

Understanding the Mental Health Act – Information for Patients/Relatives and Carers

What happens when a patient is detained in hospital?

Usually two doctors will examine and assess the patient not necessarily at the same time and complete recommendations to confirm that, in their opinion, the criteria is met for the patient to be “sectioned” under the Act.

Who can apply to detain a patient in hospital?

The Mental Health Act 1983 gives approved mental health professionals (AMHPs) (see ‘Glossary’) the power to make an application to admit a patient to hospital under a section of the Act if they consider it necessary and the best way of ensuring receipt of the right care and treatment.

Which section can a patient be detained under?

If the patient has not been sectioned, or referred before, it is more likely that the section will be a section 2, as this section is usually used to assess someone. However, treatment may follow the assessment. The patient should be asked to give consent to treatment, but even if this is refused the Act allows for treatment under section 2 if the Responsible Clinician (RC – see Glossary) considers that it is appropriate treatment and it is necessary to improve the patient’s condition or stop it from getting worse.

If the doctors are clear that treatment is needed right away, then a section 3 may be applied. If the patient is already in hospital under section 2, this may involve an assessment and re-grade onto a section 3 without leaving hospital.

There are other sections that may be used to detain the patient without consent, which are described in later sections of this booklet.

When is it legal to use a section?

If the patient is being sectioned under section 2, the Act says that two doctors, after conducting an examination, must confirm that the patient:

- (a) is suffering from “a mental disorder of a nature or degree that warrants detention in hospital for assessment” (or assessment followed by medical treatment) for at least a limited period; and
- (b) ought to be detained in the interests of their own health or safety, or with a view to the protection of others.

If the patient is being sectioned under section 3, the Act says that two doctors, after undertaking an examination, must confirm that:

- (a) the patient is suffering from a “mental disorder of a nature or degree” that makes it appropriate for them to receive medical treatment in hospital; and
- (b) “appropriate” medical treatment is available; and
- (c) it is necessary for the patients own health or safety, or for the protection of others, that the patient receives such treatment and it cannot be provided unless detained under this section.

Can the patient appeal against the section?

The patient cannot challenge the doctors’ opinion at the time of being sectioned, but the Act provides several ways of appealing subsequently.

What are the differences between sections 2 and 3?

The main difference in the legal requirements for detaining under section 3, is that “appropriate treatment” must be available to treat a mental health condition, and that the detention enables receipt of that medical treatment in hospital.

There are other important differences between the two sections.

The AMHP must consult the nearest relative before applying for a section 2 or section 3. The nearest relative cannot prevent the section 2 from going ahead; they can however prevent a section 3 from going ahead by objecting to it.

The section 3 can then only go ahead if the AMHP applies to the County Court for an order “displacing” the nearest relative or taking their powers away from them. If the judge agrees to “displace” the nearest relative, the section 3 application can then go ahead.

The Act also says that the AMHP can go ahead with the application without consulting the nearest relative if it is not “reasonably practicable” to consult them. This might happen if the AMHP cannot find them within a reasonable time, or does not know who they are. If this happens, it is important to make sure, especially in the case of section 3 that support is offered to the patient by way of an IMHA or other advocacy or legal representative.

How long does a section 2 or 3 last?

A section 2 generally lasts for a maximum of 28 days. However, if there is an application to displace the nearest relative in progress (see above), then it may be extended.

If the patient no longer satisfies the legal requirements for being detained, the Responsible Clinician (RC) can decide to discharge the patient from detention earlier than the 28 day period.

A section 3 may last for a period of up to 6 months at first. Again, this can be shorter, if the RC decides that the legal requirements for detention are no longer met. However, if the RC considers that treatment remains necessary under section 3 for longer than 6 months, they

can renew the section for another six months, then again, for one year at a time, by sending a report to the hospital managers under section 20 of the Act.

As part of this process, the RC will confirm that, in their opinion, appropriate medical treatment is available to treat the mental health condition. The RC must also consult another person of a different profession who has been professionally involved in the patient's treatment, and ask them if they agree to the section 3 being renewed.

How can a patient be discharged from detention under section 2 or 3?

A number of options are available:

- the RC may discharge if the medical conditions that justified the admission under the Act no longer apply.
- an appeal to the Managers Panel Members
- the nearest relative may apply to discharge by giving the hospital managers at least 72 hours' notice in writing. Once this is done, provided the RC does not object, the nearest relative can discharge and take the patient from where they are being detained. However, the RC can stop, or 'bar' the nearest relative from discharging the patient by making a report to the hospital managers before the 72 hours are up, that in his or her view, the patient would act in a manner dangerous to themselves or others.
- apply to the Mental Health Tribunal (MHT) (see 'Glossary') to be discharged. This brings with it the entitlement to legal aid to pay for a solicitor

Can the patient leave the ward?

The responsible clinician (RC) has the power to allow the patient to leave the ward and the hospital for short periods of time, but may attach certain conditions, such as returning within a certain time – this is section 17.

What is section 4 of the Act?

Section 4 is used less often than sections 2 and 3, and only for emergency cases. It may be used so that a patient's mental health condition can be assessed in a hospital setting. It is like a section 2 admission but can only last for 72 hours or less. The Act says that only one doctor has to confirm that:

- (a) It is of "urgent necessity" for the patient to be admitted and detained under Section 2; and
- (b) Waiting for a second doctor to confirm the need for admission under section 2 would cause "undesirable delay".

The application for section 4 can be made by an AMHP or the nearest relative, but whoever applies must have seen the patient within the previous 24 hours.

What rights are there under section 4?

If the patient has not been admitted to hospital within 24 hours of the medical examination or the application for detention under section 4 (whichever is the earlier), the section 4 application is no longer valid and the hospital authorities must discharge. There is no authority to treat for a mental health condition under section 4 without consent, although in emergencies, emergency treatment and care can be given. The RC or the hospital managers can discharge from section 4 detention. The nearest relative cannot. There are no rights of appeal to a tribunal to discharge from section 4 detention.

The RC cannot apply to extend detention under section 4, but they may decide that the patient needs to be detained in hospital for longer than 72 hours, and that possibly treatment without consent in hospital is necessary. This can only happen if the section 4 is then converted to a section 2. A second doctor will then examine the patient and sign the section 2 papers.

Can a voluntary (informal) patient, can I be detained?

Yes, a voluntary patient may be detained under section 2 or 3, however where the detention is considered to be in an emergency a Section 5 may apply, but only where the patient is already in hospital as an informal (voluntary) patient.

Normally, if a patient has a mental health condition and are having treatment in hospital but are not under a section of the Mental Health Act, they have exactly the same rights as a person being treated for a physical illness and should be free to leave the hospital or the ward if they choose.

However, the professionals have powers under section 5 of the Act that can limit that choice. They can be used if the medical team has concerns that the patient needs further treatment, possibly without consent. One way this can happen is that a doctor or other approved clinician in charge of the patient's treatment can detain for up to 72 hours by reporting to hospital managers that an application for admission to hospital under the Act "ought to be made", even if the patient does not wish to be sectioned. Even if the patient came into hospital for treatment for a physical problem and not a mental health problem, the clinician can still make this application.

A nurse qualified and trained to work with people with mental health conditions or learning disabilities can also detain a patient who is having treatment "for mental disorder" (see 'Glossary') in hospital as an informal patient. The nurse can detain for up to six hours, or until a doctor or approved clinician with authority to detain the patient arrives, whichever is earlier.

When these powers are used, the patient is no longer free to leave and will need to remain in hospital for assessment to see if they need to be detained under section 2 or section 3.

When do police become involved?

Under section 135, a warrant from a magistrate can be used to enter any premises where a person is believed to be and take that person to "a place of safety without their consent.

A police officer with a doctor and AMHP, after using the warrant to get in, can take a person from their home or some other private place, if there is “reasonable cause to suspect” that, that person is suffering from “mental disorder”, are being “ill-treated” or “neglected” or not under “proper control”, or unable to care for themselves and living alone.

The person must be released from the place of safety if not detained under the Act in a hospital within 72 hours.

If in a public place, section 136 can be used to take a person to a place of safety, usually a hospital, if it appears to a police officer that that person is suffering from “mental disorder” and “in immediate need of care or control”. The Mental Health Act Code of Practice states that a police station should be used as a place of safety only on an “exceptional basis”.

The person must be released if not detained in a hospital, under the Act, within 72 hours.

A police station may be used if it is the only designated place of safety in the area, but it does not mean a crime has been committed.

The aim of sections 135 and 136 is for the ‘detainee’ to be examined by a doctor and interviewed by an AMHP as quickly as possible so that any necessary arrangements can be made for treatment and care.

The Mental Health Act and the Judicial System

It is government policy that people with mental health problems should receive treatment and care from health and social services. The law allows for this to continue, or begin, if someone becomes involved with the police.

Free legal advice at court, under what is called a representation order (this used to be called ‘legal aid’), may be available if the court decides that it is in the ‘interest of justice’ that the defendant has solicitor; any mental health problems must be considered by the court when making this decision. If a representation order is obtained this means that either the case is serious enough for it to be possible that a custodial sentence is being considered or that the defendant may have difficulty understanding proceedings and need the help of a solicitor.

Glossary & definitions

Approved clinician A mental health professional who has been approved, for the purposes of the Mental Health Act, by the Secretary of State (England) or by Welsh ministers (Wales). Approved clinicians may be doctors or mental health professionals such as psychologists, nurses, occupational therapists and social workers. Some decisions under the Mental Health Act can only be taken by approved clinicians.

Approved mental health professional (AMHP)

May be social workers, nurses, occupational therapists or psychologists who have been approved by a local social services authority to carry out certain functions under the Mental Health Act.

Managers Panel Members

Also known as 'Hospital Managers' because they have certain duties under the Act and are responsible for administering the use of the Act in the hospital e.g. hearing patients' applications to be discharged.

Independent Mental Health Advocate (IMHA)

An advocate specially trained to help patients to find out their rights under the Act and help whilst the patient is detained, if they are a "qualifying patient". That is if detained in hospital under a section of the Act, but not if that section is a 4, 5, 135 and 136. However, patients subject to Guardianship, conditional discharge and Community Treatment Orders (CTOs), or are discussing having certain treatments, such as ECT also qualify. In Wales, informal patients are also "qualifying patients".

Nearest relative (NR) Section 26 of the Mental Health Act 1983 sets out a list of people who may be considered as the nearest relative, and the person who is highest on the list is identified as the NR. The list is in strict order and starts with spouse/co-habitee, then children, then parents. The Nearest Relative has certain rights and powers in relation to admission under the MHA, including the right to be consulted if the patient is going to be sectioned under section 2 or 3. It is possible to go to court to 'displace' the nearest relative if the patient objects to them being their nearest relative, or for them to nominate someone else to act on their behalf.

Responsible clinician (RC)

They are the approved clinician (see above) with overall responsibility for the care and treatment of their patients whilst they are under the Mental Health Act. Certain decisions, such as placing a detained person on supervised community treatment, can only be taken by the responsible clinician. All responsible clinicians must be approved clinicians.

Second Opinion Appointed Doctor (SOAD) An independent doctor appointed by the Care Quality Commission in England or by the Healthcare Inspectorate Wales, whose approval is required for certain forms of medical treatment under the Mental Health Act 1983

Definitions

Appropriate treatment

References to “appropriate medical treatment” or “appropriate treatment”, when talking about a person suffering from mental disorder, are references to medical treatment which is appropriate in his or her case and takes into account the nature and degree of the mental disorder and all other circumstances of his or her case.

Medical treatment When the Mental Health Act mentions medical treatment for mental disorder, this means medical treatment which has the purpose of relieving the mental disorder or one or more of its signs or symptoms, or stopping it from getting worse. It includes nursing, psychological intervention and specialist mental health habilitation (learning skills), rehabilitation (relearning skills) and care.

Mental Disorder When the Mental Health Act talks about mental health problems and conditions that may justify a person being sectioned, it frequently uses the term “mental disorder”. Mental disorder is defined in section 1 of the Act as “any disorder or disability of mind”. It can include any mental health problem normally diagnosed in psychiatry, and also learning disabilities. However, for the purposes of section 1, those suffering from learning disability are only considered to have a mental disorder if their disability is “associated with abnormally aggressive or seriously irresponsible conduct”.

Organisations

Care Quality Commission (CQC)

Regulates and improves the quality of health and social care and looks after the interests of people detained under the Mental Health Act in England.

Mental Health Tribunal (MHT)

Independent panels that decide whether a formal patient detained under sections 2, 3, 37 and certain other detention sections should be discharged or not. They will normally only consider circumstances at the time of the hearing and not whether a patient should have been detained in the first place. The panel normally includes a legally qualified chairperson, a psychiatrist and a 'lay person' who has appropriate experience and qualifications in mental health matters. The tribunal can decide about suitable aftercare and make recommendations about matters such as hospital leave, transfer to another hospital, guardianship and CTOs.

6. Useful contacts

Mind Legal advice service

PO Box 277

Manchester M60 3XN

tel. 0300 466 6463 (Monday to Friday, 9.00 am to 5.00 pm)

email: legal@mind.org.uk

Care Quality Commission (CQC)

Citygate, Gallowgate,

Newcastle upon Tyne NE1 4PA

tel. 03000 61 61 61

web: cqc.org.uk

The Law Society

tel. 020 7242 1222

web: lawsociety.org.uk

Mental Health Tribunal (England)

First-tier Tribunal (Mental Health),

PO BOX 8793, 5th Floor,

Leicester LE1 8BN

tel. 0300 123 2201