

CR12 - Mental Health Act 1983 and Regulations 2008 Policy and Procedure

Purpose

- | To meet the provisions of the Mental Health Act 1983 in England and Wales as amended by the Mental Health Act 2007 and associated secondary legislation.

Scope

- | All persons admitted under provisions of the Mental Health Act 1983 as amended by the Mental Health Act 2007 and associated secondary legislation, or subject to compulsion under the Act.

Policy

- | Admission of patients to hospital or subjecting patients to compulsion will be managed in a manner to comply with the provisions of the Mental Health Act 1983 as amended by the Mental Health Act 2007 and associated secondary legislation.

Procedure

Background

- | The vast majority of people receiving treatment in a mental hospital or psychiatric unit are informal patients, which means that they are in an establishment on a voluntary basis and have exactly the same rights as a person being treated for a physical illness.
- | For the purposes of the Act a hospital is defined as an establishment, either NHS or independent, which provides for the assessment and medical treatment of patients detained under the Mental Health Act 1983 and must be registered for that role by the appropriate regulatory authority in England or Wales.
- | Formal patients, who constitute about 20 per cent of the mental hospital population, are compulsorily detained under a section of the Mental Health Act 1983 and lose some of the rights enjoyed by informal patients.
- | This Procedure gives an outline guide to the main provisions of the Mental Health Act 1983 as they affect formal patients and their relatives. Numbers of the relevant sections or parts of the 1983 Act are indicated in brackets.

Definitions (Section 1)

- | Mental disorder is defined for the purposes of the Act as 'any disorder or disability of mind'.
- | **Note:** Dependence on alcohol or drugs is not considered to be a mental disorder for the purposes of the Act.
- | Learning disability is defined as 'a state of arrested or incomplete development of mind, which includes severe or significant impairment of intelligence and social functioning' and regarded as a mental disorder because it is a disability of the mind. However, for the specific purpose of certain sections of the Act (notably section 3 and section 7 but there are others), a learning disability can only be regarded as a mental disorder if it is 'associated with abnormally aggressive or seriously irresponsible conduct.'
- | The patient's 'nearest relative' is defined in Section 26. The nearest relative has various rights in relation to patients who are, or might be, subject to compulsory measures under the Act. In order of rank these as follows:
 - | Husband or wife [or civil partner];
 - | Son or daughter;
 - | Father or mother;
 - | Brother or sister;

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- ┆ Grandparents;
 - ┆ Grandchild;
 - ┆ Uncle or aunt;
 - ┆ Nephew or niece.
- ┆ The relative in each category who is the elder of the two would be regarded as the nearest relative. The relative who provides most care for the person would be regarded as the nearest relative.
- ┆ **Compulsory admission to hospital or guardianship for patients not involved in criminal proceedings (Part II) (NB. Part III of the Act concerns patients subject to criminal proceedings).**

Admission for Assessment (Section 2)

- ┆ Duration of detention: 28 days maximum.
- ┆ Application for admission: by an Approved Mental Health Professional (AMHP) or the patient's nearest relative.
- ┆ The applicant must have seen the patient within the previous 14 days.
- ┆ Procedure: two registered medical practitioners must confirm that the patient is suffering from a mental disorder of a nature or degree that warrants detention in a hospital for assessment (or assessment followed by medical treatment) for at least a limited period, and they ought to be detained in the interests of their own health or safety, or with a view to the protection of others.
- ┆ Discharge can be sanctioned by any of the following:
 - ┆ The patient's Responsible Clinician (RC);
 - ┆ The managers of the hospital;
 - ┆ The nearest relative, who must give 72 hours' notice. The RC can prevent them from discharging a patient by making a report to the hospital managers;
 - ┆ Mental Health Tribunal (MHT). The patient can apply to a tribunal within the first 14 days of detention.

Admission for assessment in cases of emergency (Section 4)

- ┆ Duration of detention: 72 hours maximum.
- ┆ Application for admission: by an AMHP or the nearest relative. The applicant must have seen the patient within the previous 24 hours.
- ┆ Procedure: one registered medical practitioner must confirm that it is of 'urgent necessity' for the patient to be admitted and detained under section 2 and that waiting for a second registered medical practitioner to confirm the need for an admission under section 2 would cause 'undesirable delay'.
- ┆ **Note:** the patient must be admitted within 24 hours of the medical examination or application, whichever is the earlier, or the application under section 4 is null and void.

Admission for Treatment (Section 3)

- ┆ Duration of detention: up to six months, renewable for a further six months, then for one year at a time.
- ┆ Application for admission: by nearest relative, or AMHP in cases where the nearest relative does not object, or is

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displaced by County Court, or it is not 'reasonably practicable' to consult them.

- | Procedure – two registered medical practitioners must confirm the following:
 - | That the patient is suffering from a mental disorder of a nature or degree that makes it appropriate for them to receive medical treatment in a hospital;
 - | That it is necessary for their own health or safety, or for the protection of others, that they receive such treatment, and that it cannot be provided unless they are detained under this section;
 - | Appropriate medical treatment is available for the patient.
- | Renewal: under section 20, the RC can renew a section 3 detention if the original criteria still apply.

Discharge can be sanctioned by any of the following:

- | Responsible Clinician.
- | The managers of the hospital.
- | The nearest relative, who must give 72 hours' notice. If the RC prevents the nearest relative discharging the patient, by making a report to the establishment managers, the nearest relative can apply to a Mental Health Tribunal (MHT) within 28 days.
- | MHT - A patient can apply to a tribunal once during the first six months of their detention, once during the second six months and then once during each period of one year.
- | If the patient does not apply in the first six months of detention, their case will be referred, automatically, to the MHT. After that, the case is automatically referred when a period of three years has passed since a tribunal last considered it (one year, if the patient is under 16).

Compulsory detention of informal patients already in hospital (Section 5)

- | A registered medical practitioner in charge of an informal patient's treatment, or one other doctor designated by them, can detain a patient for up to 72 hours by reporting to the managers of the hospital that an application for compulsory admission 'ought to be made'.
- | A nurse of the prescribed class (a registered nurse whose field of practice is either mental health nursing or learning disabilities nursing) can detain an informal patient who is receiving treatment for mental disorder for up to six hours, or until a doctor with authority to detain them arrives, whichever is earlier.

Guardianship (Sections 7–10)

- | Duration of guardianship order: up to six months, renewable for a further six months, then for one year at a time.
- | Application for reception into guardianship: by an AMHP or nearest relative.
- | Procedure – two registered medical practitioners must confirm the following:
 - | That the patient is suffering from a mental disorder of a nature or degree that warrants reception into guardianship; and
 - | That it is necessary in the interests of the patient's welfare or for the protection of others.
- | **Note:** the patient must be over 16. The guardian must be a local social services authority, or person approved by the social services authority, for the area in which they (the guardian) live.

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- i Effect – under section 8, a guardian has the following powers:
 - i To require a patient to live at a place specified by the guardian.
 - i To require a patient to attend places specified by the guardian for occupation, training or medical treatment (although the guardian cannot force the patient to undergo treatment).
 - i To ensure that a registered medical practitioner approved mental health professional or other person specified by the guardian can see the patient at the place they are residing.
 - i Guardianship does not provide a power to deprive someone of their liberty. For this to be authorised, an application for Deprivation of Liberty Safeguards authorisation would need to be made under the Mental Capacity Act 2005, for which staff should refer to the Deprivation of Liberty Safeguards Policy and Procedure.
- i Discharge can be sanctioned by any of the following:
 - i RC;
 - i Local social services authority;
 - i Nearest relative;
 - i MHT - The patient can apply to a tribunal once during the first six months of guardianship, once during the second six months and then once during each period of one year.

Supervised Community Treatment

- i Section 17a to 17g deals with Supervised Community Treatment. This allows certain patients to be discharged from detention by means of a Community Treatment Order (CTO) whilst remaining liable to be recalled to hospital for further treatment.
- i Patients are only eligible for CTO if they are detained under section 3 (or certain sections of Part III of the Act)
- i The criteria for making a CTO are as follows:
 - i The patient is suffering from a mental disorder of a nature or degree that makes it appropriate for them to receive medical treatment;
 - i That it is necessary for their own health or safety, or for the protection of others that they receive such treatment;
 - i Such treatment can be provided without the patient continuing to be detained in hospital;
 - i It is necessary that the RC should be able to exercise their power to recall the patient to hospital;
 - i Appropriate medical treatment is available for the patient.

Consent to treatment (Part IV).

Part IV of the Mental Health Act applies to treatments for mental disorder.

- i All formal patients, except those who are detained under Sections 4, 5, 35, 135 and 136, subject to guardianship or conditionally discharged. These patients have the right to refuse treatment, as have informal patients, except in emergencies.
- i **Part IV clarifies which treatment for mental disorder can be imposed upon detained patients. This part**

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of the Act describes categories of treatment and the legal requirements concerning each of these.

- | Under section 57, the most serious treatments can only be given if:
 - | The patient consents; and
 - | Three independent people appointed by the Care Quality Commission in England, or in Wales the Welsh Ministers, confirm that the patient understands the treatment and has consented to it.
- | **Note:** as the treatments specified in section 57 give rise to particular concern, this section applies to all formal and informal patients.
- | Under section 58, certain treatments can only be given in either of the following cases:
 - | The patient consents; or
 - | An independent doctor appointed by the Care Quality Commission in England or in Wales the Welsh Ministers confirms that treatment should be given. Before doing so, they must consult two people, one a nurse, and the other neither a nurse nor a doctor, who has been concerned with the patient's treatment.
- | Section 58 applies to the administration of medicine to a patient for a period of longer than three months.
- | Under section 58A, electro-convulsive therapy (ECT) may only be given if the patient consents to the treatment.
- | **Note:** under section 62, any treatment for mental disorder can be given without consent in specific emergencies, subject to restrictions when a treatment is irreversible or hazardous.

Independent Mental Health Advocacy

- | The following groups of patients are eligible for the help of an independent mental health advocate (IMHA):
 - | Detained in hospital;
 - | Conditionally discharged patients;
 - | Subject to Guardianship;
 - | Supervised Community Treatment patients;
 - | IMHAs will provide help with regard to information and understanding of their rights and their treatment.
- | Under the provisions of The Mental Health (Wales) Measure 2010 that group is extended to include all people admitted to psychiatric hospitals in Wales. Local authorities have a legal duty to provide an IMHA service.

Care Quality Commission and Welsh Ministers

- | The Care Quality Commission is the regulatory authority with a duty to keep under review all aspects of the care of formal patients in England. It can investigate complaints, and authorise persons to visit and examine patients in hospitals. This regulatory function was previously carried out by the Mental Health Act Commission (MHAC). The appointment of the {reg_authority} as the regulatory body was confirmed by the {CAct}. In Wales the regulatory authority with this duty are the Welsh Ministers whose functions are carried out for this purpose by the Health Inspectorate Wales.

Code of Practice and Reference Guide

- | There is a Code of Practice which includes a statement of guiding principles which should inform decisions made under the Act. The Code provides statutory guidance for all those concerned with the care and treatment

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of people under the Act, including admission and detention of patients under the Act, and people who are subject to Guardianship and Supervised Community Treatment. The Mental Health Act 1983 applies to England and Wales. However England and Wales each have their own Codes of Practice and links to these can be found at the end of this policy.

- | There is also a Reference Guide to the Mental Health Act 1983 which provides explanation as to how the legislation should be applied and a link to this is provided at the end of the policy. There is no separate Reference Guide for Wales. The Code of Practice and the Reference Guide should be used in conjunction to inform how the Act should be applied in practice.

Approved Mental Health Professionals

- | Approved mental health professionals (a professional who has appropriate competence in dealing with mentally disordered people, who can be a social worker, nurse, psychologist or occupational therapist) can apply to have people formally detained under a section of the Mental Health Act 1983. An AMHP can make an application for admission where necessary and proper. Before doing so, the AMHP must interview the patient and be satisfied that detention is, in all the circumstances, the most appropriate way of providing the care and medical treatment in order to meet the patient's needs.

Voting

- | The Representation of the People Act 2000 entitles all patients to register to vote, whether they are detained in hospital or subject to compulsion in the community, or in hospital as an informal patient. However, those who have been detained as a consequence of criminal activity by order of a court generally cannot vote.

Information

- | Under Section 132, the managers have a legal duty to give formal patient information on the following:
 - | The Section under which they are detained;
 - | Their right to apply to a MHT;
 - | Their right to be discharged by the RC, managers and, if applicable, their nearest relative;
 - | Consent to treatment rules.
- | Managers must also tell the nearest relative when the patient is due to be discharged, unless the nearest relative or patient has instructed that this information should not be disclosed.
- | Aftercare under Section 117: Health Authorities and local Social Services have a legal duty to provide aftercare for patients who have been on Sections 3, 37, 47, or 48, but who have left detention. They can only cease to provide this if they are satisfied that the person is no longer in need of such services. There is no power to charge for Section 117 aftercare. The Care Act 2014 defines "after care services" as services which (i) meet a need arising from or related to the person's mental disorder; and (ii) reduce the risk of a deterioration of the person's mental condition (and, accordingly, reducing the risk of the person requiring admission to a hospital again for treatment for the disorder). The authorities who are responsible for the provision of after-care are the authority are in which person was "ordinarily resident" immediately prior to being detained.

Links to external documents:

- | The Mental Health Act 1983: <http://www.legislation.gov.uk/ukpga/1983/20/contents>
- | The Mental Health Act 1983 Code of Practice in England: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/396918/Code_of_Practice
- | Mental Health (Hospital, Guardianship and Treatment) (England) (Amendment) Regulations 2008: http://www.opsi.gov.uk/si/si2008/pdf/uksi_20082560_en.pdf

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Reference Guide to the Mental Health Act

1983: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/417412/Reference_Guide.pdf

Key Lines of Enquiry Table

Key Line of Enquiry	Primary	Supporting	Mandatory
R.S1 - How are people protected from bullying, harassment, avoidable harm and abuse that may breach their human rights?	✓		✓
R.E1 - How do people receive effective care, which is based on best practice, from staff who have the knowledge and skills they need to carry out their roles and responsibilities?	✓		✓
R.E2 - Is consent to care and treatment always sought in line with legislation and guidance?	✓		✓

Note: All QCS Policies are reviewed annually, more frequently, or as necessary.

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