

The New Mental Health Act

A guide to the role of the mental health officer

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THE NEW MENTAL HEALTH ACT

A guide to the role of the mental health officer

In March 2003 the Scottish Parliament passed a new law, the Mental Health (Care and Treatment) (Scotland) Act 2003. It came into effect in **October 2005**. It sets out how you can be treated if you have a mental disorder, and says what your rights are.

This guide is one of a series of guides about the new Act, and it explains the role of the mental health officer in relation to the Act. More detailed information on your local mental health officer service can be obtained from the local authority where you live. Your local authority is listed in the telephone directory under council services.

The Act says

- When you can be given treatment against your will
- When you can be taken into hospital against your will
- What your rights are
- What safeguards there are to make sure your rights are protected

This guide is written for people who use mental health services, but it may be useful to others including carers and independent advocates.

Disclaimer

While we have done our best to see that the information contained in this guide was accurate and up to date when it was published we cannot guarantee this. If you have any questions about how the information might apply to you, you should discuss your concerns with a solicitor, your independent advocate or other appropriate adviser.

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1 Guiding principles

The main aim of the principles is to ensure that you are treated with respect.

Anyone who is carrying out duties, or giving you treatment, under the Act, e.g. doctors, nurses and social workers, has to follow the principles set out in the Act. They must take account of:

- your past and present wishes about your care and treatment, giving you information and helping you as much as possible to participate in decisions about this
- the views of your named person, carers, guardian or welfare attorney, if you have them
- the range of options available for your care and treatment
- what will ensure the maximum benefit for you
- making sure that you are not treated any less favourably because you are being treated under the Act
- your individual abilities and background, and other factors such as your age, gender, sexual orientation, religion, racial origin or membership of any ethnic group.

Any restrictions on your freedom should be the minimum necessary in the circumstances.

Where it is reasonable and practical, your carers' needs should be taken into account and your carers should receive information that might help them to care for you.

The services that you receive should be appropriate for your needs. Where you stop being subject to compulsory powers under the Act you should continue to receive care and treatment for as long as is necessary.

Where you are a child, under the age of 18, people carrying out duties under the Act must try to ensure that they do what is best for your welfare.

2 Some terms used in this guide

The Act: The Mental Health (Care and Treatment) (Scotland) Act 2003.

Assessment Order: an order made by the court which authorises hospital detention for up to 28 days so that the person's mental condition may be assessed.

Compulsion Order: an order made by the court which authorises compulsory measures (either hospital or community based) for a period of 6 months, if not otherwise renewed.

Compulsory Treatment Order (CTO): this is an order which is granted by the Tribunal. It can include a number of different requirements including detention in hospital, compulsory treatment and participating in activities in the community. It will initially be made for 6 months and can then be renewed for a further 6 months, then for periods of 12 months, or revoked at any stage in your recovery.

Emergency Detention Certificate: this type of power authorises detention in hospital for no more than 3 days.

Extension Certificate: under the Act an approved medical practitioner may grant a certificate extending a period of short-term detention by three days to allow for the preparation of an application for a compulsory treatment order.

Hospital Direction: an order made by the court in addition to sentence of imprisonment. It allows the person to be detained in hospital for treatment of their mental disorder and then transferred to prison to complete their sentence once hospital treatment is no longer required.

Independent Advocate: under the Act anyone with a mental disorder has the right to access an independent advocate. An independent advocate is able to give support and help to enable a person to express their own views about their care and treatment.

Interim Compulsion Order: an order made by the court which authorises hospital detention for 12 weeks (but can be renewed regularly for up to one year) so that the court can gather further specific evidence on the person's mental condition.

Interim Compulsory Treatment Order: an order granted by the Tribunal which authorises compulsory measures for a period of up to 28 days. The Tribunal can make more than one interim CTO as long as the total time is not more than 56 days.

Mental Disorder: this is a term used in the Act which covers mental illness (including dementia), a learning disability or a personality disorder.

Mental Health Tribunal: the Mental Health Tribunal for Scotland was set up as part of the measures of the Act to make decisions about the compulsory care and treatment of people with mental disorder.

Mental Welfare Commission: the Mental Welfare Commission is an independent organisation. Its role is to safeguard the welfare of people who are vulnerable through mental disorder.

Named Person: this is someone who will look after the person's interests if he or she has to be treated under the Act.

Place of Safety: this is a place where someone might be taken in certain circumstances if they need to be assessed and arrangements made for their care. It might be a hospital, care home, or other suitable place. As a last resort, if no other places are available, it might be a police station.

Responsible Medical Officer (RMO): this is the medical practitioner, usually a consultant psychiatrist, who is responsible for the person's care and treatment.

Short-term Detention Certificate: this power authorises detention in hospital and compulsory treatment for up to 28 days.

Social Circumstances Report (SCR): is a report which the MHO must prepare within 21 days of anyone being made subject to a relevant certificate, order or direction under the Act. The SCR contains information gathered by the MHO on your past and present circumstances.

Transfer for Treatment Direction: an order made by the Scottish Ministers to allow transfer of a prisoner to hospital for treatment of a mental disorder.

Treatment Order: an order made by the court which authorises hospital detention for treatment of a person's mental disorder.

3 What is a mental health officer?

An MHO is a specially trained social worker who has the training, education, experience and skills to work with people with a mental disorder. MHOs work for the local authorities who have legal duties under the Act.

4 What does the mental health officer do?

When you are required to receive care and/or treatment under the Act the local authority must make sure that an MHO is appointed to work with you.

You might be being treated under any of the following orders:

- a short-term detention certificate
- an interim CTO
- a CTO
- an assessment order
- a treatment order
- an interim compulsion order
- a compulsion order
- a hospital direction
- a transfer for treatment direction.

In these cases the MHO will:

- interview you
- advise you of your rights, including your right to independent advocacy, legal representation and your right to have a named person to look after your interests.

MHO's are also responsible for:

- providing consent for you to be assessed or treated in hospital on an emergency or short-term detention certificate
- applying for a CTO
- letting the Mental Welfare Commission and your named person know if you have been detained in hospital or when an application is being made for you to be placed on a CTO.

(a) Emergency and short-term orders

There are different types of emergency and short-term orders that allow someone to be assessed or treated under the Act, depending on their particular circumstances. A separate guide provides information on emergency and short-term orders (see page 12).

The role of the MHO in these orders is explained below:

- (i) If you appear to have a mental disorder and you are living in the community and someone expresses concerns about you, then your local authority has a duty to look into your circumstances. If there is a problem getting to see you, or have a doctor examine you, then the MHO can apply for warrants to get legal access to your home and can take steps to make sure that you are seen by a doctor. They can also apply for a court order that would allow you to be taken to a 'place of safety' for up to 7 days.

(ii) If you become unwell as a result of your mental disorder and need emergency care and treatment, a doctor may grant an emergency detention certificate. This will allow you to be kept in hospital for up to 72 hours. Before the doctor does this he or she must discuss this with an MHO and get his/her agreement, unless this is not possible. If possible, the MHO will interview you and will discuss your situation with the doctor. The MHO will then decide whether or not an emergency detention certificate is needed.

(iii) The Act says that before granting a short-term detention certificate the doctor must consult an MHO and get his/her agreement, otherwise your short-term detention cannot proceed. Before deciding whether to agree to the short-term detention certificate, the MHO should meet with you, unless there is good reason why they cannot do this. When the MHO sees you he/she will:

- make an assessment of your current position and future needs
- ask if you have a named person, and if not explain the role and assist you to appoint one
- inform you of the availability of independent advocacy services, and take steps to make sure you have the opportunity to access those services. A separate guide provides information on independent advocacy (see page 12)
- inform you of your right to a lawyer and advise on how to obtain one.

If the MHO is not able to interview you or find out who your named person is, then he/she will tell the doctor dealing with your case that he/she has not been able to do this. A separate guide provides information about the named person (see page 12).

The MHO must be consulted before the doctor grants an extension to the short term detention certificate, except where it is not possible for this discussion to take place.

(b) Compulsory treatment orders

If it is felt that you need longer-term care and treatment under the Act, then an application might be made by the MHO to the Tribunal for you to be placed under a CTO. A separate guide provides information on CTOs (see page 12).

The MHO who is making the application should identify your named person and explain what rights you have, e.g. your right to challenge the application and have your views heard by the Tribunal. The MHO should also give you information about independent advocacy services and help you contact this service if you need help to do this. They should also ensure that you are aware of your right to legal representation and advise how to obtain a lawyer.

If you are subject to a CTO your MHO will work with you and his or her opinion will be sought when the order is reviewed or varied.

If you have any communication difficulties the MHO must make sure you get the support you need.

(c) Orders related to criminal proceedings/offence

If you are involved in criminal proceedings the MHO might be called to advise the court on your case.

If you have been remanded on a pre-trial Assessment or Treatment Order an MHO will be appointed to work with you. Your MHO must produce an SCR within 21 days and will prepare an MHO report for the court.

If you have been remanded on a post-trial Assessment, Treatment or interim Compulsion Order an MHO will be appointed to work with you. The MHO must produce an SCR within 21 days and prepare an MHO report for the court (see section 5 below).

If you are subject to a Compulsion Order or a Restriction Order an MHO will be appointed to work with you and his or her opinion will be sought when the Compulsion Order is reviewed.

If the court has decided that you should be sent to hospital for treatment and issues a Hospital Direction you will have an MHO appointed to work with you for the period of time you are subject to this order. Your MHO must produce an SCR within 21 days and the MHO's opinion will be sought when the Direction is being reviewed.

If you are subject to a Transfer Direction that allows for you to be moved to a hospital, an MHO will be appointed to work with you for the duration of the Direction. Your MHO must produce an SCR within 21 days and the MHO's opinion will be sought when the Direction is being reviewed.

5 When will the mental health officer prepare a Social Circumstances Report (SCR)?

The SCR contains information gathered by the MHO about your past and present circumstances. The MHO must prepare an SCR if you are being given care or treatment under any of the following orders:

- a short-term detention certificate
- an interim CTO
- a CTO
- an assessment order
- a treatment order
- an interim compulsion order
- a compulsion order
- a hospital direction
- a transfer for treatment direction.

The SCR has to be prepared within 21 days of the order being put in place.

The MHO will send a copy of your SCR to the Mental Welfare Commission and your RMO. Your RMO may use the report to help him or her to make a decision about your care and treatment including any support needs of carers.

The Mental Welfare Commission may use the report to help ensure that your care and treatment is delivered in a way that provides you with maximum benefit and respects your rights. If the Commission has concerns about your circumstances it may make further enquiries.

Usually the MHO will give you a copy of the report.

Your MHO does not need to prepare an SCR if he or she thinks it would serve little or no practical purpose. This may be because an SCR was recently completed in relation to another aspect of your care and treatment. The MHO will let the Mental Welfare Commission and your RMO know why they have not prepared an SCR.

6 Can I ask for a different mental health officer?

Yes. If you find that you can't work with the MHO that has been appointed, you can discuss this with them or you can contact your local authority and ask to speak to the manager of their MHO service and explain your difficulties. In most situations the manager will help to resolve the situation or allocate you another MHO. If you are still unhappy, then you can consider making a complaint using the local authority complaints procedure.

7 Further information contacts

Bipolar Fellowship Scotland

Studio 1016, Abbeymill Business Centre, Seedhill Road, PAISLEY PA1 1TJ

telephone: 0141 560 2050

website: www.bipolarscotland.org.uk

Depression Alliance Scotland

3 Grosvenor Gardens, EDINBURGH EH12 5JU

telephone: 0131 467 7701

website: www.depressionalliance.org

Mental Health Tribunal for Scotland

1st Floor, Bothwell House, Hamilton Business Park, Caird Park,
HAMILTON ML3 0QA

telephone: 01698 390 000

service user & carer freephone: **0800 345 70 60**

website: www.mhtscot.gov.uk

Mental Welfare Commission for Scotland

Floor K, Argyle House, 3 Lady Lawson Street, EDINBURGH EH3 9SH

telephone: 0131 222 6111

service user & carer freephone: **0800 389 6809**

website: www.mwscot.org.uk

National Schizophrenia Fellowship (Scotland)

Claremont House, 130 East Claremont Street, EDINBURGH EH7 4LB

telephone: 0131 557 8969

website: www.nsfscot.org.uk

The Office of the Public Guardian

Hadrian House, Callendar Business Park, Callendar Road, FALKIRK FK1 1XR

telephone: 01324 678 300

website: www.publicguardian-scotland.gov.uk

People First (Scotland)

77-79 Easter Road, EDINBURGH EH7 5PW

telephone: 0131 478 7707

website: www.peoplefirstscotland.com

Scottish Association for Mental Health (SAMH)

Cumrae House, 15 Carlton Court, GLASGOW G5 9JP

telephone: 0141 568 7000

website: www.samh.org.uk

Scottish Commission for the Regulation of Care

11 Riverside Drive, DUNDEE DD1 4NY

telephone: 0845 60 30 890

website: www.carecommission.com

Scottish Consortium for Learning Disability (SCLD)

The Adelphi Centre, Room 16, 12 Commercial Road, GLASGOW G5 0PQ

telephone: 0141 418 5420

website: www.sclld.org.uk

Scottish Independent Advocacy Alliance

138 Slateford Road, EDINBURGH EH14 1LR

telephone: 0131 455 8183

website: www.siaa.org.uk

Scottish Public Service Ombudsman

4 Melville Street, EDINBURGH EH3 7NS

telephone: 0870 011 5378

Website: www.scottishombudsman.org.uk

Your local authority is listed in the telephone directory under council services.

8 Acknowledgements

This guide was produced in collaboration with Scottish Association for Mental Health, National Schizophrenia Fellowship Scotland, the Scottish Independent Advocacy Alliance, the Mental Welfare Commission for Scotland, the State Hospital at Carstairs, and the Scottish Executive.



9 Other guides in this series

- The new Mental Health Act – A guide to advance statements
- The new Mental Health Act – A guide to compulsory treatment orders
- The new Mental Health Act – A guide to consent to treatment
- The new Mental Health Act – An easy read guide
- The new Mental Health Act – A guide to emergency and short-term powers
- The new Mental Health Act – The role of the Mental Welfare Commission
- The new Mental Health Act – A guide to named persons
- The new Mental Health Act – A guide to the roles and duties of NHS Boards and local authorities
- The new Mental Health Act – A guide for people involved in criminal proceedings
- The new Mental Health Act – Putting Principles into Practice
- The new Mental Health Act – What's it all about? A short introduction
- The new Mental Health Act – A guide to independent advocacy
- The new Mental Health Act – An introduction to the Mental Health Tribunal for Scotland
- The new Mental Health Act – A guide to the appeals process
- The new Mental Health Act – Rights of carers

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