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STATUTORY INSTRUMENTS

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**2009 No. 139 (C.9)**

**MENTAL HEALTH, ENGLAND AND WALES**

**The Mental Health Act 2007 (Commencement  
No.10 and Transitional Provisions) Order 2009**

<i>Made</i>	- - - -	<i>29th January 2009</i>
<i>Laid before Parliament</i>		<i>4th February 2009</i>
<i>Coming into force</i>	- -	<i>1st April 2009</i>

The Secretary of State, in exercise of the powers conferred by section 56(1) and (4) of the Mental Health Act 2007<sup>(1)</sup>, and with the agreement of the Welsh Ministers, makes the following Order:

**Citation and interpretation**

1.—(1) This Order may be cited as the Mental Health Act 2007 (Commencement No. 10 and Transitional Provisions) Order 2009 and shall come into force on the 1st April 2009.

(2) In this Order,

“the 2005 Act” means the Mental Capacity Act 2005<sup>(2)</sup>; and

“the Act” means the Mental Health Act 2007.

**Appointed day**

2. The 1st April 2009 is the day appointed for the coming into force of the following provisions of the Act—

- (a) section 30 (independent mental health advocates), in so far as it applies to England and is not already in force;
- (b) section 50 (deprivation of liberty) in so far as not already in force;
- (c) Schedule 7 (which inserts new Schedule A1 into the 2005 Act) in so far as not already in force;
- (d) Schedule 8 (which inserts new Schedule 1A into the 2005 Act);
- (e) Schedule 9 (which makes other amendments to the 2005 Act and to other Acts) in so far as not already in force; and

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(1) 2007 c.12.

(2) 2005 c.9.

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- (f) Part 10 (deprivation of liberty) of Schedule 11 and in so far as it relates to that Part, section 55 (repeals and revocations) of the Act.

**Schedule**

3. The Schedule to this Order, which makes transitional provisions shall have effect.

Signed by authority of the Secretary of State for Health.

29th January 2009

*Phil Hope*  
Minister of State,  
Department of Health

## SCHEDULE

### TRANSITIONAL PROVISIONS

#### **Interpretation**

**1.** In this Schedule—

“managing authority” shall be construed in accordance with paragraphs 176, 177 and 179 of Schedule A1 to the 2005 Act;

“the Regulations” mean the Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008<sup>(3)</sup>;

“standard authorisation” has the same meaning as in paragraph 8 of Schedule A1 to the 2005 Act; and

“urgent authorisation” has the same meaning as in paragraph 9 of Schedule A1 to the 2005 Act.

#### **Standard authorisations**

**2.** Where a request for a standard authorisation is made by the managing authority on or before the 30th April 2009, paragraph (1) of regulation 13 (time frame for assessments) of the Regulations shall apply to the request as if that paragraph read—

“(1) Except as provided in paragraph (2), all assessments required for a standard authorisation must be completed within the period of 42 days beginning with the date on which the supervisory body<sup>(4)</sup> receives a request for such an authorisation.”

#### **Urgent authorisations**

**3.** Where a managing authority decides to give an urgent authorisation under paragraph 76 of Schedule A1 to the 2005 Act on or before the 30th April 2009, sub-paragraph (2) of paragraph 78 (terms of authorisation) of Schedule A1 to the 2005 Act shall apply as if that sub-paragraph read—

“(2) That period must not exceed 21 days.”

#### **Extensions of authorisations**

**4.** Paragraphs 77(3) to (5) (duty to give authorisation) and paragraphs 84, 85 and 86 (request for extension of duration) of Schedule A1 to the 2005 Act shall not apply in relation to urgent authorisations given on or before the 30th April 2009.

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(3) [S.I. 2008/1858](#).

(4) The supervisory body is determined in accordance with paragraphs 128, 180, 181 and 182 of Schedule A1 to the 2005 Act.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order brings into force section 30 in so far as not already in force and the remaining provisions of section 50 of the Mental Health Act 2007 (“the Act”) and its related consequential amendments and repeals.

Section 30 of the Act inserts provisions about independent mental health advocates into the Mental Health Act 1983 (c.20). This Order commences this section in so far as it is not already in force in England. It is already fully in force in Wales.

Section 50 of the Act makes amendments to provisions of the Mental Capacity Act 2005 (“the 2005 Act”) relating to deprivation of liberty safeguards.

This Commencement Order commences section 50 and Schedules 7 and 9 of the Act, in so far as not already in force and Schedule 8.

The Order also makes transitional provisions, which are set out in the Schedule. Paragraph 2 extends time for completing assessments for a standard authorisation from 21 days to 42 days provided that the request is received on or before the 30th April 2009; and paragraph 3 extends the period of an urgent authorisation from 7 to 21 days, provided it is given on or before the 30th April 2009. Paragraph 4 precludes requests for extensions of the duration of urgent authorisations given on or before the 30th April 2009.

## NOTE AS TO EARLIER COMMENCEMENT ORDERS

*(This note is not part of the Order)*

The following provisions of the Mental Health Act 2007 have been brought into force in England and Wales by commencement orders made before the date of this Order:

<i>Provision of the Act</i>	<i>Date of Commencement</i>	<i>S.I. Number</i>
Section 1 and Schedule 1	03.11.2008	2008/1210(C.52)
	03.11.2008	2008/1900(C.84)
Sections 2 to 16	03.11.2008	2008/1900(C.84)
Section 17	01.04.2008	2008/745(C.30)
Section 18	01.04.2008	2008/745(C.30)
	03.11.2008	2008/1900(C.84)
	03.11.2008	2008/2561(C.113)
Section 19	01.10.2007	2007/2798(C.108)
Section 20	01.10.2007	2007/2798(C.108)
Section 21 and Schedule 2	03.11.2008	2008/1900(C.84)
	03.11.2008	2008/2561(C.113)

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<i>Provision of the Act</i>	<i>Date of Commencement</i>	<i>S.I. Number</i>
Section 22	01.04.2008	2008/745(C.30)
	03.11.2008	2008/1900(C.84)
Sections 23 to 25	03.11.2008	2008/1900(C.84)
Section 26	01.12.2007	2007/2798(C.108)
Sections 27 to 29	03.11.2008	2008/1900(C.84)
Section 30 (partially)	01.04.2008	2008/745(C.30)
	03.11.2008	2008/2561(C.113)
Section 31 (partially)	03.11.2008	2008/1900(C.84)
Section 32 and Schedules 3 and 4	01.04.2008	2008/745(C.30)
	03.11.2008	2008/1210(C.52)
	03.11.2008	2008/1900(C.84)
Sections 33 and 34	03.11.2008	2008/1900(C.84)
Section 35	01.04.2008	2008/745(C.30)
	03.11.2008	2008/1900(C.84)
Section 36	03.11.2008	2008/1210(C.52)
Section 37	03.11.2008	2008/1900(C.84)
Section 38 (partially)	03.11.2008	2008/1900(C.84)
Section 39 and Schedule 5	01.10.2007	2007/2798(C.108)
	01.04.2008	2008/745(C.30)
	28.10.2008	2008/2788(C.124)
	03.11.2008	2008/1900(C.84)
Section 40	01.10.2007	2007/2798(C.108)
Section 41	01.10.2007	2007/2798(C.108)
Section 42	01.10.2007	2007/2798(C.108)
Section 43	01.01.2008	2007/2798(C.108)
Section 44	30.04.2008	2008/800 (C. 39)
Section 45	24.07.2007	2007/2156(C.80)
Section 46	01.10.2007	2007/2798(C.108)
Section 47	01.04.2008	2008/745(C.30)
Section 48 and Schedule 6	03.11.2008	2008/1900(C.84)
Section 49	01.10.2007	2007/2798(C.108)

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<i>Provision of the Act</i>	<i>Date of Commencement</i>	<i>S.I. Number</i>
Section 50 and Schedules 7 and 9 (partially)	01.04.2008	2008/745(C.30)
Section 51	01.10.2007	2007/2635(C.102)
Section 54	01.04.2008	2008/745(C.30)
Section 55 and Schedule 11 (partially)	03.11.2008	2008/1210(C.52)
	03.11.2008	2008/1900(C.84)
	28.10.2008	2008/2788(C.124)