



Mental Health Act 2007

2007 CHAPTER 12

PART 1

AMENDMENTS TO MENTAL HEALTH ACT 1983

CHAPTER 8

MISCELLANEOUS

42 Offence of ill-treatment: increase in maximum penalty on conviction on indictment

In section 127 of the 1983 Act (ill-treatment or wilful neglect of patients), in subsection (3)(b), for “two years” substitute “five years”.

43 Informal admission of patients aged 16 or 17

In section 131 of the 1983 Act (informal admission of patients), for subsection (2) substitute—

“(2) Subsections (3) and (4) below apply in the case of a patient aged 16 or 17 years who has capacity to consent to the making of such arrangements as are mentioned in subsection (1) above.

(3) If the patient consents to the making of the arrangements, they may be made, carried out and determined on the basis of that consent even though there are one or more persons who have parental responsibility for him.

(4) If the patient does not consent to the making of the arrangements, they may not be made, carried out or determined on the basis of the consent of a person who has parental responsibility for him.

(5) In this section—

Status: This is the original version (as it was originally enacted).

- (a) the reference to a patient who has capacity is to be read in accordance with the Mental Capacity Act 2005; and
- (b) “parental responsibility” has the same meaning as in the Children Act 1989.”

44 Places of safety

- (1) The 1983 Act is amended as follows.
- (2) In section 135 (warrant to search for and remove patients), after subsection (3) insert—
 - “(3A) A constable, an approved mental health professional or a person authorised by either of them for the purposes of this subsection may, before the end of the period of 72 hours mentioned in subsection (3) above, take a person detained in a place of safety under that subsection to one or more other places of safety.
 - (3B) A person taken to a place of safety under subsection (3A) above may be detained there for a period ending no later than the end of the period of 72 hours mentioned in subsection (3) above.”
- (3) In section 136 (mentally disordered persons found in public places), after subsection (2) insert—
 - “(3) A constable, an approved mental health professional or a person authorised by either of them for the purposes of this subsection may, before the end of the period of 72 hours mentioned in subsection (2) above, take a person detained in a place of safety under that subsection to one or more other places of safety.
 - (4) A person taken to a place of a safety under subsection (3) above may be detained there for a purpose mentioned in subsection (2) above for a period ending no later than the end of the period of 72 hours mentioned in that subsection.”

45 Delegation of powers of managers of NHS foundation trusts

- (1) In section 23(6) of the 1983 Act (delegation of NHS foundation trust’s power to discharge patients), for the words from “non-executive directors” to the end substitute “persons authorised by the board of the trust in that behalf each of whom is neither an executive director of the board nor an employee of the trust.”
- (2) In section 32(3) of the 1983 Act (power to make provision about how hospital managers' functions under Part 2 of that Act are to be exercised), after “23(4)” insert “and (6)”.
- (3) After section 142A of the 1983 Act (inserted by section 17 of this Act), insert—

“142B Delegation of powers of managers of NHS foundation trusts

- (1) The constitution of an NHS foundation trust may not provide for a function under this Act to be delegated otherwise than in accordance with provision made by or under this Act.
- (2) Paragraph 15(3) of Schedule 7 to the National Health Service Act 2006 (which provides that the powers of a public benefit corporation may be delegated to

a committee of directors or to an executive director) shall have effect subject to this section.”

46 Local Health Boards

- (1) The 1983 Act is amended as follows.
- (2) In section 19(3) (removal of patients), after “NHS foundation trust”, in each place, insert “, Local Health Board”.
- (3) In section 145(1) (interpretation)—
 - (a) in the definition of “hospital”, after paragraph (b) insert “; and
 - (c) any hospital as defined by section 206 of the National Health Service (Wales) Act 2006 which is vested in a Local Health Board;”, and
 - (b) in the definition of “the managers”, after paragraph (bc) insert—
 - “(bd) in relation to a hospital vested in a Local Health Board, the Board;”.

47 Welsh Ministers: procedure for instruments

- (1) Section 143 of the 1983 Act (general provisions as to regulations, orders and rules) is amended as follows.
- (2) In subsection (2), for “or rules made” substitute “made by the Secretary of State, or rules made;”.
- (3) After subsection (3) insert—
 - “(3A) Subsections (3B) to (3D) apply where power to make regulations or an order under this Act is conferred on the Welsh Ministers (other than by or by virtue of the Government of Wales Act 2006).
 - (3B) Any power of the Welsh Ministers to make regulations or an order shall be exercisable by statutory instrument.
 - (3C) Any statutory instrument containing regulations, or an order under section 68A(7) above, made by the Welsh Ministers shall be subject to annulment in pursuance of a resolution of the National Assembly for Wales.
 - (3D) No order shall be made under section 68A(1) above by the Welsh Ministers unless a draft of it has been approved by a resolution of the National Assembly for Wales.
 - (3E) In this section—
 - (a) references to the Secretary of State include the Secretary of State and the Welsh Ministers acting jointly; and
 - (b) references to the Welsh Ministers include the Welsh Ministers and the Secretary of State acting jointly.”