

# **The New Mental Health Act**

**A guide to consent to  
treatment**

**Information for Service Users  
and their Carers**

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# THE NEW MENTAL HEALTH ACT

## A guide to consent to treatment

In March 2003 the Scottish Parliament passed a new law, the Mental Health (Care and Treatment) (Scotland) Act 2003. It came into effect in **October 2005**. It sets out how you can be treated if you have a mental illness, a learning disability or a personality disorder, and what your rights are.

This guide is one of a series about the new Act, and it explains 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
- what safeguards there are to make sure your rights are protected

This guide is written for people who use mental health services, but it may be of interest to others including carers.

### **Disclaimer**

While we have done our best to see that the information contained in this guide was accurate and up to date when it was published we cannot guarantee this. If you have any questions about how the information might apply to you, you should discuss your concerns with a solicitor, your independent advocate or other appropriate adviser.



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## 1 Some terms used in this guide

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

**Advance statement:** this is a written statement, drawn up and signed when the person is well, which sets out how he/she would prefer to be treated (or not treated) if he/she were to become ill in the future. It must be witnessed and dated. The Tribunal and any medical practitioner treating the person must take notice of an advance statement but are not bound by it. If the wishes set out in an advance statement have not been followed by the medical practitioner or the Tribunal, they must send to the patient, the patient's named person and the Mental Welfare Commission a written record giving the reasons for this. There is a separate topic guide that explains advance statements in more detail.

**The Adults with Incapacity Act (AWI):** The Adults with Incapacity (Scotland) Act 2000.

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

**Designated medical practitioner:** The Mental Welfare Commission keeps a list of doctors who have the right qualifications and experience to give independent second opinions under the Act. They are experienced consultant psychiatrists who have also received training from the Mental Welfare Commission. The list includes child specialists.

**Detention in hospital:** some of the compulsory powers under the Act will include this as a condition. The amount of time that the person can be 'detained' in hospital will depend on the type of power/order that applies to them.

**Emergency detention certificate:** this type of power authorises detention in hospital for no more than 3 days.

**Independent advocate:** under the Act anyone with a mental disorder has the right to access an independent advocate. An independent advocate is able to give support and helps to enable a person to express their own views about their care and treatment.

**Mental disorder:** this is a term used in the Act which covers mental illness (including dementia), learning disability or 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 certain decisions about the compulsory care and treatment of people with mental disorder.

**Mental Welfare Commission for Scotland:** The Mental Welfare Commission is an independent organisation. Its role is to protect the welfare of people who are vulnerable through mental disorder.

**Named Person:** this is someone who will look after the person's interests if he or she has to be treated under the Act.

**Responsible Medical Officer (RMO):** the medical practitioner, usually a consultant psychiatrist, who is responsible for the person's care and treatment.

**Short-term Detention Certificate:** this power authorises detention in hospital and compulsory treatment for up to 28 days.

**Voluntary patient:** this is someone who agrees to accept treatment for their mental disorder and who is not subject to compulsory powers under the Act.

## 2 When can I be treated against my will?

Many people agree to accept treatment for their mental disorder without being subject to any compulsory powers under the Act. If you are receiving treatment on that basis, you are a 'voluntary patient'. When you are a voluntary patient, you cannot be made to accept treatment against your will.

You can only be given treatment against your will if there is an order under the Act to say you must accept it. Compulsory powers given under an order can say that you should be given medical treatment even if you do not agree that this is necessary. This is called compulsory treatment. This guide outlines the sort of treatment the Act allows and the safeguards that exist to protect your rights and welfare.

If you are unable to give consent, you may be treated for mental disorder under another law called the Adults with Incapacity (Scotland) Act 2000, which has a different set of rules and procedures than those covered in this guide. (For information on the Adults with Incapacity Act see the Scottish Executive leaflet 'It's your decision'.)

## 3 Why might I be given compulsory treatment?

Whether or not you will receive compulsory treatment will depend on the type of compulsory power/order you are under. If you are on:

- An emergency detention certificate – you can only be given treatment if it is needed urgently or if you are being treated under the Adults with Incapacity Act.
- A short-term detention certificate – you can be given treatment without your consent.
- A compulsory treatment order – you can be given treatment without your consent but only if the Tribunal has authorised this when making the order.

There are conditions that need to be met before these powers can be used. The wording of these conditions varies slightly depending on the type of order, but they are that:

- You have a mental disorder
- Medical treatment is available which could stop your condition getting worse, or help treat some of your symptoms
- If that medical treatment was not provided, there would be a significant risk to you or to others
- Because of your mental disorder, your ability to make decisions about medical treatment is significantly impaired
- The use of compulsory powers is necessary.

#### **4 What sort of treatment can I be given under an order?**

The Act says you can only be given compulsory treatment for a mental disorder or the effects of a mental disorder. It does not include treatment for physical illness unless they are the cause or result of a mental disorder. Compulsory treatment for a mental disorder can include nursing care, psychological treatments, rehabilitation, education or training in work, social and independent living skills, as well as treatment with drugs and other physical treatments, for example electro-convulsive therapy (ECT).

#### **5 Will my views about treatment be listened to?**

Anyone giving you treatment under the Act is required to follow the principles set out in the Act. They must take account of:

- your past and present wishes about your treatment. You should be given information about treatment and helped as much as possible to participate in decisions
- the views of your named person, carer, guardian or welfare attorney
- the range of options available for treatment
- what will ensure the maximum benefit for you

- making sure you are not treated any less well because you are being treated under the Act
- your abilities and background, such as age, sex, religion and racial origin.

The Act encourages those who are caring for you to involve you in decision making about your treatment. The Act also gives you the right to have access to the help of an independent advocacy worker to help you express your opinions about treatment.

When you are well enough to do so, you can make an advance statement, setting out your wishes about treatment that you would like to receive, or not receive. This is a written statement, which would be taken into account if you were being treated under the Act.

There are other guides in this series that give more information about independent advocacy and advance statements (see page 13).

## 6 What should the doctor do when treating me?

Your doctor should discuss with you the treatment available and make a decision on the way you should be treated, taking into account the principles of the Act, outlined at section 5. He/she should give you information about what a treatment involves, and any side effects it might have, or about alternative treatments.

The Act sets out rules about the kinds of treatment that you can receive. There are stricter rules, or 'safeguards', for some treatments.

You can be given treatment where you are able to consent to receiving it and where your consent is recorded in writing. Your doctor should assess your ability to make decisions about any treatment he/she thinks you should receive.

If the doctor thinks that you are not able to consent to receiving a treatment, he/she must consider the reason for that and take into account your views and the views of your named person, together with any advance statement you have made. He/she must also consider the likelihood of the treatment making you better or stopping you from getting worse. If, after considering this, the doctor still thinks it is in your best interest that you have this treatment, he/she can give you the treatment and must record the reasons for this in writing.

## 7 Can physical force be used when giving treatment?

If you are in hospital and are subject to compulsory powers, the Act only allows the use of force where this is necessary and only for as long as is necessary. Force cannot be used to give you treatment in your own home. However, if you are subject to a compulsory treatment order that authorises compulsory treatment in the community then, under certain circumstances, you can be taken to hospital and treatment can be given there, forcibly, if necessary.

If you have been given treatment and you feel that unnecessary force has been used, then you could consider making a complaint about this, perhaps with the support of your named person, or independent advocate.

## 8 Which treatments have special safeguards?

If you are under an order that authorises compulsory treatment, the Act contains special rules about the types of treatment that you can be given. Some treatments have certain safeguards:

### (a) Medication beyond 2 months

If your doctor wishes you to continue to have medication after 2 months of treatment, this can only be given where he/she thinks it is in your best interests and:

- You are able to consent and you consent in writing or
- You are not able to consent, or refuse to consent, and a second opinion doctor has examined you and said that you should have the treatment.

## (b) Electro-convulsive therapy (ECT)

If your doctor thinks it is in your best interests to be given ECT, then you can be given it if:

- You are able to consent and you consent in writing or
- You are not able to consent and a second opinion doctor has examined you and said that you should have the treatment.
- You **cannot** be given ECT where you are considered as being able to consent to it and you refuse to give your consent.

There are similar safeguards for any other electrical or magnetic treatments that affect the brain.

## (c) Artificial nutrition

Feeding by a tube into the stomach or intravenous feeding may be given if you are starving yourself because of a mental disorder such as anorexia nervosa or depression. A second opinion is required if you do not consent to the artificial nutrition.

## (d) Neurosurgery for mental disorder (NMD)

There are several safeguards for neurosurgery and similar treatments affecting brain tissue.

If your doctor thinks that you need this treatment and that you are capable of consenting, the treatment may only go ahead if:

- You give your consent in writing
- A second opinion doctor certifies in writing that you are able to consent and do consent and that the treatment is in your best interests or
- Two people, neither of whom is a doctor, appointed by the Mental Welfare Commission, certify that you are able to consent and that you have consented in writing.

If your doctor considers that you are not able to consent to NMD, you can only be given the treatment provided that:

- You do not resist or object to the treatment
- A second opinion doctor and two other people, who are not doctors and who have been appointed by the Mental Welfare Commission, agree that it is in your best interests and
- The treatment has been authorised by the Court of Session.

### **(e) The Mental Welfare Commission**

The Mental Welfare Commission has a duty under the Act to help protect the welfare of people with mental disorder. One of the Commission's responsibilities is to appoint independent second opinion doctors who have to agree to certain treatments being given under the Act. These second opinion doctors are called 'designated medical practitioners'.

The Commission is informed about all treatment that requires a second opinion, and is also notified whenever urgent treatment is given. The Commission checks that these treatments are given in accordance with the rules in the Act.

## **9 What if treatment is needed urgently?**

If you are detained in hospital under the Act, you can be given treatment where it is needed urgently to:

- save your life
- prevent serious worsening of your condition
- reduce serious suffering on your part or
- stop you from behaving violently or being a danger to yourself or others.

Treatment can go ahead in these circumstances without the need to involve a second opinion doctor.

Before giving you treatment, your doctor must consider the likely risk to you. Your doctor must tell the Mental Welfare Commission what treatment was given and why it was given if he/she uses these powers to treat you urgently.

## **10 Are there any special safeguards for children?**

Before any of the treatments referred to in paragraph 8 can be given to a child aged under 18, at least one of the medical opinions must be from a child specialist.

## **11 My order is related to an offence, are my rights the same?**

If you are subject to an order which has been made during criminal proceedings please see 'The New Mental Health Act: A guide for people involved in criminal justice proceedings'. Your doctor should be able to confirm whether the rules about medical treatment set out in this booklet apply to you.

## **12 What can I do if I want to object to the treatment I am given?**

First of all, you should discuss your concerns with your doctor. You may ask your named person or your independent advocate to support you in discussions with your doctor. Your doctor must take your views into account when making decisions about your treatment. Where you do not agree your doctor should explain to you why he/she thinks it is in your best interests.

If you are still unhappy about your treatment or being subject to compulsory powers, then you may be able to apply to the Tribunal to ask it to review your case. You can appeal to the Tribunal against a short-term detention. If you are on a compulsory treatment order, then you can appeal, or ask the Tribunal to change the requirements in the order, if you have been on it for longer than 3 months. Your named person may appeal on your behalf.

If you want to appeal, then you should consider seeking advice from a solicitor. Legal aid will be available to assist you with your appeal.

## 13 Further information contacts

### **Bipolar Fellowship Scotland**

Studio 1016, Abbeymill Business Centre, Seedhill Road, PAISLEY PA1 1TJ

telephone: 0141 560 2050

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

### **Depression Alliance Scotland**

3 Grosvenor Gardens, EDINBURGH EH12 5JU

telephone: 0131 467 7701

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

### **Enable**

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

telephone: 0141 226 4541

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

### **Mental Health Tribunal for Scotland**

1st Floor, Bothwell House, Hamilton Business Park, Caird Park,  
HAMILTON ML3 0QA

telephone: 01698 390 000

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

### **Mental Welfare Commission for Scotland**

Floor K, Argyle House, 3 Lady Lawson Street, EDINBURGH EH3 9SH

telephone: 0131 222 6111

service user and carer freephone: 0800 389 6809

website: [www.mwscot.org.uk](http://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](http://www.nsfscot.org.uk)

**People First (Scotland)**

77 – 79 Easter Road, EDINBURGH EH7 5PW

telephone: 0131 478 7707

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

**Scottish Association for Mental Health (SAMH)**

Cumrae House, 15 Carlton Court, GLASGOW G5 9JP

telephone: 0141 568 7000

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

**Scottish Commission for the Regulation of Care**

11 Riverside Drive, DUNDEE DD1 4NY

telephone: 0845 60 30 890

website: [www.carecommission.com](http://www.carecommission.com)

**Scottish Consortium for Learning Disability (SCLD)**

The Adelphi Centre, Room 16, 12 Commercial Road, GLASGOW G5 0PQ

telephone: 0141 418 5420

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

**Scottish Independent Advocacy Alliance**

138 Slateford Road, EDINBURGH EH14 1LR

telephone: 0131 455 8183

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

**The Office of the Public Guardian**

Hadrian House, Callendar Business Park, Callendar Road, FALKIRK FK1 1XR

telephone: 01324 678 300

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

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

## 14 Acknowledgements

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## 15 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 – An easy read guide
- The New Mental Health Act – A guide to emergency and short-term powers
- The New Mental Health Act – A guide to independent advocacy
- The New Mental Health Act – The role of the Mental Welfare Commission
- The New Mental Health Act – A guide to named persons
- The New Mental Health Act – A guide 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?  
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