The Mental Health Act 1983

an outline guide

For better
mental health

Introduction

The vast majority of the people receiving treatment in a mental hospital or psychiatric unit are **informal patients**, which means they are in hospital on a voluntary basis and have exactly the same rights as a person being treated for a physical illness.

Formal patients, who constitute about 20 per cent of the mental hospital population, are *compulsorily* detained under a section of the Mental Health Act 1983 and lose some of the rights available to informal patients.

This booklet outlines the main provisions of the Mental Health Act 1983 as they affect *formal* patients and their relatives. Numbers of the relevant section or part of the 1983 Act are indicated in brackets.

Note: the Mental Health Act 1983 has had several amendments since it's first implementation, and this booklet incorporates those amendments where appropriate. The latest changes, at the time of print, came into effect from November 2008.

Glossary

Key to abbreviations

AMHP Approved Mental Health Practitioner
CTO Community Treatment Order (a legal order that allows a patient to be discharged from formal detention onto supervised community treatment)
DoH Department of Health
MHRT Mental Health Review Tribunal (an independent body that decides whether a formal patient should be discharged)
SCT Supervised Community Treatment (an arrangement where a patient is discharged from detention in hospital under the Mental Health Act and is required to comply with conditions set out in a community treatment order; otherwise he or she may be recalled to hospital for treatment)

Who's who

Below are some explanations of the roles of people and organisations mentioned in this booklet.

Approved mental health practitioners

Approved mental health practitioners may be social workers, nurses, occupational therapists or psychologists who have been approved by a local social services authority to carry out certain functions under the Mental Health Act. The Mental Health Act 1983 gives them the power to make an application for admission to hospital under a section of the Act where necessary and proper. Before doing so, the AMHP must interview the patient and satisfy him or herself that detention in hospital is, in all the circumstances, the most appropriate way of providing the care and medical treatment the patient needs.

Approved clinician

Some decisions under the Mental Health Act can only be taken by approved clinicians. An approved clinician is a mental health professional who has been approved, for the purposes of the Mental Health Act, by the Secretary of State (England) or by Welsh ministers (Wales). Approved clinicians may be doctors or non-medically qualified mental health professionals such as psychologists, nurses, occupational therapists and social workers.

Responsible clinician

A responsible clinician is the approved clinician with overall responsibility for a patient's care and treatment. Certain decisions, such as placing a detained patient on supervised community treatment, can only be taken by the responsible clinician. All responsible clinicians must be approved clinicians (see above).

Independent Mental Health Advocates

Independent Mental Health Advocates are specially trained advocates. Qualifying patients are entitled to help from IMHAs when discussing neurosurgery or other treatments under **section 57** and specified in DoH regulations. They are also entitled to help and information from them about

their rights under the Mental Health Act, including the rights of the nearest relative, when making complaints in relation to health and social care services.

Nearest relative

A person's nearest relative has a number of powers under the Act and is identified according to the rules set out in **section 26**. The nearest relative can apply for their relative to be formally detained under a section of the Act, but in the vast majority of cases it is an AMHP who makes an application (see above).

Mental Health Act Commission

A special health authority authorised to keep under review all aspects of the care of formal patients. It can investigate complaints, appoint panels to give a second opinion on consent to treatment (including treatment given to community patients under SCT and certain informal child patients), and draw up codes of practice for mental health workers. It comprises approximately 100 part-time commissioners: mainly lawyers and mental health professionals, but also some service users. Their functions are to be transferred to the Care Quality Commission, expected to be established in 2009.

Terminology

Medical treatment

Any reference in the Mental Health Act to medical treatment in relation to mental disorder refers to medical treatment which has the purpose of alleviating, or preventing a worsening of, the disorder or one or more of its symptoms or manifestations. It includes nursing, psychological intervention and specialist mental health habilitation (learning skills), rehabilitation (relearning skills) and care.

Appropriate treatment

References to ‘appropriate medical treatment’ or ‘appropriate treatment’, in relation to a person suffering from mental disorder, are references to medical treatment which is appropriate in his or her case and takes into account the nature and degree of the mental disorder and all other circumstances of his or her case.

Definitions (section 1)

Mental disorder is defined as 'any disorder or disability of mind'.

Note: a person with a learning disability is not considered to be suffering from mental disorder for most purposes under the Act; or to require treatment in hospital, unless that disability is associated with abnormally aggressive or seriously irresponsible conduct.

However, a person with a learning disability can be admitted to hospital without their disability being associated with abnormally aggressive or seriously irresponsible conduct, under the emergency provisions of: section 135 (warrant to search for and remove patients), section 136 (mentally disordered persons found in public places), section 4 (assessment for emergency admission), section 5 (compulsory detention of informal patients already in hospital), and for admission for assessment under section 2 (see below).

Compulsory admission to hospital or guardianship for patients not involved in criminal proceedings (part 2)

Admission for assessment (section 2)

Duration of detention: 28 days maximum.

Application for admission: by an AMHP or the patient's nearest relative. The applicant must have seen the patient within the previous 14 days.

Procedure: two doctors must confirm that
(a) the patient is suffering from a mental disorder of a nature or degree that warrants detention in hospital for assessment (or assessment followed by medical treatment) for at least a limited period; *and*
(b) he or she ought to be detained in the interests of his or her own health or safety, or with a view to the protection of others.

Discharge: by any of the following

- responsible clinician
- hospital managers
- the nearest relative, who must give 72 hours' notice. The responsible clinician can prevent him or her discharging a patient by making a report to the hospital managers
- MHRT. The patient can apply to a tribunal within the first 14 days of detention.

Admission for treatment (section 3)

Duration of detention: up to six months, renewable for a further six months, then for one year at a time.

Application for admission: by nearest relative, or AMHP in cases where the nearest relative does not object, or is displaced by County Court, or it is not 'reasonably practicable' to consult him or her.

Procedure: two doctors must confirm that

(a) the patient is suffering from a mental disorder (see p. 5) of a nature or degree that makes it appropriate for him or her to receive medical treatment in hospital; *and*

(b) appropriate medical treatment is available for him or her; *and*

(c) it is necessary for his or her own health or safety, or for the protection of others that he or she receives such treatment and it cannot be provided unless he or she is detained under this section.

Renewal: under **section 20**, the responsible clinician can renew a section 3 detention if the original criteria still apply and appropriate medical treatment is available for the patient's condition. If the responsible clinician is not a registered medical practitioner, he or she must consult another person who has been professionally concerned with the patient's treatment, who may be, but does not need to be, a qualified medical practitioner.

Discharge: by any of the following
- responsible clinician
- hospital managers
- the nearest relative, who must give 72 hours' notice. If the responsible clinician prevents the nearest relative discharging the patient, by making a report to the hospital managers, the nearest relative can apply to an MHRT within 28 days
- MHRT. A patient can apply to a tribunal once during the first six months of his or her detention, once during the second six months and then once during each period of one year. If the patient does not apply in the first six months of detention, his or her case will be referred, automatically, to the MHRT. After that, the case is automatically referred when a period of three years has passed since a tribunal last considered it (one year, if the patient is under 16).

Admission for assessment in cases of emergency (section 4)

Duration of detention: 72 hours maximum.

Application for admission: by an AMHP or the nearest relative. The applicant must have seen the patient within the previous 24 hours.

Procedure: one doctor must confirm that
(a) it is of 'urgent necessity' for the patient to be admitted and detained under **section 2**; *and*
(b) waiting for a second doctor to confirm the need for an admission under **section 2** would cause 'undesirable delay'.

Note: the patient must be admitted within 24 hours of the medical examination or application, whichever is the earlier, or the application under section 4 is null and void.

Compulsory detention of informal patients already in hospital (section 5)

A doctor or other approved clinician in charge of an informal patient's treatment (including inpatients being treated for a physical problem), can detain a patient for up to 72 hours by reporting to hospital managers that an application for compulsory admission 'ought to be made'.

A nurse of the prescribed class (a nurse trained to work with mental illness or learning disabilities) can detain an informal patient **who is receiving treatment for mental disorder** for up to six hours, or until a doctor or a clinician with authority to detain him or her arrives, whichever is earlier.

Guardianship (sections 7–10)

Duration of guardianship order: up to six months, renewable for a further six months, then for one year at a time.

Application for reception into guardianship: by an AMHP or nearest relative.

Procedure: two doctors must confirm that
(a) the patient is suffering from a mental disorder (see p. 5) of a nature or degree that warrants reception into guardianship; *and*
(b) it is necessary in the interests of the patient's welfare or for the protection of others.

Note: the patient must be over 16. The guardian must be a local social services authority, or person approved by the social services authority, for the area in which he or she (the guardian) lives. A guardian has the following powers

- to require a patient to live at a place specified by the guardian
- to require a patient to attend places specified by the guardian for occupation, training or medical treatment (although the guardian cannot force the patient to undergo treatment)
- to ensure that a doctor, social worker or other person specified by the guardian can see the patient at home.

Discharge: by any of the following

- responsible clinician
- local social services authority
- nearest relative
- MHRT. The patient can apply to a tribunal once during the first six months of guardianship, once during the second six months and then once during each period of one year.

Warrant to search for and remove patients (section 135)

Duration of detention: 72 hours maximum.

Procedure: if there is reasonable cause to suspect that a person is suffering from mental disorder *and*
(a) is being ill-treated or neglected or not kept under proper control; *or*
(b) is unable to care for him or herself and lives alone
a magistrate can issue a warrant authorising a police officer (with a doctor and AMHP) to enter any premises where the person is believed to be and remove him or her to a place of safety.

Mentally disordered persons found in public places (section 136)

Duration of detention: 72 hours maximum.

Procedure: if it appears to a police officer that a person in a public place is 'suffering from mental disorder' and is 'in immediate need of care or control', he or she can take that person to a 'place of safety', which is usually a hospital, but can be a police station. Section 136 lasts for a maximum of 72 hours, so that the person can be examined by a doctor and interviewed by an AMHP and 'any necessary arrangements' made for his or her treatment or care.

Patients involved in criminal proceedings (part 3)

Remand to hospital for medical report (section 35)

Duration of remand: up to 28 days, renewable for further periods of 28 days to a maximum of 12 weeks in total.

Procedure: the Crown Court or Magistrates' Court remands the accused person to hospital on evidence from one doctor that

(a) there is 'reason to suspect' that he or she is suffering from a mental disorder (see p. 5); *and*

(b) it would be 'impracticable' for a report on his or her mental condition to be made if he or she were remanded on bail.

Remand to hospital for treatment (section 36)

Duration of remand: up to 28 days, renewable for further periods of 28 days to a maximum of 12 weeks in total.

Procedure: the Crown Court remands the accused person to hospital for treatment, on evidence from two doctors that he or she is suffering from a mental disorder of a nature or degree that makes detention for treatment appropriate, and that appropriate medical treatment is available for him or her.

Hospital order (section 37)

Duration of order: up to six months, renewable for a further six months, then for one year at a time.

Procedure: a hospital order can be made by the Crown Court. The Magistrates' Court can also make a hospital order, but only when the offender has been convicted of an offence that could be punishable with a prison sentence (such offences include manslaughter, but not murder). The Magistrates'

Court can make a hospital order without recording a conviction if an offender is suffering from a mental disorder, and magistrates are satisfied that he or she committed the act as charged.

The court can make a hospital order on evidence from two doctors that
(a) the offender is suffering from a mental disorder (see p. 5) of a nature or degree that makes detention for medical treatment appropriate; *and*
(b) appropriate medical treatment is available for him or her; *and*
(c) taking into account all the relevant circumstances, including the past history and character of the offender and alternative methods of dealing with him or her, a hospital order is the most suitable option.

Discharge: by any of the following
- responsible clinician
- hospital managers
- MHRT. The patient can apply to a tribunal once in the period between six and 12 months after a hospital order is made, and then once during each period of one year. A patient's case is automatically referred to a tribunal when a period of three years has passed since a tribunal last considered it (one year if the patient is under 16).

Interim hospital order (section 38)

Duration of order: 12 weeks, renewable for 28 days at a time, to a maximum of 12 months in total.

Procedure: the Crown Court or Magistrates' Court makes an interim hospital order on evidence from two doctors that
(a) a *convicted* offender is suffering from a mental disorder (see p. 5); *and*
(b) there is reason to suppose that it is appropriate for the order to be made.

Note: a convicted offender can be sent to hospital for up to 12 months so that an assessment can be made, in a hospital setting, as to whether a *full* hospital order would be appropriate. If the offender is evaluated as being unsuitable for a full hospital order, he or she can still be sent to prison when the *interim* order ends.

Restriction order (section 41)

Duration of order: without a time limit.

Procedure: the Crown Court that has made a hospital order under **section 37** can also impose a restriction order (this has stricter conditions of discharge) if
(a) this is necessary to protect the public from 'serious harm'; *and*
(b) at least one of the doctors who made recommendations for the hospital order gave his or her evidence orally.

A Magistrates' Court cannot make a restriction order, but can commit an offender to a Crown Court so that a section 41 order can be imposed. Patients on restriction orders are usually known as **restricted patients**.

Discharge: by *either*
- the Home Secretary *or*
- MHRT. A patient can apply to a tribunal once in the period between six and 12 months after a restriction order is made, and then once during each period of one year. The patient's case is automatically referred to a tribunal when a period of three years has passed since a tribunal last considered it (one year, if the patient is under 16).

Transfer to hospital from prison (section 47)

Duration of detention: up to six months, renewable for a further six months, then for one year at a time. If the Home Secretary also imposes a ‘restriction direction’ **(section 49)**, it continues in force until the earliest date on which the patient would have been released from prison with remission.

Procedure: the Home Secretary orders the transfer, if satisfied by evidence from two doctors that
(a) an offender has a mental disorder of a nature or degree that makes detention for medical treatment appropriate; *and*
(b) appropriate medical treatment is available for him or her.

Discharge: if no restriction direction has been imposed, the patient can be discharged by any of the following

- responsible clinician
- hospital managers
- MHRT. The patient can apply to a tribunal once during the first six months of transfer, once during the second six months, and then once during each period of one year. The Home Secretary must refer his or her case to a tribunal if the MHRT has not considered it in the previous three years (one year if the patient is under 16).

Until the end of his or her prison sentence (allowing for remission), **a patient under a restriction direction** can only be discharged by the Home Secretary. He or she can apply to a tribunal once during the first six months of transfer, once during the second six months and then once during each period of one year, but an MHRT can only *recommend* to the Home Secretary that the patient be discharged. The Home Secretary may order a return to prison instead. At the end of the prison sentence (allowing for remission), the restriction direction ceases to have effect and the above provisions apply.

Hospital and limitation direction (section 45A)

Duration of direction: the same as for a transfer direction under section 47, together with a restriction direction under section 49 (see p. 12). The offender may be transferred to prison at any time during his or her sentence, by warrant of the Home Secretary, on the recommendation of his or her responsible clinician or MHRT.

Procedure: if the Crown Court, having considered making a hospital order **(section 37)**, instead imposes a fixed-term sentence of imprisonment, it may direct the immediate admission of the offender to hospital, if it is satisfied by evidence from two doctors that

(a) he or she suffers from a mental disorder of a nature or degree that makes medical treatment appropriate; *and*

(b) appropriate medical treatment is available for him or her.

Discharge: before the end of the prison sentence, the offender can only be discharged by the Home Secretary, on recommendation of the responsible clinician or MHRT. He or she may order a return to prison instead.

At the end of the prison sentence (allowing for remission), the limitation direction ceases to have effect, and the offender is treated as if he or she were on a hospital order (section 37).

Consent to treatment (part 4)

Part 4 of the Mental Health Act applies to

- treatments for mental disorder
- all *formal* patients except those who are detained under **sections 4, 5, 35, 135** and **136**, subject to guardianship or conditional discharge. These patients have the right to refuse treatment, as have informal patients, except in emergencies.

Part 4 states that

(a) any treatment can be given without the patient's consent, unless the Mental Health Act or DoH regulations specify otherwise

(b) under **section 57**, psychosurgery and treatments specified in DoH regulations as giving rise to special concern can only be given if

  (i) the patient consents; *and*

  (ii) a multidisciplinary panel appointed by the Mental Health Act Commission confirms that his or her consent is valid; *and*

  (iii) the doctor on the multidisciplinary panel certifies that the treatment should be given. Before doing so, he or she must consult two people: one a nurse and the other neither a nurse nor a doctor, who have been concerned with the patient's treatment.

  Note: as the treatments specified in section 57 give rise to particular concern, this section applies to all formal and informal patients. Also patients detained under certain sections of the Mental

Health Act – including 2 and 3, guardianship and those on a CTO (‘qualifying patients’) – are entitled to help from an Independent Mental Health Advocate (IMHA) where there is a possibility of psychosurgery or other treatments specified in DoH regulations. The advocates will also provide help and information to qualifying patients making complaints in relation to health and social care services.

(c) under **section 58**, certain treatments can only be given if
   - (i) the patient consents; *or*
   - (ii) an independent doctor appointed by the Mental Health Act Commission confirms that treatment should be given. Before doing so, he or she must consult two people: one a nurse and the other neither a nurse nor a doctor, who have been concerned with the patient's treatment.

Section 58 applies to treatments named in DoH regulations (including electro-convulsive therapy). Medication can be given without the patient's consent for three months. After that, it is subject to the safeguards laid down in section 58.

Electroconvulsive therapy can be given with the patient’s consent, or if the patient lacks capacity, with the approval of a Second Opinion Appointed Doctor.

Note: under **section 62**, any treatment for mental disorder can be given without consent in specific emergencies, subject to restrictions when a treatment is irreversible or hazardous.

Supervised Community Treatment (SCT) (part 4A)

Procedure: under **section 17A** of the Act, a patient detained under **sections 3, 37, 47, 48** and **51** may be placed on a **Community Treatment Order (CTO)** when formal detention ends. The responsible clinician must apply to the hospital managers for a patient to be placed on a CTO before the detention ends. The CTO must be supported by an AMHP and the patient must be 'liable to be detained'. A patient under a CTO is known as a 'community patient'.

CTOs cannot be made in respect of patients subject to sections **4, 5, 136, 35, 36, 38, 44** or **45A**.

A restricted patient on a section 37 hospital order with a section 41 restriction order, **or a prisoner transferred to hospital** under sections 47 or 48 who is also on a restriction direction under section 49, cannot be made the subject of a CTO. A restricted patient can, however, still be conditionally discharged and subject to recall to hospital.

A CTO may be made under **section 17A(5)** if

(a) the patient is suffering from a mental disorder of a nature or degree that makes it appropriate for him or her to receive medical treatment;
(b) it is necessary for his or her health or safety or for the protection of other persons that he or she should receive such treatment;
(c) subject to his or her being liable to be recalled, such treatment can be provided without his or her continuing to be detained in a hospital;
(d) it is necessary that the responsible clinician should be able to exercise his or her power under section **17E(1)** to recall the patient to hospital;
(e) appropriate medical treatment is available for him or her.

The CTO must impose a condition that the patient make him or herself available for examinations **(section 17B(3))**. Other conditions may be imposed if the responsible clinician and AMHP consider them necessary and appropriate. A failure to comply with the condition to attend for examinations is a ground for recall to hospital. A failure to comply with other conditions may be taken into account by the responsible clinician in determining whether to recall the patient.

Duration and discharge: a CTO may be made initially for any period up to six months. When it expires, the patient is no longer liable to be recalled and the application for admission for treatment ceases to have effect. It may be revoked by the responsible clinician, and the patient then becomes subject to the hospital managers' powers to detain him or her, and is again `liable to be detained'. The patient may also be discharged from a CTO by the responsible clinician, hospital managers, nearest relative or Mental Health Review Tribunal, in which case he or she ceases to be liable to recall. A CTO may also be extended by the responsible clinician, for 6 months initially, and subsequently for periods of one year at a time.

Note: a CTO does not authorise treatment without consent in the community, but it does authorise treatment without consent in hospital following recall, when a patient may be held for up to 72 hours **(section 17F(7))**. After this time, either the patient must be released back into the community or the CTO revoked **(section 17F(4))**. If it is revoked, he or she once again becomes 'liable to be detained' and treatment can continue as he or she is subject to the compulsory treatment provisions of Part 4 **(section 56(3))**.

Additional information about patients' rights

Voting rights for patients

Informal patients have the right to vote if they enter on the electoral register their last non-hospital address, or an address where they would be if not in hospital.

Most **formal patients** can vote, if they are registered either at the hospital or at a recent home address. However, those who have been sent to hospital by a criminal court, or transferred from prison, cannot vote.

Providing information to patients

Under **section 132**, the hospital managers (usually the non-executive directors of the NHS Trusts) have a legal duty to give a formal patient information on

- the section he or she is detained under, or on SCT if the patient is subject to it
- his or her right to apply to a MHRT
- his or her right to be discharged by the responsible clinician, hospital managers and, if applicable, his or her nearest relative
- consent to treatment rules
- correspondence rules
- the Mental Health Act Commission, including its responsibility to protect formal patients, and its codes of practice.

Managers must also tell the nearest relative when the patient is due to be discharged, *unless* the nearest relative or patient has instructed that this information should not be given to the nearest relative.

Aftercare

Under **section 117**, health authorities and local social services have a legal duty to provide aftercare for patients who have been on **sections 3, 37, 47** or **48**, but who have left hospital. The duty to provide aftercare also applies in relation to **patients under a CTO**. There is no power to charge for section 117 after-care.

Further information

Mind's Legal Advice Service is always happy to offer information and advice on any aspect of mental health law, contact:

Mind Legal Advice Service
PO Box 277, Manchester M60 3XN
tel. 0845 225 9393 (Monday to Friday, 9.00 am to 5.00 pm)
email: legal@mind.org.uk

Publications

Mind also publishes a series of booklets called the *Minds rights guides*, exploring different aspects of the Mental Health Act:

Civil admission to hospital
Mental health and the police
Consent to medical treatment
Discharge from hospital
Mental health and the courts
Community care and aftercare

You can view them at Mind's website (www.mind.org.uk) or purchase copies from:

Mind Publications
Granta House, 15–19 Broadway, London E15 4BQ
tel. 0844 448 4448, fax: 020 8534 6399
email: publications@mind.org.uk

There are also several legal briefings covering various areas of mental health and the law on Mind's website at www.mind.org.uk/information

Mind's mission

- Our vision is of a society that promotes and protects good mental health for all, and that treats people with experience of mental distress fairly, positively, and with respect.
- The needs and experiences of people with mental distress drive our work and we make sure their voice is heard by those who influence change.
- Our independence gives us the freedom to stand up and speak out on the real issues that affect daily lives.
- We provide information and support, campaign to improve policy and attitudes and, in partnership with independent local Mind associations, develop local services.
- We do all this to make it possible for people who experience mental distress to live full lives, and play their full part in society.

For details of your nearest Mind association and of local services contact Mind's helpline, Mind*info*Line: **0845 766 0163** Monday to Friday 9.00am to 5.00pm. Speech-impaired or Deaf enquirers can contact us on the same number (if you are using BT Textdirect, add the prefix 18001). For interpretation, Mind*info*Line has access to 100 languages via Language Line.

Scottish Association for Mental Health tel. 0141 568 7000

Northern Ireland Association for Mental Health tel. 028 9032 8474

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