

The Mental Health Act Assessment

A Practical Guide for General Practitioners

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The most recent amendments to the Mental Health Act in England and Wales received Royal Assent on 19 July 2007. However, the need to manage persons with learning disabilities and severe mental illness by containing them in a protected environment under legal jurisdiction was appreciated more than two centuries ago, with the first legislative framework dating back to the 1713 Vagrancy Act, which provided specifically for the detention of lunatics (1).

The 1774 Madhouses Act established a commission of the Royal College of Physicians to licence and visit “private madhouses” in the London area to consider their conditions. The 1890 Lunacy Act was a major consolidating legislation of mental health law in England and Wales until the 1959 Mental Health Act repealed it. Its most significant feature was that it provided that patients should not be detained without a judicial order from a Justice of the Peace “specialising in such reception orders”.

In 1957, after three years of enquiry, The Royal Commission on the Law Relating to Mental Illness and Mental Deficiency produced the Percy Report which emphasised the need for mental disorder to be considered as contemporary medicine regarded physical illness and disability; and that psychiatric hospitals should be run along similar principles as hospitals for physical disorders.

Notably, the Mental Health Act 1959 excluded promiscuity or other immoral conduct alone as grounds for detention and introduced the definition of mental disorder as “mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind”

The Mental Health Act 1983 further refined the definition of mental disorder, classifying it into mental illness (undefined), severe mental impairment, mental impairment or psychopathic disorder. It further placed legal controls on the application of medical treatments, particularly surgery, electro-convulsive therapy and psychotropic drug use and introduced the approved social worker (ASW) with specialised training in mental health who became responsible for the application and oversight of formal detention in hospital. The 1983 Act also imposed a duty on local social service and health authorities to provide aftercare services for those patients who had ceased to be detained in hospital and discharged back into the community.

The amendments to the Act in 2007 (2) introduced the following important changes:

1. Defining the mental disorder more broadly as “any disorder or disability of the mind” with some changes in the criteria for detention;
2. The availability of appropriate medical treatment (as defined in the Act) rather than “treatability of the condition” in order to prevent the exclusion of those patients suffering with conditions such as personality disorders;

3. Providing a statutory requirement that patients are detained in age appropriate facilities;
4. Broadening the roles of various professionals with experience in mental health such as the introduction of the Approved Mental Health Practitioner replacing the Approved Social Worker;
5. Changes to the definition of the Nearest Relative;
6. The introduction of a statutory right of patients for access to Advocacy Services;
7. Safeguarding patients who have capacity to consent for electroconvulsive therapy;
8. Provision for Supervised Community Treatment (SCT) for those patients who have repeated admissions to hospital primarily due to poor compliance;
9. Changes to the access to First Tier (Mental Health) Tribunals and Managers Hearings.

The 2007 amendments also clarified some areas where the Mental Health Act interfaces with the Mental Capacity Act 2005. Further amendments to the 1983 Act are expected in the Health and Social Care legislation.

Use of The Mental Health Act 1983 (as amended in 2007)

General Practitioners (GPs) in England and Wales may use the legal framework of the Mental Health Act (MHA) to lawfully detain someone with a mental disorder who will not agree to an informal (voluntary) admission, and is considered a danger to themselves or to others. The Act also allows the compulsory admission in order to improve their health, even if they are not thought to be at immediate risk of harming themselves or others. A person cannot be detained in hospital on the basis of behaviours due to effect of alcohol and drugs (substances with psychoactive effects) alone, unless there is evidence of mental disorder, which falls within the meaning of Part I of the Act. The Code of Practice (3) includes a list of disorders that could fall within the definition of mental disorder and now includes non-organic sexual disorders.

The Act is divided into 10 Parts and there are 149 Sections. The detention criteria that will be relevant to GPs are Sections 2, 3, 4, 47/49 and 48/49 because they refer to provisions for the assessment process. Sections 135 and 136 give the police powers to search premises and to detain a person suspected of having a mental disorder and transfer to a place of safety for assessment under the Act.

Assessment Process

The Mental Health Act Assessment (MHAA) can take place in a variety of settings:

- In hospital, when an informal patient who wishes to leave hospital against medical advice is considered to be at risk of harm to themselves or others.
- At home as the patient may be causing serious concern to family or neighbours. If access is denied, section 135 (ordered by a Justice of the Peace) may need to be used.
- At a designated place of safety such as the police station or the Accident & Emergency Department or any other designated place, as agreed by local policy.
- At a police station after arrest for an offence.
- At the GPs surgery or in a psychiatric clinic.

The Guiding Principles (3):

1. Purpose Principle
2. Least restriction principle
3. Respect principle
4. Participation principle
5. Effectiveness, efficiency and equity principle

Grounds for detention:

- The patient is suffering from a mental disorder of a nature or degree which makes it appropriate for the patient to receive such treatment in a hospital.
- It is necessary in the interests of the patient's health or safety or for the protection of others that the patient should receive such treatment and it cannot be provided unless the patient is detained.

- In prison where an inmate (remand or sentenced) has a mental disorder and requires treatment in a psychiatric hospital.

The local social services authorities are responsible for providing twenty-four hour Approved Mental Health Professional (AMHP) availability to assist in the MHAA and make the application for the appropriate detention order. Local protocols dictate the referral process and contact telephone numbers. A MHAA is usually initiated by telephoning the duty AMHP with pertinent information to decide if there is the possibility of an admission under the MHA, and that the full assessment process is warranted.

The AMHP should collect as much information about the patient as possible. If the request for assessment did not come from the nearest relative, the AMHP is obligated to make every attempt possible to contact the nearest relative to inform them of the situation and obtain background information, especially in relation to the patient's history and current mental health.

The AMHP takes responsibility for coordinating the assessment, bringing relevant papers, ensuring the process complies with the law, arrangement for a bed in an appropriate setting, taking into consideration the individual need of the patient and where appropriate treatment is available (for treatment orders). This is usually done in collaboration with the assessing doctors and the detaining hospital. The AMHP is responsible for arranging for the transport of the patient to the identified hospital. It is considered good practice for the AMHP to convey the detention papers, which include the AMHP's application and the doctors' recommendations personally to the hospital managers or their deputy (usually a ward manager). The application requires a named hospital to be included. Only a "duly completed" application gives authority to convey and for the hospital to detain. The AMHP should provide the treating team with a verbal account and a short written account of the events leading to the detention and the proposed management. A more detailed account should be sent to the hospital as soon as it is practicable.

The nearest relative can make an application for detention but the AMHP is considered more appropriate for the task because of their training in the legislation and the knowledge of the local services. However, in an emergency situation the nearest relative may be the only person available to make an application for detention under Section 4 after a recommendation is made by one medical practitioner.

Section 2

Compulsory admission for assessment or assessment followed by treatment for mental disorder up to 28 days.

- The general principles/grounds of detention criteria should be fulfilled.
- This detention order may be appropriate under the following circumstances:
 - o No history of admission to hospital and a diagnosis/prognosis is currently unclear
 - o No treatment plan is in place, a period of assessment is required, and it remains unclear if the patient would accept medication voluntarily.
 - o The response to compulsory treatment is not currently known.

Section 3

Allows compulsory detention for treatment for up to 6 months, and is renewable for 6 months in the first instance and then for periods of one year.

- The general principles/grounds of detention criteria should be fulfilled.
- The patient has a diagnosis of mental disorder.
- A treatment plan is available and the patient refuses voluntary admission and management informally.
- Appropriate medical treatment should be available to the detained person in the hospital where the patient is detained.

The necessary Assessment Team

- The AMHP
- Two doctors
 - At least one of the doctors should be approved under s.12 (2) MHA, usually a consultant Psychiatrist.
 - A doctor with prior knowledge of the patient (ideally the patient's GP).
 - Where a patient belongs to a special group, such as aged under 18 or has learning disability, one of the doctors should have expertise in the particular specialty.

The doctors are advised to liaise with the AMHP about directions to the place of assessment, access to the premises, where to meet and the need for police attendance. If the patient is suffering from the short-term effect of drugs, alcohol or sedative medication, the assessment should be deferred, if practicable.

A joint assessment at the same agreed time, on account of it being safer, allowing for better communication and minimization of disruption for the patient, is considered good practice. If it is not possible, the Act allows the assessments to be undertaken up to five days apart. In any case, the two doctors must discuss their decision.

The GP often has prior knowledge of the patient, has access to records and an existing relationship with the patient and/or family, which facilitates the assessment. The psychiatrist may not know the patient, but contributes clinical experience and expertise. The AMHP makes a more comprehensive assessment of the social aspects in relation to the patient and advises on the legal issues that may arise during the process. The AMHP must be satisfied that the patient is interviewed "in a suitable manner" in keeping with the Guiding Principles.

The patient should be made to feel as comfortable as possible and examined with the questions in mind in relation to a series of legal tests that must be satisfied for the criteria for detention to be met:

- Is there any evidence of mental illness?
- Is there a risk to the health or safety of the patient or a danger to others?

If the answer to both of these questions is yes:

- Will the patient consent to informal admission, and if so, is that realistic, based on past experience or aspects of the current interview?
- Are there any community alternatives to admission? For example, Assertive Outreach Team (AOT) or Crisis Home Resolution Team (CRHT) input.

The patient can be detained only if both doctors make the recommendation and the AMHP agrees with the two doctors' recommendations and makes the application to the hospital managers. Where the two doctors do not agree, the AMHP cannot make the application for detention and informs the referrer and the nearest relative of the outcome. If the patient's condition deteriorates a fresh referral can be made and the assessment process may be repeated.

Section 4

- Detention for assessment in cases of emergency with an emergency application made by AMHP or Nearest Relative with single medical recommendation and statement of urgent necessity.
- Criteria for Section 2 should be fulfilled.
- Ceases to have effect at expiry of 72 hours after admission, unless second medical recommendation required by Section 2 is received by the hospital managers.

The Professional Roles

- Approved Mental Health Professional (AMHP) – The person requires specialist training and may be a social worker, mental health and learning disability nurse, clinical psychologist or occupational therapist.
- The Responsible Clinician (RC) replaces the Responsible Medical Practitioner (RMO) and the Approved Clinician (AC) has overall responsibility for the care of the patient. Approved training is required and is open to doctors, psychologists, nurses, social workers and occupational therapists.

Role of RC:

- Granting leave of absence
- Discharging patients from detention or onto SCT
- Barring discharge by nearest relative
- Renewing detention

Section 135

- Warrant issued by the Magistrates' Court allows the police to enter the premises and search for a person suffering from a mental disorder who is at risk, and remove the person to a place of safety until a full assessment under the Act can take place, within 72 hours of the detention.

An application can be made to a Justice of Peace that there is reasonable cause to suspect that a person believed to be suffering from a mental disorder has been or is being ill-treated, neglected or not kept under proper control or that the person who lives alone is unable to self care.

Section 136

A police officer may remove any person found in a public place and suspected of having a mental disorder to a place of safety if:

1. The person appears to be in immediate need of care or control and
2. The police officer thinks it is necessary to do so in the person's interest or for the protection of others

Sections 47 and 48 are described in Part III of the Act and relate to patients concerned in criminal proceedings, on remand or sentenced.

Section 47:

- The person is serving sentence of imprisonment
- The criteria for detention are met
- Appropriate medical treatment is available at the identified hospital
- The Secretary of State is satisfied with the reports of the two medical practitioners

Section 48:

- The person is detained in prison or remand centre (not serving a sentence of imprisonment)
- The above criteria are fulfilled
- The Secretary of State is satisfied that the person needs urgent treatment in hospital.

Section 49:

Refers to the restriction on discharge of prisoners removed to hospital, placed by the Secretary of State, which would continue for the length of the custody.

The Mental Health Act 1983 and children

There is no minimum age limit for detention in hospital under the Mental Health Act and can be used to detain children and young persons provided all the relevant criteria are met. However, where the child or young person with a mental disorder needs to be detained, but the primary purpose is not to provide medical treatment for mental disorder, consideration should be given to using section 25 of the Children Act 1989. The Code states that the best interests of the child or young person must always be a significant consideration and that they have as much right to privacy, confidentiality and their dignity to be respected as anyone else. New provisions provide that, for any patient under the age of 18 who is admitted informally or under the Act's powers, the hospital managers will consult with a person who appears to them to have knowledge or experience of cases involving minors and shall then ensure that the environment is suitable having regard to their age (subject to their needs). The new legislation states that Trusts must provide age-appropriate accommodation for the treatment of children and adolescents with mental health disorders.

Learning Disabilities and the Mental Health Act

The Act defines learning disability (Section 1(4)) as "a state of arrested or incomplete development of the mind which includes significant impairment of intelligence and social functioning". For a learning disability to be considered a mental disorder and meet the statutory criteria for detention, a higher threshold of it being "associated with abnormally aggressive or seriously irresponsible conduct", must be met. Abnormally aggressive or seriously irresponsible conduct is not defined in the Act. The Code of Practice suggests factors to be taken into account when assessing whether behaviour should be categorised as abnormally aggressive or seriously irresponsible behaviour. The patient must be detained in a hospital where their needs can be met by appropriately trained staff and where there are facilities available for management of their mental disorder and behaviour.

Section 12(2) Approval

A Section 12 approved doctor is a medically qualified doctor who has been recognised under Section 12(2) of the Act. They have specific expertise in mental disorder and have additionally received training in the application of the Act. They are usually psychiatrists, and GPs who have a special interest in psychiatry. The important approval function is currently delegated to Strategic Health Authorities. In light of recent proposals for Amendments to the Mental Health Act 1983 under Health and Social Care Bill (4), decisions have yet to be taken about how the Secretary of State's powers to approve Section 12 doctors and approved clinicians under the MHA will be exercised in future.

Conclusion

The GP's involvement in the assessment process is very important and the AMHP is expected to make attempts to arrange for the assessment in the presence of the GP. The GP is familiar with the patient's medical history and is aware of the patient's usual behaviour. This knowledge is particularly helpful in the first episode of a patient's mental disorder. Patients and their carers would prefer their own GP to be present at the assessment because the patient is familiar with their "own doctor" and usually have a trusting relationship. The process becomes less formidable with the presence of a recognisable, "friendly face", in the midst of strangers, at a difficult time in their life. GPs could improve their skills in the assessment process by becoming Section 12 (2) approved. The necessary training and courses would encourage them to keep up to date with the Mental Health Act and provide an important service to their patients.

GP comment

What have I learned from this paper?

1. This paper provides an excellent, succinct summary of the Mental Health Act, including the latest developments and the role of the general practitioner.
2. The general practitioner is usually central, not only as one of the professionals involved in making decisions about compulsory detention of patients but also as someone who has invaluable background knowledge of the patient and is able to support them through a process that is likely to be difficult for the family.
3. The general practitioner is often the professional who is best placed to carry out the initial assessment of an individual going through a first episode of psychosis or a relapse; against this background it is important for the general practitioner to understand how The Mental Health Act should be applied. The Local Mental Health team Key Worker may well have more contact with the patient than the GP. Frequently the GP has to liaise with the Mental Health Key Worker as well, as many patients do not go to their GP or may see different GPs in the primary care setting. It is important that the Mental Health Services are adequately resourced to allow implementation of the Mental Health Act, if required, within a reasonably quick time frame. It is all too common for acute psychiatric services to be available only through the local A and E Departments.

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Further reading:

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