

# The Mental Health Act 1983

Around 60% of in-patients receiving treatment in a mental hospital are informal, or voluntary, patients, which means that they have exactly the same rights as a person being treated for a physical illness.

Formal patients, who make up the remaining 40%, are compulsorily detained under the Mental Health Act 1983 and lose some of the rights enjoyed by informal patients.

Most formal patients are detained under Sections 2 and 3 of the Act, which are described below.

Any person detained under any section of the Mental Health Act must be informed of:

- the section (s)he is detained under
- his/her right to apply to a Mental Health Review Tribunal
- his/her right to be discharged by the Responsible Medical Officer, hospital managers and, if applicable, his/her nearest relative
- consent to treatment rules
- correspondence rules
- the Mental Health Act Commission's Code of Practice
- the right of the Mental Health Act Commission to interview patients and investigate complaints

Mental health advocates are available who can help a patient to exercise their rights under the Act: the phone numbers for local advocacy services are on the back of this leaflet.

## Section 1 - Definitions

Mental disorder is defined as 'mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind'.

'Mental illness' is not defined by the Act.

## Section 2 - Admission for Assessment

Patients may be detained for a maximum of 28 days under Section 2. Application for admission can be made by an Approved Social Worker (ASW) or nearest relative (normally spouse, parent or son/daughter). The applicant must have seen the patient within the previous 14 days.

Two doctors must confirm that

(a) the patient is suffering from a mental disorder of a nature or degree which warrants detention in hospital for assessment (or assessment followed by medical treatment) for at least a limited period; and

(b) (s)he ought to be detained in the interests of his/her own health or safety or with a view to the protection of others.

The patient can be discharged from hospital by any of the following:

- Responsible Medical Officer (RMO). The RMO will usually be the consultant in charge of the patient's treatment
- Hospital managers. These are not the managers responsible for running the hospital, but persons appointed solely for the purpose of carrying out the Hospital Managers' duties under the Mental Health Act. They are often referred to as 'Mental Health Act Managers'.
- Nearest relative. The nearest relative must give 72 hours notice. The RMO can prevent the nearest relative discharging patient by making a report to the hospital managers
- Mental Health Review Tribunal. The patient can apply to a tribunal within the first 14 days of detention.

## Section 3 - Admission for Treatment

Patients may be detained for up to six months, renewable for a further six months, then for one year at a time.

Application for admission may be made by the nearest relative or ASW in cases where the nearest relative consents, or is displaced by County Court, or it is not 'reasonably practicable' to consult him/her.

Two doctors must confirm that:

(a) the patient is suffering from a mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment in hospital; and

(b) if the patient is suffering from psychopathic disorder or mental impairment, such treatment is likely to 'alleviate or prevent a deterioration' of his condition; and

(c) it is necessary for his own health or safety or for the protection of others that he receives such treatment and it cannot otherwise be provided.

Under section 20, the RMO can renew a section 3 detention order if the original criteria still apply. In cases

where the patient is suffering from mental illness or severe mental impairment but treatment is not likely to alleviate or prevent a deterioration of his/her condition, detention may still be renewed if (s)he is unlikely to be able to care for him/herself, to obtain the care (s)he needs or to guard him/herself against serious exploitation.

The patient can be discharged from hospital by any of the following:

- Responsible Medical Officer (RMO)
- Hospital managers
- Nearest relative. The nearest relative must give 72 hours notice. If the RMO prevents the nearest relative discharging patient by making a report to the hospital managers, the nearest relative can apply to the Mental Health Review Tribunal within 28 days.
- Mental Health Review Tribunal. The patient can apply to a tribunal once during the first 6 months of his detention, once during the second 6 months and then once during each period of one year.

## Part IV - Consent to Treatment

Under Part IV of the Act, the consent of patients is not needed for medical treatment (which includes care, nursing and psychological treatment) for their mental disorder, if it is authorised by the RMO, who is the consultant in charge of the patient's treatment. The authority of the RMO cannot be delegated to other doctors or nurses. Some treatments require a second opinion before they can be given without consent, including any medication given for more than 3 months and ECT. Other treatments, including psychosurgery, require consent and a second opinion.

Part IV does not apply to treatment given for physical health problems, unless the physical problem is a manifestation of the mental disorder: for example, malnutrition in a patient with an eating disorder can be treated without the patient's consent.

Courts have upheld the right of nurses and doctors to use restraint or reasonable force to give treatment, but only on the grounds of clinical necessity.

Non-urgent treatment can only be given without consent, under restraint or by force where the treatment has been personally approved by the RMO.

Urgent treatment can be given without consent, if it is necessary to preserve life, prevent serious suffering or serious deterioration in a patient's condition or to prevent a patient from harming him/herself or others.

## Section 4 - Emergency Admission

A patient may be detained for up to 72 hours under Section 4. Application for admission can be made by an Approved Social Worker or the nearest relative, who must have seen the patient within the previous 24 hours. One doctor must confirm that it is of 'urgent necessity' for the patient to be admitted and detained; and that waiting for a second doctor would cause 'undesirable delay'

## Section 5 - Detention of informal patients

The doctor in charge of an informal patient's treatment or another doctor designated by him can detain the patient for up to 72 hours. Certain nurses can detain a patient for up to six hours or until a doctor with authority is available.

## Section 13 - Right of Nearest Relative to ask for assessment

Under Section 13, the Nearest Relative has the right to request that local social services assess a person for admission to hospital under the Mental Health Act. If local social services decide not to admit a person when an assessment has been requested, they must write to the Nearest Relative to explain their decision.

## Section 26 - Nearest Relative

The Nearest Relative, as defined by the Mental Health Act, will be any relative a person lives with; a husband, wife or long-term partner; the oldest child, if over 18; the older parent; or the oldest brother or sister, in that order.

## Sections 135 & 136

Under section 135, if there is reasonable cause to suspect that a person is suffering from a mental disorder and is being ill-treated or neglected or not kept under proper control; or is unable to care for him/herself and lives alone, a magistrate may issue a warrant authorising the police (with a doctor and Approved Social Worker) to enter any premises and remove that person to a place of safety, usually a hospital, but sometimes a police station.

Under section 136, if it appears to a police officer that a person in a public place is suffering from a mental disorder and is in immediate need of care or control, he can take that person to a place of safety, such as a hospital or police station.

Patients may be detained under sections 135 & 136 for 72 hours.

## About us

Dorset Mind is a local, independent charity providing services for people with mental health problems. It is affiliated to Mind, the mental health charity.

The services provided include a befriending service; groups for people suffering from anxiety disorders and from OCD; groups for women and for men; a sports club and a drop-in/lunch club.

## Contact Us

Dorset Mind  
11 Shelley Road  
Bournemouth BH1 4JQ  
tel: (01202) 392910  
email: [contact@dorsetmind.org.uk](mailto:contact@dorsetmind.org.uk)  
website: [www.dorsetmind.org.uk](http://www.dorsetmind.org.uk)

## Useful Numbers

Samaritans	01202 551999
Bournemouth Mental Health Helpline	01202 314577 (Evenings only)
Mind Information Line	0845 766 0163
Mind Legal Helpline Mon, Wed & Fri 1.00-4.00 p.m.	020 8519 2122
Bournemouth & Poole Advocacy	01202 399813
Dorset Advocacy	01305 257172
Saneline	0845 767 8000

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**For better  
mental health**

**Understanding  
The Mental  
Health Act 1983**