

# **The New Mental Health Act**

**The role of the Mental  
Welfare Commission**

**Information for Service Users  
and their Carers**

# THE NEW MENTAL HEALTH ACT

## The role of the Mental Welfare Commission

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. It explains what the Act says about the role of the Mental Welfare Commission and what the Commission can do for people with a mental disorder.

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 are there to make sure your rights are protected.

This guide is written for people who have a mental disorder, but it may be of interest to others including carers and advocacy workers.

### **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 a person is well that 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.

**Compulsory treatment order (CTO):** this is an order that is granted by the Tribunal. It can include a number of different requirements including detention in hospital, compulsory treatment and attending services in the community. It will last initially for 6 months and can then be renewed for a further 6 months, then for periods of 12 months.

**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 helps 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 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.

**Scottish Public Services Ombudsman:** looks into complaints about public services and public bodies.

**Welfare guardian:** someone appointed by the court under the Adults with Incapacity (Scotland) Act 2000 to make decisions about care and welfare on behalf of a person who cannot make these decisions him or herself.

## 2 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 treated 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.

### **3 What is the Mental Welfare Commission?**

The Mental Welfare Commission is an independent organisation. Its job is to safeguard the rights and welfare of everyone with a learning disability, mental illness or other mental disorder. The Commission is made up of people with experience of mental health and learning disability services, medicine, social care and law, who are called Commissioners. Most Commissioners have been appointed because of their professional background, others because of their experience either of using mental health and learning disability services or in caring for a service user.

### **4 What does the Mental Welfare Commission do?**

The Commission has a duty to make sure that people's rights under the Act are being protected. The Commission also has a wider role in promoting best practice in the use of mental health law. In particular the Commission is here to make sure that care and treatment of a person with a mental disorder is in line with the Principles of the Act.

As well as its work around the Act, the Commission also has duties under the Adults with Incapacity (Scotland) Act 2000, especially when a person is subject to an intervention order or guardianship. For more information see the Commission's leaflet 'Welfare Guardianship'.

There are several ways that the Commission fulfils its responsibilities:

### **Advice and support**

The Mental Welfare Commission runs a freephone advice line for service users, independent advocates and carers (call **0800 389 6809** during office hours). People who are concerned about their rights, or the rights of others who are receiving care and treatment, can contact the Commission using the freephone number. People who provide services can contact the Commission for advice and information relating to their responsibilities (call **0131 222 6111** during office hours). The Commission also provides information leaflets for service users and carers that can be requested over the phone or accessed from their website **[www.mwcscot.org.uk](http://www.mwcscot.org.uk)**

The freephone line:

- Helps people understand what the law says about care and treatment
- Advises people what action they can take if their treatment and care is not in line with the law or codes of practice
- Puts callers in touch with other local and national organisations who may be able to help.

If the Mental Welfare Commission can help, it may do things like:

- Looking into a problem in more detail with the person and the services concerned
- Telling care services when things have gone wrong for a person and asking them to put it right
- Following up to check that services have done what the Commission has asked. If the situation has not improved the Commission can take the problem to the next higher authority, up to, and including, the First Minister.

## **Visits**

The Mental Welfare Commission has a duty to visit some people receiving care and treatment under the Act. The Commission may visit whether a person is in a hospital, a care home, or in his or her own home. Sometimes the Commission will visit a ward or a service. Sometimes the Commission will ask to see a particular person. This might be for a number of reasons, for example, it visits some people on compulsory treatment orders, or people who have had a welfare guardian appointed. The Commission may also visit people who have asked for a visit. The reason for a visit is to hear directly from the person receiving care and treatment whether they feel their rights are being respected. For more information see the Commission's leaflet about visiting.

## **Looking at treatment and care**

If a person feels that they aren't getting the care they need, or is set out in their care plan, he or she can tell the Mental Welfare Commission and it will give advice and may look into the matter further.

## **Monitoring, investigations and inquiries**

The Mental Welfare Commission has a duty to make sure that treatment and care of people with a mental disorder is legal. It is told when

- a person has been detained or ordered to have compulsory treatment
- an advance statement has been over-ruled
- a welfare guardian has been appointed.

The Commission will review this information and may take action if it thinks there have been problems, which are not being taken care of, with the care that the service user has received. If a person in the care of a service has been involved in a serious accident, incident or has committed suicide the Commission will look into this. Also when something has gone badly wrong for a person and lessons have not been learnt, the Commission may carry out an investigation and make recommendations for change to make sure it doesn't happen again.

## **Promoting best practice**

Under the Act, the Mental Welfare Commission has a duty to promote best practice in the use of mental health law. The Commission does this through all of its work with individuals. The Commission also produces best practice guidelines, discussion papers and reports on the results of inquiries and investigations to improve the care of people with a mental illness or learning disability.

## **5 Who can contact the Mental Welfare Commission?**

**Anyone with a mental disorder** can contact the Commission. The Commission is there to help if a person is worried about whether they are getting the right care and treatment.

**Carers** can contact the Commission for advice about their rights if they do not feel they are getting the support they are entitled to. Carers can also contact the Commission if they are concerned about the treatment being given to a person they look after.

**People who work in care services** can contact the Commission for advice on the laws that relate to mental health and learning disability.

**Independent advocates** can contact the Commission to alert it to a problem or for information and advice in relation to someone they work with.

**Named persons** can contact the Commission if they are concerned about the welfare of the person whose interests they represent.

## **6 What if I am not satisfied with the way the Commission has dealt with me**

The Commission has a complaints policy and process in place. If you have a complaint please ring the Commission on **0800 389 6809**. The Commission will send you a copy of their complaints policy and keep you informed of the results of any investigation. If you are still unhappy you can complain to the Scottish Public Services Ombudsman by telephone on 0870 011 5378.

## **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](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 OQA

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 & 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 Rd, 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)

Your local area social work department is listed in the telephone directory under council services.

## **8 Acknowledgements**

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## 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 – A guide to independent advocacy
- 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

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