

**A Synopsis of Parts of
The Mental Health Act
1983
England and Wales**

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**With a foreword by
Professor R. Bluglass**

This booklet should be used only as a guide to those particular sections of the Act with which it deals. It does not purport to be a complete and authoritative statement of the law. The Act itself must be referred to as and when necessary.

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Foreword

The Mental Health Act 1983 for England and Wales has now been in operation for over four years. Although many people are familiar with parts of it, it is complex and often difficult to understand. Short guides provide a helpful 'aide-memoire' for those who need to refresh their memory. It is hoped that these notes will prove useful, although it is essential to turn to more extensive accounts, or to the Act itself, to be fully informed.

Professor R. Bluglass
Professor of Forensic Psychiatry
University of Birmingham

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PART I

Definitions

SECTION 1

Definitions

Mental disorder

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

Mental illness

Not defined in the Act, and its operational definition is a matter of clinical judgement in each case.

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.

Mental impairment

Means a state of arrested or incomplete development of mind which includes *significant* impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously irresponsible conduct.

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.

Exclusions from the definitions of mental disorder

A person may not be dealt with under the Act as suffering from a mental disorder purely by reason of *promiscuity*, other *immoral conduct*, *sexual deviancy*, or dependence on *alcohol* or *drugs*.

Footnote

Medical treatment

Includes nursing and also includes care, habilitation and rehabilitation under medical supervision. (5.145¹)

PART II

Compulsory admission to hospital & guardianship

SECTION 2

Admission for assessment

Duration:

Up to 28 days

Requirements:

Application by the nearest relative or approved social worker. Medical recommendation: by two medical practitioners (one of whom must be approved) in writing.

Grounds:

The patient is suffering from a mental disorder which in the interests of his own health or safety or with a view to the protection of other persons, warrants his detention in hospital for assessment (or assessment followed by medical treatment) for at least a limited period.

Special Notes:

- a) The period of detention commences from the day of admission
- b) The patient must be admitted within 14 days of the signing of the last medical recommendation. Not more than 5 days must have elapsed between the two medical examinations.
- c) The person making the application must have seen the patient within a period of 14 days ending with the date of signing the application.
- d) If the application form is signed by the nearest relative it is the duty of the hospital managers to inform the Social Services Department of the admission.
- e) It is the responsibility of the approved social worker to consult the nearest relative or, if impracticable, to inform the nearest relative of the admission and his rights under this Act.

f) It is the responsibility of the hospital managers to inform the patient, in writing, of his rights under the Act.

g) Any patient detained under Section 2 has the right to appeal to the Mental Health Review Tribunal once within the first 14 days of detention.

h) One period of detention under Section 2 must not immediately follow another.

Discharge Procedures:

The patient can be discharged at the instigation of:

a) The responsible medical officer (RMO) (Sec.23)

b) The managers. (Sec.23)

c) The nearest relative (must give 72 hours notice). (Sec. 23)

d) Mental Health Review Tribunal (MHRT) (Sec. 72)

e) After expiry of the period of detention if absent without leave. (Sec. 18)

The managers may bar the relative's application for discharge if the RMO indicates that the patient, if discharged, is likely to act in a manner dangerous to other persons or himself. If a barring certificate is issued, the relative does not have the right to apply to a MHRT., but the patient may do so during the first 14 days of his detention (Sec. 25)

SECTION 3

Admission for treatment

Duration:

Six months; can be extended for a further six months, after review—can then be extended for periods of one year at a time after appropriate review.

Requirements:

As for Section 2.

Grounds:

- a) The patient is suffering from mental illness, severe mental impairment, psychopathic disorder or mental impairment that makes it appropriate for him to receive treatment in hospital; and
- b) in the case of psychopathic disorder or mental impairment, such treatment is likely to alleviate or prevent deterioration of his condition; and
- c) 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.

Special Notes:

- a) The patient must be admitted within 14 days of the signing of the last medical recommendation. Not more than five days must have elapsed between the two medical examinations.
- b) The two medical recommendations must state that, in the opinion of both medical practitioners, the patient is suffering from one or more of the four forms of mental disorder set out in Section 1.
- c) The medical recommendations must include at least one form of disorder in common and the reason must be given why the patient cannot be suitably cared for outside hospital or be admitted as an informal patient.
- d) In the case of psychopathic disorder or mental impairment, the medical recommendations must state that the treatment is likely to alleviate or prevent a deterioration in his condition.

e) The person making the application must have seen the patient within a period 14 days ending with the date of signing the application.

f) If the application form is signed by the nearest relative it is the duty of the hospital managers to inform the Social Services Department of the admission as soon as practicable (5.14).

g) It is the responsibility of the approved social worker to inform the nearest relative of the admission and of his rights under this Act.

h) It is the responsibility of the hospital managers to inform the patient, orally and in writing, of his rights under the Act. (5.132)

i) Any patient detained under Section 3 has the right to appeal to the Mental Health Review Tribunal once within the first six months of detention. If he does not do so, the managers must refer the case to the tribunal if he is detained for a second six months.

j) List of nearest relatives (in order of precedence, the older of the two taking priority but there are further qualifications in the Act).

- i) husband or wife
- ii) son or daughter
- iii) father or mother
- iv) brother or sister
- v) grandparent
- vi) grandchild
- vii) uncle or aunt
- viii) nephew or niece (Sec.26)

Discharge Procedures:

The patient can be discharged by:

- a) The responsible medical officer (23)
- b) The managers (Sec. 23)
- c) The "nearest relative" (Sec. 23)
- d) A Mental Health Review Tribunal (Sec. 72)
or
- e) After 28 days absence without leave (Sec. 18)
or
- f) After 6 months continuous absence with leave (Sec. 17)
 - i) The responsible medical officer can bar the "nearest relative" discharging the patient. In this case, however, the relative can apply to a Mental Health Review Tribunal within 28 days. (Sec. 25)

SECTION 4

Admission to hospital for assessment in an emergency

Duration:

Up to 72 Hours

Requirements:

One medical recommendation plus application by the nearest relative or an approved social worker.

Note 1/N.B.

The person making the application must have personally seen the patient in the previous 24 hours.

Note 2/N.B.

The practitioner supplying the medical recommendation must have seen the patient within the previous 24 hours and should preferably be a practitioner who has had previous acquaintance with the patient.

Note 3/N.B.

The recommendations should make clear the circumstances of the emergency.

Grounds:

It is of urgent necessity that the patient should be admitted and detained for assessment, and compliance with the normal procedure would involve undesirable delay.

Special Notes:

If a second medical recommendation is received within the period of detention, the patient may be detained for 28 days from admission as if originally admitted under Section 2, and the rights and conditions of that section then apply.

SECTION 5 (2)

Application in respect of a patient already in hospital

Duration:

Up to 72 hours (To include any period during which nurses' holding power was used).

Application:

The practitioner currently in charge of the treatment of the patient (or his nominated deputy).

Grounds:

That it appears that an application for admission to a hospital should be made.

Special Notes:

- a) The medical practitioner in charge of a patient's treatment may nominate one, but only one, other medical practitioner on the staff of the same hospital to act on his behalf under the section, in his absence.
- b) This report should be given immediately to an officer authorised to receive such reports on behalf of the managers.
- c) The 72 hour period begins to run from the time the report is furnished.
- d) Applications under Section 5 may be made in respect of an in-patient in any part of any hospital, including a general hospital, even if he is not being treated for mental disorder at the time.

SECTION 5 (4)

Nurses' holding power

Duration:

Up to six hours

Application:

By a registered nurse (RMN or RMNS) only.

Grounds:

- a) The patient is suffering from a 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 hospital.
- b) It is not practicable to secure the immediate attendance of a practitioner for the purpose of furnishing a report under Section 5 (2).

Special Notes:

- a) The holding power starts after the nurse has recorded his opinion on the prescribed form. (No.13).
- b) This must be delivered to the hospital managers as soon as possible.
- c) The nurses should let the hospital managers know as soon as the holding power has lapsed, on the prescribed form (No.16).

SECTION 7

Application for guardianship

Duration:

As for Section 3. Allows a patient who has attained the age of 16 years to be placed under supervision of a guardian.

Application:

By nearest relative or an approved social worker (who must have seen the patient within the last 14 days).

Made to:

The local social services authority.

The Guardian:

The local social services authority or a person acceptable to that authority.

Medical Recommendation:

Application must be based on the recommendations of one approved practitioner plus one other practitioner. With certain exclusions they must have examined the patient together or within five days of each other. They must agree that the patient suffers from one of the forms of mental disorder (mental illness, severe mental impairment, mental impairment or psychopathic disorder) warranting reception into guardianship.

Grounds:

That it is necessary in the interest of the welfare of the patient that he should be received into the guardianship of an individual or the local social services authority.

Special Notes:

Discharge:

By responsible medical officer (or nominated doctor), the authority or nearest relative. The patient may apply to the Mental Health Review Tribunal within a six-month period, and similarly after a further six months.

SECTION 8

Powers of guardianship

- a) To require the patient to reside at a place specified by the authority, or person, named as guardian.
- b) To require the patient to attend at places and times so specified for the purpose of medical treatment, occupation, education or training.
- c) To require access to the patient by any doctor, approved social worker or other specified person, to be given at any place where the patient is residing.

Special Notes:

- a) The guardian has no power to give consent to treatment on behalf of the patient.
- b) If the patient fails to co-operate and takes his leave from the residence without the guardian's permission, he may be taken into custody and be brought back. After 28 days of absence, this power to take the patient into custody expires.
- c) The guardian has no other statutory powers should the patient fail to co-operate.

SECTION 17

Leave of absence from hospital

The responsible medical officer may grant leave to be absent from the hospital in which the patient is liable to be detained, subject to any conditions the R.M.O. thinks necessary in the interests of the patient, or for the protection of other people. Leave can also be extended in the absence of the patient. Restricted patients also require the approval of the Home Secretary.

Recall from leave

If it appears to the responsible medical officer that it is in the interest of the patient's health and safety, or for the protection of other persons, he may recall the patient by giving notice to the patient or the person in charge of the patient during his leave.

A patient cannot be recalled if the period of detention has lapsed, or if the patient has had six months continuous leave without returning to hospital.

SECTION 18

Absence without leave

A patient who is liable to be detained in hospital may be retaken by an approved social worker, any officer on the staff of the hospital where he is liable to be detained, any person authorised in writing by the managers of the hospital where the patient is liable to be detained, or any constable.

If a detained patient remains out of custody for 28 days, he cannot be retaken under Section 18, and a fresh application for admission would have to be made if compulsory powers were still appropriate.

This time-limit applies to all forms of mental disorder

Whenever the police are asked for help in retaking a patient, they *must be informed* of the time-limit on the power to retake him.

SECTION 23

Discharge by responsible medical officer, nearest relative or hospital manager

In all cases, patients admitted for treatment or assessment under Part II of the Act may be discharged by the nearest relative or the hospital managers. If the nearest relative wishes to discharge the patient, he must give the hospital managers not less than 72 hours notice in writing of his intention. There is no prescribed form of notice, but there is a form (34) for the nearest relative to use if he wishes.

This notice must be delivered to an officer authorised by the managers to receive it.

If the responsible medical officer thinks that, if discharged, the patient is likely to act in a manner dangerous to other persons or himself, he may, within that 72 hours, report his view on Form 36 to the hospital managers.

The effect of such a report is to prevent the nearest relative from discharging the patient then or at any time in the subsequent six months. If the report is issued in respect of a patient detained for treatment, the managers must inform the nearest relative in writing, without delay, of his right to apply to a Mental Health Review Tribunal within 28 days, but the patient has the right to apply during the first 14 days of detention. In the case of a patient detained for assessment, the nearest relative has no right to apply to a Mental Health Review Tribunal.

The nearest relative's 72-hour period of written notice of intention to discharge starts from when the notice is received by an authorised person or is delivered by post at the hospital to which it is addressed.

PART III

Patients concerned in criminal proceedings or under sentence

SECTION 35

Remand to hospital for a report

Duration:

Initially 28 days. May be reviewed for further 28-day periods for up to 12 weeks.

Application:

May be made by defence or prosecution counsel to the court, or by the court itself.

Grounds:

Empowers a Crown Court or magistrates' court to remand an accused person to a specified hospital for report on his mental condition. (There are specific qualifications for a magistrates' remand.)

a) Accused persons are defined as awaiting trial for an offence punishable by imprisonment or awaiting sentencing (excluding persons convicted if the sentence for the offence is fixed by law).

b) The court must receive evidence (written or oral) from *one* doctor that there is a reason to suspect that the person is suffering from one of the forms of mental disorder and that it would be impracticable for a report to be made if he were remanded on bail.

c) The court must be satisfied that arrangements for admission have been made within seven days.

d) The patient need not be present when the order is renewed.

e) The court may terminate the remand at any time.

SECTION 36

Remand to hospital for treatment

Duration:

As for Section 35.

Application:

As for Section 35. Empowers Crown Courts only.

Grounds:

- a) The accused person is in custody awaiting trial before a Crown Court for an imprisonable offence (but not murder).
- b) The person accused must be suffering from mental illness or severe mental impairment of a nature or degree that makes it appropriate for him to be detained in hospital for treatment.

Special Notes:

- a) The court requires *two* reports from registered medical practitioners (one must be from an approved doctor) which may be either written or oral.
- b) The court must also receive evidence from the doctor who will be in charge of treatment (may be one of the above) or from the managers of the hospital, that arrangements have been made for admission within seven days.
- c) Further remands as for Section 35 on written or oral report of the responsible medical officer.
- d) The remand may be terminated by the court at any time.

SECTION 37

The power to make a hospital or guardianship order

Duration:

Six months. May be extended for a further six months. Thereafter for periods of one year.

Application:

As for Section 35.

Grounds:

- a) Convicted by a Crown Court of an offence that may be punished by imprisonment (but not if the sentence for the offence of which he had been convicted is fixed by Law).
- b) Convicted by a magistrates' court of an offence punishable on summary conviction with imprisonment.
- c) Patient is suffering from one of the four forms of mental disorder.
- d) The mental disorder that the patient is suffering from makes it appropriate for him to be detained in hospital for medical treatment. In the case of psychopathic disorder or mental impairment that treatment is likely to alleviate or prevent deterioration of the condition.
- e) If a patient has reached or is over 16 years, that his disorder warrants reception into guardianship.
- f) The court is of the opinion that in all the circumstances of the case this section offers the most suitable method of disposing of the case.

Special Notes:

- a) Written or oral evidence from two medical practitioners, of whom one must be approved. The mental disorder must be specified. The two doctors must agree that the person is suffering from one of the forms of mental disorder.
- b) In the case of admission to hospital, the court must be satisfied that a hospital is willing to take the case.
- c) In the case of guardianship, the court must be satisfied that a local authority or other person is willing to act as guardian.

Discharge Procedures:

- a) By responsible medical officer. NB Not by the patient's nearest relative, who may, however, make an application to the Mental Health Review Tribunal, but not for the first six months.
- b) Upon successful appeal against the said conviction.
- c) The patient may make an application to the MHRT in the second six months.
- d) The patient may make an application to the managers of the hospital

SECTION 38

Interim hospital order

Duration:

Initially up to, but not exceeding, 12 weeks; renewable for 28-day periods with a limit of six months duration.

Application:

By the courts or either counsel.

- a) Crown Court if a person is convicted of an offence punishable with imprisonment (other than murder).
- b) magistrates' court if an offence punishable on summary conviction with imprisonment.

SECTION 41

Restriction order

Where a hospital order is in force, a Crown Court (not a magistrates' court) may add a restriction order—to protect the public from serious harm. One of the doctors must give oral or written evidence as to the restriction order. A restriction order may apply for a period (eg. two years).

Discharge procedure:

Only by:-

- a) Home Secretary on medical recommendation.
- b) Mental Health Review Tribunal. (Sec. 73)

Effect of a restriction order:

The patient may not be given leave of absence, be transferred to another hospital or be discharged without the agreement of the Home Secretary.

SECTION 47

Removal to hospital of persons serving sentence of imprisonment etc.

Application:

By reports from at least two medical practitioners to the Secretary of State.

The Home Secretary may make a "transfer direction" that a person serving a sentence of imprisonment shall be removed to, and detained in, such a hospital (not being a mental nursing home) as he may specify in the direction, provided that he is satisfied (by reports from two doctors one of whom is approved) that:

- a) The person named is suffering from one of the four forms of mental disorder.
- b) The disorder is of a nature or degree which makes hospital treatment under detention appropriate.
- c) In the case of psychopathic disorder or mental impairment, that treatment is likely to alleviate or prevent deterioration of the condition.
- d) That, having regard to the public interest and all circumstances, a "transfer direction" is expedient.

Special Notes:

- a) A restriction direction on the person's discharge may be made by the Home Secretary. (Sec 49) Similar to a restriction order)
- b) The person must be transferred within 14 days, or the transfer direction lapses.
- c) There is a right of appeal to the MHRT within the first six months and during each subsequent period of detention (this applies to persons either with or without restriction directions).

Duration:

The Home Secretary may order the person to be returned to prison if he is informed that the person has recovered or that no further effective treatment can be given.

This information/advice may be conveyed to him from:

- a) The RMO
- b) Any other Registered Medical Practitioner.
- c) MHRT

SECTION 48

Removal to hospital of other prisoners

The Home Secretary may authorise the transfer, by the same report procedure as for Section 47, of a person suffering from mental illness or severe mental impairment (not any other form) provided that hospital treatment is appropriate and that he is in *urgent* need of such treatment.

Application:

As for Section 47.

Persons who may be dealt with under this section:

- a) Persons detained in custody (not serving a sentence of imprisonment).
- b) Persons remanded in custody by a magistrates' court.
- c) Civil prisoners committed by a court to prison for a limited term.
- d) Person detained under the Immigration Act 1971.

Special Notes:

- a) There is immediate right of appeal to MHRT.
- b) The person must be transferred within 14 days, or a transfer direction lapses.

PART IV

Consent to treatment

SECTION 57

Treatment requiring consent and a second opinion for the treatment of mental disorder.

This applies to any patient, informal or detained with respect to the following treatment.

- a) Psychosurgery or operations for destroying brain tissue or for destroying the function of brain tissue in the treatment of mental disorder.
- b) Surgical implantation of hormones to reduce male sex drive in the treatment of mental disorder (added by Regulation).

Consent given:

1. The responsible medical officer will notify the Mental Health Act Commission (MHAC). The consent must be validated by a medical practitioner appointed by the Secretary of State and two other appointed persons (must be non-medical). They must determine that consent is valid within the meaning of the section.
2. A certificate that the treatment should be given having regard to the likelihood that it will alleviate the patient's condition or prevent its deterioration is also required. Before the issue of this certificate of the need for treatment, the independent doctor (medical practitioner appointed by the Secretary of State) is required to consult two other persons who have been concerned professionally with the patient's treatment, of whom one must be a nurse and the other neither a nurse nor a registered medical practitioner.
3. Then a certificate can be given.

Consent not given:

If the patient:

- a) Refuses to consent.
- b) Is incapable of consenting.
- c) The treatment is not likely to be beneficial as described above.

SECTION 58

Treatment requiring consent or a second opinion for the treatment of mental disorder

This applies to detained patients only and to the following forms of treatment:

- a) The further administration of a medicine three months or more after it was first used.
- b) E.C.T.

Consent:

If the detained patient is unable to give consent as defined in the section or refuses consent, and the responsible medical officer feels the patient is in need of a particular form of treatment, he must contact the MHAC, who will send an appointed doctor to give a second opinion.

Second opinion:

The appointed doctor must consult with two people who have been professionally concerned with the patient's treatment before he can give his second opinion in the form of a certificate. One must be a nurse, and the other neither a nurse nor a doctor.

Consent by patient:

If the appointed doctor considers that the patient can give consent then he must certify that this is the case. If he considers the patient's refusal is rational he cannot overrule it.

Inability to consent:

If the patient refuses the proposed treatment irrationally or is incapable of understanding the nature, purpose or likely effects of the treatment and the appointed doctor considers the treatment proposed would be beneficial he may certify that it may be given.

SECTION 59

Plan of treatment

Any consent certificate obtained for the purpose of Section 57 or 58 may relate to a treatment plan.

If a treatment plan is being considered, the appointed medical practitioner may agree and accept the whole plan, or reject it as a whole or in part. NB: In practice there is scope for discussion between the R.M.O and appointed doctor.

SECTION 60

Withdrawing consent when the patient was fit to provide it

If a patient withdraws his consent to any treatment under Section 57 and 58, the treatment must not be given or cease to be given immediately. (Unless Section 62 applies, i.e. urgent treatment [see section 62, page 32]). If necessary, the RMO should ask for a second opinion from the Commission before treatment can be continued.

SECTION 61

Review of treatment

1. The Mental Health Act Commission has the power to order that treatment be discontinued.
2. The continued treatment may be reviewed by an appointed doctor when a patient's detention is renewed, and at such other times as the MHAC may direct. This applies to all Section 57 and Section 58. In any case, a report should be sent to the MHAC at the time of renewal, describing the patient's state and need for continued treatment.

SECTION 62

Urgent treatment

A treatment otherwise restricted by Section 57 or 58 may be given without the patient's consent, or to a patient who is not capable of giving informed consent if:

- a) It is immediately necessary to save the patient's life.
- b) (NOT BEING IRREVERSIBLE) it is immediately necessary to prevent serious deterioration of his condition.
- c) (NOT BEING IRREVERSIBLE OR HAZARDOUS) it is immediately necessary to alleviate serious suffering by the patient.
- d) (NOT BEING IRREVERSIBLE OR HAZARDOUS) it is immediately necessary and represents the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or others. "An irreversible treatment" has unfavourable irreversible physical or psychological consequences (eg psycho-surgery). "A hazardous treatment" entails significant physical hazard.

In cases where treatment is not immediately necessary or it is proposed to continue treatment, after the initial urgent administration, it will be necessary to contact the Mental Health Act Commission.

SECTION 63

Treatments NOT requiring consent

The consent of the patient is not required for any treatment (for mental disorder) if the treatment falls outside the procedures (consent/second opinion) laid down by Section 57 and 58. The treatment must be given by or under the direction of the responsible medical officer.

NB Although consent/second opinion are not required, it remains good ethics and medical practice to seek the patient's consent.

PART V

Miscellaneous and supplementary provisions

SECTION 136

The mentally disordered patient found in a public place

Police constables have the power under this section to remove to a place of safety* a person whom they find in a public place who appears to be suffering from a mental disorder and to be in need of care and control in his own interests or for the protection of others.

The patient should be taken to the nearest convenient place of safety* where he/she can be detained for a period not exceeding 72 hours for the purpose of being medically examined to be interviewed by an approved social worker and suitable arrangements to be made for his or her care.

* A 'place of safety' is a hospital, police station or other appropriate place.

MENTAL HEALTH REVIEW TRIBUNALS

Each of the Regional Health Authorities in England is covered by a separate Mental Health Review Tribunal. Members are appointed by the Lord Chancellor. The president is always a lawyer (and for restricted cases must be a barrister or Queen's Counsel of judicial standing) and the other two members are a registered medical practitioner and a layman. The tribunals are administered from three regional offices, in London, Liverpool and Nottingham.

Hospital managers' duty to refer

Any patient who has been detained for more than six months under Section 3 and has not applied for a Tribunal or had an application made on his behalf by the nearest relative, or had his case referred by the Secretary of State, must be referred to a Tribunal by the hospital managers.

If the authority for detention is renewed, and the patient at that time has been assessed by a Tribunal for three years or more, (for one year or more, if he is under 16) the hospital managers must refer his case to a Tribunal.

Powers of the Tribunal

Tribunals have the power to discharge from hospital (at once or on a specified date), or recommend leave of absence or transfer to another hospital. If their recommendation is not complied with, they may reconvene.

The Tribunal *must* discharge a patient detained under Section 2 if they are satisfied that he is not then suffering from mental disorder as defined under Section 2, or that his detention is not justified in the interests of his health and safety or for the protection of others.

The Tribunal *must* discharge any other Part II patient if they are satisfied that he/she is not suffering from one of the four categories of mental disorder as defined on Page 5 and that the requirements of the section no longer apply. With respect to Part III patients, those on hospital orders (without a restriction order) must be discharged as for Section 3 patients if they have recovered appropriately

Patients on restriction orders must be given an absolute discharge if they have recovered.

However if it is considered appropriate to require the patient to be liable to recall to hospital he may be conditionally discharged. This form of discharge may be deferred until appropriate arrangements for his discharge have been made.

For transferred patients subject to restriction directions advice must be given to the Home Secretary.

It is the duty of the hospital managers to inform every detained patient of his rights and the correct procedure for applying to the Mental Health Review Tribunal.

Legal Aid is available to help patients and other applicants with limited means to prepare their cases. Before Legal Aid is given, the patient must undergo a simple assessment of resources carried out by his solicitor.

Legal representation can be provided at the hearing under the assistance by way of representation (ABWOR) scheme.

When ABWOR is sought, the Law Society's approval must be obtained.

MENTAL HEALTH ACT COMMISSION FOR ENGLAND AND WALES

Functions

1. To protect the interests of detained patients by:
 - a) Reviewing the use of powers of detention.
 - b) By visiting and interviewing patients in hospital regularly, and investigating certain complaints.
2. To govern the provision for treatment by:
 - a) Appointing doctors on behalf of the Secretary of State, to give second opinions.
 - b) Formulating a list of treatments of special concern.
 - c) Preparing a code of practice on behalf of the Secretary of State.
3. To provide a forum for discussion of important ethical and legal matters.
4. To produce a report every two years for the Secretary of State to lay before Parliament.

Composition of the Mental Health Act Commission Appointed by the Secretary of State:

A total of 95 members (approximately) including: 10 nurses, 22 doctors, 10 lawyers, 10 psychologists, 10 social workers and 10 lay people.

They form three Regional teams:

North East, North West and Southern England.

Scrutiny and rectification of documents

The people who sign the applications and make the medical recommendations should make sure that they comply with the requirements of the Act.

Those who act on the authority of those documents should also make sure that they are in the proper form, as an incorrectly completed form may not constitute authority for a patient's detention.

Admission documents should be carefully scrutinised as soon as the patient is admitted, or, if he is already in hospital, as soon as the documents are received. The managers of the hospital should nominate an officer to undertake this task.

The nurse in charge of the unit has a responsibility to check that the documentation is correctly completed, using the check-list provided.

Faults that invalidate application

An application or medical recommendation cannot be regarded as such if it is not signed at all, or it is signed by a person not empowered to do so under the Act.

The officer checking the forms may take statements at face value.

Applications are also invalid if the two medical recommendations do not specify at least one mental disorder in common.

If any fault of this sort is discovered, there is no authority for the patient's detention.

Errors that may be amended

Section 15 allows an application or medical recommendation that is found to be incorrect or defective, to be amended by the person who signed it, with the consent of the managers of the hospital, within the period of 14 days from the date of the patient's admission.

Faults that may be capable of amendment under this section include leaving blank any spaces on the form that should have been filled in (other than the signature) or failure to delete one or more alternatives in places where only one can be correct. The patient's forenames and surname should agree in all places where they appear in the application and supporting recommendations.

Any document found to contain faults of this sort should be returned to the person who signed it for amendment. Consent to the amendment should then be given by a senior officer of the hospital who has been authorised to consent to amendments on behalf of the managers.

The consent must be recorded in writing and can take the form of an endorsement on the document itself. If this is all done within a period of 14 days starting with the date on which the patient was admitted (or the date the documents were received, if the patient was already in hospital when the application was made) the documents are deemed to have had effect as though originally made as amended.

Faulty medical recommendations

If the dates entered on the application and the medical recommendation do not conform with the time-limits, the persons who signed them should be asked whether the dates or times entered are correct. If they are not correct and the correct dates and times do conform with the limits, the entry on the form may be amended.

If the time-limits have not been complied with, the application is invalid. A notice of the rejection of a recommendation under Section 15 must be sent in writing to the applicant.

A request for amendment should be sent direct to the person in question who signed the document.

The applicant - especially when not an approved social worker - should be advised that he may submit a fresh recommendation within 14 days from the patient's admission.

Approved medical practitioners

Check in all cases whether one of the two medical recommendations is given by a registered medical practitioner who is approved by the Secretary of State under Section 12 as a person having special experience in the diagnosis or treatment of mental disorder.

Approved social worker

Mental welfare officers will be replaced by approved social workers who will be appointed by local social service authorities as having appropriate competence in dealing with people with mental disorders. They are required to undertake an approved course of training.

Patients' correspondence

There are no restrictions on informal patients' correspondence.

In the case of detained patients, their incoming and out-going correspondence can be inspected or withheld by persons appointed by the managers in consultation with the responsible medical officer.

Out-going correspondence

Correspondence addressed by a detained patient to a person outside the hospital may be withheld by the Post Office if:

- a) This has been requested by the person to whom it has been addressed.
- b) The hospital is a Special Hospital and the managers consider that the contents:
 - (i) may cause distress to the person to whom it is addressed or to any other person.
 - (ii) is likely to cause danger to any person.

Incoming correspondence.

An incoming packet which is addressed to a detained patient in a Special Hospital may be withheld if the managers consider it necessary:

- a) In the interest of safety of the patient.
- b) For the protection of other people.

There are other responsibilities of hospital managers and the Mental Health Commission with respect to correspondence.

Incoming and out-going correspondence to or from any of the following cannot be inspected or withheld:

- a) Any Government Minister or Member of either House of Parliament.
- b) The Master or any other officer of the Court of Protection or any of the Lord Chancellor's Visitors.
- c) The Parliamentary Commissioner, the Health Service Commissioner for England or for Wales or a Local Commissioner, (under the Local Government Act 1974).
- d) A Mental Health Review Tribunal.
- e) A Health Authority (including the Mental Health Act Commission) local social services authority, Community Health Council or probation or after-care committee.
- f) The managers of the hospital where the patient is detained.
- g) The patient's legal adviser (if legally qualified and instructed by the patient to act for him).
- h) The European Commission of Human Rights or the European Court of Human Rights.

Useful addresses

Royal College of Psychiatrists
17 Belgrave Square, London SW1 8PG
Tel: 01 235 2351

Royal College of Nursing
Henrietta Place, London W1M 0AB
Tel: 01 580 2648

Royal College of General Practitioners
14 Prince's Gate, London SW7 1PU
Tel: 01 581 3232

National Association of Mental Health (MIND)
Harley Street, London W1N 2ED
Tel: 01 637 0741

Community Psychiatric Nurses Association
5 Bloomsbury Close, Western Gardens, Ealing, London W5 3SE
Tel: 01 992 2313

Department of Health & Social Security
Alexander Fleming House, Elephant and Castle, London SE1 6BY
Tel: 01 407 5522

National Schizophrenia Fellowship
29 Victoria Road, Surbiton, Surrey KT6 4JT
Tel: 01 390 3651

Schizophrenia Association of Great Britain
Tyrtwr, Llanfair Hall, Caernarvon, Gwynedd, LL5 1TT
Tel: 0286 70379

Special & State Hospitals

Broadmoor Hospital
Crowthorne, Berks
Tel: 0344 773111

Moss Side Hospital
Maghull, Liverpool L31 1BD
Tel: 051 531 0022

Park Lane Hospital
Maghull, Liverpool Tel: 051 520 2244

Rampton Hospital Retford, Notts DN22 0PD
Tel: 077 784 321

State Hospital
Carstairs Junction, Lanark, Scotland
Tel: 0555 840293

Further References:

Mental Health Act 1983

*Mental Health Act 1983: Memorandum on
Parts I to VI, VIII and X
London HM50*

*A guide to the Mental Health Act 1983
(1983) Robert Bluglass,
Churchill, Livingstone,
Edinburgh*

*Mental Health Tribunal Procedure 1984
Larry Gostin,
Elaine Rassaby and
Andrew Buchan
Oyez Longman*

Notes

SCHERING

Schering Health Care Ltd.
The Brow
Burgess Hill
West Sussex RH15 9NE

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