

THE MENTAL HEALTH ACT 1983 – RIGHTS, POWERS, PROTECTION

This poster shows the main sections (detention powers) of the Act – there are other powers (for example court orders) which are not listed below. The poster includes amendments made to the legislation by the Mental Health Act 2007

Admission to hospital – there are three main ways to admit a person to a mental health hospital or other place registered to use the Act:

1. Informal/voluntary – a person has capacity to decide to admit themselves and remain in hospital. Such a person has the right to leave the ward at any time or discharge themselves. They can however agree to remain on the ward or take leave off the ward for certain periods of time as part of their care plan. The person also has the right to consent to or refuse any treatment offered to them. The Mental Health Act Code of Practice states that informal patients “...should be made aware of their legal position and rights. Local policies and arrangements about movement around the hospital and its grounds must be clearly explained to the patients concerned. Failure to do so could lead to a patient mistakenly believing that they are not allowed freedom of movement, which could result in an unlawful deprivation of their liberty.” [Para 2.45]

2. Mental Capacity Act 2005 – a person lacks capacity to decide to admit themselves or remain in hospital. Those admitting the person need to complete a test of capacity under the Act to confirm this and then a best interests assessment to authorise the person's admission. This should be kept under review during the admission. The person retains the right to make other decisions unless proven to lack capacity by other decision specific tests of capacity. The Mental Capacity Act can apply not only to mental health treatment but all healthcare, nursing care, social care and financial decisions for those lacking capacity. It only applies to people aged 16+ (or 18+ for DOLS).

Note: the Mental Capacity Act also contains the power to detain people in hospitals or care homes. This is called the Deprivation of Liberty Safeguards (DOLS).

3. Mental Health Act 1983 – can apply whether or not the person has capacity to consent to their admission if they need to be brought into hospital or detained/prevented from leaving hospital due to the severity of their mental disorder. The criteria for detaining people are given below. The Act does not have age limits for the majority of sections, where this is not the case, it is stated below.

Note: there are other ways to admit a person to hospital such as under the National Assistance Act 1949, but these are rarely used.

	SHORT-TERM ORDERS – NO MORE THAN 72 HOURS DURATION						LONGER TERM HOSPITAL ORDERS			COMMUNITY POWERS	
	Section 135 (1)	Section 135 (2)	Section 136	Section 4	Section 5(2)	Section 5(4)	Section 2	Section 3	Section 37	Community Treatment Order (CTO)	Guardianship
Purpose	The power to forcibly enter private premises to remove a person for assessment in hospital (or another place of safety).	The power to forcibly enter private premises to look for and remove a detained patient who is absent without leave (AWOL) from hospital.	Police power to remove a person from a public place, who appears to have a mental disorder, for assessment in a place of safety (hospital or police station).	The power to admit a person from the community to hospital and detain them there in an emergency.	To prevent an informal/voluntary patient leaving a ward in an emergency. This allows time to assess whether further detention (Section 2 or 3) is needed.	To prevent an informal/voluntary patient leaving a ward in an emergency. This allows time to complete a longer holding power.	To admit a person from the community to hospital or to detain a patient wishing to leave hospital. It lasts for up to 28 days.	To admit a person from the community to hospital or to detain a patient wishing to leave hospital. It lasts for up to 6 months and can be renewed.	A person is found guilty of a crime and the court sentences them to hospital for treatment. It lasts for up to 6 months and can be renewed.	The power for a hospital to discharge a detained patient into the community under a CTO. They become subject to conditions enforceable by the power to recall the person back to hospital. In the event of recall back to hospital and revocation (ending) of the CTO, the original hospital section they were discharged from begins again.	The power for a guardian (usually someone in a local authority) to manage a person's care in the community (including deciding where they should live, whether they should attend appointments, education and training). Guardianship does not provide the power to detain.
Legal criteria (these must be met to use the power of the section)	There is reasonable cause to suspect that a person believed to be suffering from mental disorder has been, or is being, ill-treated, neglected or kept otherwise than under proper control or is living alone and is unable to care for themselves.	There is reasonable cause to believe that a patient already subject to a section is to be found on premises within the jurisdiction of the magistrate and admission to the premises has already been refused or a refusal of such admission is expected.	A police officer finds, in a public place, a person who appears to be suffering from mental disorder and the person appears to be in immediate need of care or control and the police officer considers it necessary in the interests of that person or for the protection of others, to remove them to a place of safety	It is of urgent necessity for the person to be admitted and detained under Section 2 and compliance with the requirements of Section 2 (two doctors and an approved mental health professional) would involve unreasonable delay.	A person is a voluntary in-patient in hospital and it appears to a doctor or an approved clinician in charge of the person's treatment that an application ought to be made for a Section 2 or 3	A person is receiving treatment for mental disorder as an in-patient in hospital and it appears to a nurse (of a prescribed level) that the disorder is of such a degree that it is necessary for the person's health or safety or for the protection of others that they are immediately restrained from leaving hospital and it is not practical to secure the immediate attendance of a person authorised to complete a Section 5(2)	A person is suffering from mental disorder and it is of a nature or degree which warrants their detention in hospital for assessment (or assessment followed by medical treatment) for at least a limited period and the person ought to be detained in the interests of their own health or safety or with a view to the protection of others	A person is suffering from mental disorder and it is of a nature or degree which makes it appropriate for them to receive medical treatment in hospital and it is necessary for the health or safety of the person or for the protection of others that they receive such treatment and treatment cannot be provided unless they are detained and appropriate medical treatment is available for them	A Magistrates' Court or a Crown Court convicts a person of an offence punishable with imprisonment and is of the opinion that Section 37 is the most suitable method of dealing with the person and they are suffering from mental disorder of a nature or degree which makes it appropriate for them to be detained in hospital for medical treatment and appropriate medical treatment is available for them	A patient is detained under either Section 3, 37, 45A, 47 or 48 and has a mental disorder of a nature or degree which makes it appropriate for them to receive medical treatment and it is necessary for their health or safety or for the protection of others that they should receive such treatment and subject to them being liable to be recalled such treatment can be provided without them continuing to be detained in hospital and it is necessary that the responsible clinician should be able to exercise the power to recall the person to hospital and appropriate medical treatment is available for them	A person is 16+ years old and has a mental disorder and the mental disorder is of a nature or degree to warrant the need for guardianship and it is necessary in the interests of the welfare of the person or for the protection of others that guardianship is used
Duration of section	Up to 72 hours from when the person is admitted to hospital (or other place of safety). Any further detention would require a new section to be completed within the 72 hours – Section 2 or 3.	Once the person is found the original section they were under (before they went AWOL) is reinstated and provides the authority to return them to hospital and resume their detention.	Up to 72 hours from the person's arrival at the place of safety. Any further detention would require a new section to be completed within the 72 hours – Section 2 or 3.	Up to 72 hours from when the person arrives at hospital. Any further detention would require a new section (either Section 2 or 3) to be completed within the 72 hour period. Section 4 can be changed to Section 2 by the addition of a second medical recommendation.	Up to 72 hours. Any further detention would require a new section to be completed within the 72 hour period – Section 2 or 3.	Up to 6 hours. Any further detention would require a Section 5(2) to be completed within the 6 hour period.	Up to 28 days. Further detention would require completion of a Section 3 within the 28 days of the Section 2.	Up to 6 months initially. Section 3 can be renewed by the responsible clinician. Up to 6 months for the first renewal and up to 12 months for each subsequent renewal.	Up to 6 months initially. Section 37 can be renewed by the responsible clinician. Up to 6 months for the first renewal and up to 12 months for each subsequent renewal.	Up to 6 months initially. It can be renewed by the responsible clinician. Up to 6 months for the first renewal and then up to 12 months for each subsequent renewal.	Up to 6 months initially. It can be renewed (usually by the responsible clinician). Up to 6 months for the first renewal and then up to 12 months for each subsequent renewal.
Staff (staff required to complete the section)	An approved mental health professional applies to a magistrate who issues a warrant. To use the warrant the police officer must be accompanied by an approved mental health professional and a doctor.	An authorised person from the hospital detaining the person or a police officer applies to a magistrate who issues a warrant. A police officer then has authority to enter the premises.	A police officer	A doctor and an approved mental health professional (or the nearest relative)	A doctor or approved clinician	A registered nurse (registered with the Nursing & Midwifery Council as a mental health or learning disabilities nurse)	Two doctors (one of whom must be Section 12 approved or an approved clinician) and an approved mental health professional (or the nearest relative)	Two doctors (one of whom must be Section 12 approved or an approved clinician) and an approved mental health professional (or the nearest relative)	Two doctors (one of whom must be Section 12 approved or an approved clinician) and an order by a Magistrates' or Crown Court	The responsible clinician and an approved mental health professional	Two doctors (one of whom must be Section 12 approved or an approved clinician) and an approved mental health professional (or nearest relative)
Treatment (what are the treatment powers)	The person must either consent to treatment or, if they lack capacity, the Mental Capacity Act may be used to treat them in their best interests.	Once found, the person comes under the treatment powers of the original section under which they were detained.	The person must either consent to treatment or, if they lack capacity to consent, the Mental Capacity Act can be used to treat them in their best interests.	The person must either consent to treatment or, if they lack capacity to consent, the Mental Capacity Act can be used to treat them in their best interests.	The person must either consent to treatment or, if they lack capacity to consent, the Mental Capacity Act can be used to treat them in their best interests.	The person must either consent to treatment or, if they lack capacity to consent, the Mental Capacity Act can be used to treat them in their best interests.	Yes – treatment for mental disorder can be given whether the person consents, refuses or lacks capacity to give or refuse consent. Note: the treatment rules are contained in Part 4 of the Act.	Yes – treatment for mental disorder can be given whether the person consents, refuses or lacks capacity to give or refuse consent. Note: the treatment rules are contained in Part 4 of the Act.	Yes – treatment for mental disorder can be given whether the person consents, refuses or lacks capacity to give or refuse consent. Note: the treatment rules are contained in Part 4 of the Act.	If they have capacity, the person must consent to treatment. If they lack capacity to consent, treatment can be given under the powers of the CTO. In all cases (including overruling a valid refusal of consent) treatment can be given if they are recalled back to hospital.	Guardianship gives no authority to treat. The person must either consent to treatment or, if they lack capacity, treatment may be provided under the Mental Capacity Act in their best interests.
Leave of absence?	Not applicable – the power provides for short-term detention.	Not applicable – the power is simply to search for an existing patient and return them.	Not applicable – the power provides for short-term detention.	Not applicable – the power provides for short-term detention.	Not applicable – the power provides for short-term detention.	Not applicable – the power provides for short-term detention.	Yes – the responsible clinician can grant leave of absence.	Yes – the responsible clinician can grant leave of absence.	Yes – the responsible clinician can grant leave of absence.	Not applicable as the person is not detained in hospital.	Not applicable as the person is not detained in hospital.
Duties on staff	Staff must inform the person of their legal rights (both verbally and in writing) and take all practicable steps to ensure the person understands these rights.	Staff must inform the person of their legal rights (both verbally and in writing) and take all practicable steps to ensure the person understands these rights.	Staff must inform the person of their legal rights (both verbally and in writing) and take all practicable steps to ensure the person understands these rights.	Staff must inform the person of their legal rights (both verbally and in writing) and take all practicable steps to ensure the person understands these rights.	Staff must inform the person of their legal rights (both verbally and in writing) and take all practicable steps to ensure the person understands these rights.	Staff must inform the person of their legal rights (both verbally and in writing) and take all practicable steps to ensure the person understands these rights.	Staff must inform the person of their legal rights (both verbally and in writing) and take all practicable steps to ensure the person understands these rights.	Staff must inform the person of their legal rights (both verbally and in writing) and take all practicable steps to ensure the person understands these rights.	Staff must inform the person of their legal rights (both verbally and in writing) and take all practicable steps to ensure the person understands these rights.	Staff must inform the person of their legal rights (both verbally and in writing) and take all practicable steps to ensure the person understands these rights.	Staff must inform the person of their legal rights (both verbally and in writing) and take all practicable steps to ensure the person understands these rights.
Right of appeal? (the right to appeal against being detained)	None	None	None	None	None	None	Yes – a right of appeal to both the Mental Health Tribunal (the appeal must be made within 14 days of the Section 2 starting) and a right of appeal to the Hospital Managers	Yes – a right of appeal to both the Mental Health Tribunal (once in each period of detention) and a right of appeal to the Hospital Managers [at any time].	Yes – a right of appeal to both the Mental Health Tribunal (once during each period of detention) and a right of appeal to the Hospital Managers [at any time].	Yes – a right of appeal to both the Mental Health Tribunal (once during each period of the CTO) and a right of appeal to the Hospital Managers at any time.	Yes – a right of appeal to the Mental Health Tribunal (once during each period of guardianship) and a right of appeal to the local authority.
Right to an advocate?	No – there is no legal right to an advocate but the person may ask if one is available.	No – there is no legal right to an advocate but the person may ask if one is available.	No – there is no legal right to an advocate but the person may ask if one is available.	No – there is no legal right to an advocate but the person may ask if one is available.	No – there is no legal right to an advocate but the person may ask if one is available.	No – there is no legal right to an advocate but the person may ask if one is available.	Yes	Yes	Yes	Yes	Yes
Right to be visited by and complain to the Care Quality Commission	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Discharge (how the section ends)	1. The assessment for Section 2 or 3 during the 72 hours decides that neither is needed. 2. The section expires at the end of the 72 hours (this would not be considered good practice because detention should end as soon as it is no longer necessary)	The section ends once the premises are entered and the person is found. The powers of the section they were under at the time they went AWOL then come into force.	The person should be assessed by both a doctor and an approved mental health professional within the 72 hour period (see the Code of Practice for when one person assesses). If the assessors do not feel any further detention is required the person can leave or admit themselves informally to hospital.	1. The assessment for Section 2 or 3 concludes that neither is required. 2. The section expires after 72 hours (this is not considered good practice because detention should end as soon as it is no longer necessary).	1. It is decided that further assessment for detention under Section 2 or 3 is not required. 2. The assessment for a Section 2 or 3 concludes that neither is required. 3. The section expires at the end of the 72 hour period (this is not considered good practice because detention should end as soon as it is no longer necessary).	The section is discharged when a doctor or approved clinician with authority to complete a Section 5(2) arrives within the 6 hour period. This person will then decide whether a Section 5(2) is appropriate, if not, the section ends. It is not good practice for the section to run the full six hours and then expire, the doctor or approved clinician should arrive within that time.	1. The responsible clinician at any time 2. Mental Health Tribunal 3. Hospital Managers' hearing 4. Nearest relative request 5. The section expires at the end of the 28 day period (this is not considered good practice as detention should end as soon as it is no longer necessary)	1. The responsible clinician at any time 2. Mental Health Tribunal 3. Hospital Managers' hearing 4. Nearest relative request 5. Transfer to a Community Treatment Order 6. The section expires (this is not considered good practice as detention should end as soon as it is no longer necessary)	1. The responsible clinician at any time 2. Mental Health Tribunal 3. Hospital Managers' hearing 4. Crown Court or Court of Appeal 5. Transfer to a Community Treatment Order 6. The section expires (this is not considered good practice as detention should end as soon as it is no longer necessary)	1. The responsible clinician at any time 2. The person is recalled and then the CTO is revoked (they are then under their original detention section) 3. Mental Health Tribunal 4. Hospital Managers' hearing 5. Nearest relative's request 6. The CTO expires (this is not considered good practice as the CTO should end as soon as it is no longer required)	1. The responsible clinician authorised by the local authority 2. The responsible local authority 3. Mental Health Tribunal 4. Nearest relative 5. Transfer to hospital and then detention under Section 3 6. If already in hospital, being placed on Section 3 7. The guardianship order expires (this is not considered good practice as detention should end as soon as it is no longer necessary)
Forms required	A magistrate's warrant	A magistrate's warrant	Police form	Form A9 – nearest relative or Form A10 – approved mental health professional Form A11 – medical recommendation Form H3 – record of detention	Form H1 – doctor or approved clinician's report on hospital in-patient	Form H2 – nurse's holding power	Form A1 – nearest relative or Form A2 – approved mental health professional Form A3 or A4 – medical recommendation Form H3 – record of detention	Form A5 – nearest relative or Form A6 – approved mental health professional Form A7 or A8 – medical recommendation Form H3 – record of detention	The court issues a Section 37 hospital order	Form CTO1	Form G1 – nearest relative or Form G2 – approved mental health professional Form G3 or G4 – medical recommendation Form G5 – record of acceptance
Guidance (from the Code of Practice)	Each warrant allows for forced entry to locked premises once only. The preferred place of safety is a hospital. A police station should only be used in exceptional circumstances. If possible, once entry is made, the doctor and approved mental health professional should carry out an initial assessment to see whether any further assessments or treatment will be necessary.	The warrant must be used within one month of being issued. Informal attempts should be made to gain access first before forced entry under Section 135(2) is considered. It is good practice for the police officer to be accompanied by staff from the hospital or local authority involved.	The preferred place of safety is a hospital and police stations should only be used in exceptional circumstances. A person can be transferred between different places of safety during the 72 hours. The Code of Practice has further information. The Royal College of Psychiatrists have standards for the use of Section 136.	The person must be admitted to hospital within 24 hours of the earliest form being completed. Code of Practice: "Section 4 should be used only in a genuine emergency, where the patient's need for urgent assessment outweighs the desirability of waiting for a second doctor." [Para 5.4]	The Code of Practice states: "The power cannot be used for an out-patient attending a hospital's accident and emergency department, or any other out-patient. Patients should not be admitted informally with the sole intention of then using the holding power." [Para 12.7]	The Code of Practice states: "The decision to invoke the power is the personal decision of the nurse, who cannot be instructed to exercise the power by anyone else." (Para 12.25) "The use of section 5(4) is an emergency measure, and the doctor or approved clinician with the power to use section 5(2) in respect of the patient should treat it as such and arrive as soon as possible." (Para 12.32)	Section 2 should be used if: the full extent of the nature and degree of a patient's condition is unclear; there is a need to carry out an assessment to formulate a treatment plan, or to reach a judgement about whether the patient will accept treatment on a voluntary basis following admission; a new in-patient assessment is needed to re-formulate a treatment plan.	The Code of Practice states: "Section 3 should be used if: the patient is already detained under section 2 (1), or the nature and current degree of the patient's mental disorder, the essential elements of the treatment plan to be followed and the likelihood of the patient accepting treatment on a voluntary basis are already established." [Para 4.27]	If, at the time of sentencing, doctors are not satisfied that a hospital order is appropriate, they should consider a Section 38 interim order instead. This allows the hospital time to assess the patient to confirm whether a full hospital order is appropriate. Courts can also make a Section 37 as a guardianship order in the community instead.	A patient with history of non-compliance with treatment plans or medication whilst in the community, resulting in relapse, may justify the use of a CTO as opposed to discharge. The conditions should restrict the patient's liberty as little as possible while still achieving their purpose.	If a person consistently refuses the guardian's authority to make decisions, consideration should be given to an alternative guardian. A person subject to guardianship can be admitted to hospital informally for their mental health. Detention does not automatically become necessary just because they have been subject to guardianship.

Explanation of terms

Advocate (IMHA) – IMHA stands for Independent Mental Health Advocate. This is a professional advocate (not a lawyer) whose role is to help and support people detained under the Act. The majority of detained patients have a legal right to see one (free of charge) and the hospital detaining the patient has a duty to inform the person of this right. Even if a person does not have a right to an IMHA under their section they can still ask if an advocate is available to help them.

Approved Clinician (AC) – a doctor, nurse, psychologist, social worker or occupational therapist who has undertaken specific training in connection with the Act for the purposes of this role. An approved clinician has a number of powers and duties under the Act including the authority to detain under Section 5(2).

Approved Mental Health Professional (AMHP) – a social worker, nurse, psychologist or occupational therapist who has undertaken specific training in connection with the Act for the purposes of this role. An AMHP has a number of powers and duties which include making assessments for admission under Sections 2, 3 and 4; assigning and consulting nearest relatives for Sections 2 and

3; confirming that community treatment orders should be made.

Care Quality Commission (CQC) – the independent inspectorate body for the NHS and other care providers. All detained patients have a right to be visited by and complain to the Care Quality Commission. Contact details: The Care Quality Commission, The Belgrave Centre, Stanley Place, Talbot Street, Nottingham NG1 5GG. Tel: 03000 616 161. Website: www.cqc.org.uk

Code of Practice – the Act has a statutory Code of Practice which gives advice on best practice when using the legislation. All staff have a duty in law to have 'regard to' the Code of Practice. Download the Code from: www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_084597

Hospital Managers – an independent group of people with relevant experience (not managers from the hospital itself) can hear appeals from people detained

under some sections. A hospital managers' hearing consists of three such people who meet the patient and those involved in their care and decide whether to discharge the patient from detention. Patients who appeal have a right to ask for a solicitor to help them. This can be free of charge but patients must speak to the solicitor to confirm this.

Mental disorder – defined in the Act as any "disorder or disability of the mind".

Examples include: depression, bi-polar disorder, schizophrenia, anxiety, phobic disorders, obsessive compulsive disorders, post-traumatic stress, dementia, delirium, personality and behavioural changes due to brain injury, personality disorders, eating disorders, learning disability, autistic spectrum disorders. Note: if a person has a learning disability and detention under Section 3, 37, Guardianship or a Community Treatment Order is being considered the learning disability MUST be "associated with abnormally aggressive or seriously irresponsible conduct" (this also applies to the court/prison Sections 35, 36, 38, 45A, 47 and 48 – these are not detailed above).

Nearest relative – a person detained under the longer term sections of the Act are allocated a nearest relative who has certain powers. This is called the Deprivation of Liberty Safeguards (DOLS). A professional will decide who to appoint as nearest relative based on the hierarchy

and rules contained within the Act. If a person is not happy with the choice of nearest relative made, they can contest this in court. An advocate or an approved mental health professional should be able to provide help in relation to this.

Place of safety – is defined as a hospital, police station, social services residential unit, care home (for mentally disordered persons) or any other suitable place the occupier of which is willing temporarily to receive the patient.

Responsible Clinician (RC) – detained patients may have several approved clinicians involved in their care but only one of them will be the responsible clinician. Generally this will be the doctor in charge of a person's care (however it could be a nurse, psychologist, social worker or occupational therapist qualified to act as a responsible clinician). A responsible clinician has authority under the Act to make certain decisions regarding detained patients – for example, to give them leave of absence or to discharge them.

Section 12 approved – a doctor who has undertaken training on the Act and is approved to carry out medical assessments in order to detain people.

Section 37 – the power to treat people with or without their consent is contained in the Act for longer detention sections. Medical treatment for mental disorder is defined by the Act (Section 145) and includes nursing care, psychological intervention and specialist mental health rehabilitation and care. This means a range of treatments including medication, care to alleviate symptoms of the disorder, nursing care, monitoring blood where this is part of taking certain medication, diagnostic tests for mental disorder and the care provided whilst a patient is in section are covered. General medical treatment may also be given if it can be shown to be treating a symptom directly resulting from the patient's mental disorder or integral to it. For example, the use of nasal-gastric tube feeding in the case of a patient with anorexia nervosa.

Section 38 interim order – if a patient is not satisfied that a hospital order is appropriate, they should consider a Section 38 interim order instead. This allows the hospital time to assess the patient to confirm whether a full hospital order is appropriate. Courts can also make a Section 37 as a guardianship order in the community instead.

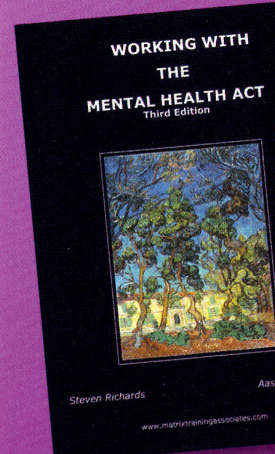
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This poster is based on the book: **Working with the Mental Health Act (3rd edition)** a detailed and practical guide to the Act.

To order the book or poster, contact:
Matrix Training, 2 The Green,
North Waltham, Hampshire RG25 2BQ
Tel: 01256 339 926
Fax: 01256 339 929 (order forms available online)
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