) above.
- (7) For the purpose of giving effect to a direction or condition imposed by virtue of a provision corresponding to subsection (3) above, the person may be conveyed to a place in, or kept in custody or detained at a place of safety in, England and Wales by a person authorised in that behalf by the direction or condition.”



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- (2) Schedule 5 (which contains amendments to Part 6 of the 1983 Act and related amendments) has effect.

#### Commencement Information

**I10** S. 39 not in force at Royal Assent see s. 56(1); s. 39(1)(2) in force for specified purposes for E.W. at 1.10.2007 by S.I. 2007/2798, art. 2(c); s. 39(2) in force for specified purposes at 1.4.2008 by S.I. 2008/745, art. 3(f); s. 39 in force for specified purposes insofar as not already in force for E.W. at 28.10.2008 by S.I. 2008/2788, art. 2(a); s. 39(1)(2) in force for specified purposes insofar as not already in force at 3.11.2008 by S.I. 2008/1900, arts. 1(1), 2(n) (with art. 3, Sch.)

## CHAPTER 7

### RESTRICTED PATIENTS

#### 40 Restriction orders

- (1) In section 41(1) of the 1983 Act (restriction orders) omit the words “, either without limit of time or during such period as may be specified in the order”.
- (2) In section 42(4)(b) of the 1983 Act (powers in respect of patients subject to restriction orders) omit the words from “, and, if the restriction order was made for a specified period,” to the end.
- (3) In the following provisions omit the words “, made without limitation of time”—
  - (a) section 44(3) of the 1983 Act (committal to hospital),
  - (b) section 84(2) of the 1983 Act (removal from Islands), and
  - (c) section 10(3)(a) of the Colonial Prisoners Removal Act 1884 (c. 31) (criminal lunatics).
- (4) In section 81(7) of the 1983 Act (removal to Northern Ireland: expiry of restriction order or direction) omit (in each place) “restriction order or”.
- (5) In section 81A(3) of the 1983 Act (transfer of responsibility for patient to Northern Ireland: expiry of restriction order or direction)—
  - (a) omit (in each place) “restriction order or”, and
  - (b) omit “order or”.
- (6) In section 91(2) of the 1983 Act (patients removed from England and Wales: revival of order on return) omit the words “at any time before the end of the period for which those orders would have continued in force”.
- (7) But subsections (3) to (6) shall have no effect in respect of—
  - (a) a restriction order for a specified period made before subsection (1) comes into force, or
  - (b) an order made outside England and Wales which is treated under the 1983 Act as if it were a restriction order for a specified period.

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#### **41 Conditionally discharged patients subject to limitation directions**

In section 75(3) of the 1983 Act (power of Mental Health Review Tribunal to direct that restriction order, etc. is to cease to have effect)—

- (a) in paragraph (b), after “restriction order”, insert “, limitation direction”, and
- (b) after “hospital order”, insert “, hospital direction”.

### **CHAPTER 8**

#### MISCELLANEOUS

#### **42 Offence of ill-treatment: increase in maximum penalty on conviction on indictment**

In section 127 of the 1983 Act (ill-treatment or wilful neglect of patients), in subsection (3)(b), for “two years” substitute “ five years ”.

#### **43 Informal admission of patients aged 16 or 17**

In section 131 of the 1983 Act (informal admission of patients), for subsection (2) substitute—

- “(2) Subsections (3) and (4) below apply in the case of a patient aged 16 or 17 years who has capacity to consent to the making of such arrangements as are mentioned in subsection (1) above.
- (3) If the patient consents to the making of the arrangements, they may be made, carried out and determined on the basis of that consent even though there are one or more persons who have parental responsibility for him.
- (4) If the patient does not consent to the making of the arrangements, they may not be made, carried out or determined on the basis of the consent of a person who has parental responsibility for him.
- (5) In this section—
  - (a) the reference to a patient who has capacity is to be read in accordance with the Mental Capacity Act 2005; and
  - (b) “parental responsibility” has the same meaning as in the Children Act 1989.”

VALID FROM 30/04/2008

#### **44 Places of safety**

- (1) The 1983 Act is amended as follows.
- (2) In section 135 (warrant to search for and remove patients), after subsection (3) insert—

“(3A) A constable, an approved mental health professional or a person authorised by either of them for the purposes of this subsection may, before the end of the period of 72 hours mentioned in subsection (3) above, take a person

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detained in a place of safety under that subsection to one or more other places of safety.

(3B) A person taken to a place of safety under subsection (3A) above may be detained there for a period ending no later than the end of the period of 72 hours mentioned in subsection (3) above.”

(3) In section 136 (mentally disordered persons found in public places), after subsection (2) insert—

“(3) A constable, an approved mental health professional or a person authorised by either of them for the purposes of this subsection may, before the end of the period of 72 hours mentioned in subsection (2) above, take a person detained in a place of safety under that subsection to one or more other places of safety.

(4) A person taken to a place of a safety under subsection (3) above may be detained there for a purpose mentioned in subsection (2) above for a period ending no later than the end of the period of 72 hours mentioned in that subsection.”

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#### Commencement Information

**111** S. 44 not in force at Royal Assent see s. 56(1); s. 44 in force at 30.4.2008 by S.I. 2008/800, art. 2 (with art. 3)

#### 45 Delegation of powers of managers of NHS foundation trusts

- (1) In section 23(6) of the 1983 Act (delegation of NHS foundation trust's power to discharge patients), for the words from “non-executive directors” to the end substitute “ persons authorised by the board of the trust in that behalf each of whom is neither an executive director of the board nor an employee of the trust. ”
- (2) In section 32(3) of the 1983 Act (power to make provision about how hospital managers' functions under Part 2 of that Act are to be exercised), after “23(4)” insert “ and (6) ”.
- (3) After section 142A of the 1983 Act (inserted by section 17 of this Act), insert—

##### “142B Delegation of powers of managers of NHS foundation trusts

- (1) The constitution of an NHS foundation trust may not provide for a function under this Act to be delegated otherwise than in accordance with provision made by or under this Act.
- (2) Paragraph 15(3) of Schedule 7 to the National Health Service Act 2006 (which provides that the powers of a public benefit corporation may be delegated to a committee of directors or to an executive director) shall have effect subject to this section.”

#### 46 Local Health Boards

- (1) The 1983 Act is amended as follows.

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- (2) In section 19(3) (removal of patients), after “NHS foundation trust”, in each place, insert “, Local Health Board”.
- (3) In section 145(1) (interpretation)—
  - (a) in the definition of “hospital”, after paragraph (b) insert “; and
  - (c) any hospital as defined by section 206 of the National Health Service (Wales) Act 2006 which is vested in a Local Health Board;”, and
  - (b) in the definition of “the managers”, after paragraph (bc) insert—
    - “(bd) in relation to a hospital vested in a Local Health Board, the Board;”.

#### **47 Welsh Ministers: procedure for instruments**

- (1) Section 143 of the 1983 Act (general provisions as to regulations, orders and rules) is amended as follows.
- (2) In subsection (2), for “or rules made” substitute “ made by the Secretary of State, or rules made, ”.
- (3) After subsection (3) insert—
  - “(3A) Subsections (3B) to (3D) apply where power to make regulations or an order under this Act is conferred on the Welsh Ministers (other than by or by virtue of the Government of Wales Act 2006).
  - (3B) Any power of the Welsh Ministers to make regulations or an order shall be exercisable by statutory instrument.
  - (3C) Any statutory instrument containing regulations, or an order under section 68A(7) above, made by the Welsh Ministers shall be subject to annulment in pursuance of a resolution of the National Assembly for Wales.
  - (3D) No order shall be made under section 68A(1) above by the Welsh Ministers unless a draft of it has been approved by a resolution of the National Assembly for Wales.
  - (3E) In this section—
    - (a) references to the Secretary of State include the Secretary of State and the Welsh Ministers acting jointly; and
    - (b) references to the Welsh Ministers include the Welsh Ministers and the Secretary of State acting jointly.”

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## PART 2

### AMENDMENTS TO OTHER ACTS

VALID FROM 03/11/2008

#### CHAPTER 1

##### AMENDMENTS TO DOMESTIC VIOLENCE, CRIME AND VICTIMS ACT 2004

#### 48 **Victims' rights**

Schedule 6 (which makes amendments to Chapter 2 of Part 3 of the Domestic Violence, Crime and Victims Act 2004 (c. 28)) has effect.

#### CHAPTER 2

##### AMENDMENTS TO MENTAL CAPACITY ACT 2005

#### 49 **Independent mental capacity advocacy service: exceptions**

For section 40 of the Mental Capacity Act 2005 (c. 9) (independent mental capacity advocacy service: exceptions) substitute—

##### **“40 Exceptions**

The duty imposed by section 37(3), 38(3) or (4) or 39(4) or (5) does not apply where there is—

- (a) a person nominated by P (in whatever manner) as a person to be consulted on matters to which that duty relates,
- (b) a donee of a lasting power of attorney created by P who is authorised to make decisions in relation to those matters, or
- (c) a deputy appointed by the court for P with power to make decisions in relation to those matters.”

#### 50 **Mental Capacity Act 2005: deprivation of liberty**

- (1) The Mental Capacity Act 2005 (c. 9) is amended as follows.
- (2) After section 4 insert—

##### **“4A Restriction on deprivation of liberty**

- (1) This Act does not authorise any person (“D”) to deprive any other person (“P”) of his liberty.
- (2) But that is subject to—
  - (a) the following provisions of this section, and

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(b) section 4B.

- (3) D may deprive P of his liberty if, by doing so, D is giving effect to a relevant decision of the court.
- (4) A relevant decision of the court is a decision made by an order under section 16(2)(a) in relation to a matter concerning P's personal welfare.
- (5) D may deprive P of his liberty if the deprivation is authorised by Schedule A1 (hospital and care home residents: deprivation of liberty).

#### **4B Deprivation of liberty necessary for life-sustaining treatment etc**

- (1) If the following conditions are met, D is authorised to deprive P of his liberty while a decision as respects any relevant issue is sought from the court.
  - (2) The first condition is that there is a question about whether D is authorised to deprive P of his liberty under section 4A.
  - (3) The second condition is that the deprivation of liberty—
    - (a) is wholly or partly for the purpose of—
      - (i) giving P life-sustaining treatment, or
      - (ii) doing any vital act, or
    - (b) consists wholly or partly of—
      - (i) giving P life-sustaining treatment, or
      - (ii) doing any vital act.
  - (4) The third condition is that the deprivation of liberty is necessary in order to—
    - (a) give the life-sustaining treatment, or
    - (b) do the vital act.
  - (5) A vital act is any act which the person doing it reasonably believes to be necessary to prevent a serious deterioration in P's condition.”
- (3) After section 16 insert—

#### **“16A Section 16 powers: Mental Health Act patients etc**

- (1) If a person is ineligible to be deprived of liberty by this Act, the court may not include in a welfare order provision which authorises the person to be deprived of his liberty.
- (2) If—
  - (a) a welfare order includes provision which authorises a person to be deprived of his liberty, and
  - (b) that person becomes ineligible to be deprived of liberty by this Act, the provision ceases to have effect for as long as the person remains ineligible.
- (3) Nothing in subsection (2) affects the power of the court under section 16(7) to vary or discharge the welfare order.
- (4) For the purposes of this section—
  - (a) Schedule 1A applies for determining whether or not P is ineligible to be deprived of liberty by this Act;

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- (b) “welfare order” means an order under section 16(2)(a).”
- (4) Omit the following provisions (which make specific provision about deprivation of liberty)—
- (a) section 6(5);
  - (b) section 11(6);
  - (c) section 20(13).
- (5) Schedule 7 (which inserts the new Schedule A1 into the Mental Capacity Act 2005 (c. 9)) has effect.
- (6) Schedule 8 (which inserts the new Schedule 1A into the Mental Capacity Act 2005) has effect.
- (7) Schedule 9 (which makes other amendments to the Mental Capacity Act 2005 and to other Acts) has effect.
- (8) In subsection (9)—
- “GOWA 1998” means the Government of Wales Act 1998 (c. 38);
  - “GOWA 2006” means the Government of Wales Act 2006 (c. 32);
  - “initial period” has the same meaning as in Schedule 11 to GOWA 2006.
- (9) If this Act is passed after the end of the initial period, the functions conferred on the National Assembly for Wales by virtue of any provision of this Part of this Act are to be treated for the purposes of Schedule 11 to GOWA 2006 as if they—
- (a) had been conferred on the Assembly constituted by GOWA 1998 by an Act passed before the end of the initial period, and
  - (b) were exercisable by that Assembly immediately before the end of the initial period.
- (10) If any function of making subordinate legislation conferred by virtue of any provision of this Part of this Act is transferred to the Welsh Ministers (whether by virtue of subsection (9) or otherwise)—
- (a) paragraphs 34 and 35 of Schedule 11 to the Government of Wales Act 2006 do not apply; and
  - (b) subsections (11) and (12) apply instead.
- (11) If a relevant statutory instrument contains regulations under paragraph 42(2)(b), 129, 163 or 164 of Schedule A1 to the Mental Capacity Act 2005 (whether or not it also contains other regulations), the instrument may not be made unless a draft has been laid before and approved by resolution of the National Assembly for Wales.
- (12) Subject to that, a relevant statutory instrument is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (13) In subsections (11) and (12) “relevant statutory instrument” means a statutory instrument containing subordinate legislation made in exercise of a function transferred as mentioned in subsection (10).

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### Commencement Information

**I12** S. 50 not in force at Royal Assent see s. 56(1); s. 50(5)(7)(8)-(13) in force for specified purposes at 1.4.2008 by S.I. 2008/745, art. 4; s. 50 in force insofar as not already in force at 1.4.2009 by S.I. 2009/139, art. 2(b) (with Sch. paras. 3, 4)

## 51 Amendment to section 20(11) of Mental Capacity Act 2005

In section 20 of the Mental Capacity Act 2005 (c. 9) (restrictions on deputies), in subsection (11)(a), for “or” substitute “ and ”.

### PART 3

#### GENERAL

## 52 Meaning of “1983 Act”

In this Act “the 1983 Act” means the Mental Health Act 1983 (c. 20).

## 53 Transitional provisions and savings

Schedule 10 (which contains transitional provisions and savings) has effect.

## 54 Consequential provisions

- (1) The Secretary of State may by order made by statutory instrument make supplementary, incidental or consequential provision for the purposes of, in consequence of, or for giving full effect to a provision of this Act.
- (2) An order under subsection (1) may, in particular—
  - (a) amend or repeal any provision of an Act passed before, or in the same Session as, this Act;
  - (b) amend or revoke any provision of subordinate legislation made before the passing of this Act;
  - (c) include transitional or saving provision in connection with the coming into force of provision made by the order.
- (3) In relation to provision which deals with matters with respect to which functions are exercisable by the Welsh Ministers—
  - (a) the power under subsection (1) is exercisable by the Secretary of State only with agreement of the Welsh Ministers, and
  - (b) the power under that subsection is also exercisable by the Welsh Ministers except that provision may not be made by virtue of subsection (2)(a).
- (4) The amendments that may be made by virtue of subsection (2) are in addition to those made by or by virtue of any other provision of this Act.
- (5) A statutory instrument containing an order under subsection (1) which makes provision by virtue of subsection (2)(a) may not be made unless a draft of the



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instrument has been laid before and approved by a resolution of each House of Parliament.

- (6) A statutory instrument containing any other order under subsection (1) made by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) A statutory instrument containing an order under subsection (1) made by the Welsh Ministers is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (8) In subsection (2), “subordinate legislation” has the same meaning as in the Interpretation Act 1978 (c. 30).

VALID FROM 28/10/2008

## 55 Repeals and revocations

The enactments mentioned in Schedule 11 are repealed or revoked to the extent specified.

### Commencement Information

- 113** s. 55 not in force at Royal Assent see s. 56(1); s. 55 in force for specified purposes for E.W. at 28.10.2008 by S.I. 2008/2788, art. 2(b); s. 55 in force for specified purposes at 3.11.2008 by S.I. 2008/1210, arts. 1(1)(b), 2(c) (with art. 4); s. 55 in force for specified purposes at 3.11.2008 by S.I. 2008/1900, arts. 1(1), 2(p); s. 55 in force for specified purposes at 1.4.2009 by S.I. 2009/139, art. 2(f)

## 56 Commencement

- (1) This Act (other than sections 51 to 53 (and Schedule 10), this section and sections 57 to 59) comes into force in accordance with provision made by the Secretary of State by order made by statutory instrument.
- (2) In relation to provision which deals with matters with respect to which functions are exercisable by the Welsh Ministers, the power under subsection (1) is exercisable only with their agreement.
- (3) Section 51 comes into force in accordance with provision made by the Lord Chancellor by order made by statutory instrument.
- (4) An order under this section may—
  - (a) make different provision for different purposes (including different provision for different areas and different provision for different descriptions of patient);
  - (b) include transitional or saving provision.
- (5) The provision which may be made by virtue of subsection (4)(b) includes provision modifying the application of a provision of this Act pending the commencement of a provision of another enactment.

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- (6) A statutory instrument containing an order under this section which makes provision by virtue of subsection (4)(b) (including provision within section 57) is subject to annulment in pursuance of a resolution of either House of Parliament.

#### Subordinate Legislation Made

- P1** S. 56(1) power partly exercised: 24.7.2007 appointed for s. 45 (E.W.) by {S.I. 2007/2156}, art. 2  
 S. 56(1) power partly exercised: different dates appointed for specified provisions and purposes (E.W.) by {S.I. 2007/2798}, arts. 2-4  
 S. 56(1) power partly exercised: 1.4.2008 appointed for specified provisions and purposes by {S.I. 2008/745}, arts. 2-4  
 S. 56(1) partly exercised: 30.4.2008 appointed for s. 44 by {S.I. 2009/800}, art. 2 (with art. 3)  
 S. 56(1) power partly exercised: 3.11.2008 appointed for specified provisions by {S.I. 2008/1210}, arts. 1(1)(b), 2, (with arts. 3-12)  
 S. 56(1) power partly exercised: 3.11.2008 power appointed for specified provisions by {S.I. 2008/1900}, arts. 1(1), 2, (with art. 3, Sch.)  
 S. 56(1) power partly exercised: 3.11.2008 appointed for specified provisions by {S.I. 2008/2561}, art. 2 (with art. 3, Sch.)  
 S. 56(1) power partly exercised: 28.10.2008 appointed for specified provisions and purposes (E.W.) by {S.I. 2008/2788}, art. 2  
 S. 56(1) power partly exercised: 1.4.2009 appointed for specified provisions and purposes by {S.I. 2009/139}, art. 2 (with transitional provisions in art. 3, Sch.)  
 S. 56(1) power partly exercised: 1.4.2010 appointed for s. 31(3) (E.W.) by {S.I. 2010/143}, art. 2
- P2** S. 56(3) power fully exercised: 1.10.2007 appointed for s. 51 (E.W.) by {S.I. 2007/2635}, art. 2

#### 57 Commencement of section 36

- (1) An order under section 56 providing for the commencement of section 36 may, in particular, provide—
- (a) for that section not to apply to or affect a patient who is subject to after-care under supervision immediately before that commencement, and
  - (b) for the patient to cease to be subject to after-care under supervision, and for his case to be dealt with, in accordance with provision made by the order.
- (2) The order may require—
- (a) a Primary Care Trust or Local Health Board to secure that the patient is examined by a registered medical practitioner of a description specified in the order;
  - (b) the registered medical practitioner to examine the patient with a view to making a decision about his case by reference to criteria specified in the order.
- (3) The order may require the registered medical practitioner, having complied with provision made by virtue of subsection (2)(b)—
- (a) to discharge the patient,
  - (b) to recommend that he be detained in hospital,
  - (c) to recommend that he be received into guardianship, or
  - (d) to make a community treatment order in respect of him.
- (4) The order may, in respect of a recommendation made by virtue of subsection (3)(b) or (c)—

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- (a) provide that the recommendation is to be made to a local social services authority determined in accordance with the order;
  - (b) provide that the recommendation is to be made in accordance with any other requirements specified in the order;
  - (c) require the local social services authority determined in accordance with paragraph (a), in response to the recommendation, to make arrangements for an approved mental health professional to consider the patient's case on their behalf.
- (5) The order may provide that a registered medical practitioner shall not make a community treatment order in respect of a patient unless an approved mental health professional states in writing—
  - (a) that he agrees with the decision made by the practitioner about the patient's case, and
  - (b) that it is appropriate to make the order.
- (6) An order requiring a registered medical practitioner to make a community treatment order in respect of a patient shall include provision about—
  - (a) the effect of the community treatment order (in particular, replacing after-care under supervision with a contingent requirement to attend, and be detained at, a hospital), and
  - (b) the effect of its revocation (including, in particular, provision for detention under section 3 of the 1983 Act).
- (7) The order may modify a provision of the 1983 Act in its application in relation to a patient who is subject to after-care under supervision immediately before the commencement of section 36.
- (8) Provision made by virtue of subsection (7) may, in particular—
  - (a) modify any of sections 25A to 25J of the 1983 Act in their application in relation to a patient for so long as he is, by virtue of subsection (1)(a), subject to after-care under supervision after the commencement of section 36;
  - (b) modify any of sections 17A to 17G, 20A and 20B of that Act (inserted by section 32 of this Act) in their application in relation to a patient in respect of whom a community treatment order is made by virtue of subsection (3)(d).
- (9) A reference in this section to section 36 includes the amendments and repeals in Schedules 3 and 11 consequential on that section.
- (10) An expression used in this section and in the 1983 Act has the same meaning in this section as it has in that Act.

## **58 Extent**

- (1) The provisions of this Act which amend other enactments have the same extent as the enactments which they amend.
- (2) But subsection (1) is subject to—
  - (a) paragraph 35 of Schedule 3,
  - (b) paragraphs 3, 4 and 20 of Schedule 5, and
  - (c) paragraph 12 of Schedule 9.
- (3) Section 54 extends to the United Kingdom.

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## 59 Short title

This Act may be cited as the Mental Health Act 2007.

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