

Carer Summary - Effect of amendments Mental Health Act 1983 + Mental Health Act 2007

The law which governs the compulsory treatment of certain people who have a mental disorder is the Mental Health Act 1983. The main purpose of the 2007 Act is to amend the 1983 Act. It is also being used to introduce “deprivation of liberty safeguards” through amending the Mental Capacity Act 2005; and to extend the rights of victims by amending the Domestic Violence, Crime and Victims Act 2004.

The 1983 Act is largely concerned with the circumstances in which a person with a mental disorder can be detained for treatment for that disorder without his or her consent. It also sets out the processes that must be followed and the safeguards for patients to ensure that they are not inappropriately detained or treated without their consent. The main purpose of the legislation is to ensure that people with serious mental disorders which threaten their health or safety or the safety of the public can be treated irrespective of their consent where it is necessary to prevent them from harming themselves or others, or to prevent a deterioration in their health.

The table below tries to set out the main changes to current legislation created by the new Act and to take you through the process of a relative being sectioned, but in a very simplified form, i.e. the detail is much more complex and so this table must not be used as the only basis for interpreting the Act. For more detail including progress with implementation see www.mhact.csip.org.uk

Stage / Activity	1983 Mental Health Act	2007 Mental Health Act, etc Changes / Additions
<i>Who comes under the Act?</i>		
1. Define Mental Disorder	Four categories: 1. Psychopathic disorder 2. Severe mental impairment 3. Mental illness 4. Mental impairment	One category: = “any disorder or disability of the mind” All of Act now applies to all forms of mental disorder
2. What is excluded from the MHAAct?	<ul style="list-style-type: none"> ▪ Learning Disability not covered unless conduct abnormally aggressive or seriously irresponsible ▪ Promiscuity / immoral conduct ▪ Sexual deviancy ▪ Drug/alcohol dependence 	<ul style="list-style-type: none"> ▪ Learning Disability not covered unless conduct abnormally aggressive or seriously irresponsible (<i>no change</i>) ▪ Drug/alcohol dependence (but dual diagnosis is covered i.e. can only be detained if they also have a mental disorder) (<i>no change</i>) (Sexual conduct no longer relevant)
<i>Around admission</i>		
3. Assessment for detention (Application made by Nearest Relative or ASW/AMHP)	2 Responsible Medical Officers (RMOs) agree has one of defined forms of mental disorder to a degree that warrants detention and in case of 1 and 2 above is considered ‘treatable’ Stage 2 – An Approved Social	No change in that 2 ACs (see 8) agree need but now ‘appropriate treatment must be available’ (this does not mean ‘in theory’). New rules govern conflicts of interest. Stage 2 – An Approved Mental Health Professional decides as before (an AMHP may come from a wider background – not necessarily the Local Authority - than an ASW

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4. Definition of 'medical treatment'	Worker then decides to detain having considered all other (social) issues. 'Medical treatment' has only its normal sense.	but must be qualified as a mental health nurse, occupational therapist, chartered psychologist or social worker and suitably trained) 'medical treatment' now includes nursing, psychological intervention and specialist mental health habilitation, rehabilitation and care
5. Patients < 18 – age appropriate treatment	Not mentioned	Patients under 18 in hospital to be housed in environment suited to their age and "subject to needs". Hospital Managers must consult with a suitable person to confirm acceptability. If from criminal justice system, Courts can check this before sending patient there.
6. Informal admission of patients aged 16/17	Patient can consent to admission to hospital for MH treatment even if parents object	Where 16/17 yr old has capacity can now refuse as well as consent to go into hospital and this can not be overridden by parents.
7. Nearest Relative	The person who is the NR is drawn from a list defined by the Act and not always = the Carer. Act affords rights to the NR including rights to apply to have patient admitted / to block admission, treatment / to discharge from compulsion / to get certain information re patient.	Extends list of possible NR to include Civil Partner with same status as husband/wife. Introduces a new ground of 'not suitable' to the reasons a Court may change NR. Patients may now apply to the Court to remove and replace their NR with a person of their choice.
8. Appoint person to look after detained patient	Person is Responsible Medical Officer = Psychiatrist only	Person is Responsible Clinician (RC) = the Approved Clinician (AC) with overall responsibility for patient. AC may be Psychologist, Nurse, Social Worker, Occupational Therapist or Doctor but must have appropriate extra training.
9. Advocacy	Not mentioned	New duty for State to provide Independent Mental Health Advocates for qualifying patients. IMHA to meet with patient at request of patient, RC, AMHP or Nearest Relative. Have right to see patient records
<i>Once Detained</i>		
10. Review for renewal of detainment or discharge	Decision to be made by RMO	Decision to be made by RC who (on renewal only) must get agreement from another clinician who works with patient and comes from a different profession
11. Discharge into Community?	Can use Supervised Discharge /Guardianship – can not enforce medication	Supervised discharge abolished. Guardianship is unchanged. New Supervised Community Treatment (if AMHP approves) – sets conditions. May include

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12. Mental Health Review Tribunals	<p>Established under the Act as an independent judicial body with the power to review cases and order the discharge of a patient.</p> <p>Hospitals must refer patients to MHRT if they do not apply within first 6 months and then again, at next renewal date, if 3 years passed since last hearing.</p>	<p>that patient receives medical treatment and / or conditions to prevent harm to self / others. Treatment cannot be enforced but patient can be recalled to hospital. Purpose of conditions to be explicit in patient file.</p> <p>Shortens obligatory timescales for referral to MHRT (e.g. 6 months now includes time spent on Section 2) and widened to cover all patients. 16 & 17 year old automatic reviews cut from 3 to 1 yr.</p>
13. Use of ECT	Safeguards at Section 58 apply subject to the urgent treatment provisions.	ECT is subject to new safeguards at Section 58A, including when patient has given consent, or is incapable of consent. An advance decision covering use can not be overridden. However ECT can still be used for all in emergencies where necessary to save life or prevent serious deterioration. Section 58A also protects informal patients aged <18.
14. Ill treatment of patients	Maximum imprisonment on conviction = 2 yrs	Maximum imprisonment = 5 yrs
15. Deprivation of liberty of patients without capacity	Not possible without Court Order unless MHAct applies. This is a change to the Mental Capacity Act 2005 to bring it into order with Human Rights law.	Introduces new procedures to authorise deprivation of liberty in care home or hospital in the least restrictive manner if in best interests of patient. But MHAct still to be used if patient needs to be in hospital for mental health treatment, but objects.
16. Victims' rights	This extends rights of victims under the Domestic Violence, Crime and Victims Act, 2004	Act only covers victims of persons convicted of a sexual or violent offence where the offender is placed in hospital without a restriction direction then the hospital managers must ensure the victim has the chance to ask for conditions to be set for any discharge and to know what is finally set out. Also to inform the victim if the patient's discharge is to be considered / has been agreed.

Fundamental Principles: The Act introduces a statement of principles to be included in the Code of Practice which is intended to inform all decisions made under the 1983 and 2007 Mental Health Acts concerning patients subject to the 1983 Act. All professional staff dealing with patients suffering from a mental disorder are required to have regard to this Code of Practice and any departure from it could give rise to legal challenge. The Secretary of State will ensure the following are addressed in preparing the statement of principles in the Code of Practice:

- (a) respect for patients' past and present wishes and feelings,
- (b) respect for diversity generally including, in particular, diversity of religion, culture and sexual orientation (within the meaning of section 35 of the Equality Act 2006),
- (c) minimising restrictions on liberty,
- (d) involvement of patients in planning, developing and delivering care and treatment appropriate to them,
- (e) avoidance of unlawful discrimination,
- (f) effectiveness of treatment,
- (g) views of carers and other interested parties are known and considered,
- (h) patient wellbeing and safety, and
- (i) public safety.

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