

2008 No. 1210 (C. 52)

MENTAL HEALTH, ENGLAND AND WALES

The Mental Health Act 2007 (Commencement No. 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions) Order 2008

Made - - - - *28th April 2008*

Laid before Parliament *7th May 2008*

Coming into force in accordance with article 1(1)

The Secretary of State, in exercise of the powers conferred by sections 54(1) and (2), 56(1) and (4) and 57 of the Mental Health Act 2007(a), and with the agreement of the Welsh Ministers, makes the following Order:

PART 1

GENERAL AND COMMENCEMENT OF 2007 ACT

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Mental Health Act 2007 (Commencement No. 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions) Order 2008 and shall come into force—

- (a) in respect of article 12, on 4th May 2009; and
- (b) in all other respects, on 3rd November 2008 immediately after the coming into force of the Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008(b).

(2) In this Order—

“the 1983 Act” means the Mental Health Act 1983(c);

“the 2007 Act” means the Mental Health Act 2007;

“ACUS community patient” has the meaning given by article 10(2) of this Order;

“ACUS patient” means any patient who was subject to after-care under supervision immediately before the commencement day and who remains so subject in accordance with provision made by this Order;

“commencement day” means the day that section 36 of the 2007 Act comes into force in accordance with article 2 of this Order;

(a) 2007 c.12.

(b) S.I. 2008/1184.

(c) 1983 c.20. The provisions of the Mental Health Act 1983 Act about after-care under supervision were inserted by section 1(1) of the Mental Health (Patients in the Community) Act 1995 (c.52).

“community responsible medical officer” has the meaning given by section 34(1) of the 1983 Act immediately before the coming into force of this Order; and

“subject to after-care under supervision” has the meaning given by section 25A(2) of the 1983 Act immediately before the coming into force of this Order.

(3) An expression used in this Order and in the 1983 Act has the same meaning in this Order as it has in that Act.

(4) In any of the provisions of the 1983 Act which are saved or which are modified in relation to an ACUS patient or an ACUS community patient by this Order, a reference to—

- (a) the approved social worker shall be construed as a reference to the approved mental health professional;
- (b) the responsible medical officer shall be construed as a reference to the responsible clinician.

Commencement of provisions of the 2007 Act and consequential amendments and repeals

2. The following provisions of the 2007 Act shall come into force on 3rd November 2008—

- (a) section 1(4) (removal of categories of mental disorder), insofar as it gives effect to paragraph 13 of Schedule 1;
- (b) section 32(4) (community treatment orders, etc), insofar as it gives effect to paragraphs 16, 17, 21(4), 23, 24 and 25 of Schedule 3;
- (c) section 36 (repeal of provisions for after-care under supervision);
- (d) section 55 (repeals and revocations), insofar as it gives effect to Part 5 of Schedule 11.

PART 2

ACUS PATIENTS: SAVINGS, MODIFICATIONS AND TRANSITIONAL PROVISIONS

ACUS patients

3. This Part of this Order shall apply in relation to an ACUS patient and such a patient shall—

- (a) continue to be subject to after-care under supervision,
- (b) have their case dealt with, and
- (c) cease to be subject to after-care under supervision,

in accordance with the following provisions.

Savings

4.—(1) Notwithstanding the coming into force of the provisions of the 2007 Act specified in article 2 of this Order, the following provisions of the 1983 Act shall continue to have effect in relation to an ACUS patient—

- (a) the definitions of “severe mental impairment”, “mental impairment” and “psychopathic disorder” in section 1(2) (application of Act: “mental disorder”), insofar as they relate to sections 25A(4) (application for supervision), 25G(4) (duration and renewal of after-care under supervision) and 72(4A) (powers of tribunals);
- (b) subsections (2), (4) (insofar as it relates to section 72(4A)) and (8) of section 25A (application for supervision);
- (c) subsections (6) and (7) of section 25C (supervision applications: supplementary);
- (d) section 25D (requirement to secure receipt of after-care under supervision);
- (e) section 25E (review of after-care under supervision etc);

- (f) section 25F(1) (reclassification of patient subject to after-care under supervision), where a report referred to in that section was furnished by a responsible medical officer prior to the commencement day, insofar as it relates to sections 66(1)(gb) and 66(2)(d) (applications to tribunals);
- (g) subsections (2) and (4) of section 25F (reclassification of patient subject to after-care under supervision);
- (h) the following subsections of section 25G (duration and renewal of after-care under supervision)—
 - (i) subsection (1), subject to article 7;
 - (ii) subsections (2), (3) and (7) insofar as they operate to renew a period of after-care under supervision that would otherwise end prior to the commencement day, subject to article 7;
 - (iii) subsection (4), insofar as it relates to subsection (3) of that section and section 72(4A) (powers of tribunals);
- (i) section 25H (ending of after-care under supervision);
- (j) section 25I(1)(a) (special provisions as to patients sentenced to imprisonment etc) and subsection (2) of that section insofar as it relates to section 25I(1)(a);
- (k) the definitions of “the community responsible medical officer” and “the supervisor” in section 34(1) (interpretation of Part 2);
- (l) section 34(1A) (interpretation of Part 2);
- (m) paragraphs (ga), (gb) and (gc) of section 66(1) (applications to tribunals);
- (n) section 66(2)(fa) (applications to tribunals);
- (o) section 72(4A) (powers of tribunals), subject to article 5;
- (p) section 117(2A) (after-care);
- (q) section 127(2A) (ill-treatment of patients);
- (r) the definitions of “supervision application” and “responsible after-care bodies” in section 145(1) (interpretation), and
- (s) section 145(1A) (interpretation).

(2) None of the provisions saved by paragraph (1) shall operate to allow a Primary Care Trust or a Local Health Board to accept a supervision application on or after the commencement day.

Transfer of Mental Health Review Tribunal functions

5. As regards England, where an order has been made under section 30 of the Tribunals, Courts and Enforcement Act 2007(a) (transfer of functions of certain tribunals) transferring the functions of a Mental Health Review Tribunal for a region of England to the First-tier Tribunal established by section 3 of that Act (the First-tier Tribunal and the Upper Tribunal), the reference in section 72(4A) of the 1983 Act (powers of tribunals), as saved by this Order, to a Mental Health Review Tribunal shall be read as a reference to the First-tier Tribunal.

Consequential modifications to the 1983 Act

6. The following provisions of the 1983 Act shall be modified in their application to an ACUS patient as follows—

- (a) insofar as it relates to sections 25A(4), 25G(4) and 72(4A), in section 1(2), in the definition of “mental disorder”, for “any disorder or disability of the mind” substitute “mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind”;

(a) 2007 c.15.

- (b) in section 17A (community treatment orders)—
 - (i) in subsection (1), for “responsible clinician” substitute “community responsible medical officer” and for “discharge a detained patient from hospital” substitute “direct that a patient subject to after-care under supervision cease to be subject to such supervision,”;
 - (ii) in subsection (4), for “responsible clinician” substitute “community responsible medical officer”;
 - (iii) in subsection (5)(c), for “without his continuing to be detained in hospital” substitute “without his being detained in hospital”; and
 - (iv) in subsection (6), for “responsible clinician” substitute “community responsible medical officer”;
- (c) in section 17B(2) (conditions in community treatment orders), for “responsible clinician” substitute “community responsible medical officer”;
- (d) in section 32(2)(c) (regulations for purposes of Part 2), after “guardianship” insert “or to after-care under supervision”;
- (e) in section 33 (special provisions as to wards of court), after subsection (4), insert—

“(5) Where a supervision application has been made in respect of a minor who is a ward of court, the provisions of this Part of this Act relating to after-care under supervision have effect in relation to the minor subject to any order which the court may make in the exercise of its wardship jurisdiction.”;
- (f) in section 66 (applications to tribunals)—
 - (i) in subsection (1)(i), at end, insert “or, in the cases mentioned in paragraphs (ga), (gb) and (gc), by his nearest relative if he has been (or was entitled to be) informed under this Act of the report or acceptance, and”;
 - (ii) in subsection (2)(c), after “paragraph (c)” insert “or (ga)”;
 - (iii) in subsection (2)(d), for “in the case mentioned in paragraph (g)” substitute “in the cases mentioned in paragraphs (g) and (gb)”;
- (g) in section 67(1) (references to tribunals by Secretary of State concerning Part 2 patients), after “or subject to guardianship” insert “or to after-care under supervision”;
- (h) in section 76(1) (visiting and examination of patients), after “subject to guardianship” insert “or to after-care under supervision (or, if he has not yet left hospital, is to be subject to after-care under supervision after he leaves hospital)”;
- (i) in section 77(3) (general provisions concerning tribunal applications), in paragraph (c), after “subject to guardianship” insert “or to after-care under supervision”;
- (j) in section 117(2) (after-care), after “such a patient” insert “or in the case of a patient subject to after-care under supervision at any time while he remains so subject”;
- (k) in section 118(1)(a) (code of practice), after “guardianship” insert “, after-care under supervision”, and
- (l) in Schedule 1 (application of certain provisions to patients subject to hospital and guardianship orders), Part 1 (patients not subject to special restrictions)—
 - (i) paragraph 1, after “24(3) and (4),” insert “25C(6) and (7),”, and
 - (ii) paragraph 2, after “23,” insert “25A(2), (4) (insofar as it relates to section 72(4A)) and (8)”.

Renewal and extension of period of after-care under supervision for certain patients

7. Where, apart from this article, the period of an ACUS patient’s after-care under supervision, as determined in accordance with section 25G of the 1983 Act (duration and renewal of after-care under supervision), would end within the period of seven days beginning on the commencement day, the period of that patient’s after-care under supervision shall continue until the end of 9th November 2008.

Duty to determine certain matters in respect of ACUS patients

8.—(1) The community responsible medical officer of an ACUS patient must, during the review period, determine whether, in respect of the patient—

- (a) the grounds for the making of an application for admission for assessment, as set out in section 2(2) of the 1983 Act, are met;
- (b) the grounds for the making of an application for admission for treatment, as set out in section 3(2) of the 1983 Act, are met;
- (c) the grounds for the making of a guardianship application, as set out in section 7(2) of the 1983 Act, are met;
- (d) the relevant criteria for the making of a community treatment order, as set out in section 17A(5) of the 2007 Act (as modified by this Order), are met, or
- (e) none of the grounds or the criteria referred to above are met.

(2) The “review period” referred to in paragraph (1) is the period beginning on the commencement day and ending on the earlier of —

- (a) the end of 3rd May 2009; and
- (b) the end of the period of after-care under supervision as determined in accordance with section 25G(1) or (7) of the 1983 Act or article 7, as the case may be.

(3) In order to make a determination under paragraph (1), the community responsible medical officer must have personally examined the patient within the period of fourteen days ending with the date of the determination.

(4) Before making a determination under paragraph (1), the community responsible medical officer must comply with the same requirements of section 25H(3) of the 1983 Act with which that officer would be required to comply if making a direction under section 25H(1) of that Act.

(5) Where the community responsible medical officer determines in accordance with paragraph (1) that, in respect of the patient—

- (a) the grounds for the making of an application for admission for assessment, an application for admission for treatment or a guardianship application are met, then that officer may make a recommendation for the purposes of such an application;
- (b) the criteria for the making of a community treatment order are met, then that officer may, subject to section 17A(4) of the 1983 Act (community treatment orders) (as modified by this Order), make a community treatment order in respect of the patient, or
- (c) none of the grounds or the criteria referred to are met, then that officer must direct that the patient cease to be subject to after-care under supervision in accordance with section 25H of the 1983 Act (ending of after-care under supervision), and subsection (3) of that section shall be taken to have been complied with by virtue of having complied with the same requirements for the purposes of paragraph (4).

(6) Where the community responsible medical officer makes one of the recommendations referred to in paragraph (5)(a)—

- (a) that recommendation must comply with the requirements of section 12 of the 1983 Act (general provisions as to medical recommendations) and must also comply with—
 - (i) section 2(3) of the 1983 Act in the case of a recommendation for the purposes of an application for admission for assessment;
 - (ii) section 3(3) of the 1983 Act in the case of a recommendation for the purposes of an application for admission for treatment;
 - (iii) section 7(3) of the 1983 Act in the case of a recommendation for the purposes of a guardianship application; and
- (b) that officer must immediately notify the local social services authority of the making of the recommendation.

(7) The notification by a community responsible medical officer of the making of a recommendation under paragraph (6)(b) shall be sufficient reason for the local social services

authority in whose area the ACUS patient is resident to think that an application for admission to hospital or a guardianship application may need to be made in respect of that patient for the purposes of section 13(1) of the 1983 Act (duty of approved mental health professionals to make applications for admission or guardianship).

(8) Where the community responsible medical officer makes a community treatment order in respect of an ACUS patient, that officer must, with respect to the making of that order, comply with the requirements of—

- (a) the Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008^(a) where the responsible hospital is to be a hospital in England;
- (b) such Regulations in respect of Wales as are made by the Welsh Ministers^(b) for similar purposes to those in paragraph (a) where the responsible hospital is to be a hospital in Wales;

and for that purpose, insofar as those Regulations relate to the making of a community treatment order, a reference to the responsible clinician shall be read as a reference to the community responsible medical officer.

Ending of after-care under supervision

9. An ACUS patient shall cease to be subject to after-care under supervision and shall cease to be an ACUS patient upon the earliest of—

- (a) the patient ceasing to be subject to after-care under supervision in accordance with—
 - (i) section 25G of the 1983 Act (duration and renewal of after-care under supervision);
 - (ii) section 25H(1) of the 1983 Act (ending of after-care under supervision);
 - (iii) section 25H(5) of the 1983 Act (ending of after-care under supervision);
 - (iv) section 72(4A) of the 1983 Act (powers of tribunals);
- (b) the patient being admitted to hospital in pursuance of an application for admission for assessment, where one of the medical recommendations on which that application is founded was made by the community responsible medical officer under article 8(5)(a);
- (c) a community treatment order being made in respect of the patient;
- (d) the expiry of fourteen days beginning with the making of a determination by the community responsible medical officer under article 8, and
- (e) the end of 3rd May 2009.

PART 3

ACUS COMMUNITY PATIENTS: MODIFICATIONS AND TRANSITIONAL PROVISIONS

ACUS community patients

10.—(1) This Part of this Order shall apply in relation to an ACUS community patient.

(2) An ACUS community patient is a patient in respect of whom a community treatment order made by the community responsible medical officer in accordance with the 1983 Act as modified by Part 2 of this Order is in force, including being in force by virtue of an extension to the community treatment period in accordance with section 20A of the 1983 Act (community treatment period).

(a) S.I. 2008/1184

(b) The Welsh Ministers have indicated that they intend to make an equivalent instrument to S.I. 2008/[to be inserted] in respect of Wales.

Modifications to the community treatment order provisions of the 1983 Act

11. The following provisions of the 1983 Act shall be modified in their application to an ACUS community patient as follows—

- (a) in section 17A(7) (community treatment orders), for the definition of “the responsible hospital”, substitute—
 - ““the responsible hospital”, in relation to such a patient, means—
 - (a) the hospital in which he was liable to be detained immediately before being placed on after-care under supervision, and where such a hospital no longer exists, the successor hospital to that hospital; or
 - (b) such other hospital—
 - (i) as the community responsible medical officer, with the agreement of the managers of that hospital, may direct; or
 - (ii) where no hospital referred to in (a) is available and no agreement referred to in (i) can be reached, as the Secretary of State (where the patient lives in England) or the Welsh Ministers (where the patient lives in Wales) may direct.”;
- (b) section 17C (duration of community treatment order) shall be read as if paragraph (c) were omitted;
- (c) in section 17D (effect of community treatment order)—
 - (i) omit subsection (1);
 - (ii) for subsection (2), substitute—

“(2) While he remains a community patient, a 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.”;
 - (iii) omit subsection (4);
- (d) in section 17G (effect of revoking community treatment order)—
 - (i) for subsection (2), substitute—

“(2) For the purposes of section 6(2) above, the reference to the application under subsection (1) in that provision shall be taken to be a reference to the order made under section 17F(4) above”, and
 - (ii) for subsection (5), substitute—

“(5) For the purposes of this or any other Act, the patient shall be treated as if he had been admitted to hospital in pursuance of an application for admission for treatment on the day on which the order is revoked.”, and
- (e) in section 20B(1) (effect of expiry of community treatment order), omit “, and the application for admission for treatment cease to have effect”.

PART 4

REVOCATION

Revocation of Mental Health (After-care under Supervision) Regulations 1996

12. The Mental Health (After-care under Supervision) Regulations 1996(a) are revoked.

(a) S.I. 1996/294, as amended by S.I. 2002/2469.

Signed by authority of the Secretary of State for Health.

28th April 2008

Ivan Lewis
Parliamentary Under-Secretary of State
Department of Health

EXPLANATORY NOTE

(This note is not part of the Order)

This Order brings into force the provisions of the Mental Health Act 2007 (c.12) (“the 2007 Act”) that repeal the provisions relating to after-care under supervision in the Mental Health Act 1983 (c.20) (“the 1983 Act”). The Order also makes transitional provision for patients subject to after-care under supervision immediately prior to that date. The Order provides for a transitional period of six months in which the status of the patient as being subject to after-care under supervision is maintained, and requires, within that period, the patient to be examined by his or her community responsible medical officer to determine whether the patient should be detained for assessment or treatment, made subject to guardianship, placed on a community treatment order or should cease to be subject to after-care under supervision.

Part 1 of the Order brings into force on 3rd November 2008 (“the commencement day”) section 36 of the 2007 Act, which repeals the provisions relating to after-care under supervision of the 1983 Act. It also brings into force on the commencement day section 32(4) of the 2007 Act, which gives effect to Schedule 3 of that Act, and section 55 of the 2007 Act, which gives effect to Schedule 11 of that Act, to the extent that those Schedules make amendments or repeals consequential upon the repeal of the after-care under supervision provisions by section 36.

Part 2 of the Order applies in relation to patients subject to after-care under supervision immediately prior to the commencement day (“ACUS patients”).

Article 4 saves those provisions of the 1983 Act which are necessary to ensure the continuation of after-care under supervision for ACUS patients.

Article 5 provides that the reference to a Mental Health Review Tribunal for a region of England in section 72(4A) of the 1983 Act (as saved by article 4) is read as a reference to the First-tier Tribunal in the event of a transfer of functions.

Article 6 makes consequential modifications to provisions of the 1983 Act to ensure the continued application of provisions of the 1983 Act to ACUS patients. It also amends the criteria for the placing of an ACUS patient on a community treatment order.

Article 7 provides that the period of a patient’s after-care under supervision that would otherwise end on or around the commencement day is extended to the end of seven days beginning with the commencement day.

Article 8—

- places a duty on the community responsible medical officer to determine, prior to the end of the specified period whether or not an ACUS patient meets the grounds for the making of an application for admission for assessment or treatment, a guardianship application or the criteria for a community treatment order and allows a recommendation to be made to that effect
- provides that where the community responsible medical officer recommends the making of an application for admission for assessment or treatment, or a guardianship application in respect of an ACUS patient, that recommendation must comply with the requirements of the 1983 Act
- provides that the community responsible medical officer may make a community treatment order in respect of an ACUS patient provided the specified conditions for the making of that order are met
- provides that the community responsible medical officer must direct that the patient cease to be subject to after-care under supervision where the patient does not meet any of the grounds or criteria referred to.

Article 9 provides that an ACUS patient will cease to be subject to after-care under supervision, in addition to the circumstances set out in the 1983 Act, where an application for admission for

assessment (made as a result of a determination made under the Order) or a community treatment order is made in respect of the patient. A patient will also cease to be subject to after-care under supervision if fourteen days beginning with the making of a determination by the community responsible medical officer have elapsed and none of the other circumstances apply to end the patient's subjection to after-care under supervision. If none of those circumstances arise, the patient will cease to be subject to after-care under supervision at the end of the specified period.

Part 3 of the Order applies to patients who were placed on a community treatment order by the community responsible medical officer in accordance with Part 2 of the Order and amends the provisions of the 1983 Act dealing with community treatment orders in their application to such patients. In particular, article 11 provides that when such a patient's community treatment order is revoked, the patient is deemed to have been detained in accordance with an application for treatment under section 3 of the 1983 Act.

Part 4 of the Order provides, in article 12, that the Mental Health (After-care under Supervision) Regulations 1996 (S.I. 1996/294) are revoked with effect from 4th May 2009.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The following provisions of the 2007 Act have been, or are being, brought into force in England and Wales by commencement order made before the date of this Order—

<i>Provision of the Act</i>	<i>Date of Commencement</i>	<i>S.I. Number</i>
Section 17	1st April 2008	2008/745 (C.30)
Section 18 (partially)	1st April 2008	2008/745 (C.30)
Section 19	1st October 2007	2007/2798 (C.108)
Section 20	1st October 2007	2007/2798 (C.108)
Section 22 (partially)	1st April 2008	2008/745 (C.30)
Section 26	1st December 2007	2007/2798 (C.108)
Section 30 (partially)	1st April 2008	2008/745 (C.30)
Section 32 (partially)	1st April 2008	2008/745 (C.30)
Section 35 (partially)	1st April 2008	2008/745 (C.30)
Section 39 and Schedule 5 (partially)	1st October 2007	2007/2798 (C.108)
Section 39 and Schedule 5 (partially)	1st April 2008	2008/745 (C.30)
Section 40	1st October 2007	2007/2798 (C.108)
Section 41	1st October 2007	2007/2798 (C.108)
Section 42	1st October 2007	2007/2798 (C.108)
Section 43	1st January 2008	2007/2798 (C.108)
Section 44	30th April 2008	2008/800 (C.39)
Section 45	24th July 2007	2007/2156 (C.80)
Section 46	1st October 2007	2007/2798 (C.108)
Section 47	1st April 2008	2008/745 (C.30)
Section 49	1st October 2007	2007/2798 (C.108)
Section 50 and Schedules 7 and 9 (partially)	1st April 2008	2008/745 (C.30)
Section 51	1st October 2007	2007/2635 (C.102)
Section 54	1st April 2008	2008/745 (C.30)

£3.00

© Crown copyright 2008

Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of Her Majesty's
Stationery Office and Queen's Printer of Acts of Parliament.

E2413 5/2008 182413T 19585