



Mental Health Act 2007

2007 CHAPTER 12

PART 1

AMENDMENTS TO MENTAL HEALTH ACT 1983

CHAPTER 4

SUPERVISED COMMUNITY TREATMENT

35 Authority to treat

(1) After Part 4 of the 1983 Act, insert the following Part—

“PART 4A

TREATMENT OF COMMUNITY PATIENTS NOT RECALLED TO HOSPITAL

64A Meaning of “relevant treatment”

In this Part of this Act “relevant treatment”, in relation to a patient, means medical treatment which—

- (a) is for the mental disorder from which the patient is suffering; and
- (b) is not a form of treatment to which section 57 above applies.

64B Adult community patients

(1) This section applies to the giving of relevant treatment to a community patient who—

- (a) is not recalled to hospital under section 17E above; and
- (b) has attained the age of 16 years.

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- (2) The treatment may not be given to the patient unless—
 - (a) there is authority to give it to him; and
 - (b) if it is section 58 type treatment or section 58A type treatment, the certificate requirement is met.
- (3) But the certificate requirement does not apply if—
 - (a) giving the treatment to the patient is authorised in accordance with section 64G below; or
 - (b) the treatment is immediately necessary and—
 - (i) the patient has capacity to consent to it and does consent to it; or
 - (ii) a donee or deputy or the Court of Protection consents to the treatment on the patient's behalf.
- (4) Nor does the certificate requirement apply in so far as the administration of medicine to the patient at any time during the period of one month beginning with the day on which the community treatment order is made is section 58 type treatment.
- (5) The reference in subsection (4) above to the administration of medicine does not include any form of treatment specified under section 58(1)(a) above.

64C Section 64B: supplemental

- (1) This section has effect for the purposes of section 64B above.
- (2) There is authority to give treatment to a patient if—
 - (a) he has capacity to consent to it and does consent to it;
 - (b) a donee or deputy or the Court of Protection consents to it on his behalf; or
 - (c) giving it to him is authorised in accordance with section 64D or 64G below.
- (3) Relevant treatment is section 58 type treatment or section 58A type treatment if, at the time when it is given to the patient, section 58 or 58A above (respectively) would have applied to it, had the patient remained liable to be detained at that time (rather than being a community patient).
- (4) The certificate requirement is met in respect of treatment to be given to a patient if—
 - (a) a registered medical practitioner appointed for the purposes of Part 4 of this Act (not being the responsible clinician or the person in charge of the treatment) has certified in writing that it is appropriate for the treatment to be given or for the treatment to be given subject to such conditions as may be specified in the certificate; and
 - (b) if conditions are so specified, the conditions are satisfied.
- (5) In a case where the treatment is section 58 type treatment, treatment is immediately necessary if—
 - (a) it is immediately necessary to save the patient's life; or
 - (b) it is immediately necessary to prevent a serious deterioration of the patient's condition and is not irreversible; or

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- (c) it is immediately necessary to alleviate serious suffering by the patient and is not irreversible or hazardous; or
 - (d) it is immediately necessary, represents the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or others and is not irreversible or hazardous.
- (6) In a case where the treatment is section 58A type treatment by virtue of subsection (1)(a) of that section, treatment is immediately necessary if it falls within paragraph (a) or (b) of subsection (5) above.
- (7) In a case where the treatment is section 58A type treatment by virtue of subsection (1)(b) of that section, treatment is immediately necessary if it falls within such of paragraphs (a) to (d) of subsection (5) above as may be specified in regulations under that section.
- (8) For the purposes of subsection (7) above, the regulations—
- (a) may make different provision for different cases (and may, in particular, make different provision for different forms of treatment);
 - (b) may make provision which applies subject to specified exceptions; and
 - (c) may include transitional, consequential, incidental or supplemental provision.
- (9) Subsection (3) of section 62 above applies for the purposes of this section as it applies for the purposes of that section.

64D Adult community patients lacking capacity

- (1) A person is authorised to give relevant treatment to a patient as mentioned in section 64C(2)(c) above if the conditions in subsections (2) to (6) below are met.
- (2) The first condition is that, before giving the treatment, the person takes reasonable steps to establish whether the patient lacks capacity to consent to the treatment.
- (3) The second condition is that, when giving the treatment, he reasonably believes that the patient lacks capacity to consent to it.
- (4) The third condition is that—
- (a) he has no reason to believe that the patient objects to being given the treatment; or
 - (b) he does have reason to believe that the patient so objects, but it is not necessary to use force against the patient in order to give the treatment.
- (5) The fourth condition is that—
- (a) he is the person in charge of the treatment and an approved clinician; or
 - (b) the treatment is given under the direction of that clinician.
- (6) The fifth condition is that giving the treatment does not conflict with—
- (a) an advance decision which he is satisfied is valid and applicable; or
 - (b) a decision made by a donee or deputy or the Court of Protection.

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(7) In this section—

- (a) reference to an advance decision is to an advance decision (within the meaning of the Mental Capacity Act 2005) made by the patient; and
- (b) “valid and applicable”, in relation to such a decision, means valid and applicable to the treatment in question in accordance with section 25 of that Act.

64E **Child community patients**

- (1) This section applies to the giving of relevant treatment to a community patient who—
 - (a) is not recalled to hospital under section 17E above; and
 - (b) has not attained the age of 16 years.
- (2) The treatment may not be given to the patient unless—
 - (a) there is authority to give it to him; and
 - (b) if it is section 58 type treatment or section 58A type treatment, the certificate requirement is met.
- (3) But the certificate requirement does not apply if—
 - (a) giving the treatment to the patient is authorised in accordance with section 64G below; or
 - (b) in a case where the patient is competent to consent to the treatment and does consent to it, the treatment is immediately necessary.
- (4) Nor does the certificate requirement apply in so far as the administration of medicine to the patient at any time during the period of one month beginning with the day on which the community treatment order is made is section 58 type treatment.
- (5) The reference in subsection (4) above to the administration of medicine does not include any form of treatment specified under section 58(1)(a) above.
- (6) For the purposes of subsection (2)(a) above, there is authority to give treatment to a patient if—
 - (a) he is competent to consent to it and he does consent to it; or
 - (b) giving it to him is authorised in accordance with section 64F or 64G below.
- (7) Subsections (3) to (9) of section 64C above have effect for the purposes of this section as they have effect for the purposes of section 64B above.
- (8) Regulations made by virtue of section 32(2)(d) above apply for the purposes of this section as they apply for the purposes of Part 2 of this Act.

64F **Child community patients lacking competence**

- (1) A person is authorised to give relevant treatment to a patient as mentioned in section 64E(6)(b) above if the conditions in subsections (2) to (5) below are met.

Changes to legislation: There are currently no known outstanding effects for the Mental Health Act 2007, Section 35. (See end of Document for details)

- (2) The first condition is that, before giving the treatment, the person takes reasonable steps to establish whether the patient is competent to consent to the treatment.
- (3) The second condition is that, when giving the treatment, he reasonably believes that the patient is not competent to consent to it.
- (4) The third condition is that—
 - (a) he has no reason to believe that the patient objects to being given the treatment; or
 - (b) he does have reason to believe that the patient so objects, but it is not necessary to use force against the patient in order to give the treatment.
- (5) The fourth condition is that—
 - (a) he is the person in charge of the treatment and an approved clinician; or
 - (b) the treatment is given under the direction of that clinician.

64G Emergency treatment for patients lacking capacity or competence

- (1) A person is also authorised to give relevant treatment to a patient as mentioned in section 64C(2)(c) or 64E(6)(b) above if the conditions in subsections (2) to (4) below are met.
- (2) The first condition is that, when giving the treatment, the person reasonably believes that the patient lacks capacity to consent to it or, as the case may be, is not competent to consent to it.
- (3) The second condition is that the treatment is immediately necessary.
- (4) The third condition is that if it is necessary to use force against the patient in order to give the treatment—
 - (a) the treatment needs to be given in order to prevent harm to the patient; and
 - (b) the use of such force is a proportionate response to the likelihood of the patient's suffering harm, and to the seriousness of that harm.
- (5) Subject to subsections (6) to (8) below, treatment is immediately necessary if—
 - (a) it is immediately necessary to save the patient's life; or
 - (b) it is immediately necessary to prevent a serious deterioration of the patient's condition and is not irreversible; or
 - (c) it is immediately necessary to alleviate serious suffering by the patient and is not irreversible or hazardous; or
 - (d) it is immediately necessary, represents the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or others and is not irreversible or hazardous.
- (6) Where the treatment is section 58A type treatment by virtue of subsection (1) of that section, treatment is immediately necessary if it falls within paragraph (a) or (b) of subsection (5) above.

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- (7) Where the treatment is section 58A type treatment by virtue of subsection (1) (b) of that section, treatment is immediately necessary if it falls within such of paragraphs (a) to (d) of subsection (5) above as may be specified in regulations under section 58A above.
- (8) For the purposes of subsection (7) above, the regulations—
 - (a) may make different provision for different cases (and may, in particular, make different provision for different forms of treatment);
 - (b) may make provision which applies subject to specified exceptions; and
 - (c) may include transitional, consequential, incidental or supplemental provision.
- (9) Subsection (3) of section 62 above applies for the purposes of this section as it applies for the purposes of that section.

64H Certificates: supplementary provisions

- (1) A certificate under section 64B(2)(b) or 64E(2)(b) above (a “Part 4A certificate”) may relate to a plan of treatment under which the patient is to be given (whether within a specified period or otherwise) one or more forms of section 58 type treatment or section 58A type treatment.
- (2) A Part 4A certificate shall be in such form as may be prescribed by regulations made by the appropriate national authority.
- (3) Before giving a Part 4A certificate, the registered medical practitioner concerned shall consult two other persons who have been professionally concerned with the patient's medical treatment but, of those persons—
 - (a) at least one shall be a person who is not a registered medical practitioner; and
 - (b) neither shall be the patient's responsible clinician or the person in charge of the treatment in question.
- (4) Where a patient is given treatment in accordance with a Part 4A certificate, a report on the treatment and the patient's condition shall be given by the person in charge of the treatment to the appropriate national authority if required by that authority.
- (5) The appropriate national authority may at any time give notice directing that a Part 4A certificate shall not apply to treatment given to a patient after a date specified in the notice, and the relevant section shall then apply to any such treatment as if that certificate had not been given.
- (6) The relevant section is—
 - (a) if the patient is not recalled to hospital in accordance with section 17E above, section 64B or 64E above;
 - (b) if the patient is so recalled or is liable to be detained under this Act following revocation of the community treatment order under section 17F above—
 - (i) section 58 above, in the case of section 58 type treatment;
 - (ii) section 58A above, in the case of section 58A type treatment; (subject to section 62A(2) above).

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- (7) The notice under subsection (5) above shall be given to the person in charge of the treatment in question.
- (8) Subsection (5) above shall not preclude the continuation of any treatment or of treatment under any plan pending compliance with the relevant section if the person in charge of the treatment considers that the discontinuance of the treatment or of treatment under the plan would cause serious suffering to the patient.
- (9) In this section, “the appropriate national authority” means—
 - (a) in relation to community patients in respect of whom the responsible hospital is in England, the Secretary of State;
 - (b) in relation to community patients in respect of whom the responsible hospital is in Wales, the Welsh Ministers.

64I Liability for negligence

Nothing in section 64D, 64F or 64G above excludes a person's civil liability for loss or damage, or his criminal liability, resulting from his negligence in doing anything authorised to be done by that section.

64J Factors to be considered in determining whether patient objects to treatment

- (1) In assessing for the purposes of this Part whether he has reason to believe that a patient objects to treatment, a person shall consider all the circumstances so far as they are reasonably ascertainable, including the patient's behaviour, wishes, feelings, views, beliefs and values.
- (2) But circumstances from the past shall be considered only so far as it is still appropriate to consider them.

64K Interpretation of Part 4A

- (1) This Part of this Act is to be construed as follows.
- (2) References to a patient who lacks capacity are to a patient who lacks capacity within the meaning of the Mental Capacity Act 2005.
- (3) References to a patient who has capacity are to be read accordingly.
- (4) References to a donee are to a donee of a lasting power of attorney (within the meaning of section 9 of the Mental Capacity Act 2005) created by the patient, where the donee is acting within the scope of his authority and in accordance with that Act.
- (5) References to a deputy are to a deputy appointed for the patient by the Court of Protection under section 16 of the Mental Capacity Act 2005, where the deputy is acting within the scope of his authority and in accordance with that Act.
- (6) Reference to the responsible clinician shall be construed as a reference to the responsible clinician within the meaning of Part 2 of this Act.

Changes to legislation: There are currently no known outstanding effects for the Mental Health Act 2007, Section 35. (See end of Document for details)

- (7) References to a hospital include a registered establishment.
- (8) Section 64(3) above applies for the purposes of this Part of this Act as it applies for the purposes of Part 4 of this Act.”
- (2) In section 119 of the 1983 Act (practitioners approved for Part 4 and section 118)—
- (a) in subsection (2)—
- (i) after “those provisions” insert “ or under Part 4A of this Act ”,
- (ii) in paragraph (a), for “in a registered establishment” substitute “ in a hospital or registered establishment or any community patient in a hospital or establishment of any description or (if access is granted) other place ”, and
- (iii) in paragraph (b), for “in that home” substitute “ there ”, and
- (b) after subsection (2) insert—
- “(3) In this section, “establishment of any description” shall be construed in accordance with section 4(8) of the Care Standards Act 2000.”
- (3) In section 121 of the 1983 Act (Mental Health Act Commission), in subsection (2)(b) after “61” insert “ , 64H(5) ”.
- (4) The Mental Capacity Act 2005 (c. 9) is amended as follows.
- (5) In section 28 (Mental Health Act matters), after subsection (1A) (inserted by section 28 of this Act) insert—
- “(1B) Section 5 does not apply to an act to which section 64B of the Mental Health Act applies (treatment of community patients not recalled to hospital).”
- (6) In section 37 (independent mental capacity advocates: provision of serious medical treatment by NHS body), in subsection (2) after “Part 4” insert “ or 4A ”.

Commencement Information

- II** [S. 35](#) not in force at Royal Assent see [s. 56\(1\)](#); [s. 35](#) in force for specified purposes at 1.4.2008 by [S.I. 2008/745](#), [arts. 2\(d\), 3\(e\)](#); [s. 35](#) in force insofar as not already in force at 3.11.2008 by [S.I. 2008/1900](#), [arts. 1\(1\), 2\(k\)](#)

Changes to legislation:

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