

# **The New Mental Health Act**

**A guide to independent advocacy**

**Information for Service Users  
and their Carers**

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# **THE NEW MENTAL HEALTH ACT**

## **A guide to independent advocacy**

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

This booklet is one of a series about the new law, and it explains about your right to independent advocacy, what it is for and how it can help you.

This guide is written for people who might want to use advocacy 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.

## **Contents**

- 1 Some terms used in this guide
- 2 What is independent advocacy?
- 3 Why do I need independent advocacy?
- 4 Who has a right to independent advocacy?
- 5 What the law says
- 6 Guiding principles
- 7 What sort of independent advocacy is right for me?
- 8 What if I am in hospital or under an order?
- 9 Where can I find out about independent advocacy?
- 10 Further information contacts
- 11 Acknowledgements
- 12 Other guides in this series

# 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 What is independent advocacy?**

Independent advocacy is a way to help you to make your voice stronger and to have as much control as possible over your own life. It is called "independent" because it is not tied to the people who provide other types of services. It does not make decisions on your behalf and it does not put words in your mouth. Instead it helps you get the information you need to make real choices and gives you help to get your choices across.

Independent advocacy is there to help you decide what you want to say and then help you to say it. Independent advocates do not work for hospitals or social work services and you should never be asked to pay for their services.

## **3 Why do I need independent advocacy?**

Many people find that when they feel ill they are not as good at saying what they want as at other times. When you are ill others might make important decisions about what will happen to you. An advocate or advocacy group can make sure your views are heard when decisions are made.

## **4 Who has a right to independent advocacy?**

If you have a mental disorder, this includes:

- mental illness
- dementia
- learning disability
- personality disorder,

then the new mental health law gives you the right to independent advocacy wherever or whenever you are in Scotland. You do not have to be in hospital or on any kind of order.

## **5 What the law says**

- Every person with a mental disorder shall have a right of access to independent advocacy
- It is the duty of local authorities and Health Boards working together to make independent advocacy services available to those with a mental disorder free of charge
- If anyone is subject to any detention or treatment order under the act, the appropriate person shall take all reasonable steps to inform them of the availability of independent advocacy and take steps to ensure they have the opportunity of making use of those services.

## **6 Guiding principles**

The law has some guiding principles that the people taking care of you have to follow. One example of these is that people giving you treatment must take into account what you want to happen. An advocate can help you do this and help make sure that people are following the principles.

## **7 What sort of independent advocacy is right for me?**

There are two main types of independent advocacy, individual advocacy, where you will be partnered with someone on a one to one basis and group advocacy. You can decide that one or the other is best for what you want to do at any time. You can use both types at the same time if you want to.

## **Individual advocacy**

There are different types of individual advocacy. All involve you working with one advocate. This person might be paid, or they might be unpaid. The different types of individual advocacy you might come across are:

- **Professional advocacy:** where you will be matched with an independent advocate who will work with you to try to deal with your problem;
- **Citizen advocacy:** where you will be partnered with someone who is unpaid and may stay partnered with them for many years. They will usually come from the same area as you and will help you be a part of your local community.

Whichever type of advocacy you choose your advocate will help to get you the information you need to make choices and then help you to get your views across. You might want them to come with you to a meeting with a doctor, help with a housing problem or get you the service you need. However they will not tell you what to do or make decisions for you.

## **Group advocacy**

If you join an independent advocacy group, you will be with people who are in a similar situation to yourself. You will be able to have your say together on what services should be available near you and how they should be run. Advocacy groups don't just wait to be asked what they think about what is happening, they decide what's important for them and can work to change things.

Other names for group advocacy are **collective** and **self advocacy**.

## **8 What if I am in hospital or under an order?**

You have a right to access independent advocacy wherever you are in Scotland whether or not you are in hospital or on any sort of order. However, there are times when it is especially important that people have help from independent advocacy. Some of these times may be,

- If you are going to a Tribunal hearing
- If you are on an order which means you must stay in hospital
- Or that you can only stay out of hospital on certain conditions
- Or that you can be given treatments that you haven't agreed to.

Then doctors, nurses, social workers and mental health officers will be making sure you know about independent advocacy and will help you to get it if you want it. When people give you information about independent advocacy it should be in a way that you can understand it. For example it should be in large print if that is what you need.

## **9 Where can I find out about independent advocacy?**

If you are in hospital or under any order your doctor, nurse, social worker or mental health officer will have information about what independent advocacy is available near you and they should also help you to get in touch with an independent advocacy service if that's what you want.

If you are not under any order you can find out which independent advocacy services are near you by getting in touch with one of the following;

- your local social work department – See phonebook for number
- **Scottish Independent Advocacy Alliance (SIAA)** – telephone 0131 455 8183 or online at [www.siaa.org.uk](http://www.siaa.org.uk)
- Hospitals, GP surgeries and daycare centres should also have information on advocacy in your area.

## **10 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](http://www.bipolarscotland.org.uk)

### **Depression Alliance Scotland**

3 Grosvenor Gardens, EDINBURGH EH12 5JU

telephone: 0131 467 7701

website: [www.depressionalliance.org](http://www.depressionalliance.org)

### **Enable**

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

telephone: 0141 226 4541

website: [www.enable.org.uk](http://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.org](http://www.mhtscot.org)

### **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](http://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](http://www.nsfscot.org.uk)

**People First (Scotland)**

77 – 79 Easter Road, EDINBURGH EH7 5PW

telephone: 0131 478 7707

website: [www.peoplefirstscotland.com](http://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](http://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](http://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](http://www.sclld.org.uk)

**Scottish Independent Advocacy Alliance**

138 Slateford Road, EDINBURGH EH14 1LR

telephone: 0131 455 8183

website: [www.siaa.org.uk](http://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](http://www.publicguardian-scotland.gov.uk)

## **11 Acknowledgements**

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## **12 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 – What's it all about? A Short Introduction

**Further copies of this document are available, on request in audio and large print formats and in community languages, please contact:**

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