

Mental Health Act 1983

From www.hyperguide.co.uk/mha

Overview

- **GENERAL PRINCIPLES:** What the Act covers and how the law treats people with mental health needs, as compared with the population in general. Who's Who.
- **COMPULSORY ADMISSION TO HOSPITAL OR GUARDIANSHIP:**
 - **How it STARTS.** The process of "being sectioned", and the effect of the Section.
 - **DURING a period of detention.** Treatment, Leave, etc.
 - **How it ENDS,** Who can discharge. Appeals that can be made.
 - **AFTER leaving hospital.** Aftercare. Supervised Discharge.

Scope and Definitions

Beginning at the beginning:- Section 1 of the Mental Health Act explains what the Act is about and who it is intended to deal with.

Scope

The Mental Health Act itself states that it deals with:

the reception, care and treatment of mentally disordered patients, the management of their property and other related matters.

Definitions

Section 1 attempts to provide a *legal* [rather than a medical] definition of the types of mental health problems the Mental Health Act is intended to cover. It gives a definition of Mental Disorder, which - for the purposes of the Act - is then split into 4 types: Severe Mental Impairment, Mental Impairment, Psychopathic Disorder, and Mental Illness. The definitions are to some extent circular and incomplete.

Mental Disorder means...

... mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind.

The 4 sub-categories of Mental Disorder are then defined. These definitions are reproduced below, with *emphasis* on certain differences between the definitions:

Severe Mental Impairment...

... means a state of arrested or incomplete development of mind which includes *severe* impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned

Mental Impairment...

... means a state of arrested or incomplete development of mind (*not amounting to severe mental impairment*) which includes *significant* impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned

Psychopathic Disorder...

... means a *persistent disorder or disability* of mind (*whether or not including significant impairment of intelligence*) which results in abnormally aggressive or seriously irresponsible conduct on the part of the person concerned

Mental Illness...

... is **not defined**. This missing definition is especially odd, in that this is the most common form of Mental Disorder for which people are dealt with under the Act. While no legal definition exists, a number of attempts to define Mental Illness have been made.

Use of the Definitions other than Mental Illness

In broad terms, Severe Mental Impairment and Mental Impairment relate to people with learning disabilities (mental handicap) but only where this is "associated" with abnormally aggressive or seriously irresponsible conduct. Psychopathic Disorder is a definition which might be used in relation to people with learning disabilities, but can apply to others. The usefulness or otherwise of this definition is the subject of some controversy.

Importance of the Definitions

While the definitions are legal constructs, the type of Mental Disorder attributed to a particular person is a matter for a doctor's clinical judgement. The type used is significant in a number of ways, for example:

- detention under a Section can be invalid if two medical recommendations cite different types of Mental Disorder
- the conditions for certain Sections to be renewed under Section 20 can be different according to the type of Mental Disorder

What it's Not

The Act states very clearly that people must *not* be deemed to have a form of Mental Disorder "by reason only of promiscuity or other immoral conduct, sexual deviancy or dependence on alcohol or drugs". Given that in the past, people have been brought into the psychiatric system because, for example, they have had a child outside marriage, or they engaged in certain sexual practices, this statement in the 1983 Act is an important safeguard against further abuses of this sort.

Use of alcohol and other substances might sometimes cause a Mental Disorder which is within the scope of the Act, but use of these substances in itself cannot be within the scope of the Act.

Who's Who in the Mental Health Act

Individuals

Approved Social Worker [ASW]

Under Section 114 a local social services authority must appoint a sufficient number of social workers who have "appropriate competence in dealing with persons who are suffering from mental disorder". Guidance is issued by the Central Council for Education and Training in Social Work as to the training which should be provided in order for social workers to fulfil this role. Most local authorities will ensure that an ASW is available 24 hours a day in order to make assessments in the community and thus to consider whether an Application should be made for admission under the Act.

Responsible Medical Officer [RMO]

The Responsible Medical Officer is defined in Section 34 as the doctor in charge of treatment for the patient. This will normally be the consultant psychiatrist, but does not legally have to be a consultant. In the absence of the consultant, it must be clear who has been delegated this responsibility in the interim. A patient detained under the Act can only have one doctor acting as RMO at any one time. In the case of someone subject to Guardianship, the RMO is authorised as such by the social services authority.

Appropriate Medical Officer

The Appropriate Medical Officer has a slightly wider meaning than Responsible Medical Officer. A person who is under the Guardianship of someone other than a local authority social services department, will have a *nominated medical attendant*. The term Appropriate Medical Officer includes RMOs and nominated medical attendants.

Second Opinion Appointed Doctor [SOAD]

This is an independent doctor appointed by the Secretary of State [in practice by the Mental Health Act Commission], who gives a second opinion with regard to treatment which can be given without the patient's consent under Section 57 or Section 58.

Nearest Relative

As the Nearest Relative has a number of specific rights and powers under the Act, it is vital to be able to determine which of a person's relatives is the Nearest Relative. This is set out at Section 26. The Nearest Relative is the person who is nearest the top of the list given below, and where more than one person is in the same category, the Nearest Relative will be the elder or eldest of the relatives in that category:

1. Husband or Wife
2. Son or Daughter
3. Father or Mother
4. Brother or Sister
5. Grandparent
6. Grandchild
7. Uncle or Aunt
8. Nephew or Niece
9. Someone, not being a relative, with whom the person concerned normally resides, and has done so for at least 5 years

Relatives who are "of the full blood" take precedence over half-relatives of the same category. Also, if the person concerned has been residing with a relative who has been caring for him/her, then that relative will take precedence. People with whom someone has been living "as husband and wife" count as Husband or Wife in the above list, if they have been living together for at least 6 months at the relevant time (which, for detained patients, is the time of admission under the Act). The law does not normally regard a same-sex couple as living together "as husband and wife", so a gay or lesbian partner would only be regarded as the Nearest Relative if they fell into the last of the numbered categories in the list above and if there were no relatives in the other categories.

The following relatives do *not* count in working out who is the Nearest Relative:

- People under 18 years old, unless they are the person's husband, wife, father or mother
- Husbands or wives who are permanently separated from, or who have deserted, the person concerned
- People who are not normally resident in the United Kingdom, the Channel Islands or the Isle of Man

The actual Nearest Relative can give a written authority for another person to act as the Nearest Relative.

The following people can ask a Court, using Section 29, to appoint an **acting Nearest Relative**:

- any relative of the person concerned
- anyone with whom the person is residing (or was residing prior to admission)
- an Approved Social Worker

The grounds for asking the Court to appoint an acting Nearest Relative are that:

- there is no Nearest Relative according to the above definitions, or it has not been practicable to work out who the Nearest Relative is, or whether or not there is one
- the Nearest Relative is incapable of acting as such by reason of mental disorder or other illness
- the Nearest Relative is unreasonably objecting to an Application for admission for treatment, or a Guardianship application
- the Nearest Relative has used, or is likely to use, his/her right to discharge the patient under Section 23 without "due regard to the welfare of the patient or the interests of the public".

Organisations and Committees

Mental Health Act Managers

The Mental Health Act makes many references to the "hospital managers". This does *not* mean the management staff who work at the hospital, but refers to the body which is ultimately responsible for running the establishment. When the Act was written, this meant the local health authority, but most hospitals are now run by an NHS Trust, and "hospital managers" refers to the board of the Trust. In most cases, the board sets up a special Committee to undertake the Trust's duties and responsibilities under the Act. This Committee will probably include a majority of co-opted members who are not on the Trust board. The Managers have powers, given in Section 23, to discharge people detained under Section 2, Section 3 and Section 37 and therefore appeals to the Managers can be made.

Mental Health Review Tribunal [MHRT]

The Mental Health Review Tribunal is constituted by law and exists to hear appeals against detention under the Act. Its proceedings are generally formal and often the parties involved will be represented by lawyers. In fact, there is a number of Tribunals, geographically based, with members appointed by the Lord Chancellor. The Tribunals consist of medical members, legal members and lay members, the latter including people with experience in social services. Appeals to the MHRT are dealt with in accordance with rules set down by the Lord Chancellor.

Mental Health Act Commission [MHAC]

The Mental Health Act Commission is officially a "special health authority". Its powers and duties include:

- Preparing and revising a Code of Practice, including drawing up guidance in relation to specific medical treatment

- Appointing second opinion doctors in relation to consent to treatment under Section 57 or Section 58
- Receiving reports on treatment plans under the consent to treatment provisions, when detention is renewed, or at the MHAC's discretion. Also, the Commission can propose that some forms of medical treatment cause special concern and should only be given with the patient's consent in accordance with Section 57
- Keeping under review the powers and duties set out in the Act, by visiting hospitals and mental nursing homes, interviewing detained patients and investigating certain complaints
- Producing a Report every 2 years, describing the Commission's work
- Reviewing any decision by the Mental Health Act Managers under Section 134 to withhold correspondence
- Issuing Practice Notes and Guidance Notes.

STARTING A PERIOD OF DETENTION UNDER THE ACT

Admission to Hospital

- Section 2. Admission for assessment for up to 28 days.
- Section 3. Admission for treatment for up to 6 months initially.
- Section 4. Emergency admission for up to 72 hours initially.
- Section 5(2) and 5(4). People who are voluntary patients in hospital can be detained by a doctor or nurse pending a further assessment.

Being taken to a Place of Safety

- Section 135. A court order can be obtained to break into a property to remove a person to a Place of Safety.
- Section 136. Someone found in a public place, who appears to have a mental disorder, can be taken by the police to a Place of Safety.

Guardianship

- Guardianship Orders. These allow for someone to be subject to the Guardianship of a social services authority or a named individual.
- Consequences of Guardianship.

Admission as a Result of Criminal Proceedings

- Section 35. Remand to hospital for a report on a person's mental health.
- Section 36. Remand to hospital for treatment.
- Sections 37 and 38. Hospital Orders imposed by the Court.
- Section 41. Restrictions on discharge.
- Sections 47 and 48. Transfer of prisoners to hospital for treatment.

DURING A PERIOD OF DETENTION

Consent to Treatment

- Section 57. Treatment which requires the patient's consent *and* a second medical opinion.
- Section 58. Treatment which requires the patient's consent *or* a second medical opinion.
- Section 62. Urgent Treatment.
- General Points on Consent.

Leave and Absence

- Section 17 Planned / authorised leave.
- Sections 18 and 21 Unauthorised absence: Absence without leave, and Returning.
- Section 19 Transfers.

THE END OF A PERIOD OF DETENTION

The Power to Discharge

- The people who can bring a period of detention or guardianship to an end are listed at Section 23.

Review of Detention or Guardianship: Appeals and Referrals

- Appeals and Referrals to the Hospital Managers and/or the Mental Health Review Tribunal

AFTER DISCHARGE

Aftercare – Support following Discharge

- Aftercare arrangements: Section 117. Statutory and voluntary agencies should co-operate to provide aftercare for people who have been detained for treatment. Such a requirement is consistent with the Care Programme Approach.
- Supervised Discharge. The Mental Health (Patients in the Community) Act 1995 provides for people to be supervised following their discharge from hospital.

Section 2

Admission for Assessment

Summary

Section 2 provides the authority for someone to be detained in hospital for assessment. It requires an Application which is based on two Medical Recommendations.

Duration

Up to **28 days**. There is no provision for this section to be renewed or extended. The imposition of a second Section 2 immediately after the end of the initial 28 days is not explicitly prohibited in the Act, but would be extremely bad practice. The 28-day period is intended to give sufficient time for an assessment of the person's mental health difficulties to be made. If continued detention is required, then Section 3 should be used.

Conditions

The grounds for the Application, as stated in the Act, are that the person:

- is suffering from mental disorder of a nature or degree which warrants the detention of the patient in a hospital for assessment (or for assessment followed by medical treatment) for at least a limited period; *and*
- he ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons.

Notes

This Section will typically be used when someone is compulsorily admitted to hospital for the first time, or on subsequent admissions where there is a considerable gap of time between periods in hospital. If a person is well known to a psychiatric service and relatively little specific assessment is needed, then they may be admitted under Section 3 - for treatment. Section 2 also provides for treatment during or following the assessment, but for the limited 28-day period .

Section 3

Admission for Treatment

Summary

Section 3 provides the authority for someone to be detained in hospital for treatment. It requires an Application which is based on two Medical Recommendations.

Duration

Up to **6 months** initially. This Section may be renewed for a further 6 months and then for a year at a time.

Conditions

The grounds for the Application, as stated in the Act, are that person:

- is suffering from mental illness, severe mental impairment, psychopathic disorder or mental impairment and his mental disorder is of a nature or degree which make it appropriate for him to receive medical treatment in a hospital; *and*
- in the case of psychopathic disorder or mental impairment, such treatment is likely to alleviate or prevent a deterioration of his condition; *and*
- it is necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment and it cannot be provided unless he is detained under this Section.

Notes

This Section will typically be used following a Section 2 when extended treatment is required. It will also commonly be used in cases where someone, and their mental health difficulties, are well-known to the hospital. Therefore, a firm treatment plan, rather than open-ended assessment, can take place early in the period of detention.

A Section 3 cannot normally be imposed if the Nearest Relative objects.

Section 4

Emergency Admission for Assessment

Summary

Section 4 is intended for emergency admissions, where if it were not for the extreme urgency, a Section 2 would be appropriate. A Section 4 requires only *one* medical recommendation, compared with *two* for a Section 2. An Application has to be made, based on that single Medical Recommendation.

Duration

Up to **72 hours**. During that time, if a second Medical Recommendation is made, the Section 4 effectively converts into a Section 2.

Conditions

The grounds for the Application are the same as for Section 2, that the person:

- is suffering from mental disorder of a nature or degree which warrants the detention of the patient in a hospital for assessment (or for assessment followed by medical treatment) for at least a limited period; *and*
- he ought to be so detained in the interests of his own health and safety or with a view to the protection of other persons.

However, in addition, it must be stated that:

- it is of urgent necessity for the patient to be admitted and detained under Section 2, *and*
- that compliance with the usual Section 2 requirements (that is, getting a second Medical Recommendation) would involve "undesirable delay".

Notes

Section 4 offers less protection to citizens against unjustified detention because only one doctor has to recommend the compulsory admission under the Act. The doctor should be someone who either knows the patient, or who is recognised under Section 12 of the Act.

Section 4 has been mis-used at times, as an administrative convenience. It is easier for the professionals involved if only one doctor has to visit the patient in the community. The second doctor required for a Section 2 can then see the person in hospital after a Section 4 admission. The Mental Health Act Commission has been very critical of such an attitude. The Act clearly intends Section 4 only to be used in cases of genuine emergency.

Section 5

Detention of People who are already Voluntary Patients in Hospital

This Section contains powers for a doctor [in the case of [Section 5\(2\)](#)], or a nurse [in the case of [Section 5\(4\)](#)] to prevent someone who is otherwise a voluntary patient from leaving hospital.

Doctor's Holding Power: Section 5(2)

Summary

A person who is a voluntary patient in hospital can be legally detained there if a registered medical practitioner provides the [Mental Health Act Managers](#) with an appropriate report.

Duration

Up to **72 hours**. There is no provision for this period to be extended. The Section ends when an assessment has been completed as to whether admission under another Section is required.

Conditions

The only ground for a Section 5(2) is that an [Application](#) for admission under the Act "ought to be made", in the opinion of the doctor.

Notes

The registered medical practitioner who exercises the doctor's holding power must be the doctor who is in charge of the person's care, or one alternative doctor formally nominated by the one in charge of treatment. It is regarded as extremely bad practice for the immediate outcome of Section 5(2) to be a [Section 4](#). The 72-hour period is regarded as sufficient time to arrange a [Section 2](#) or [Section 3](#) if necessary.

Nurse's Holding Power: Section 5(4)

Summary

A person who is a voluntary patient in hospital can be legally detained there if it appears to a suitably qualified nurse that the conditions below are met. The nurse simply has to record in writing that the conditions are met. This written record has to be conveyed to the [Mental Health Act Managers](#) (or a member of staff acting on their behalf) as soon as possible.

Duration

Up to **6 hours**. There is no provision for this period to be extended. The Section ends when a doctor who is entitled to impose a [Section 5\(2\)](#) arrives. If the doctor imposes a Section 5(2), the 72 hour period of the section 5(2) starts from the time of the original Section 5(4) report by the nurse.

Conditions

The grounds for the Application are that it appears to the nurse:

- that the patient is suffering from [mental disorder](#) to such a degree that it is necessary for his health or safety or for the protection of others for him to be immediately restrained from leaving the hospital; *and*
- that it is not practicable to secure the immediate attendance of a medical practitioner for the purpose of furnishing a report under [Section 5\(2\)](#).

Notes

This Section allows a nurse to prevent a voluntary patient from leaving the ward pending the arrival of the doctor who could, if necessary, impose a Section 5(2). The nurse must be a qualified "first level" nurse.

Section 135

Power to Enter Premises and Take a Person to a Place of Safety

Summary

Section 135 enables an Approved Social Worker to seek a warrant from a Justice of the Peace which will allow a police officer to enter premises (by force if necessary) in order to search for someone with mental health problems and take them to a Place of Safety. Like Section 136, this is not an admission Section, but one which allows assessment to take place at the Place of Safety, as to whether a Section 2 or other admission Section should be implemented.

Duration

Up to **72 hours** from the time the person first arrives at the Place of Safety. There is no provision for this time to be renewed or extended. Normally the assessment should be completed well within the 72 hour period and the Section 135 powers then lapse.

Conditions

The grounds for the warrant, as stated in the Act, are that it appears to the Justice of the Peace [JP] that "there is reasonable cause to suspect" that, at a place within the JP's jurisdiction, a person with a mental disorder:

- is being (or has been) ill-treated, neglected, or not kept "under proper control" ; *or*
- is living alone and unable to care for him/herself.

Notes

The police officer who attends, and if necessary, breaks into premises in accordance with the warrant, **must** be accompanied by an Approved Social Worker [ASW] and a doctor. This Section also provides for a police officer (rather than an ASW) to obtain a warrant to enter premises when seeking to re-take a patient who is already Sectioned and liable to be detained, but who is absent without leave. In this case the police officer may be accompanied by an Approved Social Worker [ASW] and a doctor, but this is not compulsory.

Section 136

Removal of People from Public Places

Summary

Section 136 enables a police officer to remove someone from a public place and take them to a Place of Safety. Like Section 135, this is not an admission Section, but one which allows assessment to take place at the Place of Safety, as to whether a Section 2 or other admission Section should be implemented. Section 136 states clearly that the purpose of being taken to the Place of Safety is to enable the person to be examined by a doctor and interviewed by an Approved Social Worker, and for the making of any necessary arrangements for treatment or care.

Duration

Up to **72 hours** from the time the person first arrives at the Place of Safety. There is no provision for this time to be renewed or extended. Normally the assessment should be completed well within the 72 hour period and the Section 136 powers then lapse.

Conditions

The police officer must find the person in "a place to which the public have access" and:

- the person must appear (to the police officer) to have a mental disorder and to be in "immediate need of care or control"; *and*
- the police officer must think it necessary to take the person to a Place of Safety, in the interests of the person her/himself or for the protection of others.

Notes

This Section has been the subject of considerable controversy. A police officer may have little experience of people with mental health problems, and there was concern that people would be inappropriately stopped in the street and detained by the police, and that the police would use this power disproportionately in respect of black people. Over recent years, the bodies involved - the police, doctors and other hospital staff, and social services departments - have, in many areas, set up liaison meetings to ensure that the use of Section 136 is closely monitored and reviewed to ensure its use is appropriate.