

An Introduction to

**The Mental Health
(Care and Treatment)
(Scotland) Act 2003**



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introduction

Section A

A INTRODUCTION

The Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”) received Royal Assent on 25 April 2003. The Act has been developed with co-operation and participation between all those involved in mental health care and treatment – patients and those who care for them whether in a professional capacity or otherwise. We plan that its implementation and operation should continue this co-operation and participation and that it should bring real benefits to people with mental disorder and for those who care for them.

Royal Assent represented the conclusion of one stage, and the beginning of another – the implementation of the new Act. Implementation is about making sure the benefits offered by the Act are achieved in reality.

We appreciate that the 2003 Act is quite long at over 300 sections. This booklet aims to summarise the main provisions of the Act which people need to be aware of and to help you find your way around the Act.

Its function is not to provide guidance on the operation of the Act – the Code of Practice is currently being drafted and will be consulted on shortly.

In this booklet we begin by looking at what we are trying to achieve:

- What mental health law in Scotland is for;
- How the system of mental health law in Scotland should work; and
- How the new Act will fit into that picture.

We look at what the new Act says about:

- organisational roles and duties (Parts 1-4, 14-15, some of Parts 18, 22-23)
- compulsory treatment and detention (Parts 5-7, 19-20)
- people with mental disorder involved in criminal proceedings (Parts 8-13)
- individual rights and safeguards (Parts 16-17, some of Parts 18 and 21).

We hope this booklet adds some further understanding to how everyone with an interest in mental health law in Scotland can play a part in its implementation and operation. Only this way can the benefits be fully realised. All and any comments on implementing the Act would be very welcome. (See contact details – section D.)

A Note about the Structure of the 2003 Act

The Act is set out in sections. Each section has a header which describes generally what it does. Sections can be broken down into sub-sections which are identified by numbers (1), (2) etc. and then paragraphs identified by letters (a), (b) etc. The 2003 Act has 333 sections.

To make it easier to find topics within the Act it is also divided into 23 Parts – each Part has a title and a number and a varying number of sections within it. Note that sections are numbered from the beginning of the Act and NOT just within each Part. So for instance Part 16 contains sections 233 to 249.

Some Parts are quite large and these are further broken down into Chapters, each of which has a number and a heading. Parts 4, 7, 8, 9 and 17 are broken down in this way. For example, Part 4 contains 2 Chapters.

The Header on each page of the print of the Act shows which Part and Chapter, where one exists, of the Act is on that page. You may find these helpful when looking for a topic within the Act. It is normal to use the section number when referring to something specific in the Act as this is unique within the Act.

The Act also contains 6 schedules which are placed after the main text of the Act. Some of these provide further detail on aspects of the Act and some make provision for changes to, or the repeal of, other legislation.

There is one further thing to note in the Act. Much of Part 8 and of schedule 4 which deal with mentally disordered persons in criminal proceedings are in the form of amendments to the Criminal Procedure (Scotland) Act 1995 and some of the sections take the form of insertions to, or replacements for sections in, the 1995 Act.

mental health law in Scotland

Section B

B MENTAL HEALTH LAW IN SCOTLAND

What mental health law in Scotland is for

Mental health law is about securing benefits for, and protecting the rights of, people with mental disorder. Its primary objective is to make sure people with mental disorder can receive effective care and treatment.

This objective relates to all people with mental disorder; but it is all the more critical in a situation where a person's decision-making is impaired by their mental disorder, with the result that their health, welfare or safety or the safety of others may be jeopardised by a refusal to consent to treatment which would be of benefit to them. In such situations, it is generally accepted that it can sometimes be right for society to override the individual's right to self-determination, for their benefit. Clearly, it is important that an individual's rights are only overridden in certain well-defined circumstances and under the controls put in place by legislation.

We hope that all those involved in mental health law in Scotland can agree that this objective – effective care and treatment – is what we are trying to achieve.

The Act uses the term 'mental disorder' to cover mental illness; personality disorder and learning disability. We use the term with this meaning in this booklet.

How the system of mental health law in Scotland should work

Whether or not we achieve the objective of making sure people with mental disorder can receive effective care and treatment depends on more than what the Act says. It also depends on the policies, practices and actions of a wide range of organisations and individuals, and on how well they work together. It depends on:

- how professionals discharge their specific functions under the Act;
- how service providers plan, organise and deliver services, to allow the Act to work in the way intended;
- the quality of care and treatment provided to people with mental disorder;
- how organisations, like the Mental Welfare Commission, identify and help to remedy any failures in the treatment of individuals;
- how service users and carers are supported and encouraged to participate in their care and treatment; and
- how well all the parts work and link together and how to identify and address any problems that arise.

All of these will combine to form a system of mental health law in Scotland. It is how well this system works as a whole that will determine whether or not our objectives are met.

We can also set out a number of principles, describing how the system of mental health law should work:

- all those involved should be clear about what the system consists of, what it is trying to achieve, and what their part in that is;
- there should be clear arrangements for reviewing whether the overall objective of the system is being achieved, and for considering what might need to be done; and
- the views of those the system is designed to help should be at the centre of these arrangements.

The Executive wants to ensure that all those involved in the system communicate and work together, to help ensure the system is working as well as it can, and that the system remains focused on its objective. In this way the Executive hopes to make sure people with mental disorder can receive effective care and treatment.

How the new Act will fit into that picture

The principles developed by the Millan Committee informed the Scottish Executive's thinking when developing the policy for the 2003 Act. Not all the Millan principles could be fully expressed in terms of statutory duties or powers in the Act. But, the Act does contain a range of provisions which will give significant and meaningful effect to the Millan principles.

The new Act will help achieve the objective of effective care and treatment for the benefit of people with mental disorder by:

- ensuring that emergency, short-term and longer-term periods of detention in hospital may only take place where strict criteria have been met and where clearly defined procedures have been followed;
- providing a new forum the Mental Health Tribunal to make important decisions in relation to compulsory measures imposed on people under the Act;
- strengthening the rights of the patient and the patient's named person to allow an application for revocation (cancellation) of an extension or a variation of a compulsory treatment order;
- giving the Commission and the patient's responsible medical officer the right to refer a compulsory treatment order to the Tribunal for review where an important element of the order is not being provided;
- treating offenders who enter the mental health system in the same way as civil patients wherever possible, but with some adjustment to reflect legitimate interests of justice and public safety; and
- giving powers to the Tribunal to make major decisions affecting the management of restricted patients, such as discharge for patients on a restriction order and compulsion order, and, for patients subject to hospital directions or transfer for treatment directions, the power to direct the Scottish Ministers to cancel these directions.

How implementation fits into this picture

The process of implementing the Act is now under way. For the Scottish Executive this is about doing the work necessary, such as making Regulations, setting up the Tribunal service and developing a Code of Practice, to enable the Scottish Ministers to bring the Act into effect. But, more generally, implementation is about helping Scotland's system of mental health care and treatment to give effect to the reformed legislation and to ensure it achieves its main objective of effective care and treatment for people with mental disorder.

This means that, in implementing the Act, we should keep in mind how Scotland's system of mental health law should operate, once the new Act has been brought into effect. It also means that implementation should be taken forward in the same spirit as we would like the system to work in the future:

- as a joint endeavour in which all with an interest participate;
- with a constant focus on the ultimate objective; and
- with meaningful involvement by service users and carers.

what the new act does

Section C

C WHAT THE NEW ACT DOES

C1 Introduction

This section summarises the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003. Its aim is to help you understand what the Act does, and what it might mean for you.

The new Act covers a wide range of issues but broadly they can be arranged under four headings:

- principles, roles and responsibilities: how the Act defines the nature, duties and powers of the organisations and individuals involved in mental health law and how they should give effect to the principles of the Act;
- compulsory powers: how the Act sets out the circumstances in which a person with mental disorder may receive treatment and/or be detained on a compulsory basis, and the procedures which have to be followed;
- people with mental disorder within the criminal justice system: what the Act says about how a person with mental disorder may be dealt with by the criminal justice system, and how they are subsequently cared for; and
- rights and safeguards: the additional rights the Act gives to a person with mental disorder, and the safeguards it puts in place.

C2 Principles, roles and responsibilities

Taking account of the Principles of the Act

The Act sets out some principles which most people performing functions under the Act have to consider. These include:

- the present and past wishes and feelings of the patient;
- the views of the patient's named person, carer, guardian or welfare attorney;
- the importance of the patient participating as fully as possible;
- the importance of providing the maximum benefit to the patient;
- the importance of providing appropriate services to the patient; and
- the needs and circumstances of the patient's carer.

The Act also sets out principles relating to the way in which the function must be discharged. These require the person discharging the function to do so in a way which, for example:

- involves the minimum restriction on the freedom of the patient that appears to be necessary in the circumstances;
- encourages equal opportunities; and
- if the patient is a child, best secures their welfare.

Other sections of the Act place further duties on those discharging functions under the Act:

- a duty to have regard to the Code of Practice on the Act, published by the Scottish Ministers. (This duty does not apply to the Commission, the Tribunal, or any court.);
- a duty to lessen any harm to child-parent relations, where relevant; and
- a duty to provide the Scottish Ministers with relevant information, such as for research, subject to a number of safeguards.

Roles and responsibilities

The new Act defines the nature, powers and duties of a number of organisations and individuals involved in mental health law:

- it makes provision of two organisations: the Mental Welfare Commission for Scotland, and the Mental Health Tribunal for Scotland;
- it places some specific duties on Health Boards and Local Authorities in relation to persons with mental disorder (in addition to their more general duties), and gives them some corresponding powers;
- it places certain duties on hospital managers in relation to a person who is subject to compulsory measures;
- it places certain duties on and grants certain powers to the Scottish Ministers;
- it creates and defines a number of special professional roles: approved medical practitioners, designated medical practitioners; and Mental Health Officers; and
- it provides for a Code of Practice on the Act.

Mental Welfare Commission

Part 2 of the Act sets out provisions relating to the continued existence of the Mental Welfare Commission for Scotland. The Commission will have:

- new duties to monitor the operation of the Act and to promote best practice;
- specific powers and duties in relation to carrying out visits to patients, investigations, interviews and medical examinations, and to inspect records; and
- powers and duties to publish information and guidance, and to give advice or bring matters to the attention of others in the mental health law system.

These powers and duties should enable the Commission to maintain and develop its vital role in protecting the rights of service users, and in promoting the effective operation of mental health law.

Schedule 1 of the Act sets out more detail on the membership, organisation and general powers of the Commission and makes provision for regulations to specify some matters in more detail, if necessary.

Mental Health Tribunal

The Mental Health Tribunal for Scotland ('the Tribunal') will be a new body, established by Part 3 and schedule 2 of the Act. The Tribunal will be the body which makes the decisions in a wide range of situations – for example, on an application for a Compulsory Treatment Order. Because of the nature of the decisions it will have to make the Tribunal will have to be expert both in mental health law and in the provision of care and treatment to people with mental disorder.

The Tribunal will consist of three groups of members: legal members, medical members, and general members. Decisions on most individual cases will be taken by a team of three members, one from each group. (In some situations, the legal member must be a sheriff.) Members of the Tribunal will be members of a national body – that is, they can take part in cases being heard anywhere in Scotland. The intention is that individual hearings will take place as locally as practical, for example in the hospital where the person subject to the Compulsory Treatment Order application is a patient. Health Boards (including the State Hospital) and Local Authorities are required, where practical, to provide accommodation where hearings can be held.

The Tribunal will operate within formal Rules of Procedure made by the Scottish Ministers. It will be headed by a President whose role will be to ensure that the Tribunal operates in line with the legislation and within agreed procedures. Schedule 2 of the Act gives more detail on the organisation and make-up of the Tribunal and makes provision for Regulations to specify some matters in further detail.

Appeals against certain decisions of the Tribunal can be made to the Sheriff Principal or the Court of Session and are dealt with in Part 22 of the Act.

Health Boards

Health Boards already have wide-ranging duties to provide services for people with mental disorder, mainly through the National Health Service (Scotland) Act 1978. But the new Act places further specific duties on Health Boards.

Under section 23 of the Act, Health Boards will have a new duty to provide services to meet the needs of any child or young person detained in hospital on emergency or short-term detention, or admitted to hospital for treatment for mental disorder.

Under section 24 of the Act, Health Boards will in certain circumstances have a new duty to provide such services and accommodation as are necessary to allow a mother with post-natal depression to care for her baby in hospital (Section 24).

Health Boards will also have a duty, in collaboration with Local Authorities, to ensure the provision of independent advocacy services to all persons with mental disorder in their area (see 'Advocacy' in Section C5 of this document).

Under section 22, Health Boards will also have a duty to appoint 'approved medical practitioners' for their area (see 'Special professional roles').

Beyond these specific duties, the new Act will have significant and wide-ranging implications for all who provide mental health services.

Local Authorities

Like Health Boards, Local Authorities already have a range of general duties towards persons with mental disorder, mainly set out in the Social Work (Scotland) Act 1968, and, as with Health Boards, the new Act will place further specific duties (and corresponding powers) on Local Authorities.

Under sections 25 to 27 of the 2003 Act, Local Authorities will have new and extended duties and powers to provide services for people with mental disorder. These include:

- care and support services;
- services to promote well-being and social development; and
- assistance with travel in connection with these.

Under section 33, Local Authorities will have a duty to inquire into the case of a person with mental disorder where certain criteria are met – essentially, where they are at risk of harm of some kind. Under sections 34 and 35, Local Authorities will also be able to apply for a range of warrants (such as a warrant to enter premises) to enable them to carry out their inquiries.

Local Authorities will have a duty, in collaboration with Health Boards, to ensure the provision of independent advocacy services to all persons with mental disorder in their area (see ‘Advocacy’ in Section C5 of this document).

Under section 32, Local Authorities will also have a duty to appoint sufficient Mental Health Officers for their area – see ‘Special professional roles’ below. Under section 229, Local Authorities will have a duty to designate a Mental Health Officer as being responsible for an individual’s case on particular occasions (such as a person being detained on a short-term basis).

Section 277 of the Act amends the Education (Scotland) Act 1980 to confirm that Local Authorities have a duty to provide education for children who are subject to the new Act, or who are subject to the mental disorder provisions of the Criminal Procedure (Scotland) Act 1995.

As for Health Boards, the new Act will have wider implications for the provision of mental health services by Local Authorities.

Hospital managers

Hospital managers have a number of general duties under the Act in relation to a person subject to compulsory measures.

Under section 230, hospital managers have a duty to appoint a Responsible Medical Officer (RMO) in relation to a person with mental disorder, at certain times – for example, when a person with mental disorder is detained on a short-term basis. (The role of the RMO is explained below under Special professional roles.)

The Scottish Ministers

The Scottish Ministers have a number of general duties and powers under the Act.

These include a range of powers to make secondary legislation (such as Regulations), which will fill in the detail of some aspects of the legislative framework. Secondary legislation of this kind is subject to Parliamentary procedure so that MSPs have the opportunity to scrutinise and comment on the proposals. The policy on the regulations will normally also have been subject to some public consultation before being put before the Scottish Parliament.

One example of the Scottish Ministers' Regulation-making power relates to cross-border transfers. The Scottish Ministers will have a power to complete a legislative framework within which patients may be transferred to and from Scotland.

The power to bring the Act into effect, either in whole or in part, also rests with the Scottish Ministers.

The Act places a duty on the Scottish Ministers to consult on, and publish, a Code of Practice on the Act giving guidance to those discharging functions under it (apart from the Commission, the Tribunal, and any court). This Code of Practice, which will be widely available, will be very significant in shaping professional practice under the Act.

The Scottish Ministers have a number of specific powers and duties in relation to people with mental disorder within the criminal justice system; these are described later in this section.

Special professional roles

The Act defines some special professional roles to which a person must be appointed by the relevant body, before they can discharge certain key functions under the Act:

Mental Health Officers (MHOs) play a significant role in many parts of the Act, similar to the role they play under the 1984 Act but greatly extended. Local Authorities will be able to appoint as MHOs only individuals who are officers of a Local Authority and who meet certain requirements on qualifications, training, experience and other matters which will be specified by the Scottish Ministers.

One particular duty which MHOs have throughout the Act is to prepare social circumstances reports (SCR) at points specified in the Act. (However, if the MHO considers that preparing the SCR would serve little or no practical purpose they do not need to prepare an SCR but must record the reasons for their view.) An example of an occasion when an SCR is required is the making of a Compulsory Treatment Order. A full list of these occasions is set out at section 232 of the Act.

Approved medical practitioners (AMPs) have a key role in many parts of the act such as in authorising a period of short-term detention. Health Boards will be able to appoint as AMPs only individuals who are registered medical practitioners, and who meet certain requirements on qualifications, training and experience which will be specified by the Scottish Ministers. Only an AMP can be appointed as the Responsible Medical Officer (RMO) for a patient. AMPs will replace "section 20 doctors" under the 1984 Act.

Responsible Medical Officer (RMO). This is the approved medical practitioner designated by hospital managers for a particular patient. The RMO has various duties particularly in relation to the ongoing review of whether compulsion continues to be appropriate. Section 230 sets out further detail on the appointment of an RMO.

Designated medical practitioners (DMPs) have a very specific role to play in relation to certain medical treatments (see 'Medical treatment', below). DMPs are appointed by the Mental Welfare Commission who will decide what qualifications and experience are required to perform this role.

Nurses 'of the prescribed class' will be able to detain a patient for up to 2 hours while awaiting a medical examination under section 299 of the Act. In addition, and where necessary, the patient may be detained beyond the 2 hours for up to one hour while the doctor carries out the examination. It will be for the Scottish Ministers to prescribe the class of nurse who may exercise this power.

More details on the functions which will be carried out as part of these special professional roles are given throughout this summary of the Act.

C3 Compulsory powers

Introduction

The new Act comprehensively reforms and modernises the legal framework for compulsory detention and treatment. In doing so, it sets out clear criteria which must be met before compulsion can be authorised as well as the detailed procedures which must be followed.

The Act deals with several forms of compulsion:

- emergency detention (72 hours);
- short-term detention (28 days, this may be extended);
- Compulsory Treatment Orders (6 months – this may also be extended); and
- other powers in relation to entry, removal and detention.

Emergency detention

This is dealt with in Part 5 of the Act. Under the Act, any fully registered medical practitioner may grant a certificate which authorises the managers of a hospital to detain someone for 72 hours. This can only happen where that medical practitioner considers it likely that the following circumstances apply:

- the person has a mental disorder which causes their decision-making to be 'significantly impaired';
- it is necessary as a matter of urgency to detain that person for assessment;
- either the person's health, safety or welfare, or the safety of another person, would be at significant risk if they were not detained; and
- making arrangements for the possible granting of a short-term detention certificate (see below) would involve 'undesirable delay'.

Before granting an emergency detention certificate, the medical practitioner also needs to consult and gain the consent of a mental health officer, unless this is impracticable.

When a person has been detained in this way, the hospital managers then have to carry out a range of tasks. They must:

- notify various parties of the detention, including the patient's nearest relative and named person as well as the Mental Welfare Commission and the Mental Health Tribunal;
- appoint an approved medical practitioner (AMP) to act as the patient's responsible medical officer; and
- arrange for the patient to be examined by an AMP.

If the AMP who conducts the examination is not satisfied the criteria above are met, they have to cancel the certificate.

Short-term detention

Short-term detention is dealt with in Part 6 of the new Act. Any approved medical practitioner may grant a certificate which authorises the managers of a hospital to detain someone for 28 days. This can only happen where the approved medical practitioner considers it likely that the following circumstances apply:

- the person has a mental disorder which causes their decision-making to be significantly impaired;
- it is necessary to detain them for assessment or treatment;
- either the person's health, safety or welfare, or the safety of another person, would be at significant risk if they were not detained; and
- the granting of a short-term detention certificate is necessary (i.e. the patient cannot be treated voluntarily).

To grant a certificate, the approved medical practitioner must consult and gain the consent of an MHO, whatever the circumstances.

Once a certificate has been granted, hospital managers have similar duties as for emergency detention to notify formally the patient and others of the detention. They must also appoint a responsible medical officer (RMO). One of the RMO's duties is to keep the need for detention under review: if they consider the criteria above are no longer met, they must cancel the certificate. The Mental Welfare Commission may also cancel a short-term detention certificate at any time, on the same grounds. The patient and their named person also have a right to ask the Mental Health Tribunal to review the case: the Tribunal has to cancel the certificate if it considers the criteria are not met.

Compulsory Treatment Orders

Long-term compulsion under the new Act is provided for by Compulsory Treatment Orders (CTOs). They are dealt with in Part 7 of the Act.

A CTO is an order which authorises the detention in hospital and/or treatment of a person for a period of 6 months. It has a built-in review mechanism. Only the Tribunal may grant a CTO.

Only a mental health officer (MHO) is allowed to apply to the Tribunal for a CTO. An application for a CTO has three main components:

- two mental health reports. These must have been prepared by two medical practitioners who must state their reasons for believing that compulsory measures are required;
- a report prepared by the MHO. This must cover the MHO's views on the mental health reports; details of any advance statement that the patient has made; and details of the personal circumstances of the patient; and
- a proposed care plan, containing information about the needs of the patient as well as the services, care and treatment to be provided to meet those needs. This has to be prepared by the MHO in consultation with those who have prepared reports on the patient or who will be involved in the provision of treatment and care for the patient.

Of the two mental health reports, one must be prepared by an approved medical practitioner (AMP), and the other by either the patient's GP or a second AMP. Where an MHO receives two such reports, and the reports meet certain other criteria (for example, the examinations on which they were based were carried out within 5 days of each other), then the MHO must apply to the Tribunal for a CTO.

The Tribunal will consider the application for a CTO at a hearing at which the patient, their named person, and others with an interest in the patient, the MHO and the doctors making the reports may be present.

For a Tribunal to grant a CTO, it must be satisfied that the following criteria are met:

- the patient has a mental disorder;
- medical treatment is available which would be likely to prevent that disorder worsening or be likely to alleviate the symptoms or effects of the disorder;
- there would be a significant risk to the patient or to any other person if the patient were not provided with such treatment;
- the patient's ability to make decisions about the provision of medical treatment is significantly impaired because of their mental disorder; and
- the making of the compulsory treatment order is necessary.

A CTO may:

- authorise the detention in hospital and/or treatment of the person concerned; or
- impose certain requirements on the person concerned, for example that they reside at a specified place or attend a specific place for treatment. This is known as a community-based compulsory treatment order.

Alternatively, the Tribunal may grant an interim compulsory treatment order, for instance, to allow time for further consideration of the plans in relation to the patient. This is similar to a 'full' compulsory treatment order, but can only last for a maximum of 28 days.

A patient's RMO also has a duty to review their case from time to time, and to cancel the CTO if the criteria are no longer met. The Mental Welfare Commission may also cancel a CTO on similar grounds.

If the RMO feels the terms of the order need to be changed, then they must apply to the Tribunal for a variation of the order. The patient or the patient's named person can also make an application to the Tribunal asking for an order to be cancelled or for the terms of the order to be varied.

Unless it is renewed, a CTO expires after 6 months. The patient's RMO must carry out a formal review of the order in the 2 months before it is due to expire, and must cancel the order if satisfied that the compulsion criteria are no longer met.

If the RMO feels that the order should be extended, they may do so without any reference to the Tribunal. However, if they feel that the order should be extended with some variation of its terms, then they must apply to the Tribunal.

If a CTO is renewed, it lasts for a further 6 months, and must then be renewed annually by the RMO. The Tribunal must review a patient's case if it has not been before it for a period of 2 years.

The new Act also sets out what happens when a CTO is breached (see Part 7, Chapter 5). If a person who is subject to a community-based CTO does not attend for medical treatment, the person may be taken to a hospital for the purpose of receiving that medical treatment, and detained at that hospital for up to 6 hours. Alternatively, if a community-based patient does not comply with some other term of the order, he may be taken to a hospital and detained there for up to 72 hours. Before this could happen, however, all reasonable efforts would have to have been made to make sure that the person complies with the terms of the CTO. The person could then be detained in hospital for up to a further 28 days on the approval of the person's RMO and MHO. This detention period would allow the person's RMO to decide whether they need to apply to the Tribunal for a variation of the terms of the order.

The Act also sets out the procedures which must be followed when a patient who is subject to a CTO is to be transferred to another Scottish hospital. These are set out in Part 7, Chapter 6. The patient and their named person will have a right of appeal against any such transfer.

The Act allows for the temporary suspension of CTOs. The requirement that the patient be detained in hospital can be suspended for up to 6 months. Any other provision of an order can be suspended for up to 3 months. This provision replaces the arrangements for leave of absence in the 1984 Act.

Part 20 makes provisions for patients who abscond while they are subject to compulsory measures under this Act authorising detention in hospital or a residence requirement. The powers allow the patient to be taken into custody and returned to the hospital or other place where they were required to reside.

Entry, removal and detention powers

Part 19 of the new Act provides a range of miscellaneous powers of entry, removal and detention.

Under the new Act, a sheriff or a justice of the peace may, in certain circumstances, grant a warrant authorising someone with the appropriate authority, such as an MHO, to enter specified premises to take a person to a place of safety or into custody (for example, under emergency detention).

The Act also allows for the removal to a place of safety of a person who is exposed to ill-treatment or neglect or who is unable to look after himself or his property/financial affairs. It further allows for a person to be removed from a public place to a place of safety where it is in the interests of that person or where it is necessary to protect other people.

The Act allows for an informal patient in hospital who wishes to leave hospital to be prevented from leaving and to be detained there by a nurse with the appropriate prescribed qualifications for 2 hours for the purpose of a medical examination by a medical practitioner. It also allows for the patient to be detained for up to a further hour after the practitioner has arrived to carry out the medical examination.

Part 18 (sections 274 to 291) sets out provisions relating to the withholding of correspondence to and from persons detained in hospital, and restrictions on their use of telephones. The Scottish Ministers may also make regulations authorising and placing conditions on various activities relating to safety and security in hospitals, including: searches; the taking and examination of body samples; restrictions on property which may be kept in hospital; restrictions on visitors; surveillance; and the searching of visitors.

C4 People with mental disorder within the criminal justice system

Background to new Provisions

The Act substantially reforms the law relating to people with mental disorder who enter the criminal justice system. This is dealt with by Parts 8 to 13 of the new Act.

Part 8 will amend the Criminal Procedure (Scotland) Act 1995 ('the 1995 Act'), to give courts new options in how they deal with people with mental disorder. It provides new orders which a court may make:

- an Assessment Order;
- a Treatment Order;
- an Interim Compulsion Order; and
- a Compulsion Order.

A court will still be able to make:

- a Hospital Direction; and
- a Restriction Order (in combination with a Compulsion Order.)

Part 8 also keeps the Scottish Ministers' power to transfer a prisoner to hospital for treatment of a mental disorder and introduces the Transfer for Treatment Direction.

Parts 9 to 13 of the new Act set out how some of these new orders will be reviewed once they are made; and set out procedures for the transfer of patients and the suspension of detention of patients who are subject to certain orders.

This section deals in turn with the following subjects:

- Assessment Order;
- Treatment Order;
- Interim Compulsion Order;
- the power to detain on acquittal;
- the making of a Compulsion Order;
- the review of a Compulsion Order (when not combined with a Restriction Order);
- the review of a Compulsion Order when combined with a Restriction Order;
- the making of a Transfer for Treatment Direction;
- the review of a Transfer for Treatment Directions and Hospital Direction;
- the transfer of a patient subject to a Compulsion Order and Restriction Order, a Hospital Direction or a Transfer for Treatment Direction; and
- the suspension of detention of a patient subject to a Compulsion Order and Restriction Order, a Hospital Direction or a Transfer for Treatment Direction.

Assessment Orders

The Act will amend s52 of the 1995 Act to introduce the Assessment Order. This order allows for the assessment of a person at any stage of the criminal justice process prior to sentencing by the court (including pre-trial and post-conviction). The court can make the order on its own initiative or following an application by the prosecutor or by the Scottish Ministers where the person is already in custody.

The Assessment Order is made on the evidence of one medical practitioner. It allows a person to be detained in hospital for up to 28 days, so that they can be assessed by an approved medical practitioner (AMP), and be given treatment for their mental disorder if required.

The person's designated Mental Health Officer must interview the patient and complete a Social Circumstances Report within 21 days of the order being made (unless they consider that this would serve no practical purpose). The Scottish Ministers also have a role in that their consent is required should the responsible medical officer (RMO) wish to suspend temporarily the person's detention in hospital for any period during the order.

The person's appointed RMO must report back to the court on their mental condition within 28 days of the order being made so the court can decide how best to proceed.

Treatment Orders

The Act will also amend s52 of the 1995 Act to introduce the Treatment Order. This order can be made by the court at any stage of the criminal justice process prior to sentencing where a person with a mental disorder requires care and treatment. As with Assessment Orders, the court can make the order on its own initiative, or following an application by the prosecutor or by the Scottish Ministers where the person is already in custody.

The Treatment Order is made on the evidence of two medical practitioners, one of whom must be an AMP. It allows for a person to be detained in hospital for treatment; it ceases at the end of the period for which the person is on remand or is committed. The designated MHO and the Scottish Ministers have the same duties in relation to the social circumstances report and the temporary suspension of the person's detention as with the previous order.

Interim Compulsion Orders

The Act will also amend the 1995 Act to introduce the Interim Compulsion Order. This order will replace the Interim Hospital Order (s53 of the 1995 Act); it is intended for use in cases where a person has been convicted of a serious offence punishable by imprisonment (apart from murder). Specifically, the court may make this order where the final disposal is likely to be a Compulsion Order and a Restriction Order or a Hospital Direction. This is in contrast to the current Interim Hospital Order which is only used where it is anticipated that the final disposal will be detention in the State Hospital.

An Interim Compulsion Order provides for a longer continuous period of assessment than an Assessment Order (up to one year), thereby allowing the court to gather further evidence prior to sentencing to assess whether the forensic criteria apply.

There is no application procedure for this order; the court makes it based on the medical evidence of two medical practitioners, one of whom must be an AMP. A person subject to an interim compulsion order can be detained for up to 12 months in hospital with the order being renewed by the court every 12 weeks on the basis of the evidence of the RMO. The RMO therefore has a duty to keep the order under review and submit reports to the court in accordance with this timescale.

There are the same duties on the MHO and the Scottish Ministers with regard to the Social Circumstances Report and the temporary suspension of detention as with the assessment and other orders.

The power to detain on acquittal

Part 8 also introduces a new provision into the 1995 Act in relation to a person who has been acquitted of an offence but who may require admission to hospital for treatment of a mental disorder. It allows the court to detain the person in a place of safety for up to 6 hours so that a medical examination can be carried out.

The making of a Compulsion Order

The Act will also amend the 1995 Act to introduce the Compulsion Order. This will replace the Hospital Order (s57 of the 1995 Act); its effect is similar to that of a Compulsory Treatment Order (CTO) in that it allows a court to order the detention and/or treatment of a convicted person for a period of 6 months with regular reviews. It is intended for use in cases where the person's mental disorder would benefit from treatment and there would be a significant risk to themselves or others if the order were not made.

The criteria for a Compulsion Order differs from the criteria for a CTO in only one respect: the person does not need to have significantly impaired decision-making ability with regard to their medical treatment. There is no application procedure for this order; the court makes it based on the evidence of two medical practitioners, one of whom must be an AMP, and a report from the designated MHO.

A Compulsion Order can authorise a variety of measures ranging from detention in hospital for 6 months to a requirement that the person reside at a specific address and keep specified appointments for treatment of their mental disorder. This is a major change from the current Hospital Order which always requires detention.

Once appointed, the RMO has a duty to prepare a Care Plan and the MHO has the same duty with regard to the completion of a Social Circumstances Report as with the other orders.

The effect of a Compulsion Order (when not combined with a Restriction Order)

The procedures for the review of a Compulsion Order, as set out in Part 9 of the Act, mirror those for Compulsory Treatment Orders in Part 7.

However, one important difference is at the RMO's first mandatory review of the order at the 6-month stage: if the RMO wishes to extend the order (which at the first review would be for a further period of 6 months), they can only do so by applying to the Tribunal irrespective of whether the measures in the order need to be varied or not.

For any subsequent renewals (which are then at 12 month intervals), the RMO can extend the order unless the measures specified in the order need to be varied when they would apply to the Tribunal.

Both the RMO and the Mental Welfare Commission can cancel a Compulsion Order without recourse to the Tribunal. Similarly the Commission can refer a Compulsion Order to the Tribunal for review for whatever reason it considers appropriate. The patient and the patient's named person can also apply periodically to the Tribunal to have the order cancelled or varied.

The effect of a Compulsion Order (when combined with a Restriction Order)

The Act preserves the provision in the 1995 Act which allows the court to make a Restriction Order. As happens currently, a Restriction Order is made by a court at the time of sentencing where the court considers that the person presents a serious risk to the public. Where a Restriction Order is added to a Compulsion Order, the measures specified in the Compulsion Order are without limit of time.

The test for making a Restriction Order remains unchanged in that a court needs to be satisfied that it is necessary 'for the protection of the public from serious harm' to make the order 'having regard to the nature of the offence, the antecedents of the person and the risk that as a result of his mental disorder he would commit offences if set at large'.

Once the court has made a Compulsion Order and a Restriction Order the designated MHO has the same duty as with other orders with regard to the Social Circumstances Report.

However, the Act will make considerable changes to the management of patients who are subject to a Restriction Order. The Tribunal takes on many of the functions in relation to restricted patients which are currently carried out by the Scottish Ministers: discharges, both conditional and absolute, the cancellation of a Restriction Order and the variation of a Compulsion Order if the Restriction Order is removed.

If, after carrying out a review of a restricted patient's case and taking into consideration the opinion of the MHO, the RMO considers that there should be a change to the status of the patient, the RMO must submit a report to the Scottish Ministers with their recommendations. The Scottish Ministers must then refer the case to the Tribunal for assessment and any further action.

The Mental Welfare Commission also has the power to require that the Scottish Ministers refer a restricted patient's case to the Tribunal for review. The patient and the patient's named person can themselves also apply periodically to the Tribunal to have the order cancelled or varied.

The Scottish Ministers will continue to authorise the temporary suspension of detention and the transfer of restricted patients between hospitals. This will apply whether or not the patient is detained in the State Hospital.

The making of Transfer for Treatment Directions

The new Act will keep the Scottish Ministers' power to transfer prisoners to hospital for treatment of a mental disorder. The Transfer for Treatment Direction will replace the Transfer Direction (s71 of the Mental Health (Scotland) Act 1984). The basis for the direction is the evidence of two medical practitioners, one of whom must be an AMP.

A person who is transferred from prison to hospital under a Transfer for Treatment Direction automatically becomes subject to the same regime as someone who is subject to a Hospital Direction. Once a Transfer for Treatment Direction is made, the designated MHO has the same duty in relation to the completion of a Social Circumstances Report as with other orders.

A Transfer for Treatment Direction ceases to have effect upon the expiry of the person's sentence. Continued detention in hospital is only possible if the person's case is brought before the Tribunal who would consider it on the same basis as an application for a Compulsory Treatment Order.

The review of Hospital Directions and Transfer for Treatment Directions

The review procedures for a Hospital Direction and a Transfer for Treatment Direction are similar to those for a Compulsion Order and a Restriction Order in Part 10 of the Act.

However important differences are:

- a person subject to either of these directions cannot be conditionally discharged;
- the Scottish Ministers are under a duty, in certain circumstances, to cancel the direction and return the person to prison without any requirement to apply to the Tribunal; and
- the Tribunal can only direct the Scottish Ministers to cancel the transfer for treatment direction. The Scottish Ministers must cancel the order when directed to do so by the Tribunal.

The RMO has a duty to carry out an annual review of the direction, (aside from keeping it under review on an ongoing basis), after which they submit a report to the Scottish Ministers with any recommendations. Upon receipt of the RMO's report, if it contains a recommendation that the direction is no longer necessary, and the Scottish Ministers are satisfied that this is the case, the Scottish Ministers can then cancel the Hospital Direction or Transfer for Treatment Direction without any reference to the Tribunal. However, where the Scottish Ministers receive such a report and they are not satisfied on this point, they must refer the case to the Tribunal for review.

The Scottish Ministers also have a duty to keep a Hospital Direction and a Transfer for Treatment Direction under review. They also authorise the transfer of patients between hospitals whether or not the patient is detained in, or transferred to, the State Hospital.

Transfer of patients to another hospital

Under the Act hospital managers may transfer a patient who is subject to a Compulsion Order to any other hospital provided that they obtain the consent of the managers of the 'receiving' hospital. Where the patient is subject to a Compulsion Order and a Restriction Order, a Hospital Direction or a Transfer for Treatment Direction, the managers of the 'transferring' hospital must also seek the consent of the Scottish Ministers.

Suspension of detention of patients

The Scottish Ministers will be responsible for authorising the suspension of detention for all patients on any of the pre-disposal orders and also for those who are on a compulsion order with a restriction order. Where a patient is subject to any of these orders, the RMO may grant a suspension of detention certificate for up to 3 months (apart from for an assessment order which only lasts 28 days) provided that:

- they have obtained the consent of the Scottish Ministers; and
- it does not take the total period of suspension granted over 9 months in any 12-month period.

C5 Rights, safeguards and duties

The new Act provides additional rights for people accessing mental health services and increased safeguards:

- it puts a duty on Local Authorities to undertake an assessment of needs where certain conditions are met, and gives patients, their carers and their named persons the right to request an assessment of needs from the Local Authority or Health Board;
- it gives all people with mental disorder the right of access to independent advocacy services and puts a duty on Health Boards and Local Authorities to ensure the availability and accessibility of advocacy services;
- it gives patients the right to nominate a named person who has the right to be kept informed of the patient's status in certain circumstances set out in the Act and may act on behalf of the patient, including making applications and appeals to the Tribunal;
- it gives patients the right to make an advance statement regarding how they would wish to be treated or not treated;
- it gives informal patients the right to apply to the Tribunal for an order requiring hospital managers to release a patient held unlawfully;
- it provides a framework of safeguards for different kinds of treatment, including neurosurgery for mental disorder and electro-convulsive therapy; and
- it gives patients (and others on their behalf) the right of appeal against detention in conditions of excessive security.

Assessment of Needs

A mental health officer may decide that an assessment of needs is required in relation to a person for whom they have a duty or power to provide (or secure the provision of) community care services. Where the mental health officer informs the Local Authority of such an instance, and it appears to the Local Authority that the person concerned is 'a person who may be in need of community care services', then the Local Authority has a duty under Part 14 of the Act to undertake an assessment of needs in relation to that person.

Under certain circumstances, where a Local Authority or a Health Board receives a written request for an assessment of the needs, the Local Authority or Health Board will have a duty to respond to the request within 14 days, saying whether or not they intend to carry out the assessment, and, if not, why not. A written request could come from the person, their primary carer or their named person.

Advocacy

The new Act enshrines the right of access of a patient to advocacy. It places a duty on each Local Authority and Health Board to ensure the provision of independent advocacy services to any person with mental disorder within their area. An advocate is someone who enables the patient to 'find their voice' and to express their views, for example at a Tribunal hearing. Unlike a named person, the advocate cannot act independently of the patient, but rather helps the patient to represent their own wishes and feelings. The right to advocacy and the duties on Local Authorities and Health Boards may be found in Part 17 Chapter 2.

Named Person

The Act creates a new support role for the patient – the named person. The named person has similar rights to the patient to apply for, appear at and be represented at Tribunal hearings concerning compulsory treatment orders, and to appeal against short-term detention. The named person is also entitled to be given information concerning compulsory measures which have been taken or are being sought. The named person and the patient are each entitled to act independently of the other.

The named person may undertake a number of functions in support of the patient. For example, he or she:

- may be consulted at certain times, for example before a short-term detention certificate is granted, or if a cross-border transfer is being suggested;
- is given notice of changes to the patient's status, for example, when the patient's detention is lifted;
- receives a copy of information given to the patient;
- receives a copy of the patient's advance statement if any;
- may authorise a medical practitioner to examine the patient before making an application or appeal to the Tribunal;
- may make applications to the Tribunal on the patient's behalf, and may make representations to the Tribunal and lead or give evidence; and
- may request that a Local Authority or Health Board undertake an assessment of needs for the patient.

Part 17 Chapter 1 sets out how a patient may nominate someone to act as their named person. It also sets out how the nomination may be cancelled later. If the patient does not choose to make a nomination or is unable to do so, or the nominated person declines, the patient's primary carer becomes the named person. If there is no primary carer or the primary carer declines, the nearest relative is the named person. (Section 254 sets out how to determine who the nearest relative is.)

As well as the right to nominate a named person, a patient also has the right to specify someone whom they would not wish to be their named person. A patient may later cancel a declaration.

Children under 16 cannot nominate a named person. The person with parental rights and responsibilities (or in certain circumstances, the Local Authority) is the named person. Where there is no such person appointed, the child's primary carer is the named person.

The mental health officer or another person may consider that the named person is inappropriate in that role, and apply to the Tribunal for the named person to be replaced with someone else.

Advance Statements

The Act gives patients the right to make a written statement setting out how they would wish to be treated, and how they would not wish to be treated, in the event of them becoming unable (due to their mental disorder) to make their views known when receiving care and treatment at a future date. This is in addition to the duty on doctors and others in Part 1 of the Act to have regard to the past and present wishes and feelings of the patient. Part 18 sets out how a person may make or withdraw an advance statement and its effect.

Where a person is discharging functions under the Act and the patient has made and not withdrawn an advance statement, the person must have regard to the wishes expressed in it. Where the Tribunal, or a person discharging functions under the Act, or a designated medical practitioner makes a decision which conflicts with the advance statement, they must record this in writing stating how the treatment conflicted with the patient's requests, and the reasons why this treatment decision was made. They must send a copy of this record to the patient, the named person, any guardian or welfare attorney and to the Commission, and place a copy with the patient's medical records.

Informal Patients

It is possible that a patient may be admitted or kept in hospital informally (that is, outside the scope of the 2003 or the 1995 Acts) without their genuine consent. Part 18 provides additional protection in such situations. The patient, and others on behalf of the patient (including anyone having an interest in the welfare of the patient), may apply to the Tribunal for an order requiring the hospital managers in which the patient is being unlawfully detained to cease their detention.

Medical Treatment

The Act provides a framework of safeguards for treatment for mental disorder. Any doctor giving treatment must have regard to the principles set out in Part 1 of the Act, and, wherever possible, to the past and present wishes and feelings of the patient including any advance statement made by the patient.

Part 16 sets out provisions and safeguards concerning medical treatment for mental disorder.

Patients who are subject to most orders (including those under the 1995 Act) may be given medical treatment compulsorily if they do not or cannot consent to it subject to safeguards in the 2003 Act. A patient subject to a compulsory treatment order can be given medical treatment compulsorily only if the Tribunal has authorised this under section 64.

Part 16 also makes provision for safeguards for some treatments which may be given to any patient, whether or not they are subject to compulsion under the Act (for example, neurosurgery for mental disorder).

Safeguards for specific treatments

Neurosurgery for mental disorder (NMD) can only be carried out after a designated medical practitioner (appointed by the Mental Welfare Commission) gives an independent opinion that it will be beneficial to the patient. Two lay people appointed by the Commission then must certify whether or not the patient is capable of consenting, and if the person is capable, that he or she consents, and if the person is incapable, that he or she does not object to the treatment. Finally, where the person is incapable of consenting, the Court of Session must make an order declaring the treatment may be lawfully given, before it can proceed. Where the patient is a child or an adolescent either the patient's responsible medical officer or the designated medical practitioner appointed by the Commission must be a specialist in child or adolescent psychiatry.

Electro-convulsive therapy (ECT) may only be given to a patient:

- if the patient can and does consent; or
- if the patient is incapable of consenting and the treatment is authorised by a designated medical practitioner appointed by the Commission.

It will not be possible, even in emergencies, to give ECT to a patient who is able to take a treatment decision and refuses the treatment.

Safeguards for other treatments

Part 16 of the Act also makes provision for safeguards for other treatment for patients under compulsion. Such treatments include drug treatment for more than 2 months. In general where the patient does not or cannot consent to the treatment it must be authorised by designated medical practitioner appointed by the Commission. Where the patient is subject to compulsion but not detained in hospital the Act does not authorise the giving of these medical treatments by force to the patient.

Urgent Treatment

Urgent treatment may be given without the patient's consent to save the patient's life, to alleviate serious suffering on the part of the patient or to prevent violent or dangerous behaviour, but only if the treatment would not attract significant risks or irreversible consequences.

Excessive Security

In some circumstances, the State Hospital is the most appropriate setting for a patient as it offers greater security than a local hospital ward. However, a person's needs may change. Where a patient no longer requires the secure environment of the State Hospital, he or she may apply to the Tribunal for an order declaring that they are being held in excessive security, and requiring the health board to find accommodation that is appropriate to their needs. The patient's named person, guardian, welfare attorney of the patient, or the Mental Welfare Commission may also apply to the Tribunal on behalf of the patient for such an order. The right to apply to the Tribunal for an order declaring that the patient is held in excessive security is to be found in Part 17 Chapter 3. The Act also contains parallel provisions for an application to the Tribunal, for patients detained in excessive security in hospitals other than state hospitals.

Definitions

The definition of 'mental disorder' and the interpretation of a number of other terms within the Act are now set out in Part 23 of the Act. Section 328 of the Act defines 'mental disorder' as mental illness; personality disorder or learning disability. This section also sets out a number of factors which by themselves do not constitute mental disorder such as, sexual orientation, dependence on drugs and alcohol and acting as no prudent person would act.

C6 Rights of Review and appeal

The Act makes provision for the patient and others on their behalf to apply to the Mental Health Tribunal to revoke (cancel) or vary most of the orders made in relation to the patient.

Emergency detention certificate (section 36): there is no right of appeal. The Commission also has no power to cancel the certificate. (It can only be cancelled by the AMP who examines the person after he is admitted to hospital)

Short-term detention certificate (section 44) or extension certificate (section 47): the patient can apply to the Tribunal under section 50 for a revocation (cancellation) of the certificate. The Commission also has a power to cancel the certificate under section 51.

Compulsory treatment order (section 64): In addition to the various review mechanisms which can be initiated by the RMO or the Commission (see Part 7, Chapter 4), the patient or the patient's named person can apply to the Tribunal under sections 99 and 100 for the following things to happen:

- to cancel the RMO's determination to extend the CTO (section 99);
- to cancel the CTO altogether; or
- to vary the measures or any recorded matter specified in the CTO.

Interim compulsory treatment order (section 65): the patient has no formal right of review or appeal. However, a single interim order cannot last for any longer than 28 days and, in practice, will also usually be reviewed by a Tribunal hearing when the order is due to expire. Furthermore, the Commission can cancel an interim order under section 73.

Transfers: There are also patient appeal rights relating to transfers (both within and out of Scotland).

Informal patients: Section 291 makes provisions in respect of informal patients, that is patients not subject to compulsory measures under the 2003 Act or the 1995 Act. The informal patient and a number of other individuals acting on the patient's behalf have the right of appeal to the Tribunal for an order which would require the managers of the hospital to cease to detain the patient.

For patients subject to compulsory powers through criminal proceedings the following apply:

Assessment Order: there is no right of appeal. However, the RMO must review the order and submit a report to the court before the order expires (the order lasts for 28 days).

Treatment Order: there is no right of appeal. However, the RMO must keep the order under review and submit a report to the court if they consider that the order is no longer appropriate.

Interim Compulsion Order: the patient can appeal to the court under s60 of the Criminal Procedure (Scotland) Act 1995 against this order first being made but there is no right of appeal against subsequent extension by the court.

Compulsion Order: the patient can appeal to the court under s60 of the 1995 Act against the order when it is first made and then they and their named person have the same rights of appeal to the Tribunal if it is renewed as a patient has under a CTO.

Hospital Direction: the patient can appeal to the court under s60 of the 1995 Act when the direction is first made, and then they and their named person can appeal to the Tribunal within certain timescales after that.

Transfer for Treatment Direction: The patient and the named person can both appeal to the Tribunal within certain timescales.

Part 22 of the Act provides provisions in relation to appealing decisions of the Tribunal to higher authorities.

Section 320 of the Act lists the decisions of the Tribunal which may be appealed to the Sheriff Principal. Section 321 allows for decisions of the sheriff principal to be appealed to the Court of Session by any of a number of people listed in section 320(5). Section 322 allows for a number of decisions of the Tribunal to be appealed to the Court of Session – these are generally in relation to restricted patients.

how to get involved

Section D

The Implementation Team within the Mental Health Division is working with stakeholders across Scotland to implement this Act.

We have the advice and guidance of the Mental Health Legislation Reference Group. The Reference Group itself has 4 sub-groups through which it can provide more detailed advice and guidance on aspects of the Act. These sub-groups are:

- Tribunal
- Mentally Disordered Offenders
- Training, Guidance and Information
- Monitoring and Research

We maintain a page on the Scottish Executive website which provides details of our work, such as our plans and consultation and other documents. Please use this as your starting point when looking for information on the implementation of the Act.

The 2003 Act

All Acts of the Scottish Parliament are on the HMSO website at <http://www.scotland-legislation.hmso.gov.uk/legislation/scotland/s-acts.htm>

All Acts can also be purchased from the Stationery Office book shop. The 2003 Act costs £20. We are sorry but the Mental Health Division cannot supply copies of the Act.

Distribution list

We maintain a full distribution list of contacts to whom we send all our newsletters, consultation documents and other information. If you would like to be added to our distribution list please e-mail us at mentalhealthlaw@scotland.gsi.gov.uk or phone Ryan Stewart on 0131 244 2591. If you have a particular interest, such as social work or service user information, please let us know and we can ensure that you receive the publications most appropriate to your interests.

We are happy to accept invitations to speak at national seminars and conferences about the implementation of the Act. However, please understand that as we are a small team it may not be possible for us to speak at more local events.

Our address for all correspondence is:

Mental Health Division
Health Department
Scottish Executive
3-EN
St Andrew's House
EDINBURGH
EH1 3DG

0131 244 2591

glossary of commonly- used terms in the act

Section E

Advance statement: a written, witnessed document made when the patient is well, setting out how he or she would prefer to be treated (or not treated) if they were to become ill in the future. The Tribunal and any doctor treating the patient must have regard to the advance statement, they must send the Commission a written record of the ways they have worked out with these instructions, and the reasons why, if the advance statement is not followed.

Assessment Order: a pre-disposal order made by the court under s52D of the Criminal Procedure (Scotland) Act 1995 authorising hospital detention for up to 28 days so that the patient's mental condition may be assessed.

Care plan: this is a document prepared by the mental health officer under section 62. It must detail the care, treatment and services which it is proposed to provide to a person who, it is proposed, to make subject to a compulsory treatment order.

Compulsion Order: a mental health disposal made by the court under s57A of the Criminal Procedure (Scotland) Act 1995 authorising compulsory measures (either hospital or community-based) for a period of 6 months, if not otherwise renewed.

Compulsory treatment order: this is an order granted by a Tribunal under section 64(4). It authorises compulsory measures (for example, detention in a hospital) for a period of six months, if not otherwise renewed.

Emergency detention certificate: this is a certificate issued under section 36(1). Subject to strict criteria, it authorises the removal of a person to hospital within 72 hours and the detention of that person in hospital for up to a further 72 hours.

Extension certificate: this is a certificate issued under section 47(1). It extends a period of short-term detention by three days to allow for the preparation of an application for a compulsory treatment order.

Forensic Criteria: for a court to make a mentally disordered offender subject to a mental health disposal, it must be satisfied that all of the following criteria are met:

- the person has a mental disorder
- medical treatment is available which would be likely to prevent that disorder worsening or be likely to alleviate the symptoms or effects of the disorder
- there would be a significant risk to the person or to others if treatment were not provided
- the making of the disposal is necessary.

Hospital Direction: a mental health disposal made by the court under s59A of the Criminal Procedure (Scotland) Act 1995 which is made in addition to a sentence of imprisonment. It allows the person to be detained in hospital for treatment of their mental disorder and then transferred to prison to complete their sentence once detention in hospital is no longer required.

Independent Advocate: a person who enables the patient to express their views about the decisions being made about their care and treatment by being a voice for the patient and encouraging them to speak out for themselves. An independent advocate is employed by an advocacy organisation which is not directly funded or run by the Health Board or Local Authority. All people with mental disorder have a right to independent advocacy, not only those subject to compulsory measures.

Interim Compulsion Order: a pre-disposal order made by the court under s53 of the Criminal Procedure (Scotland) Act 1995 authorising hospital detention for 12 weeks (but can be renewed regularly for up to one year) so that the court can gather further evidence on whether the forensic criteria apply.

Interim Compulsory Treatment Order: this is an order granted by the Tribunal under section 65(2). It authorises compulsory measures for a period of up to 28 days at a time.

Mental Health Officer's Report: this is a report under section 61 which is prepared by the mental health officer as part of the application for a compulsory treatment order. It must detail background information on the person who is the subject of the application.

Mental Health Report: this is a report required under section 57(4) and prepared by a medical practitioner. The practitioner must lay out in this report the reasons why a compulsory treatment order is appropriate.

Named Person: A 'named person' is someone nominated by a person in accordance with the provisions of the Act to support them and protect their interests. The named person is entitled to receive certain information about the person and to act on behalf of the person in certain circumstances and at certain times set out in the Act. Section 250 sets out the meaning of 'named person'.

Nearest Relative: There are occasions in the act where the nearest relative is given information about a person coming under the provisions of the Act such as when a person is removed to a place of safety. Section 254 sets out a list of the people who will be considered in identifying a person's nearest relative.

Nurse's Holding Power: this is a power which can be exercised by nurses 'of a prescribed class' by way of section 299 to detain a patient for up to 2 hours, while awaiting a medical examination. Where necessary the detention may be extended by up to one hour while the examination is carried out.

Place of Safety: Section 300 defines a place of safety as a hospital, premises which are used to provide a care home service or any other suitable place (other than a police station) where the occupier is willing to temporarily receive a person with mental disorder. However, if no place of safety is available, a police officer may remove a person to a police station which should then be treated as a place of safety for the purposes of the person's detention.

Removal Order: an order granted by a sheriff or a justice of the peace under section 293(1). It authorises certain persons to enter the premises of an individual at risk in order to remove them to a place of safety.

Restricted Patient: a patient who has been made subject to a compulsion order and a restriction order by the court.

Restriction Order: an order made by the court under s59 of the Criminal Procedure (Scotland) Act 1995 at the time of disposal and is added to a Compulsion Order. It means that the measures specified in the Compulsion Order will then be without limit of time.

Short-term Detention Certificate: this is a certificate issued under section 44(1). Subject to strict criteria, it authorises the detention of a person in hospital for a period of up to 28 days.

Social Circumstances Report: This is a report produced under section 231 of the Act. It must be produced by the patient's MHO within 21 days of any of the following events taking place: the granting of a short-term detention certificate; the making of an interim compulsory treatment order; of a compulsory treatment order; an assessment order; a treatment order; an interim compulsion order; a compulsion order; a hospital direction; or a transfer for treatment direction. However, an MHO does not need to complete an SCR where he is satisfied that an SCR would serve little or no practical purpose.

Transfer for Treatment Direction: an order that is made by the Scottish Ministers under s136 of the new Act which allows the transfer of a prisoner to hospital for treatment of a mental disorder.

Treatment Order: a pre-disposal order made by the court under s52M of the Criminal Procedure (Scotland) Act 1995 authorising hospital detention for treatment of a person's mental disorder. The order ceases at the end of the period for which the person is on remand or is committed.

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