

The New Mental Health Act

Rights of Carers



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THE NEW MENTAL HEALTH ACT

Rights of Carers

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 a service user with a mental disorder can be treated and says what their rights are.

This guide is one of a series of guides about the new Act, and it explains what the Act says about the rights of carers.

The Act says

- When a service user can be given treatment against their will
- When a service user can be taken into hospital against their will
- What a service user's rights are
- What the safeguards are to make sure a service user rights are protected

This guide is written for people who care for a person with a mental disorder, but it may be of interest to others including service users and independent advocates.

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 Guiding principles

The main aim of the principles is to ensure that service users are treated with respect.

Anyone who is carrying out duties, or giving treatment, under the Act, e.g. doctors, nurses and social workers, has to follow the principles set out in the Act. They must take account of:

- The service user's past and present wishes about their care and treatment, giving them information and helping them as much as possible to participate in decisions about this
- The views of the service user's named person, carers, guardian or welfare attorney, if they have them
- The range of options available for the service user's care and treatment
- What will ensure the maximum benefit for the service user
- Making sure that the service user is not treated any less favourably because they are being treated under the Act
- The service user's individual abilities and background, and other factors such as their age, gender, sexual orientation, religion, racial origin or membership of any ethnic group.

Any restrictions on the service user's freedom should be the minimum necessary in the circumstances.

Where it is reasonable and practical, the service user's carers' needs should be taken into account and their carers' should receive information that might help them to care for the service user.

The services that the service user receives should be appropriate for their needs. Where the service user stops being treated under the Act, they should continue to receive care and treatment for as long as is necessary.

Where the service user is a child, under the age of 18, people carrying out duties under the Act must try to ensure that they do what is best for the service user's welfare.

2 Some terms used in this guide

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

CPN: Community Psychiatric Nurse.

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 which covers mental illness (including dementia), a learning disability or a personality disorder.

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.

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 place is available, it might be a police station.

3 Who is a carer?

Carers can be spouses, relatives, friends or neighbours and may not even recognise themselves as carers. Care provided by informal carers is often an essential part of the total care received by a person with a mental illness, learning disability or other mental disorder. General moves to provide more mental health care and treatment in community settings increase the already important role of carers and highlight the need for carers to be given effective support.

4 What's the difference between a carer, named person and an advocate?

A carer is not the same as the named person, who has other rights to receive specific information and take part in Tribunals. A carer can become a named person if the service user nominates their carer to take on this role. If the service user has not identified a named person for him or herself the law says that the primary carer automatically becomes the named person. A separate guide provides information about the role of the named person (see page 9).

Carers can provide important support in getting the views and needs of the person they care for across but a carer does not have the same role as an independent advocate. The Act gives the service user the right of access to independent advocacy. An independent advocate is there to express the views of the service user and should not express their own views and opinions about a person's treatment. A carer may well express their own views and opinions and can add another perspective to discussions about the care and treatment of the service user. A separate guide provides information about independent advocacy (see page 9).

5 Who does the law recognise as a carer?

There are a number of different descriptions of a carer in legislation and in guidance. The Act is quite specific about what it means by the terms 'carer' and 'primary carer'.

The Act says that a carer for a service user is a person who provides, on a regular basis, a substantial amount of care for, and support to, the service user. A carer doesn't have to be a relative nor does he or she have to live with the person they support. It is possible, for example, that a carer may be providing a great deal of emotional support from a distance. The care and support can be of either a practical or an emotional nature, or both.

Where the service user is in hospital a carer may be the person who, before the service user was admitted to hospital, provided, on a regular basis, a substantial amount of care for, and support to, the service user.

The Act says that any person whose paid job it is to provide care to a service user cannot be defined as a carer. The Act also says that a paid or unpaid employee of voluntary organisations is not a carer. A carer is not, for example, a CPN or a home help or a supporter if they are providing care as part of their job.

6 Who is a primary carer?

The Act says that the primary carer is the person who provides all, or most, of the care for, and support for, the service user.

If there are two or more such carers they should decide between themselves who should be described as the 'primary carer'. Under the Act the primary carer has specific rights; this is why there cannot be more than one primary carer.

7 What are the carers' rights under the Act?

The rights and views of carers must be taken into consideration as much as possible when any decisions about the service user's care and treatment are made. Anyone involved in the care and treatment of the service user must provide carers with the information they need to provide effective care. However, a carer will not receive any information that the service user does not want to have shared.

Carers have the right to attend the Tribunal and present relevant information if the Tribunal considers the carer to have an interest in the application being considered.

A carer has a right to ask their local authority to carry out an assessment of his or her needs. The local authority has a duty to carry out the assessment within fourteen days of the request. If it does not it must let the carer know within this time whether they or the Health Board will carry out an assessment. If the local authority decides not to carry out an assessment they must give their reasons for this.

A carer may be notified by a police constable that the person they care for has been removed to a place of safety because they have a mental disorder and they are in immediate need of care and treatment.

The Act requires that the primary carer has the right to be notified by hospital management when the service user they support is going to be transferred to another hospital in Scotland under the Act. Unless this transfer is urgent (in which case they should be notified as soon as possible after the transfer) they have the right to be informed at least seven days beforehand.

8 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

Depression Alliance Scotland

3 Grosvenor Gardens, EDINBURGH EH12 5JU

telephone: 0131 467 7701

website: www.depressionalliance.org

Mental Health Tribunal for Scotland

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

telephone: 01698 390 000

service user and carer freephone: **0800 345 70 60**

website: www.mhtscot.gov.uk

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

National Schizophrenia Fellowship (Scotland)

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

telephone: 0131 557 8969

website: www.nsfscot.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

People First (Scotland)

77-79 Easter Road, EDINBURGH EH7 5PW

telephone: 0131 478 7707

website: www.peoplefirstscotland.com

Scottish Association for Mental Health (SAMH)

Cumrae House, 15 Carlton Court, GLASGOW G5 9JP

telephone: 0141 568 7000

website: 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

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

Scottish Independent Advocacy Alliance

138 Slateford Road, EDINBURGH EH14 1LR

telephone: 0131 455 8183

website: www.siaa.org.uk

Scottish Public Service Ombudsman

4 Melville Street, EDINBURGH EH3 7NS

Telephone: 0870 011 5378

website: www.scottishombudsman.org.uk

Your local authority is listed in the telephone directory under council services.

9 Acknowledgements

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

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10 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 emergency and short-term powers
- 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 – Putting Principles into Practice
- The new Mental Health Act – What's it all about? A short introduction
- The new Mental Health Act – A guide to independent advocacy
- The new Mental Health Act – An introduction to the Mental Health Tribunal for Scotland
- The new Mental Health Act – A guide to the appeals process
- The new Mental Health Act – A guide to the role of the mental health officer

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