

# **The New Mental Health Act**

**A guide to emergency  
and short-term powers  
Information for Service Users  
and their Carers**

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Information for Service Users  
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ISBN: 0-7559-4827-0

Scottish Executive  
St Andrew's House  
Edinburgh  
EH1 3DG

Produced for the Scottish Executive by Astron B43175 11/05

Published by the Scottish Executive, November, 2005

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# THE NEW MENTAL HEALTH ACT

## A guide to emergency and short-term powers

In March 2003 the Scottish Parliament passed a new law, the Mental Health (Care and Treatment) (Scotland) Act 2003. It came into effect in **October 2005**. It sets out how you can be treated if you have a mental illness, a learning disability or a personality disorder, and what your rights are.

This guide is one in a series about the new Act. It focuses on emergency and short-term powers.

The Act sets out:

- When you can be given treatment against your will
- When you can be taken into hospital against your will
- What your rights are
- What safeguards there are to make sure your rights are protected.

The term 'emergency powers' is used in this guide to cover:

- Police power to remove a person to a place of safety
- The local authority's duty to inquire where a person may be at risk
- The nurse's holding power where a person is a voluntary patient in hospital
- The granting of an emergency detention certificate.

This guide is written for people who have a mental disorder, but it may be of interest to others including carers and advocacy workers.

**This guide does not cover powers which might be used to treat people who are involved in criminal proceedings (see page 15).**

### Disclaimer

While we have done our best to see that the information contained in this guide was accurate and up to date when it was published we cannot guarantee this. If you have any questions about how the information might apply to you, you should discuss your concerns with a solicitor, your independent advocate or other appropriate adviser.



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## 1 Some terms used in this guide

**The Act:** The Mental Health (Care and Treatment) (Scotland) Act 2003.

**Advance statement:** this is a written statement, drawn up and signed when the person is well, which sets out how he/she would prefer to be treated (or not treated) if he/she were to become ill in the future. It must be witnessed and dated. The Tribunal and any medical practitioner treating the person must take notice of an advance statement but are not bound by it. If the wishes set out in an advance statement have not been followed by the medical practitioner or the Tribunal, they must send to the patient, the patient's named person and the Mental Welfare Commission a written record giving the reasons for this. There is a separate topic guide that explains advance statements in more detail.

**Independent advocate:** under the Act anyone with a mental disorder has the right to access an independent advocate. An independent advocate is able to give support and help to enable a person to express their own views about their care and treatment.

**Mental disorder:** this is a term used in the Act to include people who have a mental illness (including dementia), a learning disability or a personality disorder.

**Mental Health Officer (MHO):** this is a specially trained social worker who deals with people with mental disorder and has particular duties under the Act.

**Mental Health Tribunal:** The Mental Health Tribunal for Scotland was set up by the Act to make decisions about the compulsory care and treatment of people with mental disorder.

**Mental Welfare Commission:** The Mental Welfare Commission is an independent organisation. Its role is to protect the welfare of people who are vulnerable through mental disorder.

**Named person:** this is someone who will look after the person's interests if he or she has to be treated under the Act.

**Place of safety:** this is a place where someone might be taken in certain circumstances if they need to be assessed and arrangements made for their care. It might be a hospital, care home, or other suitable place. As a last resort, if no other places are available, it might be a police station.

**Responsible medical officer (RMO):** this is the medical practitioner, usually a consultant psychiatrist, who is responsible for the person's care and treatment.

## 2 When might emergency powers be used?

People can become unwell and in need of emergency care and treatment for mental disorder in a variety of different circumstances. They might be in a public place at the time, or at home, or perhaps already in hospital receiving treatment as a voluntary patient. The Act contains a range of powers which might apply in these different circumstances.

## 3 Who can help in an emergency?

There are different people who might be able to help if you, or someone you know, is unwell and needs care and treatment for a mental disorder as a matter of urgency. The person's General Practitioner (GP), or other people who might be involved in their care, such as a community psychiatric nurse (CPN) or social worker, might be able to help. There might be out-of-hours crisis support in your area – your local authority social work service should be able to tell you what's available.

In more urgent cases, for example, where someone has self-harmed or is at serious risk of self-harming, it might be more appropriate to contact the emergency services, i.e. police or ambulance.

## 4 Police power to remove a person to a place of safety

This power applies:

- If you are in a public place (any place where the public has access) *and*;
- A police constable reasonably suspects that you have a mental disorder *and*;
- Also suspects that you are in immediate need of care and treatment.

It allows a police constable to take you to a place of safety, and keep you there for up to 24 hours, so that they can arrange for you to be examined by a doctor.

A 'place of safety' means a hospital, a care home or any other suitable place. If there is no place of safety available, then you might be taken to a police station, although this should only be done as a last resort.

If you are taken to a place of safety, then the police constable has to notify the local authority and your nearest relative as soon as possible. If it isn't possible to inform your nearest relative, or your nearest relative doesn't live with you, then the police should notify a person who lives with you, or your carer, or someone who provides a care service to you. The Mental Welfare Commission must also be notified.

The police constable will arrange for you to be examined by a doctor. The doctor might decide that you don't need any medical treatment, or might agree arrangements about your treatment with you. In some cases, he/she might decide to grant an emergency detention certificate (see page 7) or a short-term detention certificate (see page 9).

Being taken to a place of safety by a police constable doesn't mean that you have done anything wrong; it just means that the police constable is concerned about your welfare and thinks you need to be seen by a doctor.

## 5 The local authority's duty to inquire where someone might be at risk

The local authority has a duty to inquire into your circumstances where you are an adult (someone aged 16 or over), you appear to have a mental disorder, you are living in the community, and

- You may be experiencing ill-treatment or neglect,
- Your property may be at risk of loss or damage,
- You may be living alone or without support, and may be unable to look after yourself, or
- The safety of another person might be at risk.

In order to carry out this duty, the local authority might wish to get access to premises, e.g. your home. If a mental health officer (MHO) believes that he/she will be unable to get access, then he/she can apply to the court for a warrant to authorise the access. An MHO is a specially trained social worker who has particular duties under the Act.

An MHO can also seek a warrant from the court which would authorise a doctor to examine you. If they believe it is necessary, they can also seek a warrant which would enable you to be taken to a 'place of safety' to be examined.

If you are examined by a doctor, he/she might decide that you don't need any medical treatment, or might agree arrangements about your treatment with you. In some cases, he/she might decide to grant an emergency detention certificate (see page 7) or a short-term detention certificate (see page 9).

## 6 The nurses' holding power where a person is a voluntary patient in hospital

If you have been admitted to hospital for treatment on a voluntary basis, and later decide that you wish to discharge yourself, against medical advice, then you may be prevented from leaving by a nurse using the *nurses' holding power*.

This power allows a nurse to detain you in hospital for up to 2 hours so that a doctor can examine you. This 2-hour period can be extended by 1 more hour, where the doctor arrives within the second hour that you have been detained, from the point that the doctor arrives. For example, say the nurse exercises the holding power at 1 pm. If the doctor arrives at 2.30 pm, then you could be detained for a further hour, i.e. until 3.30 pm.

A nurse should only use this power where it is not possible for you to be examined by a doctor immediately, and he/she believes that:

- You have a mental disorder; and
- It is necessary for your health safety or welfare, or the safety of any other person, that you be detained; and
- It is necessary for you to be examined by a doctor so that the doctor can decide whether an emergency detention certificate or short-term detention certificate should be granted.

Whenever a nurse uses this power, he/she must make a written record of it, and pass this to the hospital managers. The hospital managers must send a copy of this record to the Mental Welfare Commission.

If you are examined by a doctor, he/she might decide that you don't need any medical treatment, or might agree arrangements about your treatment with you. In some cases, he/she might decide to grant an emergency detention certificate (see page 7) or a short-term detention certificate (see page 9).

## 7 Emergency detention certificate

### (a) When might a doctor grant an emergency detention certificate?

A doctor who has examined you may grant an emergency detention certificate where he/she believes:

- It is likely that you have a mental disorder; and
- It is likely that your ability to make decisions about medical treatment is significantly impaired as a result of your mental disorder; and
- It is necessary as a matter of urgency to detain you in hospital, to help decide what medical treatment you need; and
- That if you were not detained in hospital, there would be a significant risk to you, or to other people; and
- That making arrangements with a view to granting a short-term detention certificate would involve undesirable delay.

Before granting the certificate, the doctor must consult a mental health officer and get his/her agreement, unless it is not possible for this consultation to take place.

### (b) What happens after an emergency detention certificate is granted?

If you are not in hospital when the certificate is granted, then arrangements will be made to transfer you to hospital. The Act says that you have to be transferred to hospital within 72 hours (3 days) of the certificate being granted. Transfers to hospital should take place as soon as possible within that period and should be carried out sensitively. Once you have been admitted to hospital, you can be kept there under the emergency detention certificate for a further 72 hours (3 days) from the time you are admitted.

If you are already in hospital when the certificate is granted, you can be kept there under the certificate for up to 72 hours (3 days).

**(c) What will happen to me when I'm in hospital under an emergency detention certificate?**

The purpose of an emergency detention certificate is to allow you to be assessed in hospital with a view to deciding if you need medical treatment for your mental disorder. During that time, you should not be given treatment without your consent unless you are being treated under a different law (the Adults with Incapacity (Scotland) Act 2000), or you need treatment urgently, e.g. to save your life, or prevent a serious deterioration in your condition.

The hospital managers are under a duty to ensure that a doctor with experience in diagnosing and treating mental disorder (a psychiatrist) examines you as soon as possible. If that doctor believes that it is not necessary for you to be detained in hospital under the Act, then he/she will revoke the emergency detention certificate. You will then be free to leave the hospital, or to stay as a voluntary patient, if you have agreed to do so. If he/she believes that you do need to be detained in hospital, then they may grant a short-term detention certificate.

The hospital managers also have a duty to provide you with information about your detention in hospital and your rights. They should tell you about independent advocacy services and help you to access the support of an independent advocate, if you wish to do so.

**(d) Can I appeal to the Tribunal against an emergency detention certificate?**

There is no right of appeal to the Tribunal against an emergency detention certificate. This is because it would not be practical to organise an appeal in such a short time.

## 8 Short-term detention certificate

### (a) When might a short-term detention certificate be granted?

A doctor with experience in diagnosing and treating mental disorder (a psychiatrist), who has examined you, may grant a short-term detention certificate where he/she believes it is likely that:

- You have a mental disorder; and
- Your ability to make decisions about medical treatment is significantly impaired, as a result of your mental disorder; and
- It is necessary to detain you in hospital, to help decide what medical treatment you need and to give you that treatment; and
- If you were not detained in hospital, there would be a significant risk to you, or to other people; and
- Granting a short-term detention certificate is necessary.

Before granting the certificate, the doctor *must* consult a mental health officer (MHO) and get his/her agreement. Before deciding whether to agree to the certificate, the MHO should see you and discuss matters with you, unless there is a good reason why they cannot do this.

Where possible, the doctor should also consult your named person (see page 2 - glossary) and take his/her views into account.

### (b) What happens after a short-term detention certificate is granted?

If you are not in hospital when the certificate is granted, then arrangements will be made to transfer you to hospital. The Act says that you have to be transferred to hospital within 72 hours (3 days) of the certificate being granted. Transfers to hospital should take place as soon as possible within that period and should be carried out sensitively. Once you have been admitted to hospital, you can be kept there under the certificate for up to a further 28 days from the day you are admitted.

If you are already in hospital when the certificate is granted, you can be kept there under the certificate for up to 28 days.

It is possible for the certificate to be extended beyond the 28 day period. If your condition has got worse towards the end of that period and extra time is needed to put together an application for a compulsory treatment order (CTO) (see page 11), then you can be detained for a further 3 days. Where an application for a CTO has been submitted to the Tribunal, then you can be detained in hospital under the short-term detention certificate for a further 5 days.

**(c) What will happen to me when I'm in hospital under a short-term detention certificate?**

The purpose of a short-term detention certificate is to allow you to be assessed and/or treated in hospital.

You can be given treatment for your mental disorder in accordance with the rules set out in part 16 of the Act. You can be given some treatment, including medication, without your consent. However, your views and wishes about treatment should be taken into account, including where these are expressed in an advance statement.

The hospital managers are under a duty to ensure that a doctor with experience in diagnosing and treating mental disorder (a psychiatrist) is appointed as your responsible medical officer (RMO).

Your RMO should keep your condition under review. If he/she thinks that it is no longer necessary for you to be detained in hospital under the Act, then he/she will revoke the short-term detention certificate. You will then be free to leave the hospital, or to stay as a voluntary patient, if you have agreed to do so. If he/she believes that you do need to be detained in hospital, or receive treatment under the Act beyond the period authorised by the certificate, then they may decide to make an application for a compulsory treatment order (CTO).

The hospital managers also have a duty to provide you with information about your detention in hospital and your rights. They should tell you about independent advocacy services and help you to access the support of an independent advocate, if you wish to do so.

**(d) Can I appeal to the Tribunal against a short-term detention certificate?**

Yes. You or your named person can apply to the Tribunal to have the short-term detention certificate revoked. You can get information about how to do this from the Tribunal (see page 12). However, you should consider seeking advice from a solicitor. You will be entitled to legal aid to allow a solicitor to represent you at any Tribunal hearing. A solicitor may also be able to instruct an independent medical report which might support your case.

## **9 Compulsory treatment order**

If it is felt that you need longer term care and treatment under the Act, then an application might be made to the Tribunal for you to be placed under a compulsory treatment order (CTO). A separate guide deals with the procedures and safeguards for the granting of a CTO (see page 15).

## 10 Further information contacts

### **Bipolar Fellowship Scotland**

Studio 1016, Abbeymill Business Centre, Seedhill Road, PAISLEY PA1 1TJ

telephone: 0141 560 2050

website: [www.bipolarscotland.org.uk](http://www.bipolarscotland.org.uk)

### **Depression Alliance Scotland**

3 Grosvenor Gardens, EDINBURGH EH12 5JU

telephone: 0131 467 7701

website: [www.depressionalliance.org](http://www.depressionalliance.org)

### **Enable**

6th Floor, 7 Buchanan Street, GLASGOW G1 3HL

telephone: 0141 226 4541

website: [www.enable.org.uk](http://www.enable.org.uk)

### **Mental Health Tribunal for Scotland**

1st Floor, Bothwell House, Hamilton Business Park, Caird Park, HAMILTON  
ML3 0QA

telephone: 01698 390 000

website: [www.mhtscot.org](http://www.mhtscot.org)

### **Mental Welfare Commission for Scotland**

Floor K, Argyle House, 3 Lady Lawson Street, EDINBURGH EH3 9SH

telephone: 0131 222 6111

service user and carer freephone: 0800 389 6809

website: [www.mwscot.org.uk](http://www.mwscot.org.uk)

### **National Schizophrenia Fellowship (Scotland)**

Claremont House, 130 East Claremont Street, EDINBURGH EH7 4LB

telephone: 0131 557 8969

website: [www.nsfscot.org.uk](http://www.nsfscot.org.uk)

**People First (Scotland)**

77 – 79 Easter Road, EDINBURGH EH7 5PW

telephone: 0131 478 7707

website: [www.peoplefirstscotland.com](http://www.peoplefirstscotland.com)

**Scottish Association for Mental Health (SAMH)**

Cumbrae House, 15 Carlton Court, GLASGOW G5 9JP

telephone: 0141 568 7000

website: [www.samh.org.uk](http://www.samh.org.uk)

**Scottish Commission for the Regulation of Care**

11 Riverside Drive, DUNDEE DD1 4NY

telephone: 0845 60 30 890

website: [www.carecommission.com](http://www.carecommission.com)

**Scottish Consortium for Learning Disability (SCLD)**

The Adelphi Centre, Room 16, 12 Commercial Road, GLASGOW G5 0PQ

telephone: 0141 418 5420

website: [www.sclld.org.uk](http://www.sclld.org.uk)

**Scottish Independent Advocacy Alliance**

138 Slateford Road, EDINBURGH EH14 1LR

telephone: 0131 455 8183

website: [www.siaa.org.uk](http://www.siaa.org.uk)

**The Office of the Public Guardian**

Hadrian House, Callendar Business Park, Callendar Road, FALKIRK FK1 1XR

telephone: 01324 678 300

website: [www.publicguardian-scotland.gov.uk](http://www.publicguardian-scotland.gov.uk)

Your local area social work department is listed in the telephone directory under council services.

## 11 Acknowledgements

This guide was produced in collaboration with the Mental Welfare Commission for Scotland, Scottish Association for Mental Health, National Schizophrenia Fellowship Scotland, the Scottish Independent Advocacy Alliance, the Advocacy Safeguards Agency, the State Hospital at Carstairs, and the Scottish Executive.

We wish to thank Sandra McDougall for her assistance with this Guide.



## 12 Other guides in this series

- The New Mental Health Act – A guide to advance statements
- The New Mental Health Act – A guide to compulsory treatment orders
- The New Mental Health Act – A guide to consent to treatment
- The New Mental Health Act – An easy read guide
- The New Mental Health Act – A guide to independent advocacy
- The New Mental Health Act – The role of the Mental Welfare Commission
- The New Mental Health Act – A guide to named persons
- The New Mental Health Act – A guide to the roles and duties of NHS Boards and local authorities
- The New Mental Health Act – A guide for people involved in criminal proceedings
- The New Mental Health Act – What's it all about? A Short Introduction

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ISBN 0-7559-4827-0



9 780755 948277