



Mental Health Act 2007

2007 CHAPTER 12

PART 1

AMENDMENTS TO MENTAL HEALTH ACT 1983

CHAPTER 3

SAFEGUARDS FOR PATIENTS

Consent to treatment

27 Electro-convulsive therapy, etc.

After section 58 of the 1983 Act insert—

“58A Electro-convulsive therapy, etc.

- (1) This section applies to the following forms of medical treatment for mental disorder—
 - (a) electro-convulsive therapy; and
 - (b) such other forms of treatment as may be specified for the purposes of this section by regulations made by the appropriate national authority.
- (2) Subject to section 62 below, a patient shall not be given any form of treatment to which this section applies unless he falls within subsection (3), (4) or (5) below.
- (3) A patient falls within this subsection if—
 - (a) he has attained the age of 18 years;
 - (b) he has consented to the treatment in question; and
 - (c) either the approved clinician in charge of it or a registered medical practitioner appointed as mentioned in section 58(3) above has certified

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in writing that the patient is capable of understanding the nature, purpose and likely effects of the treatment and has consented to it.

- (4) A patient falls within this subsection if—
- (a) he has not attained the age of 18 years; but
 - (b) he has consented to the treatment in question; and
 - (c) a registered medical practitioner appointed as aforesaid (not being the approved clinician in charge of the treatment) has certified in writing—
 - (i) that the patient is capable of understanding the nature, purpose and likely effects of the treatment and has consented to it; and
 - (ii) that it is appropriate for the treatment to be given.
- (5) A patient falls within this subsection if a registered medical practitioner appointed as aforesaid (not being the responsible clinician (if there is one) or the approved clinician in charge of the treatment in question) has certified in writing—
- (a) that the patient is not capable of understanding the nature, purpose and likely effects of the treatment; but
 - (b) that it is appropriate for the treatment to be given; and
 - (c) that giving him the treatment would not conflict with—
 - (i) an advance decision which the registered medical practitioner concerned is satisfied is valid and applicable; or
 - (ii) a decision made by a donee or deputy or by the Court of Protection.
- (6) Before giving a certificate under subsection (5) above the registered medical practitioner concerned shall consult two other persons who have been professionally concerned with the patient's medical treatment but, of those persons—
- (a) one shall be a nurse and the other shall be neither a nurse nor a registered medical practitioner; and
 - (b) neither shall be the responsible clinician (if there is one) or the approved clinician in charge of the treatment in question.
- (7) This section shall not by itself confer sufficient authority for a patient who falls within section 56(5) above to be given a form of treatment to which this section applies if he is not capable of understanding the nature, purpose and likely effects of the treatment (and cannot therefore consent to it).
- (8) Before making any regulations for the purposes of this section, the appropriate national authority shall consult such bodies as appear to it to be concerned.
- (9) In this section—
- (a) a reference to an advance decision is to an advance decision (within the meaning of the Mental Capacity Act 2005) made by the patient;
 - (b) “valid and applicable”, in relation to such a decision, means valid and applicable to the treatment in question in accordance with section 25 of that Act;
 - (c) a reference to a donee is to a donee of a lasting power of attorney (within the meaning of section 9 of that Act) created by the patient, where the donee is acting within the scope of his authority and in accordance with that Act; and

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- (d) a reference to a deputy is to a deputy appointed for the patient by the Court of Protection under section 16 of that Act, where the deputy is acting within the scope of his authority and in accordance with that Act.
- (10) In this section, “the appropriate national authority” means—
- (a) in a case where the treatment in question would, if given, be given in England, the Secretary of State;
 - (b) in a case where the treatment in question would, if given, be given in Wales, the Welsh Ministers.”

PROSPECTIVE

28 Section 27: supplemental

- (1) Part 4 of the 1983 Act (consent to treatment) is amended as follows.
- (2) In section 58 (treatment requiring consent or a second opinion)—
 - (a) in subsection (1)(b), after “section 57 above” insert “ or section 58A(1)(b) below ”, and
 - (b) in subsection (3)(b), before “has not consented to it” insert “ being so capable ”.
- (3) In section 59 (plans of treatment), for “or 58” substitute “ , 58 or 58A ”.
- (4) In section 60 (withdrawal of consent), for “or 58”, substitute “ , 58 or 58A ”.
- (5) In section 61 (review of treatment)—
 - (a) in subsection (1), for “or 58(3)(b)” substitute “ , 58(3)(b) or 58A(4) or (5) ”, and
 - (b) in subsection (3)—
 - (i) for “or 58(3)(b)” substitute “ , 58(3)(b) or 58A(4) or (5) ”, and
 - (ii) for “and 58” substitute “ , 58 and 58A ”.
- (6) In section 62 (urgent treatment), after subsection (1) insert—
 - “(1A) Section 58A above, in so far as it relates to electro-convulsive therapy by virtue of subsection (1)(a) of that section, shall not apply to any treatment which falls within paragraph (a) or (b) of subsection (1) above.
 - (1B) Section 58A above, in so far as it relates to a form of treatment specified by virtue of subsection (1)(b) of that section, shall not apply to any treatment which falls within such of paragraphs (a) to (d) of subsection (1) above as may be specified in regulations under that section.
 - (1C) For the purposes of subsection (1B) above, the regulations—
 - (a) may make different provision for different cases (and may, in particular, make different provision for different forms of treatment);
 - (b) may make provision which applies subject to specified exceptions; and
 - (c) may include transitional, consequential, incidental or supplemental provision.”
- (7) In that section, in subsection (2), for “or 58” substitute “ , 58 or 58A ”.

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- (8) In section 63 (treatment not requiring consent), for “, not being treatment falling within section 57 or 58 above,” substitute “, not being a form of treatment to which section 57, 58 or 58A above applies,”.
- (9) In section 64 (supplementary provisions), after subsection (1A) (inserted by section 12 of this Act) insert—
- “(1B) References in this Part of this Act to the approved clinician in charge of a patient's treatment shall, where the treatment in question is a form of treatment to which section 58A above applies and the patient falls within section 56(5) above, be construed as references to the person in charge of the treatment.
- (1C) Regulations made by virtue of section 32(2)(d) above apply for the purposes of this Part as they apply for the purposes of Part 2 of this Act.”
- (10) In section 28 of the Mental Capacity Act 2005 (c. 9) (Mental Health Act matters), after subsection (1) insert—
- “(1A) Subsection (1) does not apply in relation to any form of treatment to which section 58A of that Act (electro-convulsive therapy, etc.) applies if the patient comes within subsection (7) of that section (informal patient under 18 who cannot give consent).”.

29 **Withdrawal of consent**

- (1) Section 60 of the 1983 Act (withdrawal of consent) is amended as follows.
- (2) After subsection (1) insert—
- “(1A) Subsection (1B) below applies where—
- (a) the consent of a patient to any treatment has been given for the purposes of section 57, 58 or 58A above; but
- (b) before the completion of the treatment, the patient ceases to be capable of understanding its nature, purpose and likely effects.
- (1B) The patient shall, subject to section 62 below, be treated as having withdrawn his consent, and those sections shall then apply as if the remainder of the treatment were a separate form of treatment.
- (1C) Subsection (1D) below applies where—
- (a) a certificate has been given under section 58 or 58A above that a patient is not capable of understanding the nature, purpose and likely effects of the treatment to which the certificate applies; but
- (b) before the completion of the treatment, the patient becomes capable of understanding its nature, purpose and likely effects.
- (1D) The certificate shall, subject to section 62 below, cease to apply to the treatment and those sections shall then apply as if the remainder of the treatment were a separate form of treatment.”
- (3) In subsection (2), for “subsection (1)” substitute “ subsections (1) to (1D) ”.

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