

The New Mental Health Act

**A guide to the roles and duties of
NHS Boards and local authorities**

**Information for Service Users and their
Carers**

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The New Mental Health Act

A guide to the roles and duties of NHS Boards and local authorities

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 the new powers and responsibilities given to health boards and local authorities under the Act, and what it means for you. It also sets out the duties and powers of organisations and individuals who may be responsible for your care.

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 primarily 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.

Approved medical practitioner (AMP): Approved medical practitioners have special qualifications, training and experience in diagnosing and treating mental disorder. They must meet certain standards and are employed and approved by their local health board to carry out particular duties under the Act.

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), 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 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.

Public Guardian: if someone is unable, because of a mental disorder, to look after their own finances or property, the Office of the Public Guardian has a duty to supervise the actions of the person who is appointed to look after their affairs.

Scottish Commission for the Regulation of Care: The Scottish Commission for the Regulation of Care (known as the **care commission**) is responsible for registering and regulating the standards of care services throughout Scotland.

2 Health Board and local authority functions under the Mental Health (Care and Treatment) (Scotland) Act 2003

Health Boards and local authorities already have a duty to provide services for people with mental disorder. This guide explains the new duties set out in the Act, and how it affects people who are being treated voluntarily and people who are not in hospital.

2.1 **Local authorities** have particular duties to make sure that you can get **care and support services** when you are not in hospital. Sometimes they may also provide some of these services for you while you are in hospital.

These services should aim to help you **to lead as normal a life as possible**, and to meet your **social, training, employment and leisure needs**. The services can include living accommodation and care and support, but do not include nursing care.

Local authorities must also **appoint a suitable number of mental health officers** for their area. Mental health officers are employed by local authorities and must meet special standards of education and training, experience and competence in dealing with people who have a mental disorder. Specific duties include:

- interviewing patients who may be detained under the Act
- preparing reports and care plans
- advising patients of their rights, including the right to have access to an independent advocate and to have a named person to look after their interests
- applying for a compulsory treatment order (CTO)
- notifying the Mental Welfare Commission and the patient's named person when someone is detained or an application is made for a CTO.

2.2 In addition to their general duty to provide appropriate care and treatment **NHS Boards** have a duty to appoint ‘**approved medical practitioners**’. Approved medical practitioners have special qualifications, training and experience in diagnosing and treating mental disorder. Health Boards (including the State Hospitals Board for Scotland) must keep a list of practitioners in their area who meet the standards required.

NHS Boards must also co-operate with local authorities when they are making enquiries under the Act.

2.3 **Local authorities and NHS Boards together** must see that anyone with a mental disorder can have access to **independent advocacy**. An independent advocate is able to give you support and help you to express your own views about your care and treatment. Advocates are independent of health and local authority services.

Local authorities and Health Boards have a duty to work together to provide these services for you, and local authorities must work with voluntary organisations where this will help.

3 Children and young people

If you are under the age of 18 and have been admitted to hospital for treatment for a mental disorder, **NHS Boards** must provide services and accommodation to meet your needs. This applies whether or not you have been receiving treatment as a voluntary patient or under compulsion.

Local authorities must provide education for children who are being treated for a mental disorder. They must also monitor the relationship between a child who is receiving treatment and the person who has parental responsibility for them; they must take steps to deal with any difficulties in contact or the relationship which may arise because of the treatment.

4 Mothers with post-natal depression

If you are admitted to hospital for treatment for post-natal depression **NHS Boards** have a new duty to provide services and accommodation so that you can care for your child in hospital if you want to. Your child, or adoptive child, must be under a year old, and you must normally be caring for him or her. This must not endanger the health or welfare of your child.

5 Training and help with finding a job

Local authorities have a duty to assist you to begin or continue in work or training, if you are over school age. This might mean helping you to prepare for employment, or move into employment, or to find the support you need to continue in employment.

For some people taking part in leisure activities may be more appropriate and a range of options should be available within their area.

6 Services to promote the well-being of people with mental health problems.

Local authorities have a duty to provide services such as social, cultural and recreational activities and training and help with finding employment for people who are over school age.

7 Help with travelling

Local authorities must help if you are not in hospital and you need assistance to travel to take advantage of any of these services. If you are in hospital they may still be able to help.

8 Avoiding the risk of harm to patients and property

If you are aged 16 or over, have a mental disorder, and you are not being treated in hospital, a **local authority** has a duty to make enquiries if it believes that you or your property may be at risk of

harm. This might be:

- if there was a concern that you might be suffering ill-treatment, neglect or some other problem with your care or treatment
- because, as a result of your mental disorder, your property has been, or is at risk of being lost or damaged
- because you are living alone, without care, and you are unable to look after your property or financial affairs, or
- although you are not in hospital, the safety of some other person may be at risk.

The local authority can ask other bodies to help with its enquiries, including:

- the Mental Welfare Commission
- the Public Guardian
- the Care Commission
- a Health Board, and
- a National Health Service Trust.

In carrying out these enquiries a mental health officer can apply to a sheriff or justice of the peace for a warrant to:

- enter premises, if necessary with the help of a police officer
- detain someone for up to 3 hours until a medical examination can be carried out, and
- have access to medical records.

9 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 and 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 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)

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

10 Acknowledgements

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11 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 for people involved in criminal proceedings

The new Mental Health Act - What's it all about? A short introduction

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