



# Mental Health Act 2007

## 2007 CHAPTER 12

### PART 1

#### AMENDMENTS TO MENTAL HEALTH ACT 1983

### CHAPTER 3

#### SAFEGUARDS FOR PATIENTS

##### *Patient's nearest relative*

### **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)—

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- (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)”.

## **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—

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“(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.”

## **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”.

### *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

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- (b) such other forms of treatment as may be specified for the purposes of this section by regulations made by the appropriate national authority.
- (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.”

## **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—
- “(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.

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- (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
  - (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

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- (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—
  - (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.

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### **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
  - (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—



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- (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.
- (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—

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- (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 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;

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- (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.”

*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—

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**“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.”