

The New Mental Health Act

**Putting Principles
into Practice**

**Information for Service Users
and their Carers**

© Crown copyright 2006

ISBN: 0-7559-4971-4

Scottish Executive
St Andrew's House
Edinburgh
EH1 3DG

Produced for the Scottish Executive by Astron B45245 09/06

Published by the Scottish Executive, September, 2006

Further copies are available from
Blackwell's Bookshop
53 South Bridge
Edinburgh
EH1 1YS

The text pages of this document are printed on recycled paper and are 100% recyclable

The New Mental Health Act

Putting Principles into Practice

Information for Service Users and their Carers

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 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
- How your rights and safety are protected

The new law is based on a set of principles that the people providing your care and treatment must take into account when making decisions. This leaflet provides more information about these principles and what they might mean for you.

This guide is written for people who have a mental disorder, but it may be of interest to others including carers, 'named persons' 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.

(Please note all page references are to the original).

Contents

- 1 Some terms used in this guide
- 2 What are the principles for?
- 3 What do the principles say?
 - Take your past and present wishes into account
 - Make sure you get the information and support you need to take part in decisions
 - Take the views of your carer, named person, guardian or welfare attorney into account
 - Look at the full range of options for your care
 - Give you treatment that provides maximum benefit
 - Take account of your background, beliefs and abilities
 - Make sure that any restrictions on your freedom should be the minimum necessary in the circumstances
 - Make sure that you are not being treated less favourably than other patients
 - Your carers' needs are taken into account and they get the information and support they need to help them care for you
 - Take special care of your welfare if you are under 18 years of age.
- 4 What can I do if I don't think the principles are being applied to my care and treatment?
- 5 Further information contacts
- 6 Acknowledgements
- 7 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 statement in more detail.

Guardian: if, as a result of a mental disorder, you are unable to make a safe decision about your own finances or welfare, the court can appoint a Guardian to make these decisions on your behalf. 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 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.

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.

Welfare attorney: a person who you have given the power to make decisions about your welfare through a legal arrangement called 'Power of Attorney'.

2 What are the principles for?

The Mental Health Act principles are there to help people understand how the law should work in practice. The principles were developed through consultation about what people felt was important to them when they were being treated for a mental disorder. Users and carers, as well as professionals, were involved in this consultation. The principles are a set of guidelines for how professionals should work when providing treatment and care under the Act. They do not provide you with legal rights in the same ways as other parts of the Act, but you can use principles as a guide to what you should expect from the people and organisations who provide your care and treatment. Although the principles are intended to apply to people who are receiving compulsory care and treatment under the Mental Health Act, they are also a useful guide for people receiving treatment on a voluntary basis.

Put into practice, these principles work to promote respect for your individual needs and to support your recovery. The most important theme of the principles is the importance of your **participation** in all decision-making that affects you.

The Voice of experience' quoted in this leaflet are quotes from Highland User Group members. They have been included to help show how applying the principles could impact on the care and treatment people receive.

The voice of experience

"I think people need to be told that they do have certain rights even when they are being given compulsory treatment. They can still be involved in their treatment. I think sometimes when you are under a

section it's as if you are a second-class citizen. I think that doctors and nurses need to remember that the way you are treated in hospital can have an effect, not just on your illness at that time but can also have repercussions on your future."

3 What do the principles say?

The principles say that whenever a professional involved is making a decision about your care and treatment under the Act he or she should:

Take your past and present wishes into account

Professionals should work with you to find out what care and treatment options you think might be right for you. If you are very ill it might be difficult for you to be involved or to make your views clear. The Act has put in place several arrangements that aim to help you

- a) **Your named person** is someone who should be given information and can be involved in decisions about your treatment and care. This can be someone that you choose, or it can be your primary carer or nearest relative. There is a separate guide which explains named persons in more detail (see page 12).
- b) **Your advance statement** can be made while you are well. It is a written statement setting out what treatment you would, or would not, like to receive in future. If someone involved in your care and treatment makes a decision that goes against your advance statement you will be informed in writing of the reasons for this. The Mental Welfare Commission will also be informed and may investigate further. There is a separate guide which explains advance statements in more detail (see page 12).
- c) **Your right to access independent advocacy services** is set out in the Act. If you are being treated under the Act you have the right to access an independent advocate. Independent advocacy can help you to make your views heard. There is a

separate guide which explains independent advocacy in more detail (see page 12).

Make sure you get the information and support you need to take part in decisions

You should be supplied with the information and given the support you need to participate as fully as possible in decisions. This might mean that information should be in a form you can understand. If you have communication difficulties and need help (for example translation services or signing) this should be looked into. Services have certain legal duties to provide you with the support you need to access services under both the Race Relations Act and the Disability Discrimination Act.

The voice of experience

"I felt I wasn't consulted on what I thought was best for myself. I don't know if it was because I was just 18, but I felt like a silly wee lassie that needed to get sorted out. There was one nurse who treated me as an equal, which was so refreshing. I knew that I could say whatever I was thinking, whatever I was feeling and I wasn't going to be made to feel silly. His attitude toward me was what I would have hoped everyone else's attitude was going to be."

Take the views of your carer, named person, guardian or welfare attorney into account

The people who know you well, or may help to look after you should be involved in decisions about your care and treatment. They should be given the information and support that they need to support you.

Look at the full range of options for your care

Professionals involved in your care should look into what treatment options and services are available and should match these to your individual needs. Your care and treatment should not restrict your freedom any more than is necessary to keep you safe. When you stop being treated under the Act, you should continue to receive care and treatment for as long as is necessary.

The voice of experience

"I'm one of the very fortunate people who receives support in the community. Prior to leaving hospital I was put onto a 'supporting people in the community care plan'. This has been really successful for me. After several years of being in and out of hospital, eventually resulting in my children being taken into care, I have had 7 successful months which I expect to continue. I just wish it had happened earlier."

Give you treatment that provides maximum benefit

Being treated under the Act can mean that you are kept in hospital against your will, given treatment that you haven't consented to, or made to take part in particular activities. In exchange for removing some of your freedom, the people involved in your care have a duty to make sure that you get the care and treatment that is of maximum benefit to you.

The voice of experience

"If I hadn't been put onto a section I don't think I would be here today. I reckon I would definitely have gone on to commit suicide. Although I can't say it was a positive experience it probably was a necessary one."

Take account of your background, beliefs and abilities

The principles support a way of working that promotes respect for you as an individual. People involved in your care and treatment should take account of who you are, your abilities, your cultural or ethnic background and your beliefs.

Make sure that any restrictions on your freedom should be the "minimum necessary in the circumstances"

Treatment under the Act might mean that some of your freedom of choice or movement might be restricted. The law says that this freedom should not be restricted any more than is necessary to keep you safe.

The voice of experience

"The problem is that often we know when we are getting ill and often we ask for help but don't get it when we feel that we desperately need it. We need to acknowledge ideas such as prevention, self-help and recovery. We need a range of services that will support us in the community and at home; to give us as good a quality of life as possible and to help reduce the regular descent into illness so many of us face."

Make sure that you are not being treated less favourably than other patients

The fact that you are being treated under mental health law should not affect the quality of care and treatment that you receive.

The voice of experience

"I don't think I was treated in the same way as I would have been if I had been in an ordinary hospital."

Your carers' needs are taken into account and they get the information and support they need to help them care for you

Carers should be consulted and involved in decisions about the care and treatment you receive from service providers, provided you are happy for them to be involved. Professionals need to balance the importance of informing, consulting and supporting carers with your right to confidentiality. You can say if there is some information about your illness or treatment that you don't want to be shared with your carer. Unless there is serious risk of harm to yourself or others you have the right to confidentiality.

The voice of experience

"After five and a half months in hospital you definitely need support when you come home. And it wasn't just me who needed support but the family I was staying with needed help to understand how I was feeling. They needed reassurance that what they were doing was OK."

Take special care of your welfare if you are under 18 years of age

If you are a child, or young person under the age of 18, people carrying out duties under the Act must try to make sure that they are putting your welfare first. This might mean helping you to access services that have been designed to meet the needs of children and young people.

4 What can I do if I don't think the principles are being applied to my care and treatment?

You should discuss your concerns with your mental health officer (MHO) or RMO. You may want to get some help from an independent advocacy service who can provide support and help you get your views across. The people providing your care and treatment should help you to contact an advocacy service.

You can also contact the Mental Welfare Commission for Scotland. The Commission can provide you with free information and advice. If they think that the principles are not being applied in your case they can take this up with the people providing your care. Contact details for the Commission can be found on page 9 of this leaflet.

5 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.mwscot.org.uk

National Schizophrenia Fellowship (Scotland)

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

telephone: 0131 557 8969

website: www.nsfscot.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

People First (Scotland)

77-79 Easter Road, EDINBURGH EH7 5PW

telephone: 0131 478 7707

website: www.peoplefirstscotland.com

Scottish Association for Mental Health (SAMH)

Cumbræ 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

Scottish Public Service Ombudsman

4 Melville Street, EDINBURGH EH3 7NS

Telephone: 0870 011 5378

website: www.scottishombudsman.org.uk

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

6 Acknowledgements

This guide was produced in collaboration with Scottish Association for Mental Health, National Schizophrenia Fellowship Scotland, the Scottish Independent Advocacy Alliance, the Mental Welfare Commission for Scotland, the State Hospital at Carstairs, and the Scottish Executive.

We wish to thank Anita Wiseman for her assistance with this guide.

10 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 - An introduction to the Mental Health Tribunal for Scotland

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:

Telephone 0131 556 8400

© Crown copyright 2006

This document is also available on the Scottish Executive website:
www.scotland.gov.uk

Astron B45246 05/06

Further copies are available from
Blackwell's Bookshop
53 South Bridge, Edinburgh EH1 1YS

Telephone orders and enquiries
0131 622 8283 or 0131 622 8258

Fax orders 0131 557 8149

Email orders business.edinburgh@blackwell.co.uk

Whilst every effort has been taken to ensure the accuracy of this text, the enclosed original documentation should be relied upon as the true and accurate version, and should be retained for future reference.