

EXPLANATORY MEMORANDUM TO
THE MENTAL HEALTH ACT 2007 (COMMENCEMENT NO. 8 AND
TRANSITIONAL PROVISIONS) ORDER 2008

2008 No. 2561 (C. 113)

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This instrument brings into force, in relation to Wales, on 3 November 2008, three of the provisions of the Mental Health Act 2007 (the 2007 Act) which amend the Mental Health Act 1983 (the 1983 Act). These give effect to the introduction of approved mental health professionals (AMHPs) and independent mental health advocates (IMHAs).

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 This instrument is part of the implementation of the 2007 Act.

4.2 The order brings into force three sections of the 2007 Act which amend the 1983 Act, with respect to Wales, from 3 November 2008. These relate to the introduction of AMHPs and IMHAs.

4.3 The order does not deal with the introduction of AMHPs in England because this was done previously in “The Mental Health Act 2007 (Commencement No. 7 and Transitional Provisions) Order 2008” (SI 2008/1900). Nor does it deal with the provision of independent mental health advocates in England, which Ministers indicated during the passage of the 2007 Act would be brought in during April 2009.

4.3 The order contains a number of transitional provisions, which are in addition to those made by Schedule 10 to the 2007 Act itself.

5. Territorial Extent and Application

5.1 The amendments commenced, and modifications made, by this order relate solely to Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

Approved mental health professionals

7.1 The role currently undertaken under the 1983 Act by the approved social worker (ASW) is being opened up to a wider group of professionals, and these practitioners will be called approved mental health professionals (AMHPs).

7.2 To allow for a smooth transition to the new arrangements and to prevent unnecessary disruption to service delivery, this order allows individuals who are already approved as ASWs to be treated as if they are approved as AMHPs from the commencement date for as long as their ASW approval lasts. This order also applies certain parts of the Mental Health (Approval of Persons to be Approved Mental Health Professionals) (Wales) Regulations 2008 (SI 2008/2436 (W.209)) to persons so treated as approved. Those Regulations were laid before the National Assembly for Wales on 17 September 2008. The order also allows for decisions made by ASWs before the commencement date to be treated as made by AMHPs.

Independent mental health advocates

7.3 Statutory access to an independent mental health advocate (IMHA) is a new safeguard that will be available to patients subject to compulsion under the Act. Qualifying persons are most patients detained or liable to be detained under the 1983 Act; patients subject to guardianship under that Act; patients on supervised community treatment; or certain other patients considering treatment to which section 57 or 58A of that Act applies. This order brings into force the provision relating to IMHAs in Wales. These provisions are to be brought into force in England from April 2009, to allow time to develop suitable training and commissioning arrangements.

Consultation

7.4 The Welsh Assembly Government consulted publicly on draft secondary legislation in relation to AMHPs and IMHA services between 5 November 2007 and 28 January 2008. There was no separate public consultation on the transitional arrangements included in this order.

Guidance

7.5 The Welsh Assembly Government intends to notify NHS and social care organisations in Wales of the implementation of these provisions of the 2007 Act through their normal communication channels. In addition, guidance on the new AMHP role has already been issued in Wales, together with commissioning guidance for the IMHA services.

8. Impact

8.1 An impact assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies over and above that already identified for the provisions of the Act which it commences.

9. Contact

Clive Marritt at the Department of Health (tel. 020 7972 4492 or e-mail: clive.marritt@dh.gsi.gov.uk) can answer any queries about the instrument.