

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

MENTAL HEALTH ACT 2007

EXPLANATORY NOTES

BACKGROUND AND SUMMARY

Background

4. The legislation governing the compulsory treatment of certain people who have a mental disorder is the Mental Health Act 1983 (the 1983 Act). The main purpose of the 2007 Act is to amend the 1983 Act. It is also being used to introduce “deprivation of liberty safeguards” through amending the Mental Capacity Act 2005 (MCA); and to extend the rights of victims by amending the Domestic Violence, Crime and Victims Act 2004.
5. The 1983 Act is largely concerned with the circumstances in which a person with a mental disorder can be detained for treatment for that disorder without his or her consent. It also sets out the processes that must be followed and the safeguards for patients, to ensure that they are not inappropriately detained or treated without their consent. The main purpose of the legislation is to ensure that people with serious mental disorders which threaten their health or safety or the safety of the public can be treated irrespective of their consent where it is necessary to prevent them from harming themselves or others.
6. The changes in relation to the MCA are in response to the 2004 European Court of Human Rights judgment (*HL v UK (Application No.45508/99)*) (the “Bournewood judgment”) involving an autistic man who was kept at Bournewood Hospital by doctors against the wishes of his carers. The European Court of Human Rights found that admission to and retention in hospital of HL under the common law of necessity amounted to a breach of Article 5(1) ECHR (deprivation of liberty) and of Article 5(4) (right to have lawfulness of detention reviewed by a court).