

BLACKSTONE'S GUIDE TO THE MENTAL HEALTH ACT 2007

Paul Bowen

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BOOK REVIEW BY SALLY RAMAGE, THE CRIMINAL LAWYER

The Mental Health Act 2007 received the Royal Assent on July 19, 2007 and most of its provisions will be in force by October 2008. The passage of the Act marks the end of a review process that commenced in 1998, representing nearly 10 years of hotly contested debate about the shape of mental health legislation fit for 21st century Britain. This book on the Mental Health Act 2007, therefore contains detailed legal knowledge of social importance because mental health law provides for those who by reason of mental disorder present a risk to themselves; those who suffer long-term debilitation conditions such as severe learning disability and for those who lose capacity to make decisions for themselves, whether temporarily or over the long-term.

The history of the 2007 Act is that it forms an amendment of the Mental Capacity Act 2005, which in turn was passed to amend the 1983 Mental Health Act. Paul Bowen sets out the book into two parts, namely, the reform of the Mental Health Act 1983 and the Mental Capacity Act 2005 and its amendments prior to the 2007 Mental Health Act, thus telling the story of how the law evolved to its present state.

The 1983 Mental Health Act is concerned with the circumstances in which a person with a “*mental disorder*” may be detained for treatment for that disorder without his consent. It provides three main routes into hospital for mental health care under compulsion.

(1) Civil admission (where the decision takers are mental health professionals).

(2) Admission to mental health care by Court Order (either on remand or following conviction).

(3) Admission to a mental health hospital by transfer from prison to hospital.

The term “*mental disorder*” as defined in the Mental Health Act 1983 is the key to the rest of that Act, because the Act does not apply if a person is not suffering from a “*mental disorder*”. The definition of “*mental disorder*” in the 1983 Act has been replaced by a new definition in the 2007 Act which simply defines “*mental disorder*” as “*any disorder or disability of the mind*”.

As to examination to decide whether a child is suffering from a “*mental disorder*”, the Children’s Act 1989, section 38(6) and (7) states that where an examination is made without consent, even if the examination is directed in an interim care order, or interim supervision order, there is to be no such examination or assessment unless a court directs otherwise. Paul Bowen’s book reviews standard authorizations in Chapter 12. The new Act concentrates on the application of the Act for those working mental hospital patients concerned with criminal proceedings or under sentence. Its concept is for a new set of guiding principles referred to in the Act and forming the revised Code of Practice. The changes in the definition of “*mental disorder*” mean that the conditions about which a Court has to be satisfied before making a Mental Health Act disposal are as a consequence also amended. The 2007 Act removes the right of the Courts to impose time limited Restriction Orders.

As regards older children, aged 16 or 17, who have the capacity to give or withhold consent to informal admission, they cannot be detained under the 2005 Act, which applies only to individuals who lack capacity.

Paragraph 15.66 states: “*If such an older child consents, he may be admitted to, or detained in, hospital informally under section 131(2) of the 1983 Act, as before. If he refuses to be admitted he may no longer be admitted informally with the consent of a person with parental responsibility as per section 131(2) to (5) of the 1983 Act.He can probably be admitted and detained by order of the High Court in its jurisdiction in relation to children...*” This is confirmed by the case of *South Glamorgan County Council v W and B* [1993] 1 FLR 574, when it was decided that the High Court exercising its ‘inherent jurisdiction’ may authorize an assessment against the wishes of a competent if the child would otherwise be likely to suffer ‘significant harm’. There must not be a violation of the child’s right under Art.5 of the ECHR to liberty and security of the person and these and other human rights implications are discussed at length in Chapter 6 of the book.

The use of restraint is defined in the 2007 Act and the use of restraint may be allowed as per sections 6, 11 and 20 of the Act and Chapter 10 examines this deprivation of liberty.

There are *Approved Mental Health Professionals* (AMHP), replacing the old Approved Social Worker (ASW).

The AMHP does not have to be a social worker.

The 2007 Act creates independent *Mental Health Act Advocates* (MHA), to be available when someone is detained in hospital or when someone is subject to guardianship or a Community Treatment Order (CTO) as per sections 17A–G. This Community Treatment Order replaces the system of “after-care under supervision” and carries a power of recall to hospital. The criteria for a CTO are that the patient is detained under s.3; that it is necessary for his or her health or safety, or for the protection of other persons, that he or she receives treatment; and that treatment can be provided outside of hospital, subject to the power of recall. The patient may challenge the use of a CTO in the absence of a relevant history. A CTO may specify that a patient receive certain treatment in the community but that treatment cannot be given against the patient’s wishes.

Under the Domestic Violence, Crime and Victims Act 2004, the victims of violent and or sexual acts where the perpetrator is subjected to a Hospital Order with restrictions, has a right to information about the patient’s application to a tribunal and to representation. The 2007 Act extends to such victims where the offender is subject to a hospital order without restrictions, and this is expected to be the subject of intense judicial scrutiny and increasing legal activity.

The Mental Capacity Act 2005 has implications for the decision-making of vulnerable witnesses. It applies to anyone over 16 who lacks mental capacity and where a decision as to consent for a medical examination or a police interview needs to be made. The Act establishes the principle that everybody should be assumed to have capacity unless established otherwise. Most importantly for criminal lawyers is Chapter 2 on powers of detention in criminal cases as per Part 3 of the 1983 Mental Health Act, which remains unaltered by the 2007 Act and also Chapter 6, dealing with forced treatment of older children, because it is established that even younger children (aged 11 and 12) can give sworn evidence. (see *R v Hayes* [1976]).

This very important book brings a thorough understanding of modern English mental health laws which are compliant with the European Convention on Human Rights.

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The Mental Health Act 2007 applies to England and Wales (as does the Mental Health Act 1983). The Scottish Parliament has powers over mental health legislation in Scotland and in 2003 passed its own Mental Health Act (the Mental Health (Care and Treatment) (Scotland) Act 2003), which came into effect in 2005. The Department of Health has issued a revised Code of Practice for England to guide mental health professionals in implementing the Act correctly and appropriately (Department of Health 2008). The King's Fund 11-13 Cavendish Square London W1G OAN Tel 020 7307 2400. Registered charity: 207401 www.kingsfund.org.uk. Blackstone's Guides. Accessible and clear layout makes this an ideal quick reference. The appendices include the full text of the Mental Health Act 1983 and the Mental Capacity Act 2005 as amended by the 2007 Act, indicating both new and deleted text for at a glance comparison between current and new provisions. The remaining provisions of the Mental Health Act 2007 are also included. This practical guide contains a chapter by chapter analysis of the amendments in two parts: Part I, 'Reform of the Mental Health Act 1983 Act', and Part II 'The Mental Capacity Act 2005 and it Citation: Ministry of Health. 2012. Guidelines to the Mental Health (Compulsory Assessment and Treatment) Act 1992. Wellington: Ministry of Health. Published in November 2012 by the Ministry of Health PO Box 5013, Wellington 6145, New Zealand ISBN 978-0-478-37358-5 (book) ISBN 978-0-478-37359-2 (online) HP 5422 This document is available at www.health.govt.nz. The definition of mental disorder incorporates intermittently present phenomena, allowing continuing compulsory treatment during periods of remission to provide for more intensive overview and the possibility of early intervention to prevent relapse.

4 Guidelines to the Mental Health (Compulsory Assessment and Treatment) Act 1992.