

# Mental Health Act 2007

Voluntary means of dealing with the patient's mental health problems must have been exhausted before these legally sanctioned methods of detention may be used. The patient must have a mental disorder, i.e. [mental illness](#), mental impairment, or [psychopathy](#). The patient's mental disorder must require hospital detention for assessment or treatment, or to protect the interests of the patient or others. The Mental Health Act (1983) gives a statutory framework for non-consensual detention of patients in hospital. In addition, a Code of Practice provides guidance on how to carry out the Act. Great care should be taken when filling out the Statutory forms as they are legal documents. In addition they will be checked by the Mental Health Act Administrator and errors will have to be amended. It can be very irritating, having been involved in a time-consuming 'Section', to have to go back to tidy up the paperwork! This act operates in England and Wales; arrangements in Scotland are slightly different.

## Mental Health Act 2007<sup>1</sup>

The 1983 Mental Health Act has been amended by the Mental Health Act 2007, which is expected to become fully implemented by the end of 2008. The amendments include the definition of mental disorder, which is defined as any disorder or disability of the mind, excluding drug or [alcohol dependence](#), or learning disability (unless with abnormally aggressive or seriously irresponsible behaviour).

### Professional roles

Applicant Approved Social Worker (ASW) is to be replaced by Approved Mental Health Professional (AMHP). An AMHP is a person from any health profession/social work approved to act in that role by a local social services authority (LSSA). A registered medical practitioner (RMP) may not be an AMHP.

Medical recommendations are to be made by 2 doctors, one of the two being section 12 approved (all Medical Approved Clinicians are deemed also to be approved).

Approved Clinician: an approved clinician is a person approved by the appropriate national authority to act as an approved clinician for the purposes of the Act. The power to approve is delegated. To act as a patient's responsible clinician, a professional must first be approved as an approved clinician. The approved clinician in charge of a particular episode or type of treatment may or may not be the Responsible Clinician.

Responsible Clinician (RC): a patient's Responsible Clinician is defined as the approved clinician with overall responsibility for the patient's case. All patients subject to detention or Supervised Community Treatment have a Responsible Clinician, who may be a Nurse, Occupational Therapist, Psychiatrist, Psychologist or Social Worker.

### Supervised Community Treatment (Community Treatment

## Order)

The Mental Health Act 2007 states that Supervised Community Treatment should be considered when:

The patient is suffering from a mental disorder of a nature or degree which makes it appropriate for them to receive medical treatment.

It is necessary for their health or safety or for the protection of other persons that they should receive such treatment.

Such treatment can be provided without their continuing to be detained in a hospital.

It is necessary for their health or safety or for the protection of other persons that they should be liable to be recalled to hospital for medical treatment.

Appropriate medical treatment is available for the patient.

It is necessary that the responsible clinician should be able to exercise the power to recall the patient to hospital.

The Responsible Clinician should consider what risk there would be of a deterioration of the patient's condition if they were not detained in a hospital (e.g. as a result of not complying with the medical treatment required for their mental disorder).

The following summaries do not include the amendments made by the 2007 Mental Health Act. These amendments will be included when the 2007 Act becomes implemented.

## Section 2: Admission for assessment

The period of assessment (and treatment) lapses after 28 days (not renewable).

Patient's appeals must be sent within 14 days to the mental health tribunal (composed of a doctor, lay person and lawyer).

An approved social worker (or the nearest relative) makes the application on the recommendation of 2 doctors (from different hospitals), one of whom is 'approved' under Section 12(2) of the Act (in practice a consultant psychiatrist or SpR of sufficient experience). The second medical recommendation is given by a doctor who knows the patient personally in a professional capacity. If this is not possible, the Code of Practice recommends that the second doctor should be an 'approved' doctor.

## Section 3: Admission for treatment (up to 6 months)

The exact mental disorder must be stated.

Detention is renewable for a further 6 months (annually thereafter).

2 doctors must sign the appropriate forms and know why treatment in the community is contraindicated. They must have seen the patient within 24 hours. They must state that treatment is likely to benefit the patient, or prevent deterioration; or that it is necessary for the health or safety of the patient or the protection of others.

## Section 4: Emergency treatment (for up to 72 hours)

The admission to hospital must be an urgent necessity.

May be used if admission under section 2 would cause undesirable delay (admission must follow the recommendation rapidly).

An approved social worker or the nearest relative makes the application after recommendation from one doctor (eg the GP).

The GP should keep a supply of the relevant forms, as the social worker may be unobtainable (eg with another emergency).

It is usually converted to a section 2 on arrival in hospital following the recommendation of the duty psychiatrist. If the second recommendation is not completed, the patient should be discharged as soon as the decision not to convert to section 2 is made. The Section should not be allowed to lapse.

## Section 5(2): Detention of a patient already in hospital (up to 72 hours)

The doctor in charge (or, in the case of a consultant psychiatrist, his or her deputy) applies to the hospital administrator, day or night - so it is often helpful to obtain early joint care for these patients with a consultant psychiatrist.

A patient in an A&E department is not in a ward, so cannot be detained under this section. Common law is all that is available, to provide temporary restraint 'on a lunatic who has run amok and is a manifest danger either to himself or to others' while awaiting an assessment by a psychiatrist.

Plan where the patient is to go before the 72 hours has elapsed, e.g. by liaising with psychiatrists for admission under section 2.

## Section 5(4): Nurses' holding-powers (for up to 6 hours)

Any authorized psychiatric nurse may use force to detain a voluntary 'mental' patient who is taking his own discharge against medical advice, if such a discharge would be likely to involve serious harm to the patient (e.g. [suicide](#)) or others.

During the 6 hours the nurse must find the necessary personnel to sign a section 5(2) application or allow the patient's discharge.

## Section 7: Application for guardianship

Enables patients to receive community care where it cannot be provided without the use of compulsory powers.

Application is made by an ASW or Nearest Relative and also needs two medical recommendations.

The guardian, usually a social worker, can require the patient to live in a specified place, to attend at specified places for treatment and to allow authorised persons access.

## Section 20(4): Renewal of compulsory detention in hospital

The patient continues to suffer from a mental disorder and would benefit from continued hospital treatment.

Further admission is needed for the health or safety of the patient - which cannot be achieved except by forced detention.

## Section 25: Supervised Discharge

This is as a result of The Mental Health (Patients in the Community) Act 1995, which has been incorporated within the 1983 Act.

It allows formal supervision to ensure that a patient who has been detained for treatment under the Act receives follow up care.

The application is made at the time of detention for treatment by the RMO. It is supported by an ASW and a doctor involved in the patients treatment in the community.

A supervisor is appointed who can convey the patient to a place where treatment is given.

## Section 117: Aftercare and the Care Programme Approach (CPA)

Section 117 requires the provision of after-care for patients who have been detained on the longer term Sections (3,37,47 or 48).

The CPA is not part of the Act but stipulates that no patient should be discharged without planned after-care: the systematic assessment of health and social needs, an agreed care plan, the allocation of a keyworker and regular reviews of progress.

## Section 136 (for up to 72 hours)

Allows police to arrest a person 'in a place to which the public have access' and who is believed to be suffering from a mental disorder.

The patient must be conveyed to a 'place of safety' (usually a designated A&E department) for assessment by a doctor (usually a psychiatrist) and an approved social worker.

The patient must be discharged after assessment or detained under section 2 or 3.

## Section 135

This empowers an approved social worker who believes that someone is being ill-treated or is neglecting himself to apply to a magistrate to search for and admit such patients.

The ASW or a registered medical practitioner must accompany the police.