

# Mental Health Act (1983)

## ***Introduction***

To what extent should a person suffering mental disorder be held responsible for their behaviour (e.g. is it fair to punish a man who smashes a window in response to "voices")? If they are not fully responsible then should their freedom be limited "for their own good" (i.e. should the same man be taken to hospital against his will)? The law must provide practical responses to this type of question.

## ***Legal Definition of Mental Disorder***

The importance of such a definition is that it protects people regarded as "odd" or a "nuisance" from inappropriate compulsion. Persons cannot be considered mentally disordered simply on grounds of "immoral conduct, sexual deviancy or dependence on alcohol or drugs". It is important to remember that psychiatric diagnoses do not necessarily correspond to legal definitions!

## **Mental Disorder**

In the Act this is defined as; "Mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind." It is a deliberately broad definition and when applied results in the liability of an individual to compulsory admission for up to 28 days.

There are four *legal* subtypes of mental disorder:

- **Mental Impairment** - "a state of arrested or incomplete development of mind resulting in significant impairment of intelligence and social functioning and associated with abnormally aggressive or seriously irresponsible conduct."
- **Psychopathic Disorder** - "a persistent disorder or disability of mind which results in abnormally aggressive or seriously irresponsible conduct."
- **Severe Mental Impairment** - this has the same definition as for mental impairment but with "severe impairment of intelligence etc."
- **Mental Illness** - this is not specifically defined in the Act but left up to doctors

Mental Impairment and Psychopathic Disorder result in liability to compulsory admission for over 28 days **only** if treatment is likely to "alleviate or prevent a deterioration" in the condition.

Severe Mental Impairment and Mental Illness result in liability to prolonged compulsory admission regardless of likely outcome.

## ***Compulsory Admission to Hospital***

In the UK only about 5% of psychiatric patients are detained, 95% are "informal" so the vast majority of inpatient psychiatric treatment is not done under the auspices of the Mental Health Act. There are 8 procedures usually known by the Section of the Act in which they are found (hence the verb "to section"). Application forms for the compulsory admission or treatment of a patient must be completed by nearest relative or more commonly an "approved" Social Worker (ASW - appointed by the local authority). Recommendation forms must be completed by medical practitioner(s) and must state two grounds for compulsion.

- Patient is suffering from a mental disorder of appropriate severity.
- And compulsion is needed for this patient's health, safety or for the protection of other persons.

When two recommendations are needed at least one doctor should be:

- "approved" by the regional health authority as having special experience in mental disorder (usually a consultant or specialist registrar in psychiatry).
- at least one doctor (often their GP) should have previously known patient (this is not always possible).
- at least one doctor should be independent of the admitting hospital.

Patients have the right to appeal to Mental Health Review Tribunals on Sections lasting over 72 hours. Patients also have the right to appeal to the Hospital Managers, a misleading term for members of the Trust Board and associate members appointed for the purpose of reviewing compulsory detention. They may appeal at any time. Patients detained under Section 3 of the Mental Health Act may only appeal to the Mental Health Review Tribunal on one occasion during any period of detention. There is no limit set by statute on the number of appeals that may be made to the Hospital Managers. The Managers should conduct a review when asked by the patient unless they have done so recently and there is no evidence of change.

## ***The Sections***

<b>Section</b>	<b>Grounds</b>	<b>Requires</b>	<b>Duration</b>
"2" Assessment	Mental disorder "warranting admission" and patient requiring detention for "own health or safety or protection of others"	1 application and 2 medical recommendations.	Up to 28 days.
"3" Treatment	As Section 2 but applies only to mental illness, severe mental impairment, mental impairment or psychopathic disorder. For the latter two, treatment must be likely to help.	1 application and 2 medical recommendations.	Up to 6 months (third consecutive detention lasts up to one year).
"4" Emergency Assessment	As Section 2 but need for emergency admission before an assessment for Section 2 or 3 could be completed.	1 application and 1 medical recommendation.	Up to 72 hours if a Section 2 is being arranged.

## Sections (cont).

Section	Grounds	Requires	Duration
"5(2)" Doctors' Holding Power	A patient previously admitted informally demands to leave and grounds for Section 2 apply.	Report by the responsible consultant (or nominated deputy) on an inpatient (includes general medical patients).	Up to 72 hours while further section is arranged.
"5(4)" Nurses' Holding Power	As section 5(2) but no doctor is available.	A report from qualified psychiatric nurse.	Up to 6 hours.
Guardianship ("7 & 8")	Mental illness, mental impairment, severe mental impairment or psychopathic disorder. Guardianship is necessary for welfare of patient or protection of others.	1 application, 2 recommendations and a named guardian.	Up to 6 months. The Guardian can require a patient to live at a specified place and to attend for treatment (but can't force them to take treatment).
"135" Warrant to Search For and Remove Patients	There is reason to believe a person with mental disorder is suffering neglect or ill treatment in private premises.	Warrant from magistrate.	Police accompanied by a doctor and ASW may enter the premises by force. The person may be removed to a "place of safety" (hospital or police station) for up to 72 hours.
"136" Police Powers	Person in a public place appears to Police to be suffering from mental disorder and in immediate need of care and control.		Removal to "place of safety" for up to 72 hours.

## Patients Involved in Criminal Proceedings

The Mental Health Act allows courts to deal with mentally disordered offenders. Whilst court sections require medical recommendations the decision as to whether the prisoner "deserves" punishment or treatment is for the court.

There are seven court sections: the two most important examples are:

- **Section 37:** This allows a person convicted of an imprisonable offence to be detained and treated in hospital. The patient is discharged when well regardless of the length of prison sentence they may have been given if they had not been detained in hospital.
- **Section 41:** This restricts discharge of "dangerous" patients detained under section 37 by requiring permission from the Home Secretary.

Some criminal law also involves psychiatric reports, for example the verdict of "not guilty by reason of insanity" or "unfit to plead" (person too mentally disordered to know right from wrong) results in the individuals detention as if under Section 37 with Section 41 restrictions. The verdict of "Diminished responsibility" can reduce a murder verdict to one of manslaughter.

## ***Consent to Treatment***

"Informal" patients cannot be treated for a psychiatric disorder without informed consent.

Patients detained under Sections 4, 5(2), 135, 136 (72 hour sections) and guardianship cannot be treated without informed consent.

Patients detained under Sections 2, 3, and 37 may be given some treatments without consent under the following conditions:

### **General treatments**

There are no conditions applied here. Nursing care, occupational therapy etc. must be given to any of the specified detained patients without consent.

### **Medication and ECT**

Consent or a second opinion (Section 58) are required. To be given ECT or prolonged medication, i.e. for more than 3 months, either the patient must give consent certified valid by the consultant (remember their wish to leave hospital is considered invalid!) or agreement to the treatment plan must be obtained from a doctor appointed by the Mental Health Act Commission.

### **Urgent treatment**

(Section 62) If urgent, a course of ECT may be started with a detained patient while waiting for the second opinion.

### **Psychosurgery and hormone implants**

Consent **and** a second opinion (Section 57) are required. For these treatments the second opinion appointed doctor must agree with the plan and the patient must give consent which is considered valid by a three person panel.

### **Consent to general medical treatment**

The MHA applies only to treatment of mental disorder and **cannot** be used in treatment of physical conditions. Unconscious patients are treated under authority of Common Law which recognises a duty to save life *etc.* (Doctrine of Necessity). Restraint of a potentially violent or suicidal informal patient, whether in a general medical or a psychiatric ward, would be justified on the same basis.

## ***Mental Health Act Commission & Patients Rights***

### **Mental Health Act Commission.**

The Mental Health Act Commission (MHAC) consists of 90 psychiatrists, lawyers, psychologists, nurses, social workers and laypersons. It is directly responsible to the Secretary of State and has a statutory role to:

- Provide independent second opinions on consent to treatment.
- Protect the rights of detained patients through regular hospital visits and investigating complaints.

The MHAC has published a "Code of Practice" outlining good practice in the application of the MHA and other aspects of mental health care.

## **Patients Rights.**

Under the MHA patients have their rights defined. Some of these are:

- Detained patients must be informed of their right to appeal.
- Health Authorities and Social Services have a duty to provide aftercare to patients discharged from Sections 3 or 37. A Section 117 meeting should be convened with all those professionals present who will be involved in treatment after discharge.
- Informal patients in psychiatric hospitals retain the right to vote.
- Mail to or from any patient may not be withheld except under special circumstances.
- All patients, formal or informal, retain the right to manage their financial affairs *etc.*

If a patient at home or in hospital seems incapable of running their affairs these can be taken over by "the Court of Protection" especially set up for this purpose.