



# Mental Health Act 2007

## CHAPTER 12

### MENTAL HEALTH ACT 2007

#### PART 1

#### AMENDMENTS TO MENTAL HEALTH ACT 1983

#### CHAPTER 1

#### CHANGES TO KEY PROVISIONS

##### *Mental disorder*

- 1 Removal of categories of mental disorder
- 2 Learning disability
- 3 Changes to exclusions from operation of 1983 Act

##### *Tests for detention etc*

- 4 Replacement of “treatability” and “care” tests with appropriate treatment test
- 5 Further cases in which appropriate treatment test is to apply

##### *Medical treatment*

- 6 Appropriate treatment test in Part 4 of 1983 Act
- 7 Change in definition of “medical treatment”

##### *Fundamental principles*

- 8 The fundamental principles

*Status: Point in time view as at 01/04/2008.*

*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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## CHAPTER 2

### PROFESSIONAL ROLES

#### *Approved clinicians and responsible clinicians*

- 9 Amendments to Part 2 of 1983 Act
- 10 Amendments to Part 3 of 1983 Act
- 11 Further amendments to Part 3 of 1983 Act
- 12 Amendments to Part 4 of 1983 Act
- 13 Amendments to Part 5 of 1983 Act
- 14 Amendments to other provisions of 1983 Act
- 15 Amendments to other Acts
- 16 Certain registered medical practitioners to be treated as approved under section 12 of 1983 Act
- 17 Regulations as to approvals in relation to England and Wales

#### *Approved mental health professionals*

- 18 Approved mental health professionals
- 19 Approval of courses etc for approved mental health professionals
- 20 Amendment to section 62 of Care Standards Act 2000
- 21 Approved mental health professionals: further amendments

#### *Conflicts of interest in professional roles*

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- 24 Discharge and variation of orders appointing nearest relative
- 25 Restriction of nearest relative's right to apply to tribunal
- 26 Civil partners

#### *Consent to treatment*

- 27 Electro-convulsive therapy, etc.
- 28 Section 27: supplemental
- 29 Withdrawal of consent

#### *Advocacy*

- 30 Independent mental health advocates

#### *Accommodation, etc.*

- 31 Accommodation, etc.

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*Status: Point in time view as at 01/04/2008.*

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## SCHEDULES

### SCHEDULE 1 — Categories of mental disorder: further amendments etc

#### Part 1 — AMENDMENTS TO 1983 ACT

- 1 The 1983 Act is amended as follows.
- 2 In section 3(2) (grounds for application for admission for treatment),...
- 3 In section 7(2) (grounds for guardianship application), in paragraph (a),...
- 4 In section 20 (renewal of detention or guardianship)—
- 5 In section 35(3) (conditions for exercise of power to remand...
- 6 In section 36(1) (conditions for exercise of power to remand...
- 7 In section 37 (power to order hospital admission or guardianship)—...
- 8 In section 38(1) (conditions for exercise of power to make...
- 9 In section 45A(2) (conditions for exercise of power to direct...
- 10 In section 47(1) (power to make transfer direction), in paragraph...
- 11 In section 48 (further power to make transfer direction)—
- 12 In section 51(6) (further power to make hospital order), in...
- 13 In section 66(2) (time limits for applications to tribunals), in...
- 14 In section 72 (powers of tribunals)— (a) in subsection (1)(b)(i),...
- 15 (1) Section 86 (application of power to remove alien patients)...
- 16 (1) Section 141 (Members of Parliament etc) is amended as...
- 17 In section 145(1) (interpretation), for the definitions of “mental disorder”,...

#### Part 2 — AMENDMENTS TO OTHER ACTS

##### *Juries Act 1974*

- 18 (1) Part 1 of Schedule 1 to the Juries Act...

##### *Contempt of Court Act 1981*

- 19 In section 14 of the Contempt of Court Act 1981...

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*Family Law Act 1996*

20 (1) The Family Law Act 1996 (c. 27) is amended...

*Housing Act 1996*

21 In section 156 of the Housing Act 1996 (c. 52)...

*Care Standards Act 2000*

22 In section 121 of the Care Standards Act 2000 (c....

*Mental Capacity Act 2005*

23 (1) In Schedule 4 to the Mental Capacity Act 2005...

*National Health Service Act 2006*

24 In section 275 of the National Health Service Act 2006...

*National Health Service (Wales) Act 2006*

25 In section 206 of the National Health Service (Wales) Act...

*Police and Justice Act 2006*

26 In section 27 of the Police and Justice Act 2006...

SCHEDULE 2 — Approved mental health professionals: further amendments to 1983 Act

- 1 The 1983 Act is amended as follows.
- 2 In the following provisions, for “approved social worker” substitute “...
- 3 (1) Section 10 (transfer of guardianship) is amended as follows....
- 4 (1) Section 11 (general provisions as to applications) is amended...
- 5 (1) Section 13 (the title to which becomes “Duty of...
- 6 In section 14 (social reports), for “a social worker” substitute...
- 7 In the following provisions, for “approved social worker” substitute “...
- 8 For section 115 substitute— Powers of entry and inspection (1) An approved mental health professional may at all reasonable...
- 9 In section 118(1)(a) (application of code of practice), for “approved...
- 10 In the following provisions, for “approved social worker” substitute “...
- 11 (1) Section 145 (interpretation) is amended as follows.

SCHEDULE 3 — Supervised community treatment: further amendments to 1983 Act

- 1 The 1983 Act is amended as follows.

*Application in respect of patient already in hospital*

- 2 In section 5 (application in respect of patient already in...

*Return of patients absent without leave*

- 3 (1) Section 18 (return and readmission of patients absent without...

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*Assignment of responsibility for community patients*

- 4 After section 19 insert— Regulations as to assignment of responsibility...

*Renewal of authority to detain patients*

- 5 In section 20 (duration of authority)— (a) in subsection (2),...

*Special provisions as to patients absent without leave*

- 6 (1) Section 21 (special provisions as to patients absent without...  
7 In section 21A (patients who are taken into custody or...  
8 (1) Section 21B (patients who are taken into custody or...

*Patients sentenced to imprisonment etc*

- 9 For section 22 substitute— Special provisions as to patients sentenced...

*Discharge*

- 10 (1) Section 23 (discharge of patients) is amended as follows...  
11 (1) Section 24 (visiting and examination of patients) is amended...  
12 (1) Section 25 (restrictions on discharge by nearest relative) is...

*Orders appointing acting nearest relative*

- 13 In section 29 (appointment by court of acting nearest relative),...  
14 (1) Section 30 (discharge and variation of orders under section...

*Regulations for purposes of Part 2*

- 15 In section 32 (regulations for purposes of Part 2), in...

*Wards of court*

- 16 (1) Section 33 (special provisions as to wards of court)...

*Restricted patients*

- 17 In section 41 (power of higher courts to restrict discharge)...

*Applications and references to Mental Health Review Tribunal*

- 18 (1) Section 66 (applications to tribunals) is amended as follows...  
19 In section 67 (references to tribunals by Secretary of State...  
20 In section 69 (applications to tribunals concerning patients subject to...  
21 (1) Section 72 (powers of tribunals) is amended as follows...  
22 In section 76 (visiting and examination of patients), in subsection...  
23 In section 77 (general provisions concerning tribunal applications), in subsection...

*After-care services*

- 24 In section 117 (after-care), in subsection (2) for the words...

*Code of practice*

- 25 In section 118 (code of practice), in subsection (1)(a) for...

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*General protection of detained patients*

- 26 (1) Section 120 (general protection of detained patients) is amended...  
27 In section 121 (Mental Health Act Commission), in subsection (4),...

*Offences*

- 28 In section 128 (assisting patients to absent themselves without leave,...

*Duty to give information*

- 29 In section 132 (duty of managers of hospitals to give...  
30 After section 132 insert— Duty of managers of hospitals to...  
31 In section 133 (duty of managers of hospitals to inform...

*Retaking of patients escaping from custody*

- 32 In section 138 (retaking of patients escaping from custody), in...

*Members of Parliament suffering from mental disorder*

- 33 In section 141 (Members of Parliament suffering from mental disorder),...

*Interpretation*

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

*Extent*

- 35 (1) In section 146 (application to Scotland), omit the words...

*Application of certain provisions to patients concerned in criminal proceedings*

- 36 (1) In Schedule 1 (application of certain provisions to patients...  
37 (1) Part 2 of that Schedule (patients subject to special...

SCHEDULE 4 — Supervised community treatment: amendments to other Acts

*Administration of Justice Act 1960*

- 1 After section 5 of the Administration of Justice Act 1960...

*Criminal Appeal Act 1968*

- 2 (1) The Criminal Appeal Act 1968 (c. 19) is amended...

*Courts-Martial (Appeals) Act 1968*

- 3 (1) The Courts-Martial (Appeals) Act 1968 (c. 20) is amended...

*Juries Act 1974*

- 4 In Schedule 1 to the Juries Act 1974 (c. 23)...

SCHEDULE 5 — Cross-border arrangements

Part 1 — AMENDMENTS TO PART 6 OF 1983 ACT

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### *Introduction*

- 1 Part 6 of the 1983 Act is amended as set...

#### *Transfer of patients: Scotland*

- 2 In section 80 (removal of patients to Scotland) (the cross-heading...  
3 (1) After that section insert— Transfer of responsibility for  
community...  
4 (1) After section 80A (the title to which becomes (...

#### *Transfer of patients: Northern Ireland*

- 5 In section 81 (removal of patients to Northern Ireland), in...  
6 After that section insert— Removal of community patients to  
Northern...  
7 (1) Section 81A (transfer of responsibility for patients to Northern...  
8 In section 82 (removal to England and Wales of patients...  
9 In section 82A (the title to which becomes “Transfer of...

#### *Transfer of patients: Channel Islands and Isle of Man*

- 10 Before section 83A (the title to which becomes “Transfer of...  
11 In section 85 (patients removed from Channel Islands or Isle...  
12 Before section 85A (the title to which becomes “Responsibility for...  
13 (1) Section 85A is amended as follows.

#### *Patients absent from hospitals in England and Wales*

- 14 (1) Section 88 (patients absent from hospitals in England and...

#### *Regulations for purposes of Part 6*

- 15 In section 90 (regulations for purposes of Part 6), for...

#### *General provisions as to patients removed from England and Wales*

- 16 In section 91 (general provisions as to patients removed from...

### *Interpretation*

- 17 In section 92 (interpretation of Part 6), after subsection (1)...  
Part 2 — RELATED AMENDMENTS

### *The 1983 Act*

- 18 In section 69 of the 1983 Act (applications to tribunals...  
19 (1) Section 79 of that Act (interpretation of Part 5)...  
20 (1) In section 146 (application to Scotland), omit the words...

#### *Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078)*

- 21 (1) The Mental Health (Care and Treatment) (Scotland) Act 2003...

### SCHEDULE 6 — Victims' rights



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### *Introduction*

1 Chapter 2 of Part 3 of the Domestic Violence, Crime...

#### *Hospital orders (with or without restriction orders)*

- 2 (1) Section 36 (victims' rights: preliminary) is amended as follows....  
3 After section 36 insert— Supplemental provision for case where no...  
4 In section 37 (the title to which becomes “Representations where...  
5 After section 37 insert— Representations where restriction order not  
made...  
6 In section 38 (the title to which becomes “Information where...  
7 After section 38 insert — Information where restriction order not...

#### *Hospital directions and limitation directions*

- 8 In section 39 (victims' rights: preliminary), in subsection (3)—  
9 After section 41 insert— Removal of restriction (1) This section applies  
if, in a case where section...

#### *Transfer directions (with or without restriction directions)*

- 10 (1) Section 42 (victims' rights: preliminary) is amended as follows....  
11 After section 42 insert— Supplemental provision for case where no...  
12 In section 43 (the title to which becomes “Representations where...  
13 After section 43 insert— Representations where restriction direction not  
given...  
14 In section 44 (the title to which becomes “Information where...  
15 After section 44 insert — Information where restriction direction not...

### *Interpretation*

- 16 (1) Section 45 (the title to which becomes “Interpretation: sections...

SCHEDULE 7 — Mental Capacity Act 2005: new Schedule A1  
Before Schedule 1 to the Mental Capacity Act 2005 (c....

SCHEDULE 8 — Mental Capacity Act 2005: new Schedule 1A  
After Schedule 1 to the Mental Capacity Act 2005 (c....

SCHEDULE 9 — Amendments relating to new section 4A of, & Schedule A1 to,  
Mental Capacity Act 2005

Part 1 — OTHER AMENDMENTS TO MENTAL CAPACITY ACT 2005

### *Introduction*

- 1 The Mental Capacity Act 2005 (c. 9) is amended as...

#### *New section 21A*

- 2 After section 21 insert— Powers of the court in relation...

#### *Section 35: Appointment of independent mental capacity advocates*

- 3 In section 35, in subsection (1) after “relate” insert “...

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*Section 38: IMCAs and provision of accommodation by NHS body*

4 (1) Section 38 is amended as follows.

*Section 39: IMCAs and provision of accommodation by local authority*

5 (1) Section 39 is amended as follows.

*New section 39A*

6 After section 39 insert— Person becomes subject to Schedule A1...

*Section 40: Exceptions to duty to appoint IMCAs*

7 (1) Section 40 (as substituted by section 49 of this...

*Section 42: Codes of practice*

8 (1) Section 42 is amended as follows.

*Section 50: Application to the Court of Protection*

9 In section 50, after subsection (1) insert—

*Section 64: Interpretation*

10 (1) Section 64 is amended as follows.

*Section 65: Rules, regulations and orders*

11 (1) Section 65 is amended as follows.

Part 2 — AMENDMENTS TO OTHER ACTS

*National Assistance Act 1948 (c. 29)*

12 (1) Section 47 of the National Assistance Act 1948 (removal...

*Local Authority Social Services Act 1970 (c. 42)*

13 (1) Schedule 1 to the Local Authority Social Services Act...

SCHEDULE 10 — Transitional provisions and savings

*Interpretation*

1 (1) This Schedule is to be read as follows.

*Authority to detain etc*

2 (1) The provisions mentioned in sub-paragraph (4) do not affect—...

*Consent to treatment*

3 (1) The amendments made by section 6 (appropriate treatment test...

*Reclassification of patients*

4 The amendment made by paragraph 13 of Schedule 1 and...

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*Supervised community treatment*

- 5 Section 32 and the amendments and repeals in Schedules 3...

*Nearest relative*

- 6 (1) Subsections (2), (3) and (4)(b) of section 23 (extension...  
7 (1) If, by virtue of section 26 (civil partners) coming...

*Independent mental health advocates*

- 8 (1) Section 30— (a) applies to a patient who is...

*Applications and references to Mental Health Review Tribunal*

- 9 (1) The amendments made by section 37 apply in relation...

SCHEDULE 11 — Repeals and revocations

- Part 1 — REMOVAL OF CATEGORIES OF MENTAL DISORDER
- Part 2 — REPLACEMENT OF “TREATABILITY” AND “CARE” TESTS
- Part 3 — APPROVED CLINICIANS AND RESPONSIBLE CLINICIANS
- Part 4 — SAFEGUARDS FOR PATIENTS
- Part 5 — SUPERVISED COMMUNITY TREATMENT
- Part 6 — ORGANISATION OF TRIBUNALS
- Part 7 — CROSS-BORDER ARRANGEMENTS
- Part 8 — RESTRICTED PATIENTS
- Part 9 — MISCELLANEOUS
- Part 10 — DEPRIVATION OF LIBERTY

**Status:**

Point in time view as at 01/04/2008.

**Changes to legislation:**

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