

# MENTAL HEALTH ACT 2007

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## EXPLANATORY NOTES

### COMMENTARY

#### Part 3 - General

##### *Section 58: Extent*

251. **Section 58** provides that the amendments contained in the 2007 Act will have the same extent as the enactments they amend (subject to subsection (2)).
252. It has been agreed with the Office of the Solicitor to the Scottish Executive and the Office of the Solicitor to the Advocate General that the amendments in the Act which extend to Scotland, in so far as they relate to devolved matters, do not engage the Sewel Convention. Those amendments include the amendment to section 80 (removal of patients to Scotland), contained in paragraph 2 of Schedule 5. *Subsection (2)* sets out a handful of qualifications to the general proposition in *subsection (1)*.
253. Paragraph (a) of subsection (2) refers to paragraph 35 of Schedule 3. Paragraph 35 amends section 146 of the 1983 Act so as to provide that section 128 does not extend to Scotland. Paragraph (b) refers to paragraph 20 of Schedule 5. Paragraph 20 amends section 146 of the 1983 Act so as to provide that section 88 (and so far as applied by that section sections 18, 22 and 138) does not extend to Scotland. Both sections 88 and 128 will no longer apply in Scotland as a result of their repeal by the Adult Support and Protection (Scotland) Act 2007.
254. **Section 88** (patients absent from hospitals in England and Wales) currently provides for the taking into custody in Scotland of persons who are subject to measures in England and Wales in the 1983 Act and who escape from hospital there, fail to return at the end of a period of leave of absence or escape in other specified circumstances. Provision is made in the Mental Health (Care and Treatment) (Scotland) Act 2003 to deal with such matters in regulations made under section 309 (Patients from other jurisdictions) and so it is no longer necessary to have provision in the 1983 Act which extends to Scotland about this matter.
255. **Section 128** (Assisting patients to absent themselves without leave etc) of the 1983 Act makes provision for the offence of assisting patients subject to measures under the Mental Health Act 1983 to escape from custody or absent themselves without leave. This has been replaced in Scotland by the application of section 316 (Inducing and assisting absconding etc) of the Mental Health (Care and Treatment) (Scotland) Act 2003 to such patients, so again it is no longer necessary to have provision in the 1983 Act.
256. **Section 146** (Application to Scotland) of the 1983 Act lists the provisions of the 1983 Act which extend to Scotland. Sections 88 and 128 are at present included in section 146 as provisions which do extend to Scotland, and thus require amendment now this is no longer to be the case.

*These notes refer to the Mental Health Act 2007  
(c.12) which received Royal Assent on 19 July 2007*

257. Paragraph (b) of subsection (2) of section 58 also refers to paragraphs 3 and 4 of Schedule 5. Those paragraphs insert new sections 80ZA, 80B, 80C and 80D, which make provision about the transfer of patients to and from Scotland. There is nothing in any of those sections which needs to form part of the law of Scotland in order for them to operate properly. But section 80 (after which section 80ZA is to be inserted) and section 80A (after which sections 80B to 80D are to be inserted) each extend to Scotland. So it might be arguable that the new sections also extend to Scotland. Paragraphs 3(2) and 4(2) of Schedule 5 remove any such doubt.
258. Paragraph (c) of subsection (2) of section 58 refers to paragraph 12 of Schedule 8. Paragraph 12 amends section 47 of the National Assistance Act 1948 (which makes provision in respect of those in particular need of care and attention) to take account of a change made by the Act to the MCA. Section 47 of the National Assistance Act will no longer apply in Scotland as a result of its repeal by Schedule 2 to the Adult Support and Protection (Scotland) Act 2007. As such, the amendment to section 47 does not need to extend to Scotland. *Sub-paragraph (3)* of paragraph 12 makes provision for this.
259. Subsection (3) provides that section 54 (consequential provisions) extends to the United Kingdom so as to ensure that consequential amendments made in reliance on that section can extend to Scotland or Northern Ireland if the provisions being amended also extend there.