
STATUTORY INSTRUMENTS

2008 No. 1210

**The Mental Health Act 2007 (Commencement
No. 6 and After-care under Supervision: Savings,
Modifications and Transitional Provisions) Order 2008**

PART 2

**ACUS PATIENTS: SAVINGS, MODIFICATIONS
AND TRANSITIONAL PROVISIONS**

ACUS patients

- 3.** This Part of this Order shall apply in relation to an ACUS patient and such a patient shall—
- (a) continue to be subject to after-care under supervision,
 - (b) have their case dealt with, and
 - (c) cease to be subject to after-care under supervision,

in accordance with the following provisions.

Savings

4.—(1) Notwithstanding the coming into force of the provisions of the 2007 Act specified in article 2 of this Order, the following provisions of the 1983 Act shall continue to have effect in relation to an ACUS patient—

- (a) the definitions of “severe mental impairment”, “mental impairment” and “psychopathic disorder” in section 1(2) (application of Act: “mental disorder”), insofar as they relate to sections 25A(4) (application for supervision), 25G(4) (duration and renewal of after-care under supervision) and 72(4A) (powers of tribunals);
- (b) subsections (2), (4) (insofar as it relates to section 72(4A)) and (8) of section 25A (application for supervision);
- (c) subsections (6) and (7) of section 25C (supervision applications: supplementary);
- (d) section 25D (requirement to secure receipt of after-care under supervision);
- (e) section 25E (review of after-care under supervision etc);
- (f) section 25F(1) (reclassification of patient subject to after-care under supervision), where a report referred to in that section was furnished by a responsible medical officer prior to the commencement day, insofar as it relates to sections 66(1)(gb) and 66(2)(d) (applications to tribunals);
- (g) subsections (2) and (4) of section 25F (reclassification of patient subject to after-care under supervision);
- (h) the following subsections of section 25G (duration and renewal of after-care under supervision)—

- (i) subsection (1), subject to article 7;
- (ii) subsections (2), (3) and (7) insofar as they operate to renew a period of after-care under supervision that would otherwise end prior to the commencement day, subject to article 7;
- (iii) subsection (4), insofar as it relates to subsection (3) of that section and section 72(4A) (powers of tribunals);
- (i) section 25H (ending of after-care under supervision);
- (j) section 25I(1)(a) (special provisions as to patients sentenced to imprisonment etc) and subsection (2) of that section insofar as it relates to section 25I(1)(a);
- (k) the definitions of “the community responsible medical officer” and “the supervisor” in section 34(1) (interpretation of Part 2);
- (l) section 34(1A) (interpretation of Part 2);
- (m) paragraphs (ga), (gb) and (gc) of section 66(1) (applications to tribunals);
- (n) section 66(2)(fa) (applications to tribunals);
- (o) section 72(4A) (powers of tribunals), subject to article 5;
- (p) section 117(2A) (after-care);
- (q) section 127(2A) (ill-treatment of patients);
- (r) the definitions of “supervision application” and “responsible after-care bodies” in section 145(1) (interpretation), and
- (s) section 145(1A) (interpretation).

(2) None of the provisions saved by paragraph (1) shall operate to allow a Primary Care Trust or a Local Health Board to accept a supervision application on or after the commencement day.

Transfer of Mental Health Review Tribunal functions

5. As regards England, where an order has been made under section 30 of the Tribunals, Courts and Enforcement Act 2007(1) (transfer of functions of certain tribunals) transferring the functions of a Mental Health Review Tribunal for a region of England to the First-tier Tribunal established by section 3 of that Act (the First-tier Tribunal and the Upper Tribunal), the reference in section 72(4A) of the 1983 Act (powers of tribunals), as saved by this Order, to a Mental Health Review Tribunal shall be read as a reference to the First-tier Tribunal.

Consequential modifications to the 1983 Act

6. The following provisions of the 1983 Act shall be modified in their application to an ACUS patient as follows—

- (a) insofar as it relates to sections 25A(4), 25G(4) and 72(4A), in section 1(2), in the definition of “mental disorder”, for “any disorder or disability of the mind” substitute “mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind”;
- (b) in section 17A (community treatment orders)—
 - (i) in subsection (1), for “responsible clinician” substitute “community responsible medical officer” and for “discharge a detained patient from hospital” substitute “direct that a patient subject to after-care under supervision cease to be subject to such supervision,”;

- (ii) in subsection (4), for “responsible clinician” substitute “community responsible medical officer”;
- (iii) in subsection (5)(c), for “without his continuing to be detained in hospital” substitute “without his being detained in hospital”; and
- (iv) in subsection (6), for “responsible clinician” substitute “community responsible medical officer”;
- (c) in section 17B(2) (conditions in community treatment orders), for “responsible clinician” substitute “community responsible medical officer”;
- (d) in section 32(2)(c) (regulations for purposes of Part 2), after “guardianship” insert “or to after-care under supervision”;
- (e) in section 33 (special provisions as to wards of court), after subsection (4), insert—

“(5) Where a supervision application has been made in respect of a minor who is a ward of court, the provisions of this Part of this Act relating to after-care under supervision have effect in relation to the minor subject to any order which the court may make in the exercise of its wardship jurisdiction.”;
- (f) in section 66 (applications to tribunals)—
 - (i) in subsection (1)(i), at end, insert “or, in the cases mentioned in paragraphs (ga), (gb) and (gc), by his nearest relative if he has been (or was entitled to be) informed under this Act of the report or acceptance, and”;
 - (ii) in subsection (2)(c), after “paragraph (c)” insert “or (ga)”;
 - (iii) in subsection (2)(d), for “in the case mentioned in paragraph (g)” substitute “in the cases mentioned in paragraphs (g) and (gb)”;
- (g) in section 67(1) (references to tribunals by Secretary of State concerning Part 2 patients), after “or subject to guardianship” insert “or to after-care under supervision”;
- (h) in section 76(1) (visiting and examination of patients), after “subject to guardianship” insert “or to after-care under supervision (or, if he has not yet left hospital, is to be subject to after-care under supervision after he leaves hospital)”;
- (i) in section 77(3) (general provisions concerning tribunal applications), in paragraph (c), after “subject to guardianship” insert “or to after-care under supervision”;
- (j) in section 117(2) (after-care), after “such a patient” insert “or in the case of a patient subject to after-care under supervision at any time while he remains so subject”;
- (k) in section 118(1)(a) (code of practice), after “guardianship” insert “, after-care under supervision”, and
- (l) in Schedule 1 (application of certain provisions to patients subject to hospital and guardianship orders), Part 1 (patients not subject to special restrictions)—
 - (i) paragraph 1, after “24(3) and (4),” insert “25C(6) and (7),” and
 - (ii) paragraph 2, after “23,” insert “25A(2), (4) (insofar as it relates to section 72(4A)) and (8)”.

Renewal and extension of period of after-care under supervision for certain patients

7. Where, apart from this article, the period of an ACUS patient’s after-care under supervision, as determined in accordance with section 25G of the 1983 Act (duration and renewal of after-care under supervision), would end within the period of seven days beginning on the commencement day, the period of that patient’s after-care under supervision shall continue until the end of 9th November 2008.

Duty to determine certain matters in respect of ACUS patients

8.—(1) The community responsible medical officer of an ACUS patient must, during the review period, determine whether, in respect of the patient—

- (a) the grounds for the making of an application for admission for assessment, as set out in section 2(2) of the 1983 Act, are met;
- (b) the grounds for the making of an application for admission for treatment, as set out in section 3(2) of the 1983 Act, are met;
- (c) the grounds for the making of a guardianship application, as set out in section 7(2) of the 1983 Act, are met;
- (d) the relevant criteria for the making of a community treatment order, as set out in section 17A(5) of the 2007 Act (as modified by this Order), are met, or
- (e) none of the grounds or the criteria referred to above are met.

(2) The “review period” referred to in paragraph (1) is the period beginning on the commencement day and ending on the earlier of —

- (a) the end of 3rd May 2009; and
- (b) the end of the period of after-care under supervision as determined in accordance with section 25G(1) or (7) of the 1983 Act or article 7, as the case may be.

(3) In order to make a determination under paragraph (1), the community responsible medical officer must have personally examined the patient within the period of fourteen days ending with the date of the determination.

(4) Before making a determination under paragraph (1), the community responsible medical officer must comply with the same requirements of section 25H(3) of the 1983 Act with which that officer would be required to comply if making a direction under section 25H(1) of that Act.

(5) Where the community responsible medical officer determines in accordance with paragraph (1) that, in respect of the patient—

- (a) the grounds for the making of an application for admission for assessment, an application for admission for treatment or a guardianship application are met, then that officer may make a recommendation for the purposes of such an application;
- (b) the criteria for the making of a community treatment order are met, then that officer may, subject to section 17A(4) of the 1983 Act (community treatment orders) (as modified by this Order), make a community treatment order in respect of the patient, or
- (c) none of the grounds or the criteria referred to are met, then that officer must direct that the patient cease to be subject to after-care under supervision in accordance with section 25H of the 1983 Act (ending of after-care under supervision), and subsection (3) of that section shall be taken to have been complied with by virtue of having complied with the same requirements for the purposes of paragraph (4).

(6) Where the community responsible medical officer makes one of the recommendations referred to in paragraph (5)(a)—

- (a) that recommendation must comply with the requirements of section 12 of the 1983 Act (general provisions as to medical recommendations) and must also comply with—
 - (i) section 2(3) of the 1983 Act in the case of a recommendation for the purposes of an application for admission for assessment;
 - (ii) section 3(3) of the 1983 Act in the case of a recommendation for the purposes of an application for admission for treatment;
 - (iii) section 7(3) of the 1983 Act in the case of a recommendation for the purposes of a guardianship application; and

(b) that officer must immediately notify the local social services authority of the making of the recommendation.

(7) The notification by a community responsible medical officer of the making of a recommendation under paragraph (6)(b) shall be sufficient reason for the local social services authority in whose area the ACUS patient is resident to think that an application for admission to hospital or a guardianship application may need to be made in respect of that patient for the purposes of section 13(1) of the 1983 Act (duty of approved mental health professionals to make applications for admission or guardianship).

(8) Where the community responsible medical officer makes a community treatment order in respect of an ACUS patient, that officer must, with respect to the making of that order, comply with the requirements of—

- (a) the Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008⁽²⁾ where the responsible hospital is to be a hospital in England;
- (b) such Regulations in respect of Wales as are made by the Welsh Ministers⁽³⁾ for similar purposes to those in paragraph (a) where the responsible hospital is to be a hospital in Wales;

and for that purpose, insofar as those Regulations relate to the making of a community treatment order, a reference to the responsible clinician shall be read as a reference to the community responsible medical officer.

Ending of after-care under supervision

9. An ACUS patient shall cease to be subject to after-care under supervision and shall cease to be an ACUS patient upon the earliest of—

- (a) the patient ceasing to be subject to after-care under supervision in accordance with—
 - (i) section 25G of the 1983 Act (duration and renewal of after-care under supervision);
 - (ii) section 25H(1) of the 1983 Act (ending of after-care under supervision);
 - (iii) section 25H(5) of the 1983 Act (ending of after-care under supervision);
 - (iv) section 72(4A) of the 1983 Act (powers of tribunals);
- (b) the patient being admitted to hospital in pursuance of an application for admission for assessment, where one of the medical recommendations on which that application is founded was made by the community responsible medical officer under article 8(5)(a);
- (c) a community treatment order being made in respect of the patient;
- (d) the expiry of fourteen days beginning with the making of a determination by the community responsible medical officer under article 8, and
- (e) the end of 3rd May 2009.

(2) [S.I. 2008/1184](#)

(3) The Welsh Ministers have indicated that they intend to make an equivalent instrument to S.I. 2008/[to be inserted] in respect of Wales.