

2008 No. 2828

MENTAL HEALTH

**The Mental Health Act 2007 (Consequential Amendments)
Order 2008**

Made - - - - - *28th October 2008*

Coming into force as provided in article 1

Whereas a draft of this instrument was laid before Parliament in accordance with section 54(5) of the Mental Health Act 2007^(a) and approved by resolution of each House of Parliament.

The Secretary of State for Health, in exercise of the powers conferred by section 54(1) and (2) of the Mental Health Act 2007, and with the agreement of the Welsh Ministers, makes the following Order:

PART 1

Preliminary

Citation and commencement

1.—(1) This Order may be cited as the Mental Health Act 2007 (Consequential Amendments) Order 2008.

(2) Subject to paragraph (3), this Order comes into force on 3 November 2008.

(3) Articles 11, 12, 13, 14, 17(b), 18(b) and 19(b) come into force on 4 May 2009.

Extent

2.—(1) Subject to paragraphs (2), (3), (4) and (5), this Order extends to England and Wales only.

(2) Article 4 also extends to Scotland and Northern Ireland.

(3) Article 6 also extends to Scotland.

(4) Article 16 extends to England only.

(5) Article 17 extends to Scotland only.

(6) Article 20 also extends to Northern Ireland.

(a) 2007 c. 12.

PART 2

Amendment of primary legislation

Amendment of the Local Authority Social Services Act 1970

3. In Schedule 1 to the Local Authority Social Services Act 1970(a) (social services functions), in the entry relating to section 114 of the Mental Health Act 1983(b), for “approved social workers” substitute “approved mental health professionals”.

Amendment of the Disability Discrimination Act 1995

4. In section 68(1) of the Disability Discrimination Act 1995(c) (interpretation), the definition of “mental impairment” is repealed.

Amendment of the Family Law Act 1996

5. In section 63L(4) of the Family Law Act 1996(d) (remand: medical examination and report), for “mental illness or severe mental impairment” substitute “mental disorder within the meaning of the Mental Health Act 1983”.

Amendment of the Disability Discrimination Act 2005

6. Paragraph 34(4) of Schedule 1 to the Disability Discrimination Act 2005(e) (minor and consequential amendments) is repealed.

PART 3

Amendment of subordinate legislation

Amendment of the Mental Health Act Commission (Establishment and Constitution) Order 1983

7. In article 3 of the Mental Health Act Commission (Establishment and Constitution) Order 1983(f) (functions of the Commission), after paragraph (2)(b) insert—

“(ba) the function of giving notice disapplying a Part 4A certificate under section 64H(5) of the Act(g);”.

Amendment of the Family Proceedings Courts (Matrimonial Proceedings etc) Rules 1991

8. In Schedule 1 to the Family Proceedings Courts (Matrimonial Proceedings etc) Rules 1991(h) (Forms), in Forms FL409 (Remand Order), FL413 (Hospital Order/Interim Hospital Order) and FL 414 (Guardianship Order), for “(mental illness) (severe mental impairment)” substitute “mental disorder”.

(a) 1970 c. 42.

(b) 1983 c. 20.

(c) 1995 c. 50.

(d) 1996 c. 27. Section 63L was inserted by section 1 of the Forced Marriage (Civil Protection) Act 2007 (c.20).

(e) 2005 c. 13.

(f) S.I. 1983/892.

(g) Section 64H was inserted by section 35(1) of the Mental Health Act 2007.

(h) S.I. 1991/1991. These Forms were inserted by S.I. 1997/1894.

Revocation of the Mental Health (Patients in the Community) (Transfers from Scotland) Regulations 1996

9. The Mental Health (Patients in the Community) (Transfers from Scotland) Regulations 1996(a) are revoked.

Amendment of the Teachers' Pensions Regulations 1997

10. In Schedule 2 to the Teachers' Pensions Regulations 1997(b) (pensionable employment), in paragraph 12, for "impairment, severe mental impairment, psychopathic disorder or mental illness" substitute "disorder".

Amendment of the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000

11. In regulation 5(b) of the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000(c) (functions of NHS bodies), for "sections 25A to 25H and" substitute "section".

Amendment of the National Health Service (Payments by Local Authorities to NHS Bodies) (Prescribed Functions) Regulations 2000

12. In regulation 2(1)(b) of the National Health Service (Payments by Local Authorities to NHS Bodies) (Prescribed Functions) Regulations 2000(d) (prescribed functions of NHS bodies), for "sections 25A to 25H and" substitute "section".

Amendment of the National Health Service Bodies and Local Authorities Partnership Arrangements (Wales) Regulations 2000

13. In regulation 5(b) of the National Health Service Bodies and Local Authorities Partnership Arrangements (Wales) Regulations 2000(e) (functions of National Health Service bodies), for "sections 25A to 25H and" substitute "section".

Amendment of the National Health Service (Payments by Local Authorities to Health Authorities) (Prescribed Functions) (Wales) Regulations 2001

14. In regulation 2(1)(b) of the National Health Service (Payments by Local Authorities to Health Authorities) (Prescribed Functions) (Wales) Regulations 2001(f) (prescribed functions of Health Authorities in Wales), for "sections 25A to 25H and" substitute "section".

Revocation of the Mental Health Act 1983 (Remedial) Order 2001

15. The Mental Health Act 1983 (Remedial) Order 2001(g) is revoked.

Amendment of the Private and Voluntary Health Care (England) Regulations 2001

16. In regulation 47 of the Private and Voluntary Health Care (England) Regulations 2001(h) (mental health records), for "Mental Health (Hospital, Guardianship and Consent to Treatment)

(a) S.I. 1996/295.
(b) S.I. 1997/3001.
(c) S.I. 2000/617.
(d) S.I. 2000/618.
(e) S.I. 2000/2993.
(f) S.I. 2001/1543.
(g) S.I. 2001/3712.
(h) S.I. 2001/3968.

Regulations 1983” substitute “Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008(a)”.

Amendment of the Community Care (Direct Payments) (Scotland) Regulations 2003

17. In regulation 2 of the Community Care (Direct Payments) (Scotland) Regulations 2003(b) (description of persons specified for the purposes of section 12B(1) of the Act)—

(a) after paragraph (m) insert—

“(ma) a person who is subject to a community treatment order within the meaning of section 17A of the 1983 Act(c)”;

(b) omit paragraph (n).

Amendment of the Community Care, Services for Carers and Children’s Services (Direct Payments) (England) Regulations 2003

18. In regulation 2(2) of the Community Care, Services for Carers and Children’s Services (Direct Payments) (England) Regulations 2003(d) (prescribed descriptions of persons—community care services and services for carers)—

(a) after subparagraph (e) insert—

“(ea) he is subject to a community treatment order within the meaning of section 17A of the 1983 Act;”;

(b) omit subparagraph (f).

Amendment of the Community Care, Services for Carers and Children’s Services (Direct Payments) (Wales) Regulations 2004

19. In Schedule 1 to the Community Care, Services for Carers and Children’s Services (Direct Payments) (Wales) Regulations 2004(e) (persons to whom direct payments may not be made)—

(a) after subparagraph (e) substitute—

“(ea) who is subject to a community treatment order within the meaning of section 17A of the 1983 Act;”;

(b) omit subparagraph (f).

Amendment of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005

20. In article 8 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005(f) (patients absent from hospitals or other places in Scotland), in paragraph (2)(b)(i), for “social worker” substitute “mental health professional”.

Signed by authority of the Secretary of State for Health.

Phil Hope
Minister of State,
Department of Health

28th October 2008

(a) S.I. 2008/1184.
(b) S.S.I. 2003/243.
(c) Section 17A was inserted by section 32(2) of the Mental Health Act 2007.
(d) S.I. 2003/762.
(e) S.I. 2004/1748.
(f) S.I. 2005/2078.

EXPLANATORY NOTE

(This note is not part of the Order)

The purpose of this Order is to make amendments to certain Acts and Statutory Instruments as a consequence of the enactment of the Mental Health Act 2007 (“the 2007 Act”).

Article 1 provides for citation and commencement. While the majority of the Order comes into force on 3 November 2008, amendments consequential on the repeal of provisions of the Mental Health Act 1983 (“the 1983 Act”) that deal with after care under supervision (“ACUS”) will not come into force until 4th May 2009, the day after the day on which ACUS classification will end.

Article 2 provides that generally this Order extends to England and Wales only. Article 4 also extends to Scotland and Northern Ireland. Article 17 extends to Scotland only. Article 20 also extends to Northern Ireland.

Article 3 updates terminology in the Local Authority Social Services Act 1970 to reflect the replacement of approved social workers with approved mental health professionals in the 1983 Act.

Article 4 repeals the term “mental impairment” from the Disability Discrimination Act 1995, as this term is no longer used in the 1983 Act. The term “mental disorder” is now used instead. Article 5 amends section 63L of the Family Law Act 1996 on the same basis.

Article 6 repeals a provision of the Disability Discrimination Act 2005, which is consequential to the amendment made by article 4.

Article 7 amends article 3 of the Mental Health Act Commission (Establishment and Constitution) Order 1983 to add a function under the new legislation to the prescribed list of functions that the Mental Health Act Commission performs on behalf of the Secretary of State. The additional function is that of directing that a certificate under Part 4A of the Mental Health Act 1983 (which regulates the treatment of community patients) shall not apply to the treatment of a patient.

Article 8 updates the terminology in certain forms prescribed by the Family Proceedings Courts (Matrimonial Proceedings etc) Rules 1991 to reflect the new term “mental disorder”.

Article 9 revokes the Mental Health (Patients in the Community) (Transfers from Scotland) Regulations 1996. These Regulations have become redundant as a result of the 2007 Act.

Article 10 amends Schedule 2 to the Teachers’ Pensions Regulations 1997 to reflect the new term “mental disorder”.

Articles 11, 12, 13 and 14 omit the references to ACUS from the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000, National Health Service (Payments by Local Authorities to NHS Bodies) (Prescribed Functions) Regulations 2000, National Health Service Bodies and Local Authorities Partnership Arrangements (Wales) Regulations 2000 and the National Health Service (Payments by Local Authorities to Health Authorities) (Prescribed Functions) (Wales) Regulations 2001, respectively. These articles commence on 4th May 2009.

Article 15 revokes the Mental Health Act 1983 (Remedial) Order 2001, which is now redundant.

Article 16 updates a reference in the Private and Voluntary Health Care (England) Regulations 2001 from the Mental Health (Hospital, Guardianship and Consent to Treatment) Regulations 1983 to the Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008, which replace the 1983 Regulations in respect of England from 3rd November 2008.

Articles 17, 18 and 19 amend the Regulations concerning Direct Payments for Scotland, England and Wales, respectively. Paragraph (a) of each article inserts a reference to supervised community treatment, the replacement regime for ACUS, into each of those Regulations. Paragraph (b) of each article omits a reference to ACUS in each of those Regulations, with effect from 4th May 2009.

Article 20 amends the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 to reflect the replacement of approved social workers with approved mental health professionals in the 1983 Act.

An impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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STATUTORY INSTRUMENTS

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