

MENTAL HEALTH ACT 2007

EXPLANATORY NOTES

COMMENTARY

Part 1 – Amendments to Mental Health Act 1983

Chapter 1 – Changes to Key Provisions

Section 4: Replacement of “treatability” and “care” tests with appropriate treatment test

30. Section 4 introduces a new “appropriate medical treatment test” into the criteria for detention under section 3 of the 1983 Act, related sections of Part 3 and the corresponding criteria for renewal and discharge. The effect is that these criteria cannot be met unless medical treatment is available to the patient in question which is appropriate taking account of the nature and degree of the patient’s mental disorder and all other circumstances of the case.
31. The test requires that appropriate treatment is actually available for the patient. It is not enough that appropriate treatment exists in theory for the patient’s condition. The words “nature or degree” in the appropriate treatment test are already used in the criteria for detention in the 1983 Act. Case law has established that “nature” refers to the particular mental disorder from which the patient is suffering, its chronicity, its prognosis, and the patient’s previous response to receiving treatment for disorder. “Degree” refers to the current manifestation of the patient’s disorder (*R v Mental Health Review Tribunal for the South Thames Region ex p. Smith* [1999] C.O.D. 148).
32. The appropriate medical treatment test replaces the so-called “treatability” test. The treatability test requires the relevant decision-maker to determine whether medical treatment “is likely to alleviate or prevent deterioration in the patient’s condition”. Where that test forms part of the criteria for detention under a particular section, it applies at all stages to patients suffering from mental impairment or psychopathic disorder (ie to the initial decision to detain, and both renewal and discharge from detention). However, for patients suffering from mental illness or severe mental impairment it applies only when detention is being renewed under section 20(4) of the 1983 Act (or 21B) or when the MHRT is considering discharge in accordance with the criteria in section 72(1)(b). In both these cases there is an alternative test – variously known as the “grave incapacity” or “care” test - which may be applied instead. Both the treatability test and this alternative test are abolished by this section and replaced by the appropriate medical treatment test. Because of the removal of categories of disorder by section 1 the appropriate medical treatment test applies equally to all mental disorders.
33. As an illustration, the effect of sections 1 and 4 and paragraph 2 of Schedule 1 on the criteria for applications for admission for treatment under section 3 of the 1983 Act is as follows:

“3 Admission for treatment

- (1) A patient may be admitted to a hospital and detained there for the period allowed by the following provisions of this Act in pursuance of an application (in this Act referred to as “an application for admission for treatment”) made in accordance with this section.
- (2) An application for admission for treatment may be made in respect of a patient on the grounds that—
 - (a) he is suffering from mental illness, severe mental impairment, psychopathic disorder or mental impairment and his mental disorder is of a nature or degree which makes it appropriate for him to receive medical treatment in a hospital; and
 - (b) in the case of psychopathic disorder or mental impairment, such treatment is likely to alleviate or prevent a deterioration of his condition; and
 - (c) it is necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment and it cannot be provided unless he is detained under this section.; and
 - (d) appropriate medical treatment is available for him.
- (3) An application for admission for treatment shall be founded on the written recommendations in the prescribed form of two registered medical practitioners, including in each case a statement that in the opinion of the practitioner the conditions set out in subsection (2) above are complied with; and each such recommendation shall include—
 - (a) such particulars as may be prescribed of the grounds for that opinion so far as it relates to the conditions set out in paragraphs (a) and (d b) of that subsection; and
 - (b) a statement of the reasons for that opinion so far as it relates to the conditions set out in paragraph (c) of that subsection, specifying whether other methods of dealing with the patient are available and, if so, why they are not appropriate.
- (4) In this Act, references to appropriate medical treatment, in relation to a person’s mental disorder, are references to medical treatment which is appropriate in his case, taking into account the nature and degree of the mental disorder and all other circumstances of his case.