

2008 No. 000

MENTAL HEALTH, ENGLAND AND WALES

**The Mental Health Act 2007 (Commencement No. 7 and
Transitional Provisions) Order 2008**

Made - - - - 2008

Laid before Parliament 2008

Coming into force in accordance with article 1(1)

The Secretary of State for Health, in exercise of the powers conferred by sections 56(1), (2), (4)(b) and (5) of the Mental Health Act 2007(a), and with the agreement of the Welsh Ministers in respect of functions exercisable by them, makes the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Mental Health Act 2007 (Commencement No.7 and Transitional Provisions) Order 2008 and shall come into force on 3rd November 2008 immediately after the coming into force of the Mental Health Act 2007 (Commencement No. 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions) Order 2008(b) and immediately before the coming into force of the Transfer of Tribunal Functions Order 2008(c).

(2) In this Order—

“the 2007 Act” means the Mental Health Act 2007;

“the 1983 Act” means the Mental Health Act 1983(d).

Commencement of provisions

2. The following provisions of the 2007 Act shall come into force on 3rd November 2008—

- (a) section 1 and Schedule 1, insofar as not already in force;
- (b) sections 2 to 16;
- (c) section 18, insofar as it applies to England and is not already in force;
- (d) section 21, insofar as it gives effect to Schedule 2 in relation to England;
- (e) section 22, insofar as not already in force;
- (f) sections 23 to 25;
- (g) sections 27 to 29;
- (h) section 31(1), (2) and (4);

(a) 2007 c.12.

(b) S.I. 2008/1210 (C.52).

(c) This order is subject to affirmative resolution and was laid on 4 June 2008.

(d) 1983 c.20.

- (i) section 32 and Schedule 3, insofar as they are not already in force, and Schedule 4;
- (j) sections 33 and 34;
- (k) section 35, insofar as not already in force;
- (l) section 37;
- (m) section 38(1) and (2), and insofar as they apply in relation to Wales, subsections (3)(e), (5) (for the purposes of subsection (7)(b)), and (7)(b);
- (n) section 39(1) and (2), insofar as it gives effect to paragraphs 1, 3, 4, 6, 10, 12, 15 to 17, and, insofar as they are not already in force, paragraphs 18 and 21 of Schedule 5;
- (o) section 48 which gives effect to Schedule 6;
- (p) section 55, insofar as it gives effect to Parts 1 to 4 and 6, 8 and 9 of Schedule 11.

Schedule

3. The Schedule to this Order, which makes transitional and saving provisions, shall have effect.

Signed by authority of the Secretary of State for Health

Ivan Lewis
Parliamentary Under-Secretary of State
Department of Health

Date

SCHEDULE

TRANSITIONAL AND SAVING PROVISIONS

Interpretation

1. In this Schedule—

“ASW” means an approved social worker as defined in section 145(1) of the 1983 Act immediately before the commencement day;

“AMHP” means an approved mental health professional;

“commencement day” means 3rd November 2008;

“LSSA” means a local social services authority;

“responsible clinician” means a responsible clinician as defined in section 34(1) in relation to Part 2 of the 1983 Act and in section 55(1) in relation to Part 3 of the 1983 Act;

“RMO” means a responsible medical officer as defined in section 34(1) in relation to Part 2 of the 1983 Act and in section 55(1) in relation to Part 3 of the 1983 Act immediately before the commencement day;

“RMP” means a registered medical practitioner;

“the Approval Regulations” means the Mental Health (Approved Mental Health Professionals) (Approval) (England) Regulations 2008(a);

“under 18 informal patient” means a person to whom section 56(5) of the 1983 Act applies.

(a) S.I. 2008/1206.

Supervised Community Treatment: transitional provisions in relation to amendment to other Acts

2.—(1) Pending the commencement of Part 3 of the Constitutional Reform Act 2005(a), the application of the 2007 Act shall be modified as described in this paragraph.

(2) In the provisions specified in sub-paragraph (3), for “Supreme Court” in each place substitute “House of Lords”.

(3) The provisions mentioned in sub-paragraph (2) are—

- (a) section 5A(6) of the Administration of Justice Act 1960(b), as inserted by paragraph 1 of Schedule 4 to the 2007 Act;
- (b) section 37A(1), (4) and (7) of the Criminal Appeal Act 1968(c), as inserted by paragraph 2(3) of Schedule 4 to the 2007 Act;
- (c) section 43A (3) and (6) of the Courts-Martial (Appeals) Act 1968(d), as inserted by paragraph 3(4) of Schedule 4 to the 2007 Act.

3.—(1) Pending the commencement of paragraph 21(d) and (f) of Schedule 8 to the Armed Forces Act 2006(e), the application of the 2007 Act shall be modified as described in sub-paragraph (2).

(2) In section 20(4A) of the Courts-Martial (Appeals) Act 1968, as inserted by paragraph 3(2) of Schedule 4 to the 2007 Act, for “subsection (3A)” substitute “subsection (5)”.

(3) Pending the commencement of paragraph 43 of Schedule 8 to the Armed Forces Act 2006, the application of the 2007 Act shall be modified as described in sub-paragraph (4).

(4) In section 43A(1)(b) of the Courts-Martial (Appeals) Act 1968, as inserted by paragraph 3(4) of Schedule 4 to the Act, for “Director of Service Prosecutions” substitute “Defence Council”.

AMHPs: general

4. Subject to paragraphs 6 to 11, where a person is approved as an ASW by an LSSA in England immediately before the commencement day, that person shall be treated as an AMHP approved by that LSSA in relation to England (“an English approval”).

5. Any decision made or action taken by an ASW before the commencement day shall be treated as made or taken by an AMHP.

AMHPs approved in relation to England

6. Subject to regulation 7 of the Approval Regulations, an English approval shall be for the unexpired period of that person’s approval as an ASW.

7. Regulation 7 of the Approval Regulations shall apply to an English approval as if paragraph 2(b) of that regulation read—

“(b) if it is not satisfied that the AMHP has appropriate competence taking into account the matters set out in Schedule 2;”.

8. An English approval shall be subject to the conditions set out in regulation 5 of the Approval Regulations.

9. Any ASW whose registration as a social worker is suspended on the commencement day shall be treated as an AMHP whose approval is suspended in accordance with regulation 6 of the Approval Regulations for so long as that registration is suspended.

(a) 2005 c.4.
(b) 1960 c.65.
(c) 1968 c.19.
(d) 1968 c.20.
(e) 2006 c.52.

10. An English approval may be suspended in accordance with regulation 6 of the Approval Regulations.

11. An LSSA in England shall record details of an English approval in accordance with regulation 8 of the Approval Regulations, as if paragraph (1)(c) of that regulation read—

“(c) the date that the person was approved as an ASW, and the date on which that approval expires;”.

Approved clinicians and responsible clinicians

12. On the commencement day a decision made or action taken under the Part of, or section of, the 1983 Act specified in column 1 by a person named in column 2, shall be treated as though it had been made or taken by the person specified in column 3—

<i>Provision in 1983 Act</i>	<i>Named person</i>	<i>Treated as taken by</i>
Part 2	RMO	responsible clinician
Part 2	appropriate medical officer	appropriate practitioner
Sections 36(4), 38(5), 41(3)(c) and (6), 45B(3), 49(3), 51(4), 52(5) and (7)	RMO	responsible clinician
Sections 57(2)(a) and 58(3)(b)	RMO	responsible clinician or the approved clinician in charge of the treatment in question
Sections 58(3)(a), 61(1) (the first time it appears) and 63	RMO	approved clinician in charge of the treatment
Section 35(4) and (5)	RMP	approved clinician
Sections 36(3), 37(4), 38(4), 45A(5)	RMP who would be in charge of his treatment	approved clinician who would have overall responsibility for his case
Section 44(2)	RMP who would be in charge of the offender’s treatment	approved clinician who would have overall responsibility for the offender’s case
Sections 50(1), 51(3) and 53(2)	RMO or any other RMP	responsible clinician or any other approved clinician
Section 134	RMP in charge of the treatment of the patient	approved clinician with overall responsibility for the patient’s case

Electro-convulsive therapy

13. Where before the commencement day, an under 18 informal patient has been receiving, or is about to receive, electro-convulsive therapy, that patient may receive, or continue to receive, such treatment pending compliance with section 58A for a period of up to 14 days beginning with the commencement day.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is the seventh commencement order made under the Mental Health Act 2007 and brings into force on 3rd November 2008 the provisions set out in article 2.

The Order also makes transitional and saving provisions, which are set out in the Schedule to the Order.

Paragraphs 2 and 3 of the Schedule make provision for some modification of Schedule 4 to the Act pending the commencement of specified provisions in the Constitutional Reform Act 2005 and the Armed Forces Act 2006.

Paragraphs 4 and 5 require local social services authorities to treat as an approved mental health professional a person who had been approved as an approved social worker by an LSSA in England immediately before 3rd November 2008. Paragraphs 6 to 11 apply parts of the Mental Health (Approved Mental Health Professionals) (Approval) (England) Regulations 2008 to persons treated in England as AMHPs with specified modifications.

Paragraph 12 provides for certain decisions or actions taken before 3rd November 2008 to be treated as taken by other persons named in the third column of the table.

Paragraph 13 provides for certain persons under 18 to continue to have electro-convulsive treatment for a period of 14 days from 3rd November 2008, even though section 58A has not yet been complied with.

NOTE AS TO EARLIER COMMENCEMENT ORDERS

(This note is not part of the Order)

The following provisions of the 2007 Act have been, or are being, brought into force in England and Wales by commencement order made before the date of this Order—

<i>Provision of the Act</i>	<i>Date of Commencement</i>	<i>S.I. Number</i>
Section 1 and Schedule 1 (partially)	03.11.2008	2008/1210 (C.52)
Section 17	01.04.2008	2008/745(C.30)
Section 18 (partially)	01.04.2008	2008/745(C.30)
Section 19	01.10.2007	2007/2798(C.108)
Section 20	01.10.2007	2007/2798(C.108)
Section 22 (partially)	01.04.2008	2008/745(C.30)
Section 26	01.12.2007	2007/2798(C.108)
Section 30 (partially)	01.04.2008	2008/745(C.30)
Section 32 (partially)	01.04.2008 03.11.2008	2008/745(C.30) 2008/1210(C.52)
Section 35 (partially)	01.04.2008	2008/745(C.30)
Section 36	03.11.2008	2008/1210(C.52)
Section 39 and Schedule 5 (partially)	01.10.2007 01.04.2008	2007/2798(C.108) 2008/745(C.30)
Section 40	01.10.2007	2007/2798(C.108)
Section 41	01.10.2007	2007/2798(C.108)
Section 42	01.10.2007	2007/2798(C.108)
Section 43	01.01.2008	2007/2798(C.108)
Section 44	30.04.2008	2008/800 (C. 39)
Section 45	24.07.2007	2007/2156(C.80)
Section 46	01.10.2007	2007/2798(C.108)
Section 47	01.04.2008	2008/745(C.30)
Section 49	01.10.2007	2007/2798(C.108)
Section 50 and Schedules 7 and 9 (partially)	01.04.2008	2008/745(C.30)
Section 51	01.10.2007	2007/2635(C.102)
Section 54	01.04.2008	2008/745(C.30)
Section 55 and Schedule 11 (partially)	03.11.2008	2008/1210(C. 52)

