

# **The New Mental Health Act**

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## **Transitional Training Guide**

**Local Authority  
Elected Members**

**Briefing Paper**

**MENTAL HEALTH (CARE & TREATMENT)  
(SCOTLAND) ACT 2003**

**TRANSITIONAL TRAINING GUIDE MATERIAL**

**LOCAL AUTHORITY ELECTED MEMBERS**

**BRIEFING PAPER**

## FOREWORD

This is part of a package of training materials commissioned by the Scottish Executive. It was developed by Mike Maas-Lowit of Robert Gordon University who was assisted in this process by a multi-disciplinary Advisory Group drawn from services across Scotland and chaired by the Scottish Executive.

The training material is geared primarily to assisting Mental Health Officers gain knowledge of their new statutory roles and duties which have been expanded considerably in the Mental Health (Care and Treatment) (Scotland) Act 2003. The material, however, is organised in such a way as to be of value to others involved in implementing the new legislation. Ideally, wherever possible, training will be delivered on a joint basis.

By necessity the material had to be developed before the Code of Practice, Regulations and Forms had been finalised. References made are generally to draft versions of each (e.g. Volume 1 of the Draft Code of Practice published in March 2004 and Volumes 2 and 3 in June 2004). This material should not be taken as a definitive, legal interpretation of statute. Practitioners should refer to primary legislation and the associated Codes of Practice and seek their own legal advice when questions on implementation and/or interpretation arise.

All should feel free to reproduce any of the material included in the Mental Health (Care and Treatment) (Scotland) Act 2003 Transitional Training Guide series, although the name of the author and the publication from which it came should always be clearly stated. All the material can be downloaded from the Scottish Executive's mental health law website: [www.scotland.gov.uk/health/mentalhealthlaw](http://www.scotland.gov.uk/health/mentalhealthlaw)

## Introduction

This paper introduces the Mental Health (Care and Treatment) (Scotland) Act 2003 (the 2003 Act) and sets out matters of importance for local authority councils in advance of its coming into effect. **The intention of this paper is to make Elected Members aware of the many matters associated with the Act that will carry financial and resource implications for councils, particularly for social work departments and their mental health officer service.**

Please note that this paper is part of a package of training materials commissioned by the Scottish Executive and developed by Robert Gordon University. This material also includes a Briefing Paper for Local Authority and Health Service Managers.

It is important for you to note that the 2003 Act is the largest undertaking of the Scottish Parliament to date and represents a fundamental overhaul of mental health law in Scotland, addressing the needs for care and medical treatment of people affected by mental disorder, their carers and others.

## What is mental disorder?

Mental disorder is the umbrella term used in the 2003 Act to cover:

- People affected by mental illness;
- People with personality disorder; and
- People with learning disability.

The largest group of people affected by the 2003 Act will be those with mental illness. The scope of this undertaking may be seen in the figures that 1 in 4 inhabitants of Scotland will experience some form of mental health problem in adult life<sup>1</sup>, although not that all of them will require measures under the Act.

## Why was a new Act needed?

Under the previous legislation, the Mental Health (Scotland) Act 1984 (the 1984 Act), the focus of compulsory care and treatment was located almost exclusively in hospital. The 2003 Act acknowledges the fact that most care and treatment for people affected by mental disorder occurs in the community and that hospitalisation is not always necessary to ensure people get the care and treatment they need. It implicitly accepts the expansion of the local authority's role in providing community care services for people affected by mental disorder and the role of social care in responding to what is no longer seen as just a medical problem.

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<sup>1</sup> This figure is taken from the "See Me" anti-stigma campaign of the Scottish Executive and its partners. [www.seemescotland.org](http://www.seemescotland.org)

## **The 2003 Act in brief:**

The 2003 Act makes provision for:

- A set of principles which governs the way in which people given formal powers under the Act should go about their duties;
- The creation of the Mental Health Tribunal for Scotland, which largely replaces the role played by the Sheriff Court in civil procedures in granting powers to detain and provide care and treatment;
- Expanded duties upon the local authority to provide a range of services for people affected by mental disorder in their area (such as service to promote mental health and well-being);
- Expanded roles and duties for other bodies such as the Mental Welfare Commission for Scotland;
- A revised framework of compulsory powers of detention in hospital for assessment, care and treatment of serious mental disorder;
- New powers to compel some individuals affected by serious mental disorder to receive care and treatment services in the community;
- Revision of the relationship between the criminal justice system, mentally disordered offenders and the powers to detain, treat and compel people to receive care;
- A more focused regard for the needs of children and young people affected by serious mental disorder;
- A greater respect for the human rights of people with mental disorder in relation to the Act;
- Statutory requirement to have accessible advocacy services for all people affected by mental disorder (i.e. not those just being treated compulsorily under the Act);
- Introduction of 'advance statements' whereby people may register the care and treatment they wish to receive should they become unwell;
- Creation of a new role ("the named person") who will help support people with mental disorder who require compulsion; and
- Revision of the medical treatments that may be given to people without their consent and the conditions in which they may be given.

### **Expanded duties for the local authority**

While local authorities have a range of general duties towards persons with mental disorder which are mainly set out in the Social Work (Scotland) Act 1968, other duties in relation to people with mental disorder have been specified, historically, in mental health legislation. The 2003 Act expands the narrow duties imposed by the 1984 Act in relation to what it termed 'aftercare'. In doing so, the 2003 Act better reflects the range of services and the partnership arrangements that have been developed through such national policies as the Framework for Mental Health Services in Scotland and the programme of Mental Illness Specific Grants. These new duties are also closely linked to the wider mental health agenda being promoted by the Scottish Executive. This is particularly the case with respect to the National Programme for Mental Health and Well-Being in Scotland through which considerable resources have been allocated to local authorities for the purposes of

promoting positive mental health and tackling the stigma and discrimination all too often associated with mental ill health.

Under the 2003 Act, local authorities are required to provide or secure:

- Care and support services designed to promote well-being and social development. These include services which promote social, cultural, and recreational activities as well as training (Section 25);
- Assistance in obtaining employment (Section 26); and
- Assistance with Travel (Section 27).

It also imposes duties to make inquiries into neglect and deficiencies in care and treatment of people with mental disorder (section 33).

Local authorities, along with NHS partners, are also required to secure the availability of independent advocacy services for anyone affected by mental disorder living in their area (section 259).

Perhaps the most important aspect of the local authorities' increased duties is the impact of the Act on the workload and responsibilities of mental health officers (MHOs). These are described in the following paragraphs.

### **The role of the mental health officer**

MHOs have long been a small but essential component of the local authority workforce; a body of specially trained officers of a local authority who are expert mental health social workers and who alone are charged with carrying out specific important duties in respect of extremely vulnerable individuals under the Mental Health and Adults with Incapacity legislation.

The 1984 Act gave MHOs a specific set of statutory duties as officers of the local authority. With these duties came powers of consent in relation to hospital-detention of people with mental disorder and the right to make their views known when a Court was considering an application for long-term detention. The powers and responsibilities of MHOs were significantly expanded with the introduction of the Adults with Incapacity (Scotland) Act 2000. The 2003 Act extends these duties and powers yet further .

In consultation with ADSW and the Scottish Social Services Council, Scottish Ministers are developing Statutory Directions under the 2003 Act to regulate the education, training, experience and competence of social workers who can be appointed by local authorities as MHOs.

The 2003 Act expands upon the requirements for the appointment of MHOs, reflecting the hugely extended role that they are given. The most significant changes in the role of the MHO include:

- Consenting to Emergency and Short-term Detention. Relatives are no longer to be given the power to consent to detention. Now only MHOs can give consent;

- Making applications to the Mental Health Tribunal for long term compulsory powers of care and treatment. The application process is much more exacting and time-consuming than under current legislation;
- Providing reports for key medical colleagues, the Mental Welfare Commission for Scotland and the Tribunal in a greatly expanded number of situations;
- Providing information and advice to people subject to compulsion about their rights, the availability of independent advocacy and helping those people access those advocacy services;
- Playing a central role in assessments and decision-making about the long-term exercise of powers under the Act;
- Providing reports to the Court in relation to mentally disordered offenders; and
- Applying for warrants to a JP or Sheriff, as necessary, to enable the local authority to carry out statutory enquiries under the Act.

**It is crucial for elected representatives to understand that there are few and very limited powers under the 2003 Act that may be exercised without MHO involvement. The existing complement of MHOs is now key to the entire operation of the Act and without increasing the capacity of this group, your local authority would fail in its responsibility to protect those many people who may be vulnerable due to the effects of mental disorder**

### **What needs to be done about these additional demands?**

In an attempt to find out how MHO services are presently responding to existing pressures and what they might need to do to respond to new statutory demands brought about by both the Adults with Incapacity (Scotland) Act 2000<sup>2</sup> and the 2003 Act, MHO services have been the subject of national research both by the Scottish Development Centre for Mental Health<sup>3</sup> and by Dr Sandra Grant's 'National Mental Health Services Assessment: final report'<sup>4</sup>. Both these pieces of research indicate that MHO services across Scotland are patchy, inconsistently staffed and mostly require redesign to become fit for the task. In many areas the task of redesigning MHO services is already underway. The challenge for local authorities is to use the additional resources made available for MHO services and the framework set out in the National Service Standards for Mental Health Officer Services (recently out for consultation) to develop quality services which will ensure implementation of the legislation as intended in the Code of Practice, while attracting and retaining good MHO staff in the process.

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<sup>2</sup> Under Adults with Incapacity, MHOs have important duties to apply to Court for Guardianship and other Orders in respect of people who are incapable of making decisions about their own finances, property and welfare. The body of MHOs entered into these duties on implementation of the Act in 2001.

<sup>3</sup> Scottish Development Centre for Mental Health, MHO Service: Structures and Supports (Scottish Executive, 2003) may be found at <http://www.scotland.gov.uk/library5/social/mhos-00.asp>

<sup>4</sup> *National Mental Health Services Assessment: final report* (Scottish Executive 2004) may be found on <http://www.scotland.gov.uk/library5/health/mnhsaf-07.asp>

## Resources

The Scottish Executive worked closely with ADSW in estimating the likely impact of the 2003 Act on MHO workloads and, as a consequence of this work, the Financial Memorandum for the Mental Health Bill set out the costs which would fall to local authorities from the new Act. In line with these projected costs provision was made to assist local authorities to implement the legislation in the Revenue (GAE) Distribution. This amount was announced on 4 December 2002 and detailed in Finance Circular No. 10/2002. The recurring monies reach £13m in 2005-06. This is for implementing the Act as follows:

	<b>2003-2004</b>	<b>2004-2005</b>	<b>2005-2006</b>
Improvements in packages of care	0	2.0	2.0
Improved day & aftercare	0	7.0	7.0
Additional MHO resources	0	2.5	2.5
LA Training for MHOs	0.7	0	0
New duties to support Advocacy	0.5	1.0	1.5
<b>TOTAL</b>	<b>1.2</b>	<b>12.5</b>	<b>13.0</b>

In addition there has been a capital allocation of £4m over 2 years (2004/2005 and 2005/2006) to local authorities.

The Executive also announced, in letters to local authorities and NHS Boards of 9 June 2004, Partnership Agreement monies to be issued through NHS Boards to assist in the development and implementation of Joint Local Implementation Plans (JLIPS). These funds are additional to the overall allocation to the NHS and local authorities and are allocated by Ministers to support the delivery of the Government's stated objectives set out in the Partnership for a Better Scotland. These funds are allocated through NHS Boards but it is open to partners involved in delivering the partnership agenda to discuss and agree spend as local circumstances dictate. So far £5.5m has been issued and further allocations will be made in 2005-06.

### Training for the new duties

A number of local authorities are already planning and/or implementing an expansion of their MHO services. Some intend to achieve this primarily by redesigning their service, relying to a large extent on existing staff. All will have to train and/or recruit additional staff to a greater or lesser degree to be in a position to meet new demand. Thought and resources will also have to be devoted to the continuing professional development of existing MHO staff to ensure they have sufficient knowledge and

experience to be re-appointed as MHOs at 5-year intervals as the legislation will require.

The need for training under the Act extends beyond MHOs to:

- A range of other staff who may be involved in making statutory inquiries into deficiencies of care, neglect, abuse and/or exploitation (such as other assessment and care management staff, day care staff, care home staff etc);
- Care management staff who will have to meet the duties to provide services;
- Care staff who may have to work with people compelled to receive services in the community; and
- A range of other staff who will have to be conversant with the principles of the Act and the local authority's new duties to make inquiries and provide services in relation to dealing with people who experience mental disorder in their area.

## **Conclusion**

This Act brings a much-needed, modernising, statutory dimension to the provision of mental health services in Scotland. The expansion of local authority and MHO responsibilities is to some degree a reflection of the professionalism with which many staff and the authorities in which they work have responded to the challenges of the current legislation. The 2003 Act is arguably at the cutting edge of mental health legislation in the world and it creates an exciting opportunity to further improve the ways in which the needs of some of the most vulnerable individuals in society are met and their rights protected. It is being approached with much energy, enthusiasm and innovative creativity across Scotland. **In the short-term, the immediate priority will be ensuring that your authority's mental health officer service is properly resourced and organised to meet the new statutory duties the Act imposes upon them and their employing authorities.**

We hope you will be able to give the staff in your authority, particularly MHOs, the support they will need to implement the 2003 Act as intended so that those in your area affected by mental disorder are able to benefit from this progressive legislation.

This pack is one of a series of Training Guides detailed below developed for local authority mental health officers and related health and social care staff commissioned from Robert Gordon University by the Scottish Executive.

Reader 1

Introductory training for mental health officers and other practitioners

Reader 2

Emergency and short-term detention and related matters

Reader 3

Compulsory treatment orders and related matters

Reader 4

Provision of social circumstance reports and provisions for people with mental disorder within the criminal justice system and other related matters

Trainers Guide for Readers 1-4

Briefing Paper

For health service and local authority managers

Briefing Paper

For local authority elected members

This material is also available on the Scottish Executive's mental health law website  
[www.scotland.gov.uk/health/mentalhealthlaw](http://www.scotland.gov.uk/health/mentalhealthlaw)

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