

The New Mental Health Act

**An introduction to the
Mental Health Tribunal
for Scotland**

**Information for Service Users
and their Carers**

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THE NEW MENTAL HEALTH ACT

An introduction to the Mental Health Tribunal for Scotland

In March 2003 the Scottish Parliament passed a new law, the Mental Health (Care and Treatment) (Scotland) Act 2003. It came into effect in **October 2005**. It sets out how you can be treated if you have a mental illness, a learning disability or a personality disorder, and what your rights are.

The Act says:

- when you can be given treatment against your will
- when you can be taken into hospital against your will
- what your rights are
- what safeguards there are to make sure your rights are protected.

This guide is written for people who use mental health services, but it may be of interest to others including carers and independent advocates.

This guide gives service users and their named person an introduction to the Mental Health Tribunal for Scotland. More detailed guidance about the Tribunal rules and procedures is available from the Tribunal Administration.

Disclaimer

While we have done our best to see that the information contained in this guide was accurate and up to date when it was published we cannot guarantee this. If you have any questions about how the information might apply to you, you should discuss your concerns with a solicitor, your independent advocate or other appropriate adviser.

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1 Some terms used in this guide

The Act: The Mental Health (Care and Treatment) (Scotland) Act 2003.

Advance statement: this is a written statement, drawn up and signed when the person is well, which sets out how he/she would prefer to be treated (or not treated) if he/she were to become ill in the future. It must be witnessed and dated. The Tribunal and any medical practitioner treating the person must have regard to an advance statement but are not bound by it. If the wishes set out in an advance statement have not been followed by the medical practitioner or the Tribunal, they must send to the patient, the patient's named person and the Mental Welfare Commission a written record giving the reasons for this. There is a separate topic guide that explains advance statements in more detail.

Compulsory treatment order (CTO): this is an order which is granted by the Tribunal. It can include a number of different requirements including detention in hospital, compulsory treatment and attending services in the community. It will last initially for 6 months and can then be renewed for a further 6 months, then for periods of 12 months.

Curator ad litem: this is someone who may be appointed in certain circumstances to represent the patient's interests in Tribunal proceedings where the patient is unable to do this for her/himself.

Independent advocate: under the Act anyone with a mental disorder has the right to access an independent advocate. An independent advocate is able to give support and helps to enable a person to express their own views about their care and treatment.

Mental disorder: this is a term used in the Act which covers mental illness (including dementia), a learning disability or a personality disorder.

Mental Health Officer (MHO): this is a specially trained social worker who deals with people with mental disorder and has particular duties under the Act.

Mental Health Tribunal: The Mental Health Tribunal for Scotland was set up by the Act to make certain decisions about the compulsory care and treatment of people with mental disorder.

Mental Welfare Commission for Scotland: The Mental Welfare Commission is an independent organisation. Its role is to protect the welfare of people who are vulnerable through mental disorder.

Named person: this is someone who will look after the person's interests if he or she has to be treated under the Act.

Responsible medical officer (RMO): the medical practitioner, usually a consultant psychiatrist, who is responsible for the person's care and treatment.

Welfare guardian: someone appointed by the court under the Adults with Incapacity (Scotland) Act 2000 to make decisions about care and welfare on behalf of a person who cannot make these decisions him or herself.

2 What is the Tribunal?

The Mental Health Tribunal for Scotland is an independent organisation set up by the new Mental Health (Care and Treatment) (Scotland) Act 2003. Its role is to make decisions about your care and treatment if you are subject to compulsory powers under the Act.

The Tribunal consists of the President and around 300 members. There are three groups of members – legal, medical, and general. Each hearing will have a panel of three members which includes one person from each group. The legal members will chair the hearing. Medical members are psychiatrists. General members are people with a special interest in mental health including psychiatric nurses,

social workers, psychologists, service users and carers. None of the panel should have had any previous connection with the patient/service user.

3 What does the Tribunal do?

The Tribunal considers the following types of proceedings:

- applications to the Tribunal, e.g. compulsory treatment orders (CTO);
- references to the Tribunal, e.g. from the Mental Welfare Commission;
- appeals to the Tribunal from patients or named persons, e.g. appeal against a short-term detention certificate;
- reviews by the Tribunal; and
- cases remitted to the Tribunal by the sheriff principal or the Court of Session.

If an MHO thinks that you need compulsory treatment for more than 28 days he or she will make an application to the Tribunal. A separate guide is available on CTOs (see page 11). If you are already subject to a CTO your RMO might also apply to the Tribunal for changes to your care and treatment plan. The Tribunal is required to review your case at least once every two years. If you, or your named person, are unhappy with your CTO you both have the right to ask the Tribunal to review it.

The Tribunal will also consider your case if you are in hospital as a result of criminal proceedings. A separate guide is available on people involved in criminal proceedings (see page 11). Your RMO might apply to the Tribunal for changes to your care and treatment plan and you and/or your named person can ask the Tribunal to review your case.

From May 2006 you can also ask the Tribunal to review your case if you think you are being held in conditions of greater security than you think are necessary. The right to review will only apply to people in the State Hospital in Carstairs. (The principles say that your freedom should be limited only as much as is needed – which applies more generally.)

If the Mental Welfare Commission has concerns about your care or your order it can refer your case to the Tribunal for consideration.

4 Where will the Tribunal hearing be?

The Tribunal hearing will usually be held in a place near you. This could be in a local hospital or in other facilities or offices in the community. Your local authority and Health Board will have made suitable accommodation available for hearings. All or part of a hearing may be held via a video or telephone link.

The Tribunal Administration is based in Hamilton, Lanarkshire. All communication and papers should go through this office. The Tribunal Administration team will arrange your hearing and let everyone who needs to be there know about it. Hearings can also be held in the Tribunal suite in Hamilton HQ. Contact information for the Tribunal is on page 8 at the end of this booklet.

5 Who will be at the Tribunal hearing?

If the Tribunal is considering your case, you will be invited to attend the hearing. You may want to seek legal advice from a solicitor who can advise you about your rights. You should be entitled to legal aid which would cover the cost of advice and having a solicitor to act for you at the hearing.

If you have a named person, welfare guardian or welfare attorney they will also be invited to attend. In addition any other person with an interest, who the Tribunal thinks should be allowed to speak, will be

invited to attend the hearing. This might include your carer, advocacy worker or community psychiatric nurse (CPN).

Your RMO, MHO, and possibly your GP may also be invited to the hearing. If your RMO or MHO is making an application it is expected that he/she will be present at the hearing.

If you are asked to attend the hearing you may be able to claim your travel and other expenses. The Tribunal Administration will give you information about this and you can speak to the clerk on the day about getting these paid.

6 How can you appeal against your order?

If you have a solicitor, then your solicitor can help organise your appeal for you.

If you don't have a solicitor, then you can write or phone the Tribunal Administration and say you would like to make an appeal against your order. The Tribunal will advise you if this is possible and how you should go about it. The actual procedure will depend on what kind of order is in place and how long it has been in place.

You will need to provide the Tribunal Administration with details of your name, the name of your doctor and the hospital in your order. You may find it helpful to have your named person, independent advocate or legal representative help you with this.

7 What will happen before you attend the hearing?

Before you attend a hearing the Tribunal Administration team will send you information about the time and place of the hearing, and will send you copies of any relevant reports or papers.

If you have any questions about the hearing, you should discuss these with your solicitor, or contact the Tribunal Administration.

8 Will the Tribunal always have a hearing?

It may be that you and everyone agrees with the changes or extensions to your care and treatment that are being asked for. In these circumstances, the Tribunal can consider your case without asking everyone to be present and give their views. If there is disagreement a hearing must be held.

9 What will happen at the Tribunal hearing?

On the day the Tribunal clerk will show you where the waiting room, hearing room and other facilities are.

The convenor of the Tribunal will explain the rules about the hearing, why it is taking place and what will happen. The Tribunal aims to respond to the needs of patients and where possible, it will try to make proceedings as accessible and informal as they can.

During the course of a hearing people involved in your care and treatment may be entitled to make their views known and present information relevant to your case to the panel.

The Tribunal panel will read, listen to and discuss information that is relevant to your case. If the hearing is about an application for a CTO the papers will include reports from two doctors and from your MHO. For other hearings the papers will usually include a report from your RMO and sometimes a report from your MHO. The Tribunal panel will listen to what everyone, including you, has to say about your case. The panel will try to reach a decision on the day of your hearing. If a decision cannot be made, the hearing will carry on at a later date. In some circumstances an interim order can be made to ensure that you get the care and treatment you need until a final order is put in place.

The panel may let you know its decision at the end of your hearing, or may send its decision to you in writing after the hearing. The panel will also let the parties and any relevant people identified by the panel know about their decision. A copy of the decision will also be sent to

the Mental Welfare Commission. If your case has come to the Tribunal through the court system, a copy of the decision will also be sent to the court.

Named person

Your named person can apply independently to the Tribunal for a review of your case on your behalf, and should be entitled to free legal advice and assistance to help with this.

Legal representation

You and your named person can ask for legal representation and you should get legal aid for this. This will be arranged by your solicitor.

Curator ad litem

In some circumstances, the Tribunal may appoint a **curator ad litem** to represent your interests in the proceedings. This might be where you don't have the capacity to instruct your own solicitor, or don't have anyone else who can represent your interests.

10 What if you're unhappy with the Tribunal's decision?

If you are unhappy with the Tribunal's decision you may be able to appeal to the sheriff principal and then to the Court of Session for a review of their decision. The Tribunal will tell you about this when they give you their decision.

11 How do I become a Tribunal member?

Tribunal membership is a public appointment. Members can serve for 5 years which can be extended for a further 5 years. Vacancies are advertised widely in the press and can also be viewed on the Scottish Executive website. The process for appointment is designed to be fair and open and the qualifications and experience needed by each type of member will be set out in the application pack.

All members are provided with special training before sitting on a panel and will also receive regular training and information updates.

12 Further information contacts

Bipolar Fellowship Scotland

Studio 1016, Abbeymill Business Centre, Seedhill Road PAISLEY
PA1 1TJ

telephone: 0141 560 2050

website: www.bipolarscotland.org.uk

Depression Alliance Scotland

3 Grosvenor Gardens, EDINBURGH EH12 5JU

telephone: 0131 467 7701

website: www.depressionalliance.org

Enable

6th Floor, 7 Buchanan Street, GLASGOW G1 3HL

telephone: 0141 226 4541

website: www.enable.org.uk

Mental Health Tribunal for Scotland

1st Floor, Bothwell House, Hamilton Business Park, Caird Park
HAMILTON ML3 0QA

telephone : 01698 390 000

service user and carer freephone: **0800 345 70 60**

website: www.mhtscot.gov.uk

Mental Welfare Commission for Scotland

Floor K, Argyle House, 3 Lady Lawson Street, EDINBURGH
EH3 9SH

telephone: 0131 222 6111

service user & carer freephone: **0800 389 6809**

website: www.mwscot.org.uk

National Schizophrenia Fellowship (Scotland)

Claremont House, 130 East Claremont Street, EDINBURGH
EH7 4LB

telephone: 0131 557 8969

website: www.nsfscot.org.uk

People First (Scotland)

77-79, Easter Road, EDINBURGH EH7 5PW

telephone: 0131 478 7707

website: www.peoplefirstscotland.com

Scottish Association for Mental Health (SAMH)

Cumrae House, 15 Carlton Court, GLASGOW G5 9JP

telephone: 0141 568 7000

website: www.samh.org.uk

Scottish Commission for the Regulation of Care

11 Riverside Drive, DUNDEE DD1 4NY

telephone: 0845 60 30 890

website: www.carecommission.com

Scottish Consortium for Learning Disability (SCLD)

The Adelphi Centre, Room 16, 12 Commercial Road, GLASGOW
G5 0PQ

telephone: 0141 418 5420

website: www.sclld.org.uk

Scottish Independent Advocacy Alliance

138 Slateford Road, EDINBURGH EH14 1LR

telephone: 0131 455 8183

website: www.siaa.org.uk

The Office of the Public Guardian

Hadrian House, Callendar Business Park, Callendar Road, FALKIRK
FK1 1XR

telephone: 01324 678 300

website: www.publicguardian-scotland.gov.uk

Your local area social work department is listed in the telephone directory under council services.

13 Acknowledgements

This guide was produced in collaboration with the Mental Welfare Commission for Scotland, the Scottish Association for Mental Health, National Schizophrenia Fellowship Scotland, the Scottish Independent Advocacy Alliance, the State Hospital at Carstairs and the Scottish Executive.

14 Other guides in this series

- The New Mental Health Act – A guide to advance statements
- The New Mental Health Act – A guide to compulsory treatment orders
- The New Mental Health Act – A guide to consent to treatment
- The New Mental Health Act – An easy read guide
- The New Mental Health Act – A guide to emergency and short-term powers
- The New Mental Health Act – The role of the Mental Welfare Commission
- The New Mental Health Act – A guide to named persons
- The New Mental Health Act – A guide to the roles and duties of NHS Boards and local authorities
- The New Mental Health Act – A guide for people involved in criminal proceedings
- The New Mental Health Act – Putting Principles into Practice
- The New Mental Health Act – What's it all about? A short introduction

Further copies of this document are available, on request in audio and large print formats and in community languages, please contact:

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