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

COMMENTARY

Part 1 – Amendments to Mental Health Act 1983

Chapter 4 – Supervised Community Treatment

Section 32: Community treatment orders, etc

109. Section 32 inserts new sections 17A-17G which set out how CTOs are to be made, and how they will work.

110. Under new section 17A, the RC may make a CTO for a patient detained under section 3, or for a patient who is not subject to restrictions under Part 3 of the 1983 Act (i.e. to a restriction order, a restriction direction or a limitation direction), if they are satisfied that the relevant criteria are met. An AMHP must agree that the criteria are met and also that a CTO is appropriate for that patient. The CTO, and the AMHP's agreement to it, will be in writing.

111. The criteria that the patient must meet - in order to be suitable for SCT - are specified within section 17A(5). The patient must need medical treatment for their mental disorder for their own health or safety, or for the protection of others. It must be possible for the patient to receive the treatment they need without having to be in hospital, provided that the patient can be recalled to hospital for treatment should this become necessary. When deciding if it is necessary to be able to recall the patient to hospital, the RC must consider the risk that the patient's condition will deteriorate after discharge from hospital, as a result, for example, of their refusing or neglecting to receive the treatment they need. In considering that risk, the RC must have regard to the patient's history of mental disorder and any other relevant factors. Appropriate medical treatment for the patient must be available in the community. Patients who are subject to a CTO are referred to in the legislation as "community patients".

112. Section 17B requires that CTOs specify conditions to which a community patient will be subject. There are two mandatory conditions that the patient must be available for medical examinations, firstly as required for the purposes of determining whether the CTO should be extended, and secondly to allow a SOAD to make a Part 4A certificate. Otherwise, conditions must be necessary or appropriate to ensure that the patient receives medical treatment, or to prevent harm to the patient's health or safety, or to protect others. The RC and an AMHP must agree the conditions. The RC may vary the conditions, or suspend any of them.

113. Other than the conditions about availability for examination, the conditions specified under section 17B are not in themselves enforceable but, if a patient fails to comply with any condition, the RC may take that into account when considering if it is necessary to use the recall power (section 17B(6)). However, if the criteria for recall are met, the recall power may still be exercised even if the patient is complying with the conditions (section 17B(7)). See also section 17E.

114. Section 17C specifies the duration of a CTO. A patient's CTO will end either if the period of the CTO runs out and the CTO is not extended, or the patient is discharged from the powers of the 1983 Act. It will also end if the RC revokes the CTO following the patient's recall to hospital under section 17F or, for Part 3 patients, if the CTO was time-specific and runs out.

115. Section 17D sets out the effect of a CTO on certain other provisions of the 1983 Act. The application for admission for treatment under which the patient was detained remains in force, but the hospital managers' authority to detain the patient under section 6(2) is suspended whilst the patient remains a community patient. The authority to detain the patient will not expire while it is suspended. However, when a patient's CTO ends, the patient will be discharged absolutely from SCT. Should an application for admission for treatment still remain in force, this will also end.

116. Section 17D(2)(b) provides that where the 1983 Act mentions patients who are "detained" or "liable to be detained", this does not include community patients. Where it is intended that a provision should apply to community patients, the 1983 Act is amended by the 2007 Act to make this clear. In addition, references in other legislation to patients who are detained, or liable to be detained, do not include community patients.

117. Section 17E provides that a community patient may be recalled to hospital if the RC decides that the patient needs to receive treatment for his or her mental disorder in a hospital and that, without this treatment, there would be a risk of harm to the patient's health or safety, or to other people. The recall notice will trigger the hospital managers' authority to re-detain the patient (section 17E(6)). A community patient may be recalled even if the patient is in hospital at the time. This could happen, for example, if the patient goes to hospital but then refuses the treatment that the RC considers is needed, and the patient, or someone else, would be at risk if the patient were not to receive that treatment.

118. Under section 17E(2), there is also a power to recall a patient to hospital if the patient fails to comply with the condition under section 17B(3) that specifies that patients must make themselves available for examination. This allows the RC to examine a patient to assess whether a patient's CTO should be extended and also allows a SOAD to examine the patient in order to meet the certificate requirement in new sections 64B and 64E of the 1983 Act (see section 35 below).

119. Section 17F sets out the powers which apply to a patient who is recalled to hospital under section 17E. If the RC decides that the patient meets the 1983 Act's criteria for detention for treatment in hospital (set out in section 3(2)), the RC may, subject to an AMHP's agreement that it is appropriate, revoke the patient's CTO under section 17F(4). The RC can only recall a patient for a maximum of 72 hours without revoking the CTO. Therefore, the RC may release a recalled patient from detention at any time within the first 72 hours, provided the CTO has not been otherwise revoked. On release, the patient continues to remain subject to the CTO.

120. Section 17G provides that when a CTO is revoked (so that the patient is no longer a community patient), the authority to detain the patient under section 6(2) applies (unless the patient is a Part 3 patient), exactly as if the patient had never been a community patient. In addition, all the 1983 Act's provisions apply to the patient as they did when the patient was first admitted to hospital for treatment before the CTO was made (unless the 1983 Act provides otherwise).

121. Section 32 also inserts new sections 20A and 20B which set out how long CTOs will last, and how they can be extended. A new CTO will initially last for 6 months from the date when the order was made. The order can then be extended for a further 6 months and, following that, it can be extended for periods of one year at a time. For an order to be extended under section 20A, the RC must examine the patient and furnish a report to the hospital managers confirming that the conditions, as set out in section 20A(6), are met. The RC must apply exactly the same considerations as when the CTO was

first made, so that the RC must again consider the risk that the patient's condition will deteriorate in the community, as a result, for example, of their refusing or neglecting to receive the treatment they need. In considering that risk, the RC must have regard to the patient's history of mental disorder and any other relevant factors. The RC can only make a report to extend the CTO if the grounds for the CTO still apply. An AMHP must agree that the criteria for extension of the CTO are satisfied, and that it is appropriate to extend the CTO, before the report can be made.