

EXPLANATORY MEMORANDUM TO
THE MENTAL HEALTH ACT 2007 (COMMENCEMENT NO. 7 AND
TRANSITIONAL PROVISIONS) ORDER 2008

2008 No. 1900 (C.84)

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Description

This instrument brings into force, on 3 November 2008, the bulk of the provisions of the Mental Health Act 2007 (the 2007 Act) which amend the Mental Health Act 1983 (the 1983 Act). It also commences section 48 and Schedule 6 (which amend the Domestic Violence, Crime and Victims Acts 2004).

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Background

4.1 This instrument is part of the implementation of the 2007 Act.

4.2 The order brings into force the majority of the remaining amendments made by the 2007 Act to the 1983 Act from 3 November 2008. But it does not deal with those amendments which Ministers indicated during the passage of the 2007 Act would be brought in at a later date (in particular, the amendments relating to the provision of independent mental health advocates and age-appropriate hospital accommodation for children and young people).

4.3 The order contains a number of transitional provisions, which are in addition to those made by Schedule 10 to the 2007 Act itself.

5. Territorial Extent and Application

Unless otherwise stated, the amendments commenced, and modifications made, by this order have the same extent as the enactments they amend or modify.

6. European Convention on Human Rights

As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

Electro-convulsive Therapy

7.1 One of the effects of the commencement of Section 27 of the 2007 Act is that in future (except in emergencies) no child or young person under 18 may be given electro-convulsive therapy for mental disorder unless it is approved by a second opinion appointed doctor (SOAD). Paragraph 13 of the Schedule to this order provides a brief transitional period during which certain children and young people may continue to be given ECT while steps are taken to obtain approval from a SOAD. That is to avoid interrupting or delaying their treatment.

Approved mental health professionals

7.2 The role currently undertaken by the approved social worker (ASW) is being opened up to a wider group of professionals, and these practitioners will be called approved mental health professionals (AMHPs).

7.3 To allow for a smooth transition to the new arrangements and to prevent unnecessary disruption to service delivery, this Order allows individuals who are already approved as ASWs to be treated as if they are approved as AMHPs from the commencement date for as long as their ASW approval lasts. This Order also applies certain parts of the Approval Regulations to persons so treated as approved. It also allows for decisions made by ASWs before the commencement date to be treated as made by AMHPs.

Approved clinicians and responsible clinicians

7.4 The roles currently undertaken by responsible medical officers (RMOs) and registered medical practitioners (in respect of certain parts of the 1983 Mental Health Act) are being opened up to a wider group of professionals, these practitioners will be called approved clinicians (ACs) and responsible clinicians (RCs). This instrument allows that any decisions made by an RMO or registered medical practitioner before these new regulations are commenced are to be treated as though they had been made by an AC and RC.

Supervised Community Treatment

7.5 The Act introduces supervised community treatment (SCT), a new way to manage the care and treatment of patients in the community rather than under detention in hospital. Eligible patients include those detained under Part 3 of the Mental Health Act (that is, they have been involved in criminal proceedings) provided they are not subject to a restriction order. Consequential amendments have therefore been made under Schedule 4 of the 2007 Act to certain other Acts, to allow continuity of care and treatment in the event that an appeal against a conviction, or by the prosecution, involves an SCT patient. The purpose of the amendments is to provide that SCT may continue, or be ordered by a court to continue, if an appeal is made under any of the Acts in question. These are the Administration of Justice Act 1960, the Criminal Appeal Act 1968 and the Courts-Martial (Appeals) Act 1968.

7.6 The amendments take account of provisions in other Acts which amend the relevant Acts. The Constitutional Reform Act 2005 establishes a Supreme Court of the United Kingdom and abolishes the appellate function of the House of Lords; the Armed Forces Act 2006 introduces a Director of Service Prosecutions to replace the Defence Council, and amends the definition of “relevant time”. These provisions will not however be in force by November 2008.

7.7 Transitional arrangements are therefore required to modify the consequential amendments made by Schedule 4 of the 2007 Act until such time as the measures above are brought into force.

Consultation

7.8 Consultation on draft AMHP regulations and AC directions, including the transitional arrangements, took place as part of the Department of Health’s consultation on draft secondary legislation arising from the Mental Health Act 2007. The consultation ran from 25th October 2007 to 24th January 2008, and was supplemented by events and workshops. Proposals for these transitional arrangements were generally supported.

Guidance

7.9 The Department of Health intends to notify the NHS and social care organisations of the implementation of these provisions of the 2007 Act through the regular bulletin issued by the Chief Executive of the NHS (“The Week”) which will include a link to the relevant information on the Department of Health website. In addition, guidance on the new AMHP and AC roles is being prepared for employers and approvers.

8. Impact

8.1 An impact assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies over and above that already identified for the provisions of the Act which it commences.

9. Contact

Clive Marritt at the Department of Health (tel. 020 7972 4492 or e-mail: clive.marritt@dh.gsi.gov.uk) can answer any queries about the instrument.