



A guide to the Mental Health Act in Scotland

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Please help us to continue to provide free information to people affected by brain injury by making a donation at www.headway.org.uk/donate. Thank you.

Introduction

The Mental Health (Care and Treatment) (Scotland) Act 2003 was passed by the Scottish Parliament in March 2003 and came into effect in October 2005. It replaced the previous 1984 Act and established new arrangements for the detention, care and treatment of people with a mental illness or related condition, including acquired brain injury.

The Act sets out:

- When you can be taken into hospital against your will
- When you can be given treatment against your will
- What rights you have when receiving care and treatment
- The safeguards that are in place to protect your rights

Who does the Act apply to?

The Act applies to anyone with a 'mental disorder'. This includes any mental illness, personality disorder or learning disability, however caused or manifested, including symptoms associated with brain injuries.

Principles of the Act

There are ten key principles under the Act. Whenever a professional is involved in making a decision about your care and treatment they should take account of these principles. The principles state that they should:

- Take your past and present wishes into account
- Make sure you get the information and support you need to take part in decisions
- Take the views of your carer, named person, guardian or welfare attorney into account
- Look at the full range of care and treatment options that you may need
- Give treatment that provides the maximum benefit to you
- Take account of your background, beliefs and abilities
- Make sure that any restrictions on your freedom should be the minimum necessary in



- Take the needs of carers into account and ensure that carers get the information and support they need
- Take special care of your welfare if you are under 18 years of age

What powers does the Act provide?

The Act allows for people to be placed under different types of compulsory orders, depending on the circumstances. There are three main types of compulsory powers:

Emergency detention

This allows someone to be detained in hospital for up to 72 hours in circumstances where admission to hospital is urgently required. This will only take place if recommended by a doctor. Wherever possible, the doctor should also obtain the agreement of a mental health officer (a social worker specially trained in mental health).

Short-term detention

This allows persons to be detained in hospital for up to 28 days in order to be assessed and/or treated. This will only take place if recommended by a psychiatrist. The psychiatrist must obtain the agreement of a mental health officer, who should meet with the person first if possible.

Compulsory Treatment Order (CTO)

This sets out various conditions relating to a person's care and treatment, in order for them to be treated against their own wishes. A CTO has to be approved by a Tribunal (see below). You have the right to free legal representation at the Tribunal hearing and to make any objections you have to the Tribunal. A CTO lasts for six months initially and can be extended for a further six months and then for 12 months at a time. It can be based in a hospital or in the community and the conditions can be changed during the course of the CTO.



When can these powers be used?

The following strict criteria in the Act set out when these powers can be used:

- The person has a diagnosed 'mental disorder'
- Medical treatment is available which could prevent their condition from getting worse, or help treat some of their symptoms (including specialist brain injury services and not restricted to mental health services)
- If that medical treatment was not provided, there would be a significant risk to that person or to others
- Because of the person's mental disorder, their ability to make decisions about medical treatment is significantly impaired
- The use of compulsory powers is necessary

Safeguards

The following safeguards are provided under the Act to protect the rights and welfare of individuals:

The Mental Health Tribunal for Scotland

The Tribunal decides on compulsory treatment orders, carries out reviews and also considers the care plans of patients. It is made up of three members: a lawyer, a psychiatrist and a person with experience or qualification in social care. The Tribunal aims to be fair, impartial and accessible.

A Named Person

Persons covered by the Act can choose a Named Person to support them and help protect their interests when any powers under the Act are used. They are also entitled to free legal representation at any Tribunal hearing.

Advance statements

People with disorders covered by the Act can make an advance statement setting out how they wish to be treated in the future should their condition deteriorate. This must be taken into account when any decisions about their treatment are made.



Independent Advocacy

Every person with a mental disorder has a right of access to independent advocacy, which aims to help you to make your voice stronger and to have as much control as possible over your own life.

Conclusion

The Mental Health (Care & Treatment) (Scotland) Act 2003 is designed to strengthen and safeguard the rights of service users to ensure that they receive appropriate care and treatment, based on the principle of least restrictive intervention. It provides a comprehensive framework for addressing the needs of persons with diagnosed 'mental disorders' including the effects of acquired brain injury.

If you would like to discuss any aspect of the factsheet please contact the Headway helpline on **0808 800 2244**.

Further reading

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

The full Act, explanatory notes and associated legislation are available to read at: www.legislation.gov.uk/asp/2003/13/contents.

Scottish Government

Information on a range of issues related to mental health and mental health law is available at www.scotland.gov.uk/Topics/Health/Services/Mental-Health.

To discuss any issues raised in this factsheet, or to find details of our local groups and branches, please contact the Headway helpline free of charge on 0808 800 2244 (Monday - Friday, 9am-5pm) or by email at helpline@headway.org.uk.

You can also find more information and contact details of groups and branches on our website at www.headway.org.uk/supporting-you.



Useful organisations

Act Against Harm

Information about the Adult Support and Protection (Scotland) Act 2007, which seeks to support and protect adults who may be at risk of harm or neglect and may not be able to protect themselves. Website lists local contacts to report concerns.

Web: www.actagainstharm.org

Law Society of Scotland

Regulates and represents all practising solicitors in Scotland. Provides information to the public on where to find and what to expect from solicitors.

Tel: 0131 226 7411

Web: www.lawscot.org.uk

Mental Health Tribunal for Scotland

Considers and determines applications for compulsory treatment orders (CTOs) and operates in an appellate role to consider appeals against compulsory measures made under the Act. Also plays a monitoring role by periodic review of compulsory measures.

Tel: 0800 345 70 60

Email: mhts@scotland.gsi.gov.uk

Web: www.mhtscotland.gov.uk

Mental Welfare Commission for Scotland

Protects the interests of adults with mental illness or related conditions in Scotland. Monitors the Act and supports people by visiting them and investigating improper care and treatment. Provides information and advice.

Tel: 0131 313 8777 or 0800 389 6809

Email: enquiries@mwscot.org.uk

Web: www.mwscot.org.uk

Scottish Independent Advocacy Alliance

Provides a directory of advocacy services in Scotland.

Tel: 0131 260 5380

Email: enquiry@siaa.org.uk

Web: www.siaa.org.uk

Scottish Legal Aid Board

Provides information on all aspects of legal aid and a list of solicitors registered for legal aid work.

Tel: 0131 226 7061

Email: general@slab.org.uk

Web: www.slab.org.uk

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