



## The Mental Health Acts 1983 and 2007

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### 1. Mental Health Act 1983

#### Summary

The Mental Health Act 1983 provides “a framework for the compulsory detention and treatment in hospital of people suffering from mental disorders, where that is warranted.”<sup>1</sup> In this sense, carers of people with mental health problems are likely to be familiar with some applications of this Act, for better or worse.

The most controversial and well-known parts of this Act are sections 2 and 3. These sections cover compulsory treatment and detention of individuals considered to be a danger to themselves or others as a result of their mental condition. In this sense, when someone is termed to be ‘sectioned’, this means that they have been detained in line with one of the sections of the Mental Health Act. The extract below explains how a decision to detain a person must be made:

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*“A decision to detain a person in hospital (under civil sections) is usually made by two doctors, one of whom is authorised under Section 12 of the MHA (in most cases a psychiatrist), another doctor (who might be the patient’s GP) and an Approved Social Worker (ASW) who has received training in mental health and mental health law. The term ‘sectioned’ is often used when a person is detained because he or she is placed under a particular section of the MHA – but it is a term best avoided as it is considered offensive by many service users. An assessment to decide whether an application should be made for a patient to be detained under the MHA can take place in hospital or in the community.”*

From: **Mental Health Training Set for Mental Capacity Act**, p.71 (Appendix 2), produced by the Department of Health, available at:

[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_074491](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_074491)

Once in hospital, “...informal patients (sometimes called ‘voluntary patients’) are free to leave... unless at the time they want to leave they represent an immediate serious risk to themselves or others.”<sup>ii</sup> Detained patients cannot leave unless “their responsible medical officer (RMO), a Mental Health Review Tribunal (MHRT) or Managers’ Hearing, or nearest relative (NR) agrees.”<sup>iii</sup> The decision of the nearest relative (who may be the carer) to discharge “may be blocked by the RMO if the patient would act dangerously if discharged.”<sup>iv</sup>

The Mental Health Act also requires the use of Care Programme Approach for the treatment of mental health problems.

### Care Programme Approach

Essentially, this approach specifies how individuals should be diagnosed and treated for severe mental illness. All individuals receiving treatment, care and support from secondary mental health services are entitled to care. However, from October 2008, the Care Programme Approach (CPA) applies only to “individuals with a wide range of needs from a number of services, or who are at most risk” who will “receive a higher level of care coordination support.”<sup>v</sup> Individuals on CPA should be involved in a thorough assessment of their needs, and a plan drawn up of their care package, which will include details of how different agencies will collaborate in providing care and treatment. This CPA should also identify the carer(s) involved, outline how they should be involved, and recognise the carer’s right to a Carers’ Assessment. The care programme must also include a:

- Ⓞ written care plan
- Ⓞ named Care Coordinator (could be a social worker, nurse, etc.)
- Ⓞ Health and Social Care Needs Assessment
- Ⓞ Risk Assessment
- Ⓞ regular review (at least annually)

### Carers’ role

Carers can have a key role in:

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- Managing the care of the mental health service user
- Being involved in care planning for the service user
- Requesting a Mental Health Act Assessment of the person cared for
- Setting up Advance Decisions or Lasting Powers of Attorney for the service user
- Being involved in decisions about hospital discharge

In some instances, carers' legal rights are dependent on whether they are identified as the service users' 'nearest relative' (see **Further Help and Guidance**).

## 2. Mental Health Act 2007

### Summary

The Mental Health Act 2007 received Royal Assent on 19<sup>th</sup> July 2007 and thus became law. This came into force on 3<sup>rd</sup> November 2008, and amends the 1983 Act.

The Government had been attempting to update the Mental Health Act for a number of years. The previous Mental Health Act was identified as having had two major flaws, in addition to some incompatibility with the European Human Rights Act 1998:

- some people with personality disorders were being denied treatment, with the risk that such patients might harm themselves or others.
- the Act covered treatment in hospital under direct medical supervision, but did not address care in the community. Given that modern mental health services tend to be community-based, and delivered by multi-disciplinary professional teams, the previous Act did not reflect today's services.<sup>vi</sup>

### Key differences to Mental Health Act 1983

This is a selection of the most important changes relevant to carers and staff working with them:

1. Introduction of **supervised community treatment** for suitable patients following an initial period of detention and treatment in hospital. Community treatment orders (CTOs) may be issued to some patients to ensure they comply with treatment when they are discharged from hospital, and enable staff to take action to prevent a relapse. However, these can only be used to ensure compliance with health-related treatments; **CTOs cannot be used to restrict people's social lives and activities.**
2. A new right for patients to apply to the county court to **appoint an acting nearest relative**, and **displace** the current nearest relative, if they have reasonable objections to the person currently in that role. At the same time, the Act has brought the nearest relative provisions in the 1983 Act in line with the Civil Partnership Act 2004.<sup>vii</sup>
3. **Broadening of the range of professionals** that can take on key roles in the Mental Health Act 1983. For example, the title of 'Approved Social Worker' is replaced with 'Approved

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- Mental Health Professional'.<sup>viii</sup> This development reflects NHS practices which encourage a more flexible workforce.<sup>ix</sup>
4. Introduction of a new criterion for compulsion; **'appropriate' treatment must be available for compulsion to be used**. This will mean patients can only be detained under the Act if appropriate medical treatment is available. 'Appropriate' in this case means treatment which is appropriate to that patient's mental disorder and all other circumstances of their case. The intention of this treatment must be to alleviate the condition; there is no test under the Act for the likelihood of actual benefit to the patient. This appropriate treatment test will replace the 'treatability' test.<sup>x</sup>
  5. Introduction of a duty for all hospital managers to ensure that **all patients aged under 18 are placed in suitable settings**, unless needs dictate otherwise. By November 2008, no child under 16 years of age is to be treated on an adult ward.<sup>xi</sup>
  6. Creation of more rights for victims of violent and sexual crimes committed by mentally disordered offenders - they will now **know when offenders are discharged back into the community and have the right to make representations** about their discharge.<sup>xii</sup>
  7. **Introduction of statutory advocacy services** to support patients detained under the Mental Health Act and to champion their rights. Carers can also request advocacy visits for the service user.<sup>xiii</sup>

The 2007 Act has also been used to amend the Mental Capacity Act 2005 to introduce the 'Deprivation of Liberty Safeguards', previously known as the 'Bournewood Safeguards'. The intention is to provide safeguards for people who lack capacity to make decisions for themselves, and are deprived of their liberty in care homes or hospital. The safeguards are aimed to prevent arbitrary decisions which may deprive a person of liberty and give rights of appeal.

### Impact of these changes on carers

Some of the changes will benefit carers and the people they care for, such as:

- ◆ the provision of advocacy for patients,
- ◆ the nearest relative's rights to request advocacy visits, and
- ◆ the safeguards against children under 16 years old being treated on adult wards

However, The Princess Royal Trust for Carers remains concerned that the Mental Health Act 2007 fails to provide adequate support and safeguards for service users. This impacts directly on the well-being of their carers.

In addition, our view is that there are insufficient precautions in the Act against the overuse of **Community Treatment Orders** (CTOs). As a result, many carers may find themselves 'stuck in the middle' between their loved ones on CTOs and the care coordinators. We are concerned that carers may feel pressured by under-supported and under-resourced mental health services to play the role of warden and informer on their family members. And there remains little consideration in the Act of carers' own requirements, such as carers' need to be given appropriate information and support to help them care safely and effectively.

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However, the **Revised Code of Practice** for the Mental Health Act 1983 (revised 2008) is more inclusive of carers' needs, emphasising that carers and family members should be involved in planning and developing care (the 'Participation Principle'). The Code also outlines carers' needs for information:

"2.41 In order to ensure that carers can, where appropriate, participate fully in decision-making, it is important that they have access to:

- practical and emotional help and support to help them to participate; and
- timely access to comprehensive, up-to-date and accurate information.

2.42 Even if carers cannot be given detailed information about the patient's case, where appropriate they should be offered general information which may help them understand the nature of mental disorder, the way it is treated, and the operation of the Act."<sup>xiv</sup>

### Relationship between Mental Health Act 2007 and Mental Capacity Act 2005

As demonstrated above, the Mental Capacity Act 2005 and Mental Health Act 2007 are intended to work together, rather than supersede one another. For example, the Mental Capacity Act can be used to "admit people to inpatient care when they lack the capacity to consent to admission and admission is judged to be in their best interests, but it cannot be used to detain them in hospital."<sup>xv</sup> However, if a person is detained under the Mental Health Act, they can be detained and treated for their mental health condition without their consent. In this way, the aim is for each Act to be applied when it is most appropriate to the circumstances of the case. How easy this principle is to apply in practice will be seen in coming years.

When supporting carers, the key issue to consider is whether the person they care for lacks capacity *at that time*, and *in that way*. For example, although someone may be in a psychiatric hospital and have a diagnosis of schizophrenia, this does not automatically mean that they lack capacity, or that they lack capacity to make any decisions. Capacity is "**decision specific**"<sup>xvi</sup>; while someone may not have the capacity to make decisions about their finances, they may be capable of making decisions about their care and treatment. Indeed, people with a mental illness do not necessarily lack capacity, although those with a severe mental illness "may experience a temporary loss of capacity to make decisions about their care and treatment."<sup>xvii</sup> A key example would be discharge, where "regardless of whether or not a person is detained under the [Mental Health Act], the individual's capacity to make decisions needs to be considered in planning for discharge".<sup>xviii</sup> This allows carers (possibly with the support of health, social care or voluntary sector staff) to challenge decisions made under either Act.

Remember, there remain many untested areas between the two Acts. For example, although it is assumed that the Mental Health Act will overrule some provisions in LPAs about treatment in the case of sectioning, this is yet to be legally tested.

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More detailed examination of how the two Acts operate together is available at <http://www.mhac.org.uk/files/POLICY%20BRIEFING%20issue%2017%20July%202007.pdf> (p.10).

### 3. What does this mean for staff working with carers?

In working with carers:

- Be aware of the Mental Health Act 2007, its Code of Practice, and where it applies
- Support carers to understand their rights, and the rights of the person cared for
- Support carers to exercise their rights under the current 1983 Act until October 2008, including being involved on the service users' care plan

### 4. Further help and guidance

- Overview of mental health carers rights (England and Wales) and Mental Capacity Act guidance** on Carers.org Professionals ([www.carers.org/professionals](http://www.carers.org/professionals))
- Hyperguide to the Mental Health Act 1983** at <http://www.markwalton.net/guidemha/index.asp>
- MIND Legal Advice Line** on 020 8519 2122 (open Mondays, Wednesdays and Fridays 2pm-4.30pm)
- For an accessible definition of the '**Nearest Relative**' concept, see MIND Carers factsheet at <http://www.mind.org.uk/Information/Factsheets/Carers/>, or the Hyperguide to the Mental Health Act page at <http://www.hyperguide.co.uk/mha/whoswho.htm#NR>

### Guidance last updated: Feb 09

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<sup>i</sup> **Mental Health Training Set for Mental Capacity Act**, p.71 (Appendix 2), produced by the Department of Health, available at: [www.dh.gov.uk](http://www.dh.gov.uk).

<sup>ii</sup> See above.

<sup>iii</sup> See above.

<sup>iv</sup> See above.

<sup>v</sup> **Refocusing the Care Programme Approach**, p.2, produced by the Department of Health, available at: [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_083647](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_083647)

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<sup>vi</sup> Press release from the Mental Health Foundation, 5.7.07,  
<http://www.mhf.org.uk/information/news/?EntryId=48051&p=1>

<sup>vii</sup> See above.

<sup>viii</sup> **Mental Health Act Policy Briefing**, from the Mental Health Act Commission, p.4, available at  
<http://www.mhac.org.uk/files/POLICY%20BRIEFING%20issue%2017%20July%202007.pdf>

<sup>ix</sup> See above.

<sup>x</sup> See above.

<sup>xi</sup> Press release from the Mental Health Foundation, 5.7.07,  
<http://www.mhf.org.uk/information/news/?EntryId=48051&p=1>

<sup>xii</sup> Press release from the Mental Health Foundation, 5.7.07,  
<http://www.mhf.org.uk/information/news/?EntryId=48051&p=1>

<sup>xiii</sup> See above.

<sup>xiv</sup> **Mental Health Act 1983: Revised Code of Practice**, p.16, produced by the Department of Health, available at  
[http://www.dh.gov.uk/en/Healthcare/NationalServiceFrameworks/Mentalhealth/DH\\_4132161](http://www.dh.gov.uk/en/Healthcare/NationalServiceFrameworks/Mentalhealth/DH_4132161)

<sup>xv</sup> **Mental Health Training Set for Mental Capacity Act**, p.29, produced by the Department of Health, available at  
[www.dh.gov.uk](http://www.dh.gov.uk).

<sup>xvi</sup> As above, p.26

<sup>xvii</sup> As above, p.8

<sup>xviii</sup> As above, p.35