

# MENTAL HEALTH ACT 2007

---

## EXPLANATORY NOTES

### COMMENTARY

#### **Part 1 – Amendments to Mental Health Act 1983**

#### *Chapter 2 - Professional Roles*

#### *Section 21: Approved mental health professionals: further amendments and Schedule 2*

70. **Section 21** introduces Schedule 2 which makes further amendments to the 1983 Act in relation to ASWs.
71. ASWs are responsible for assessing whether an application for a patient's admission under Part 2 of the 1983 Act should be made (unless the application is made by the patient's nearest relative). They arrange and co-ordinate the assessment, taking into account all factors to determine if detention in hospital is the best option for a patient or if there is a less restrictive alternative. The 2007 Act allows assessments for admission to be undertaken by an AMHP, who might, for example, be a nurse, occupational therapist or chartered psychologist, as well as a social worker.
72. **Paragraph 5** of Schedule 2 amongst other things amends section 13(1) of the 1983 Act so that LSSAs who have reason to think that an application for admission to hospital or a guardianship application may need to be made in respect of a patient within their area shall have a duty to arrange for an AMHP to consider the patient's case on their behalf. Where a patient is detained for assessment under section 2, and the LSSA that arranged for an AMHP to consider that admission has reason to think that an application for treatment may be needed under section 3, new subsections (1B) and (1C) of section 13 place a duty on that LSSA to arrange for an AMHP to consider the patient's case on their behalf even where the patient is no longer in the area of that authority. The duties under sections 13(1), (1B) and (1C) do not prevent another LSSA from arranging for an AMHP to consider a patient's case. Subsection (5) of section 13, as amended by paragraph 5(6) of Schedule 2, makes clear that any other LSSA also has the power to do so. The effect of the amendments to section 13 is to provide for LSSAs to continue to have a role in ensuring that there is an adequate AMHP service, whether they choose to run the AMHP service themselves or enter into agreements with other LSSAs and/or NHS organisations to do so.
73. Because AMHPs will no longer always be employed by a LSSA, section 145 of the 1983 Act is amended to provide in new subsection (1AC) that references to an AMHP in the 1983 Act are generally to be read as an AMHP carrying out their functions on behalf of a LSSA. This is to retain the link between the AMHP and an LSSA even though the AMHP no longer needs to be employed by an LSSA.