

The New Mental Health Act

**A guide to compulsory
treatment orders**

**Information for Service Users
and their Carers**

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The New Mental Health Act

A guide to compulsory treatment orders

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 illness, a learning disability or a personality disorder, and what your rights are.

This guide is one of a series about the new Act, and it explains how you can be given treatment under the Act, and what it means for you.

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 of interest to others including carers.

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 Some terms used in this guide

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

Advance statement: this is a written statement, drawn up and signed when the person is well, which sets out how he/she would prefer to be treated (or not treated) if he/she were to become ill in the future. It must be witnessed and dated. The Tribunal and any medical practitioner treating the person must take notice of an advance statement but are not bound by it. If the wishes set out in an advance statement have not been followed by the medical practitioner or the Tribunal, they must send to the patient, the patient's named person and the Mental Welfare Commission a written record giving the reasons for this. There is a separate topic guide that explains advance statements in more detail.

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.

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 Officer (MHO): this is a specially trained social worker who deals with people with mental disorder and has particular duties under the Act.

Mental Health Tribunal: The Mental Health Tribunal for Scotland was set up by 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 protect 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.

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

2 Care and treatment for mental disorder

Care and treatment for people with mental disorder covers a range of different things including: medication; talking therapies; training services; and services to promote social and independent living skills.

People's needs for care and treatment can vary greatly depending on their particular circumstances.

Many people will receive care and treatment on a voluntary basis, i.e. they will agree to accept it being provided for them. The Act deals with situations where it is believed that someone needs care and treatment, but that care and treatment **cannot** be provided on a voluntary basis. This may be either because the person refuses to accept it, or where they are unable to accept it (perhaps because they are too ill to make a decision about it). There are powers set out in the Act which allow care and treatment to be provided in these types of situations, subject to conditions and safeguards being met. This guide looks at one of these powers, the compulsory treatment order (CTO).

3 Emergency and short-term powers

This guide focuses on the longer term power in the Act, i.e. the compulsory treatment order. However, the Act also includes other powers which can be used in emergency situations or for a shorter period of time. There is a separate guide which looks at emergency and short-term powers (see page 15).

4 Powers to treat people involved in criminal proceedings

The Act also includes powers to treat people who are involved in criminal proceedings. Those powers are explained in a separate guide (see page 15).

5 Application for a compulsory treatment order

A Tribunal is responsible for deciding whether you should be put on a compulsory treatment order (CTO). It is made up of a panel of three people:

- (i) A lawyer
- (ii) A psychiatrist
- (iii) A person with other skills and experience, e.g. a nurse, social worker or someone with personal experience of mental disorder.

An application for a CTO has to be made to the Tribunal by a mental health officer (MHO), a specially trained social worker who has duties under the Act.

It must include:

- Two medical reports by doctors who have examined you and
- A report by the MHO making the application and
- A proposed care plan setting out the care and treatment that you would be given if you were put on the CTO.

Both you and your named person should be given notice if an application for a CTO is to be made. The MHO who is making the application should explain what rights you have, e.g. to challenge the application and have your views heard by the Tribunal. He/she should also give you information about independent advocacy services which can help support you to ensure your views are

heard. If you need help contacting independent advocacy services, your MHO should help you with this.

You may want to seek legal advice from a solicitor who can advise you about your rights. You should be entitled to legal aid which would cover the cost of advice and having a solicitor to act for you at any hearing. If you want to challenge the application, a solicitor might also be able to get an independent medical report to help you to do this.

6 How will the Tribunal decide whether to make a compulsory treatment order?

Once the Tribunal has received an application for a CTO, it will contact you and your named person to give you details about your hearing.

The Tribunal has to give a range of people, including you and your named person, the chance to have your views heard, and to give evidence in support of your case.

You can get more information about the Tribunal and how it works, by contacting the Mental Health Tribunal for Scotland (see page 12).

The Tribunal will weigh up all of the information and evidence it has received before reaching a decision. If you have made an advance statement about medical treatment, then this must be taken into account by the Tribunal – there is a separate guide on advance statements, see page 15 for details.

The Tribunal has to consider if all of the criteria in box 1 below are met.

Box 1: Criteria for making a Compulsory Treatment Order

- You have a mental disorder
- Medical treatment is available which will stop your condition getting worse, or help treat some of your symptoms
- If that medical treatment was not provided, there would be a significant risk to you, or to any other person
- Because of your mental disorder, your ability to make decisions about medical treatment is significantly impaired
- The use of compulsory powers is necessary.

7 What decisions might the Tribunal make in an application for a CTO?

The Tribunal can decide to:

- (i) Refuse the application or
- (ii) Make an interim CTO or
- (iii) Grant the application and make a CTO.

(i) When might the Tribunal refuse the application?

Where the Tribunal is satisfied that the criteria listed in box 1 above are not met, it may refuse the application, i.e. decide not to make a CTO.

(ii) When might the Tribunal make an Interim CTO?

In some circumstances, the Tribunal may decide to make an interim (temporary) CTO. This could be where the Tribunal needs further information before it can make a final decision and it will take some time to get that information, or perhaps, where you or your solicitor needs more time to prepare your case.

An interim CTO can last for up to 28 days. When the interim CTO runs out of time, the Tribunal can make another interim CTO, so

long as the total time you are on interim CTOs is not more than 56 days.

Before the Tribunal can make an interim CTO, it has to give a range of people, including you and your named person, the chance to have your views heard and to give evidence. It also has to be sure that certain criteria are met – these are similar to the criteria for making a CTO (see box 1 on page 6).

If you are put on an interim CTO, you can be subject to the same range of requirements as if you were on an actual CTO. These are listed in box 2 on page 8.

(iii) When might the Tribunal make a CTO?

If all of the criteria listed in box 1 on page 6 are met, then the Tribunal may make a CTO. The CTO will set out a number of conditions that you will have to comply with. This will be a combination of the conditions listed in box 2 on page 8, depending on whether your order is based in hospital, or in the community.

Box 2: Conditions you might have to comply with if you are on a CTO

- That you have to stay in hospital
- That you may be given medical treatment under the rules set out in part 16 of the Act
- That you have to attend for medical treatment as instructed
- That you have to attend certain community care services
- That you have to stay at a particular place in the community
- That you have to allow visits in your home by people involved in your care and treatment

- That you have to notify your MHO if you want to change your address
- That your MHO has to agree to any change in your address

These conditions can be varied (changed) during the course of the CTO. So, for example, you could start out on a hospital based order, and this could be changed to a community based order. If the doctor in charge of your care wants to change the conditions, he/she has to follow procedures set out in the Act. This involves him/her making an application to the Tribunal. You, and your named person, would be told about this, and would have a chance to give your views before the Tribunal makes a decision.

You, or your named person, can ask the Tribunal at certain times to change the conditions in your CTO.

There are rules set out in the Act about what happens if you are on a community based order and don't comply with ('breach') the conditions. This could involve you being admitted to hospital for assessment or treatment.

8 Can you be given medical treatment when you're on a CTO?

You can be given medical treatment for your mental disorder when you're on a CTO, or interim CTO, if the Tribunal has agreed to this, or if you need treatment in an emergency.

The rules about medical treatment are set out in part 16 of the Act. The definition of "medical treatment" under the Act is quite wide. It means treatment for mental disorder and as well as medical treatments like drug treatments and electro-convulsive therapy (ECT), it also covers nursing care, psychological interventions, habilitation and rehabilitation. ('Habilitation' and 'rehabilitation' cover things like education and training in work, social and independent living skills.)

There are special safeguards for some treatments, for example neurosurgery for mental disorder (NMD), ECT and drug treatment given for more than 2 months.

The rules about medical treatment are set out in more detail in a separate guide called **The New Mental Health Act: A guide to consent to treatment** – see page 14 for details.

9 Can you appeal against the CTO?

You, or your named person, can ask the Tribunal at certain times to end your CTO. This is sometimes referred to as ‘making an appeal against the CTO’. There are a number of people/organisations who can advise you about when and how you can do this, e.g. a solicitor or the Mental Health Tribunal Service (see page 12). A solicitor can apply to the Tribunal on your behalf – you should be entitled to legal aid to cover any costs.

10 When will a CTO end?

If the Tribunal make a CTO, it can last for up to 6 months initially. It can then be extended for a further 6 months, then for periods of 12 months at a time. If the doctor in charge of your care wants to extend the CTO, he/she has to follow procedures set out in the Act. There are a number of situations in which the CTO can be revoked (ended). These are set out below.

(i) The CTO may be ended by the RMO

The doctor responsible for your care and treatment is called the responsible medical officer (RMO). Your RMO must review your case regularly. This might involve examining you and speaking to other people involved in your care. If your RMO thinks that the criteria listed in box 1 on page 6 are no longer met, or thinks that you don’t need to be on a CTO, he/she should end your CTO. If this happens, then you and your named person will be notified about this.

(ii) The CTO may be ended by the Tribunal

The Tribunal has the power to end a CTO where it believes the criteria listed in box 1 on page 6 are no longer met. It can use this power whenever it is looking at your case.

You, or your named person, can ask the Tribunal at certain times to end your CTO.

(iii) The CTO may be ended by the Mental Welfare Commission

The Mental Welfare Commission has the power to end a CTO. However, if the Commission believes your CTO should be ended, it is likely to talk to your RMO about ending the order, or refer your case to the Tribunal, rather than using its own power to end the CTO.

11 What happens after a CTO ends?

Once the CTO ends, you no longer have to comply with the conditions which were set out in it (see box 2 on page 8). However, you can still continue to receive any care or treatment that you need, on a voluntary basis. The doctor in charge of your care (your RMO) should ensure that you have a care plan setting out what further care and treatment is intended after the CTO ends. This care plan should be drawn up in consultation with you and other people involved in your care.

12 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

Enable

6th Floor, 7 Buchanan Street, GLASGOW G1 3HL

telephone: 0141 226 4541

website: www.enable.org.uk

Mental Health Tribunal for Scotland

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

telephone: 01698 390 000

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 and carer freephone: 0800 389 6809

website: www.mwcscot.org.uk

National Schizophrenia Fellowship (Scotland)

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

telephone: 0131 557 8969

website: www.nsfscot.org.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)

Cumbrae 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 OPQ

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

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

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

13 Acknowledgements

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14 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 - A guide to independent advocacy

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 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 - What's it all about? A short introduction

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