

# MENTAL HEALTH LAW

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## **Mental Health Law**

Mental health law is made up of the following:

Statute (laws made by Parliament):

- Mental Health Act 1983
- Mental Capacity Act 2005
- Human Rights Act 1998

Regulations: Secondary Legislation. They tell us how to enact the statute.

Case Law: Judges interpret the law and their judgements direct how we enact it.

Statutory Guidance: Mental Health Act Code of Practice and The Mental Health Act Guide.

All the above tell us how to use the law in a lawful manner. There are sanctions if we act in an unlawful manner. These range from a telling off by a judge in court to custody for the most serious breaches. AMHPs can be personally sued if they are deemed to have

## **Mental Health Act 1983**

### **Glossary**

**AMHP:** Approved Mental Health Professional. Must have undertaken specific training, must be approved by the local authority but can be employed by other organisations, must be either a nurse, social worker, O.T. or psychologist

**S12 Doctor:** A medical doctor, who has undergone specific training and demonstrated competence in mental health issues,

**A.C.:** Approved Clinician

**R.C.:** Responsible Clinician

**Nearest Relative(NR):** This person is defined by the Mental Health Act 1983 as the person whom has to be spoken to by the AMHP. They also have additional rights to apply for the detention of the person, object to a Treatment Order (Section 3), to be advised of an Assessment Order (Section 2), to request the discharge of the person who is detained and to appeal to the Tribunal.

## Mental Health Act 1983

### **Section 2 - Assessment Order**

Criteria must be suffering from a mental disorder of a nature and degree which warrants **assessment** in hospital.

In addition there must be a risk to the person's health or his or her safety or for protection of someone else.

Compulsory Treatment YES

Duration UP TO 28 DAYS . No renewal

Recommendations Two doctors one of whom must be approved under S12 MHA 1983 . Where possible one of the doctors should know the person.

Application By an Approved Mental Health Professional or the person's Nearest Relative.

Appeal Yes . To the First Tier Tribunal (Mental Health) and the Hospital Managers

Discharge By the R.C. or the First Tier Tribunal (Mental Health) or the Hospital Managers. The NR can also request discharge.

## Section 3 - Treatment Order

Criteria must be suffering from a mental disorder of a nature and degree which warrants **treatment** in hospital.

In addition there must be a risk to the person's health or their safety or the health or the protection someone else.

There must be appropriate treatment available

Compulsory Treatment YES

Duration Up to 6 months . It can then be renewed for 6 months then for a further 12 months if the legal criteria are met

Recommendations Two doctors one of whom must be approved under S12 MHA 1983 . Where possible one of the doctors should know the patient.

Application By an Approved Mental Health Professional or the patient's Nearest Relative.

Appeal Yes . To the First Tier Tribunal (Mental Health) and the Hospital Managers

Discharge By the R.C. or the First Tier Tribunal (Mental Health) or the Hospital Managers. The NR can also request discharge.

## **Section 4 - Admission for assessment in cases of emergency**

Criteria must be suffering from a mental disorder of a nature and degree which requires urgent assessment in hospital

In addition there must be a risk to the patient's health or their safety or the protection someone else.

To wait for a second doctor would result in increased risks.

Compulsory Treatment NO

Duration Up to 72 hours. No renewal

Recommendations One doctor

Application By an Approved Mental Health Professional or the person's Nearest Relative.

Appeal No

Discharge By the R.C. or when assessment is complete for detention under Section 2 and the criteria are not met.

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## **Section 7 - Guardianship**

Criteria must be suffering from a mental disorder of a nature and degree which warrants reception into guardianship.

It is the person's welfare or for the protection someone else that they are received into guardianship

Compulsory Treatment No

Duration Up to 6 months . It can then be renewed for 6 months then for a further 12 months if the legal criteria are met.

Recommendations Two doctors one of whom must be approved under S12 MHA 1983 . Where possible one of the doctors should know the patient.

Application By an Approved Mental Health Professional or the person's Nearest Relative.

Appeal Yes . To the First Tier Tribunal (Mental Health)

Guardian Usually the Local Social Services Authority but can be a private individual approved by the Local Social Services Authority

Discharge By the R.C. or the First Tier Tribunal (Mental Health). The NR can also order discharge. Councillors from the Local Social Services Authority can also order a discharge

## **Section 17 A - Community Treatment Order**

Criteria Before going on a CTO the person must have been subject to a Treatment Order (Section 3) Must be suffering from a mental disorder of a nature and degree which makes it appropriate for the person to receive treatment.

In addition there must be a risk to the patient's health or their safety or the protection someone else.

The treatment can be provided without the person being hospital.

There is a power to recall the person to hospital for treatment if necessary.

The person will be subject to conditions

Compulsory Treatment No – only if recalled to hospital

Duration Up to 6 months . It can then be renewed if the legal criteria are met for 6 months then for a further 12 months

Application The person's responsible clinician. This does not have to be a doctor but can be nurse, O.T., psychologist or a social worker providing they meet the criteria to be an Approved Clinician.

In addition agreement must be obtained from an Approved Mental Health Professional

Appeal Yes . To the First Tier Tribunal (Mental Health) and the Hospital Managers.



Discharge By the R.C. or the First Tier Tribunal (Mental Health) or Hospital Managers and the NR can request discharge

## **Section 135(1) - warrant to search for and remove**

- Criteria
- suffering from a mental disorder
  - has been or is being ill treated , neglected or “kept otherwise than under proper control”
  - OR being unable to care for himself is living alone

Can be removed to a place of safety

Compulsory Treatment    No

Duration    Up to 72 hours

Professionals required and roles    AMHP , doctor  
*(both to assess and decide if person should be removed) and police (to effect an entry and to escort person to place of safety)*

Authorised by :    Magistrate

Appeal    No

Discharge :    When assessment is complete and it is not appropriate to detain under Ss 2or 3.

## **Section 136 - “Mentally disordered persons found in a public place”**

Criteria : Police officer believes a person who is found in a public place has a mental disorder and they are in need “ of care or control” and it is in their interests or for the protection of others that they are moved to a place of safety.

Compulsory Treatment : No

Duration: Up to 72 hours

Professionals required and roles AMHP , doctor *(both to assess and decide if person should be either admitted to hospital or allowed to leave with ,if necessary ,a package of care)* and police *(power of arrest and detention)*

Appeal : No

This could lead to the person being assessed for detention under Section 2 or Section 3

Discharge : When assessment is complete and it is not appropriate to detain under Ss 2 or 3.