

# MENTAL HEALTH ACT 2007

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## EXPLANATORY NOTES

### COMMENTARY

#### Part 3 - General

##### *Sections 52-59*

244. This Part sets out general provisions for the 2007 Act. Particular points to note are set out below.

##### *Section 53 and Schedule 10: Transitional provision and savings*

245. [Section 53](#) introduces Schedule 10, which contains a number of transitional provisions. These transitional provisions provide a bridge from the system as it operates at present under the 1983 Act to the one that will operate under the amendments made to the 1983 Act by the 2007 Act. They stipulate the extent to which an amendment to the 1983 Act applies to or has an impact on a patient who is subject to the 1983 Act when the amendments come into force. The transitional provisions in Schedule 10 relate to provisions in the 2007 Act concerning:

- the authority to detain a patient
- consent to treatment
- the reclassification of a patient's mental disorder
- the patient's nearest relative
- the rules governing applications and referrals to the MHRT
- independent mental health advocates.

##### *Section 54: Consequential provisions*

246. [Section 54](#) allows the Secretary of State to make minor supplementary, incidental or consequential amendments to relevant provisions of other Acts and subordinate legislation by means of an order. This is to ensure that provisions in other Acts and subordinate legislation are consistent with the changes contained in the 1983 Act, as amended by the 2007 Act. The Secretary of State will require the agreement of the Welsh Ministers to make these amendments, to the extent that they relate to matters in respect of which functions are exercised by the Welsh Ministers.

##### *Section 56: Commencement*

247. [Section 56](#) (commencement) provides that the provisions of the 2007 Act (other than sections 51-53 and Schedule 10, section 56 itself and sections 57- 59) are to be brought into force on a day appointed for the purpose by the Secretary of State by order made by statutory instrument. In accordance with subsection (4)(a), provisions may be commenced separately in England and Wales. They may also be commenced separately

for different groups of patients, e.g. those subject to Part 2 or Part 3 of the 1983 Act and, where relevant, informal patients.

248. **Section 51**, which amends the MCA, will be brought into force on a day appointed by order made by the Lord Chancellor. Sections 52 (meaning of “1983 Act”), 53 and Schedule 10 (transitional provisions and savings), 56 (commencement), 57 (commencement of section 36), 58 (extent) and 59 (short title) will come into effect immediately. Orders made under section 56 are to be made by statutory instrument and, by virtue of subsection (6), are subject to the negative resolution procedure if they include transitional or saving provision.
249. The power in subsections (4)(b) and (5) to make transitional provision to modify the application of the 2007 Act pending the commencement of a provision of another enactment will be used to make temporary modifications to the amendments made by Schedule 4 to the Administration of Justice Act 1960, the Courts-Martial (Appeals) Act 1968 and the Criminal Appeal Act 1968. The modifications will be necessary in order to reflect the existing definition of “relevant time” in section 20(5) of the Courts-Martial (Appeals) Act pending its repeal and replacement by a new definition, for which the Armed Forces Act 2006 provides. They will also be necessary to provide for the retention of the role of the Defence Council under the Courts-Martial (Appeals) Act pending its replacement by that of the Director of Service Prosecutions, for which the Armed Forces Act provides. And they will be necessary to provide for the retention of the role of the House of Lords in the Administration of Justice Act, the Criminal Appeal Act and the Courts-Martial (Appeals) Act pending its replacement by the Supreme Court, for which the Constitutional Reform Act 2005 provides.

#### ***Section 57: Commencement of section 36***

250. **Section 57** gives the Secretary of State the power to make provision in an order made under section 56 for the commencement of section 36 (repeal of provisions for after-care under supervision) for transitional arrangements for persons subject to after-care under supervision when it ends. The intention is to retain after-care under supervision for a brief period after its abolition so that a decision can be made about what should happen to a person subject to it at that time. PCTs in England and LHBs in Wales will be required to ensure that a registered medical practitioner examines each person subject to after-care under supervision within the transitional period so that such a decision can be made.

#### ***Section 58: Extent***

251. **Section 58** provides that the amendments contained in the 2007 Act will have the same extent as the enactments they amend (subject to subsection (2)).
252. It has been agreed with the Office of the Solicitor to the Scottish Executive and the Office of the Solicitor to the Advocate General that the amendments in the Act which extend to Scotland, in so far as they relate to devolved matters, do not engage the Sewel Convention. Those amendments include the amendment to section 80 (removal of patients to Scotland), contained in paragraph 2 of Schedule 5. *Subsection (2)* sets out a handful of qualifications to the general proposition in *subsection (1)*.
253. Paragraph (a) of subsection (2) refers to paragraph 35 of Schedule 3. Paragraph 35 amends section 146 of the 1983 Act so as to provide that section 128 does not extend to Scotland. Paragraph (b) refers to paragraph 20 of Schedule 5. Paragraph 20 amends section 146 of the 1983 Act so as to provide that section 88 (and so far as applied by that section sections 18, 22 and 138) does not extend to Scotland. Both sections 88 and 128 will no longer apply in Scotland as a result of their repeal by the Adult Support and Protection (Scotland) Act 2007.
254. **Section 88** (patients absent from hospitals in England and Wales) currently provides for the taking into custody in Scotland of persons who are subject to measures in England

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

and Wales in the 1983 Act and who escape from hospital there, fail to return at the end of a period of leave of absence or escape in other specified circumstances. Provision is made in the Mental Health (Care and Treatment) (Scotland) Act 2003 to deal with such matters in regulations made under section 309 (Patients from other jurisdictions) and so it is no longer necessary to have provision in the 1983 Act which extends to Scotland about this matter.

255. [Section 128](#) (Assisting patients to absent themselves without leave etc) of the 1983 Act makes provision for the offence of assisting patients subject to measures under the Mental Health Act 1983 to escape from custody or absent themselves without leave. This has been replaced in Scotland by the application of section 316 (Inducing and assisting absconding etc) of the Mental Health (Care and Treatment) (Scotland) Act 2003 to such patients, so again it is no longer necessary to have provision in the 1983 Act.
256. [Section 146](#) (Application to Scotland) of the 1983 Act lists the provisions of the 1983 Act which extend to Scotland. Sections 88 and 128 are at present included in section 146 as provisions which do extend to Scotland, and thus require amendment now this is no longer to be the case.
257. Paragraph (b) of subsection (2) of section 58 also refers to paragraphs 3 and 4 of Schedule 5. Those paragraphs insert new sections 80ZA, 80B, 80C and 80D, which make provision about the transfer of patients to and from Scotland. There is nothing in any of those sections which needs to form part of the law of Scotland in order for them to operate properly. But section 80 (after which section 80ZA is to be inserted) and section 80A (after which sections 80B to 80D are to be inserted) each extend to Scotland. So it might be arguable that the new sections also extend to Scotland. Paragraphs 3(2) and 4(2) of Schedule 5 remove any such doubt.
258. Paragraph (c) of subsection (2) of section 58 refers to paragraph 12 of Schedule 8. Paragraph 12 amends section 47 of the National Assistance Act 1948 (which makes provision in respect of those in particular need of care and attention) to take account of a change made by the Act to the MCA. Section 47 of the National Assistance Act will no longer apply in Scotland as a result of its repeal by Schedule 2 to the Adult Support and Protection (Scotland) Act 2007. As such, the amendment to section 47 does not need to extend to Scotland. *Sub-paragraph (3)* of paragraph 12 makes provision for this.
259. Subsection (3) provides that section 54 (consequential provisions) extends to the United Kingdom so as to ensure that consequential amendments made in reliance on that section can extend to Scotland or Northern Ireland if the provisions being amended also extend there.