

# Mental Health Law Briefing

Number 117

## Mental Health Act 2007

As reported in a previous briefing<sup>1</sup>, the Mental Health Act 2007 was passed last month. However, save for Section 45 (see below) this is not yet in force. It is anticipated that it will come into force in April 2008 once the new Code of Practice to accompany it is finalised.

Section 45 of the Act has however been brought into force on 24 July 2007<sup>2</sup>, in order to deal with the difficulties faced by Foundation Trusts in relation to the delegation of their power to discharge patients from detention.

Section 45(1) amends Section 23 of the Mental Health Act 1983 to give Foundation Trusts greater flexibility and in particular to allow them to delegate discharge decisions to any three or more people authorised by the Board of the Trust, provided those persons are neither executive directors nor employees of the Trust. The effect of this is to allow Foundation Trusts to delegate their discharge powers in the way done by NHS Trusts.

Section 45(2) amends Section 32 of the 1983 Act so that the powers in that section to make regulations (including regulations regarding delegation of Hospital Manager's functions) are subject to Section 23(6) (as amended).

Section 45(3) inserts a new Section 142B into the Mental Health Act 1983 and provides that a Foundation Trust's constitution may not permit its functions under the 1983 Act to be delegated to executive directors or committees of directors unless that is permitted by or under the 1983 Act itself.

The benefit of this section is to allow NHS Foundation Trusts to delegate the power of discharge, rather than being reliant upon their non-executive directors to exercise these powers, as is currently the case.

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<sup>1</sup> See Briefing No. 116

<sup>2</sup> By the Mental Health Act 2007 (Commencement No. 1) Order 2007, SI 2007/2156