

# Mental Health Law Briefing

Number 118

## Mental Health Act 2007 – Part 2

The Mental Health Act 2007, amending the 1983 Act, was passed in July. Other than the provision relating to Foundation Trusts referred to in our previous Briefing, the Act will not come into force until the subsidiary Regulations and amendments to the Code of Practice have been finalised. However it is anticipated that the Act will come into force in April 2008.

This Briefing provides a summary of the key provisions.

### Definition of Mental Disorder

Mental Disorder is redefined as “any disorder or disability of the mind” removing the existing four categories of mental illness, mental impairment, severe mental impairment and psychopathic disorder.

The 1983 Act excludes promiscuity, immoral conduct and sexual deviancy from the definition of mental disorder. That exclusion is removed and these can therefore amount to a mental disorder. However dependence upon alcohol and drugs is not to be defined as mental disorder per se.

### Treatability Test

The 1983 Act requires the Treatability Test to be met for the admission of some categories of patient and on renewal.

The Treatability Test is abolished by the 2007 Act which applies a new test (to all patients, given the abolition of

the four categories of mental disorder referred to above) that medical treatment for mental disorder

*“shall be construed as ..... 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”.*

It should be noted that there is no need to be able to demonstrate that there is actual therapeutic benefit. Any benefit may simply be to treat the symptoms and signs of the disorder rather than treating the disorder itself. Therefore the disorder does not have to be seen to be either curable or treatable. Treatment may do this but it only has to be intended to benefit the symptoms or manifestations of the mental disorder.

The Act also requires the treatment to be “appropriate” in relation to the patient to whom the treatment is to be provided.

Note that the other detention criteria under the Act still apply and must be addressed as appropriate.

### Dramatis personae

Some of the professional roles inherent in the 1983 Act are amended by the 2007 Act. The RMO and a Section 12 approved professional no longer needs to be a doctor (eg it might include a Psychologist or Nurse), and the Approved Mental Health Professional does not have to be a Social Worker. Local Authorities will be responsible

for approving the AMHP whose training will be subject to statutory regulation and approved by the General Social Care Council<sup>1</sup>.

## Definition of Medical Treatment

The definition of medical treatment in Section 145 is amended to reflect the change in the dramatis personae referred to above and to make it plain that psychological interventions are valid medical treatment. This underlines the Government's clear policy to make it plain that personality disorder is covered by the Act.

## Nearest Relative

A Civil Partner will now be recognised in the same way as a spouse.

Further, patients themselves may apply to displace the nearest relative. An additional criteria for displacement is added, namely that the nearest relative is

*"otherwise not a suitable person to act as such"*

A patient therefore will have the right to nominate their own nearest relative but only through making an application to the Court and on the basis that the Court accepts that the person in the Section 26 list is not a suitable person. The amendment thus does not give the patient free choice per se simply to name a nearest relative of their choice.

## Advocates

The Secretary of State will now have a duty to provide Advocacy services for all detained patients<sup>2</sup>, Guardianship patients and patients subject to Community Treatment Orders. Service providers are obliged to provide patients with information that Advocacy services are available. The Advocates will have a right to meet with patients in private and to meet with the relevant professionals.

## Children

Patients under 18 admitted either informally or under the Detention Sections will be subject to a new provision requiring the Hospital Managers to consult a person who appears to them to have knowledge or experience of cases involving minors and to ensure that the environment is suitable for the child.

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<sup>1</sup> In England, or the Care Council for Wales

<sup>2</sup> Except those under Section 4, 5, 135 or 136

## SOAD

The Section 58 criteria for SOAD approval will be amended so that instead of certifying that the treatment is likely to alleviate or prevent a deterioration in the patient's condition, the new criteria will be that

*"....it is appropriate for the treatment to be given"*

Appropriate treatment is defined as treatment appropriate for the individual's case taking account of the nature and degree of the mental disorder from which he is suffering and all the other circumstances of the case. The Code of Practice will provide further guidance on this.

## ECT

Other than in cases of emergency,<sup>3</sup> a patient may not be given ECT if the patient has capacity and refuses it. It may only be given to an incapacitated patient if it does not conflict with an advanced decision, decision of a donee of a lasting Power of Attorney, or the decision of a Deputy or the Court of Protection.

A SOAD must approve ECT for anyone under 18 whether or not detained and whether or not the patient consents.

## MHRT

Patients must be automatically referred to the MHRT if detained or subject to a CTO after 6 months if the patient does not exercise their own right to apply themselves.

## Restricted Patients

The power to make time limited Restriction Orders is abolished.

## Informal Admission of 16 and 17 year olds

The 2007 Act amends Section 131 to make it plain that a person with Parental Responsibility cannot override the consent or refusal of consent of a child aged 16 or 17 with regard to admission to Hospital.

## Place of Safety

Sections 135 and 136 are amended to allow transfers between places of safety within the 72 hour detention period.

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<sup>3</sup> using Section 62

**Victims' Rights**

The victims of violent or sexual acts by unrestricted patients detained under Section 37 or 47 will have the right to information about and to representation at MHRT Hearings.

**Supervised Community Treatment and Deprivation of Liberty (The Bournemouth Gap)**

The detail of these provisions will be covered in our next Briefing.

**Andrew Parsons**  
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Our readers will have noted in Briefing No. 117 that the anticipated date for the implementation of the Mental Health Act 2007 was April 2008 once the Code of Practice, which was accompanying it was finalised. We understand that the proposed implementation date has now been put back to October 2008.

We also now understand that there will be a separate Code of Practice accompanying the Act for Wales.