U.C.I

USER & CARER INVOLVEMENT

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

GUIDANCE FOR NAMED PERSONS

INFORMATION FOR THOSE CONSIDERING OR UNDERTAKING THE ROLE OF NAMED PERSON - SUPPORTING AND REPRESENTING A USER OF MENTAL HEALTH SERVICES IN DUMFRIES & GALLOWAY

The information contained in our leaflets is believed, but not warranted, to be accurate as at the date of publication. If you have any queries as to how any of the information in our leaflets may apply in your own particular circumstances, it is recommended that you seek advice from a solicitor.

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User And Carer Involvement

User and Carer Involvement (UCI) is a registered Scottish charity whose aims are to ensure that service users and carers of people with dementia, mental health problems or learning disabilities in Dumfries and Galloway have a say in how the services that they use are delivered and run.

UCI is managed by a project coordinator and this is overseen by a Board of Management. The Board is made up of volunteers from a range of relevant voluntary organisations and also importantly by members who use services and their carers.

We try wherever possible to create safe forums that allow people to express their concerns and take those concerns forward to the appropriate agencies. UCI will then monitor the response and outcome of the agency and ensure that this is fed back to our members. We also offer training and support to our members and give users and carers easy access to important information.

UCI is involved in either meeting or talking to over 400 members every month throughout our region. We are active in bringing the concerns of both users and carers to a wide range of professionals, resulting in improvements in the services and care provided to our members.

Under the new Mental Health (Care and Treatment) (Scotland) Act 2003, people are encouraged to write an Advance Statement and to have a Named Person. Our project worker at UCI helps people to complete the forms and then lodges them with Medical Records at Crichton Hall, Dumfries.

Membership of UCI is free and open to all service users and carers of those with mental health problems, dementia or

learning disabilities in Dumfries and Galloway. Professionals can join as associate members and will receive all relevant mailings and newsletters.

Throughout this booklet you will find details of websites which contain helpful information about some of the subjects covered. If you do not have access to the internet, contact us and we will send you the relevant information. Contact details for organisations mentioned in this booklet can be found on page 56. If you have any queries regarding any of the information in this booklet, please contact us:

UCI, Kindar House, The Crichton, Bankend Road, Dumfries, DG1 4ZZ

Tel: 01387 255330 Email: info@userandcarer.co.uk

Website: www.userandcarer.co.uk

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UCI also receives funding from NHS Dumfries and Galloway.

PART ONE
NAMED PERSONS AND THE MENTAL HEALTH ACT

The Mental Health (Care and Treatment) (Scotland) Act 2003 - hereafter described as the Act - covers important issues relating to the representation of patients being treated under the Act. These include having a "named person" to represent a patient's interests, should they become subject to compulsory treatment.

1. Named Persons and Patient Representation.

The named person's role is very limited so long as the person they have agreed to represent is well, or being treated on a voluntary basis. That is, accepting treatment for their mental disorder without being subject to any compulsory powers under the Act. Voluntary patients cannot be made to accept treatment against their will.

It is when/if the patient is subject to compulsory powers that the named person's role becomes important. Compulsory patients can be given treatment against their will if there is an order – probably a Compulsory Treatment Order - to say they must have it. The purpose of such an order is to enable mental health professionals to introduce a course of care and treatment they think will be best for the patient, or is necessary for the public's safety, despite the fact that the patient cannot or will not consent to it.

There are safeguards to protect the rights and welfare of those subject to compulsory treatment. Some require them to have

taken action prior to becoming unwell and no longer able to represent themselves. As well as nominating a named person, they can have a say in determining their care and treatment – if they have set down their wishes and preferences in advance, in what is described as an Advance Statement (see page 26).

The role of the named person is broadly to represent and safeguard the interests of a compulsory patient. However, it is important to note that the named person and the patient are entitled to act independently of each other. For example, a named person can apply to the Mental Health Tribunal (see page 42) for a review of the patient's compulsory treatment order - with or without the patient's approval. Equally, the named person has the right to put his or her own view forward - even when the patient has a different view. Clearly, this requires the named person to have an understanding of the Act and the various other issues, procedures and organizations that will be described in this booklet.

Broadly speaking, the named person has similar rights to the patient to apply to the Mental Health Tribunal, to appear and be represented at tribunal hearings (for example, concerning compulsory treatment orders, appeals against short term detention, review of compulsion orders etc.), and to appeal. The named person is also entitled to be given information concerning any compulsory measures which have been taken or are being sought, where this is provided for in the Act.

2. The Mental Health (Care and Treatment) Act 2003

In March 2003, the Scottish Parliament passed The Mental Health (Care and Treatment) (Scotland) Act 2003. It came into effect in October 2005 and sets out how people can be treated if they have a mental illness, a learning disability or a personality disorder. It covers such issues as:

- What their rights are.
- What safeguards there are to ensure those rights are not abused.
- When a person can be taken into hospital against their will.
- When they can be given treatment against their will.

The Act is based on a set of guiding principles that can be used as a guide to what a service user (and their named person) can expect in their care and treatment, and which most people performing functions under the Act have to consider. These include:

- the present and past wishes and feelings of the patient;
- the views of the patient's named person, carer, guardian or welfare attorney;
- the importance of the patient participating as fully as possible;
- the importance of providing the maximum benefit to the patient;
- the importance of providing appropriate services to the patient; and
- the needs and circumstances of the patient's carer.

The Act also sets out principles relating to the *way* in which the function must be discharged. These require the person discharging the function to do so in a way which, for example:

- involves the minimum restriction on the freedom of the patient that appears to be necessary in the circumstances;
- encourages equal opportunities; and
- if the patient is a child, best secures their welfare.

Notice that the principles of the Act require any person exercising functions under the Act to take account of the views of the named person - and carer, guardian or welfare attorney - when making a decision or considering a course of action, but only where it is reasonable and practicable to do so. What is reasonable and practicable will depend on the individual circumstances of the case.

Detailed information about the Act can be found on the Scottish Government website at www.scotland.gov.uk.

3. Carers and Named Persons

The Act makes distinctions between carers, named persons and independent advocates – who can all play a role in representing and protecting a service user's interests.

The Act states that any person whose paid job it is to provide care to a service user cannot be defined as a carer. It also states that a paid or unpaid employee of a voluntary organisation is not a carer.

Instead, a carer is a person who provides, on a regular basis and without payment, a substantial amount of care for, and support to, a service user. They don't have to be a relative. Nor do they have to live with the person they support. They may be spouses, relatives, friends or neighbours.

The primary carer is the person who provides all or most of the care and support for the service user. If there are two or more such carers providing roughly equal amounts of care and support, they must decide between themselves who is the primary carer. This is because, under the Act, the primary carer has specific rights that cannot be shared.

A carer is not the same thing as a named person, and they have different rights to receive specific information and take part in mental health tribunals. However, a carer can become a named person if the service user nominates them to take on this role, and they agree.

4. Carers' rights under the Act

Named persons have a right to represent a patient's interests, but should be aware that, at the same time, the views of carers must be taken into consideration whenever decisions about the service user's care and treatment are made. To this end, anyone involved in the care and treatment of the service user must provide carers with the information they need to provide effective care. However, the carer will not receive any information that the service user does not want to be given to them.

The Data Protection Act (1998) ensures that information given by individuals to organisations is protected. This is an important issue and there are clear reasons for ensuring that a patient's personal information and medical details aren't divulged to third parties. However, this can cause distress to carers.

The basic principle is that unless a patient has given permission, hospital and other staff are obliged by law not to give out any information about them, other than the most basic. Unfortunately this means they are unable to release information to people who may be desperate to understand what is happening to their friend or family member. But the law is very clear regarding this issue. They cannot talk to anyone unless the patient gives permission.

The patient can give a full or limited consent to the sharing of information with their carers. That is, they can give permission for all and any aspects of their care and treatment to be discussed, or they can say if there is some particular information about their illness or treatment that they don't want to be shared, while allowing other information to be passed on.

The best way for a service user to ensure that information can be given to a member of their family and/or to their carer, should they become too unwell to give nursing staff permission at the time, is to have their consent included in an Advance Statement lodged with their records at the hospital. This allows them to choose who the nursing staff should contact and can talk to if they are unwell in the future.

A comprehensive guide to all aspects of patient confidentiality can be found on the NHS Scotland website at: www.confidentiality.scot.nhs.uk/publications/6074NHSCode.pdf

Carers have the right to attend a Mental Health Tribunal and present relevant information if the Tribunal considers the carer to have an interest in the application being considered.

Carers also have a right to ask the local authority to carry out an assessment of the service user's needs. The local authority has a duty to carry out the assessment within fourteen days of the request. If it does not it must let the carer know within this time whether they or the Health Board will carry out an assessment. If the local authority decides not to carry out an assessment they must give their reasons for this.

A carer may be notified by a police constable that the person they care for has been removed to a place of safety because they have a mental disorder and are in immediate need of care and treatment.

The Act requires that the primary carer has the right to be notified by hospital management when the service user they support is going to be transferred to another hospital in Scotland under the Act. Unless this transfer is urgent (in which case they should be notified as soon as possible after the transfer), they have the right to be informed at least seven days beforehand.

5. Named Persons and Independent Advocates

The Act gives all service users the right of access to independent advocacy services. An independent advocate must express the views of the service user and should not express their own views and opinions about the person's treatment. A service user can have both an independent advocate and a named person,

but because their roles are different they cannot be the same person.

Notice that in this context, an "advocate" is not the stereotypical figure in cloak and wig with a qualification in law – prosecuting or defending cases in courts. Instead, the independent advocate, in relation to the Act, is an independent advisor with an understanding of mental health and other related issues

Every person with a mental disorder has a right to be helped by an independent advocate - they do not have to be in hospital or on any kind of order. Independent advocates do not work for hospitals or social services and their services are absolutely free. An independent advocate can help a service user in many different ways from accompanying them to a meeting with a doctor, or helping with a housing problem.

The advocate's role is to help make the service user or patient's views heard, and help them to have as much control as possible over their own life - though they should not make decisions on the service user's behalf, or tell them what to say. Instead, they should provide all the information the service user needs to make their choices – to help but not guide the service user in deciding what they want to say, and then help them to say it. In that role, an independent advocate can accompany a service user to a tribunal hearing to support them - but does not have the same rights as a named person to be consulted, informed or to make applications and representations to the tribunal.

If the patient is in hospital or under any compulsory order, their doctor, nurse, social worker or mental health officer should get in touch with an independent advocacy service on their

behalf. If they are not under any order, they can find out about agencies that provide this free service and also obtain a free booklet with more detailed information regarding the use of independent advocates, by checking the Scottish Independent Advocacy website at www.siaa.org.uk

6. The Choice of a Named Person

To summarise what has been discussed this far - a named person is someone chosen by a service user to represent and help protect their interests, should they need to be treated in the future as a compulsory patient under the Mental Health (Care and Treatment) (Scotland) Act 2003.

A named person has various rights with regard to the welfare of the patient if an application is being made, a certificate has already been issued, or if an order has been made for the patient to be treated under the Act. They must be informed and consulted about aspects of the compulsory patient's care and treatment, and can make certain applications on their behalf. The views of the patient and their named person, in regard to that care and treatment, must be taken into account - unless their wishes are unreasonable or impractical to carry out.

Clearly, for the service user choosing a named person is a very important decision, as their choice could affect their future welfare. They are advised to think very carefully about the decision and discuss their choice - with their family and friends, doctors and nurses, and their solicitor or independent advocate if they have one. The service user will want to be sure that their named person is someone who knows them well, and whom

they trust to act in their best interests at all times. Someone who will be able to make important decisions about their care and treatment if they are not able to do this for themselves.

Anybody accepting the role of named person needs to ask themselves if they would be prepared to invest their time and effort in representing the patient, that might be required at some time in the future. They should recognise that the role of named person is not one to be undertaken lightly - not least because the named person can act independently of the patient. They must do what they truly believe is in the patient's best interests.

There again, nobody who is asked to accept the role of named person need feel too daunted by the task, or the level of knowledge that may seem to be required. As will be described in this booklet, there are a number of agencies who are able to provide high levels of support along with the necessary advice and information.

7. Who can choose a Named Person?

A named person can be chosen by anyone - they do not have to be a user of mental health services, though clearly this is usually the case - over the age of 16, so long as a suitably qualified witness can verify that they understand the effect of choosing a named person and were not unduly influenced by others when making their choice.

Those under 16 years of age cannot choose their named person. The Act states that their named person will automatically be a

person who has parental rights and responsibilities, as long as they are 16 years old or more; or the local authority, if the child is being looked after under a Care Order under the Children Act 1989; or in all other cases the main carer, if they are 16 years old or more.

8. Who can be a Named Person?

The named person can be anyone who the service user feels can be trusted to make decisions about them - if they become subject to compulsory treatment - that will always be in their best interest. As already stated, this could be the service user's carer, spouse, nearest relative, friend or solicitor.

The named person may be another mental health service user, so long as they are - and continue to be - capable of taking on this important role.

They must be aged 16 or over, know what is involved in the role and agree to act as named person. The service user's nomination of a named person must be signed and witnessed (see later).

As a general rule, the named person should not be someone responsible for providing professional care to the service user - for example their General Practitioner, Mental Health Officer or Community Psychiatric Nurse. This is because the named person must be able to make independent decisions about what is in the patient's best interests - and this might be different to what the care team think.

A person working in a *related* role, but not responsible for the patient's care or treatment - for example a residential housing worker - might be approached to act as named person, and may feel reluctant to decline where the patient has made declarations stating that their carer and nearest relative shall not be their named person. A person working in such circumstances may feel that he or she has a duty of care and may wish to accept the named person role, to ensure the patient has a named person, but may also feel that a conflict of interest arises. For example, if an application for a community-based Compulsory Treatment Order were to be made specifying the service as part of the care plan, then the support worker acting as named person could feel that a conflict of interest had arisen between their work role and their role as named person. In such circumstances, it might be that the patient would benefit from the assistance of an independent advocate, and this should be explored before a person working in a related role agrees to act as named person - where a perceived conflict of interest may arise. It would be best practice for anyone working in a support role who wishes to undertake the named person role in circumstances like these to discuss the nomination with the patient's Mental Health Officer (social worker) with a view to identifying and preventing any potential difficulties. Also, it would be best practice for a person in circumstances such as these to seek guidance and support from their employer before agreeing to act in the named person role.

PART TWO
NAMED PERSONS – PAPERWORK AND PROCEDURES

Inevitably, there is a certain amount of paperwork involved in the appointment of a named person and other related issues. However, in practice it should be relatively straightforward and if any problems are encountered, UCI is able to supply one-to-one support and information.

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9. The Nomination of a Named Person

Once a person has agreed to act as a named person, the service user must complete a Nomination. This must be made in writing, signed by the service user, and then be signed and dated by a witness. It does not have to be typed, but it must be easily readable. (See Appendix 1 on page 61)

The witness must certify that the service user understands the effect of choosing a named person, and that they have not been under any undue pressure from anyone in making their choice. The witness must be chosen from a specified group of professionals - a medical practitioner, clinical psychologist, occupational therapist registered with the Health Professions Council, a registered nurse, social worker, solicitor or certain persons working in or managing certain care services.

Service users should be advised that some people might need to charge for their working time. Before asking anyone for

help in nominating their named person, or to act as a witness, they should ask if it will cost anything. If they seek the help of a solicitor, they should ask if Legal Aid will pay for some or all of the cost. If they are asked to pay more than they can afford, then they may ask the person to suggest someone else who can help them.

If a service user is experiencing difficulties in finding a witness, they can get advice from **User And Carer Involvement** on this matter.

When the Nomination of the named person has been completed and witnessed, copies should be sent to all those who need to know about it. They might include: the primary carer, family members, solicitor, nurse, independent advocate, guardian, welfare attorney, Responsible Medical Officer (RMO), Mental Health Officer (MHO), General Practitioner, and any other people who are close to the service user.

It is very important for the service user to keep a list of the names and contact details of everyone who has been given a copy of their nomination. If they later decide to change their named person, they will need to notify everybody who received a copy. The named person might hold a copy of the list of names and contact details for safe keeping.

At the same time as they are nominating their named person, the service user may wish to complete an Advance Statement (see page 26). They may find it most convenient to complete and send out copies of the two documents at the same time – though this is not a requirement.

10. What if there is no Named Person?

A service user who becomes a compulsory patient might have been unable to decide upon a named person when they were well, or decided not to choose one, or perhaps their illness was unforeseen. In such circumstances, a named person may be appointed for them by the Mental Health Tribunal, according to rules set down in the Act.

The Act states that if a named person hasn't been nominated, or the person previously chosen is now unable or unwilling to undertake the responsibility, then the patient's main adult (16 or over) carer will automatically become their named person – but only if they agree. If the patient has more than one adult carer, they can decide between them who will undertake the responsibility. And if no adult carer is willing to become the named person, then it will be the patient's nearest relative - if they agree.

Notice that nobody can be forced to take on the role of named person – they must agree to it.

If there are no carers or relatives willing or able to be named person, then the Mental Health Officer or anyone else who has an interest in the patient's welfare can apply to the Mental Health Tribunal to have an independent person appointed as named person.

11. Making a Declaration

In view of the provisions for appointing a named person where one hasn't been nominated, a service user may be concerned that an unsuitable person - perhaps one who doesn't really know them, or might not have their best interests at heart - could be given the role. They can protect themselves against this by making a Declaration, which states the name of any person or persons they do not wish to act as their named person. Such a declaration does not have to be typed, but it must be easily readable, signed and appropriately witnessed. (See Appendix 2 on page 62).

12. Change of Named Person

Where a tribunal has appointed a named person for a patient, the patient can apply to the tribunal to have that person changed. The application must be in the form of a letter. The patient can telephone the Tribunal Service (see page 42) explaining that they want to make an application under section 256 of the Act, and ask for advice about what information to include. They might be helped by an independent advocate.

13. Named Person acting inappropriately

The Mental Health Tribunal can change a nominated or appointed named person if he or she is thought to be acting inappropriately. It may be, for example, that they are always arguing for the opposite of what the patient said they would want in their Advance Statement, or are thought to be acting in

a "bullying" fashion towards the patient. In such circumstances – and while the tribunal will always take account of the patient's wishes – they can make whatever decisions they think are in the patient's best interests.

At the same time, a number of people can apply to the Tribunal to have the named person changed if he or she is thought to be unsuitable or acting inappropriately. These include the patient's Mental Health Officer, Responsible Medical Officer, Hospital Managers if the patient is in hospital, their welfare attorney if they have one, their guardian if they have one, family and relatives, and anyone else who has an interest in the patient's welfare. In response, the tribunal will make whatever decision it thinks is in the patient's best interests.

In the case of those who are not yet 16 years of age, an application to remove or replace a named person can be made by someone with parental responsibilities.

14. Revoking a Nomination or Declaration

If a service user changes their mind about their named person, they can revoke their Nomination following the usual rules regarding the documentation – readable, signed and appropriately witnessed, with copies sent to everyone on their contact list. (See Appendix 3).

If they wish to appoint a new named person, they will need to complete one document revoking their original Nomination, and another document making a new Nomination. Copies of both documents should be sent – preferably at the same time – to everybody who received copies of the original Nomination.

Equally, the service user can revoke a Declaration that identified someone they didn't want to be their named person, if they later decide that the person would be suitable - despite their earlier reservations. Following the usual rules in regard to legibility, signing and witnessing. (See Appendix 4).

If they wish the person referred to in the original Declaration to now act as their named person, they will need to complete one document revoking their Declaration, and another document appointing same as their named person. Again, copies of both documents should be sent to everybody on their contact list.

If the named person decides that they no longer wish, or are no longer able, to act as the service user's named person, they should write to everybody on the contact list to tell them so.

PART THREE
NAMED PERSON'S POWERS AND SUPPORT

A named person has a number of rights or "powers" which appear throughout the Act. In exercising these powers, they can call upon the support of various organizations including the Mental Welfare Commission.

15. The Named Person's Powers

Named persons have six different kinds of powers or rights. An example of each kind is listed below:

- to be consulted when certain things happen - such as when a short-term detention or an application for a compulsory treatment order (CTO) is being considered;
- to be notified when certain changes to the patient's circumstances happen - for example if their short-term detention is revoked;
- to receive copies of certain records or information which are given to the patient, including the record made if treatment has been given which conflicts with the patient's Advance Statement (if they have made one);
- to make applications or appeals to the Mental Health Tribunal for, and to speak and give or lead evidence at a hearing;
- to consent to two medical examinations taking place at the same time, if the patient is not capable of giving their consent to this (two medical examinations being needed when an application has been made for a compulsory treatment order);

- to ask for an assessment of the patient's needs from the local authority and/or Health Board.

16. Support from the Mental Welfare Commission

In order to be confident in exercising their powers, any named person can seek the support and guidance of the Mental Welfare Commission - an independent organisation whose job is to protect the rights and welfare of everyone with a mental illness or learning disability. To make sure that people's rights under the Act are being protected, they aim to ensure that the care and treatment of people with a mental disorder is in line with the principles of the Act.

The Commission is a group of people – including medical practitioners and lawyers - with experience of mental health and learning disabilities services, medicine, and social care and law. Some of the Commissioners have been appointed because they have experience either in using mental health and learning disability services or in caring for a service user. Their services are available to anyone within the mental health service who feels they may need help or guidance.

Named persons, carers, service users, people who work in the care services, and independent advocates are just some of those who can contact the Commission if they are unsure or unhappy about any aspect of someone's care or treatment.

The Mental Welfare Commission has a free phone advice line for people who are concerned about their rights or the rights of others - you can call 0800 389 6809 during office hours to access this.

People who provide services and who require advice and

information relating to their responsibilities can call 0131 222 6111 during office hours.

The Mental Welfare Commission web site is found at www.mwcscot.org.uk.

PART FOUR
ADVANCE STATEMENTS

A user of mental health services may choose their named person at the same time as making what is known as an Advance Statement. They might wish to discuss their statement and what it should contain with their named person who, at the same time, should understand the effect the statement can have in regard to the service user's care and treatment, should they be subject to compulsory treatment in the future.

17. Advance Statements – A Brief Guide

In normal circumstances, health professionals should work with service users to find out what care and treatment options they think might be best for them. However, if the service user becomes very ill, it might be difficult for them to be involved or to make their views clear. In order to ensure that their wishes about their care and treatment will be taken into account despite such circumstances, they should complete an Advance Statement.

In brief, an Advance Statement is a document that the Act says any service user has a right to complete. Written in advance, it sets out what treatment the service user would or would not prefer to receive in future. It can include their wishes about medications, therapies and particular treatments. Notice that the Advance Statement only becomes relevant if, at some time in the future, the service user becomes too unwell to make decisions about their treatment.

An Advance Statement must be in writing. It must be signed both by the service user and an appropriately qualified witness who must confirm that, in their opinion, the person making the statement is able to understand what they have written and the effect it might have on their future treatment.

When the Advance Statement has been completed and witnessed, a copy should be given to all those people who may need to know about it if the patient becomes subject to compulsory treatment. Basically, they are the same people who would receive a copy of the Nomination of the named person.

The named person might hold a copy of the list of names and contact details for safe keeping.

If someone involved in the care and treatment of a compulsory patient makes a decision that goes against their Advanced Statement, the patient will be informed in writing of the reasons for this. A copy of this letter will also be given to their named person. The Mental Welfare Commission will also be informed and may investigate further.

An Advance Statement cannot make a medical practitioner do anything that is illegal or unethical. Nor can it insist on particular services, medicines or treatments because, for example, it might be that the patient's preferred medication would not be right for them any more.

If the service user changes their mind about their Advance Statement, they can withdraw it. This will allow them to replace it with an up-to-date version of their wishes in regard to any possible future treatment.

The service user can also write a Personal Statement to explain about important things apart from their treatment. For example, they might be concerned about who will look after their children if they are in hospital. Who will look after their pets? They can include any special dietary requirements, how they like to relax, details of their spiritual life, who should be informed when they are going home, who can arrange for some food to be in the house and the heating to be switched on. And so on…

Within Dumfries and Galloway, UCI offers free help with writing and reviewing Advance Statements and Personal Statements, and can offer advice if a service user is having trouble in finding someone to witness their documents.

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PART FIVE
COMPULSORY TREATMENT

People's needs for care and treatment can vary greatly depending on their particular circumstances. The Act deals with situations where it is believed someone needs care and treatment, but that care and treatment cannot be provided on a voluntary basis - either because the person refuses or is unable to accept it (perhaps because they are too ill to make a decision about it). Powers are set out in the Act which allow care and treatment to be provided in these types of situations - subject to conditions and safeguards being met.

Additionally, there will be times when a person who is subject to criminal proceedings may be in need of care and treatment. In such cases, various orders may be made by a court under the **Criminal Procedure (Scotland) Act 1995** (see page 32).

Returning to those who are not subject to criminal proceedings, service users may be placed on different kinds of compulsory orders, according to their particular needs. Some are short-term powers to deal with emergency situations. The longer term power under the Act is the Compulsory Treatment Order.

18. Compulsory Treatment Order

There are strict conditions in the Act about when a Compulsory Treatment Order can be granted. The following criteria must be fulfilled.

- The person has a mental disorder.
- Medical treatment is available which could stop their

condition getting worse, or help treat some of their symptoms.

- If that medical treatment was not provided, there would be a significant risk to the person or to others.
- Because of the person's mental disorder, his/her ability to make decisions about medical treatment is significantly impaired.
- The use of compulsory powers is necessary.

In order for a CTO to be granted, a Mental Health Officer must apply to the Mental Health Tribunal. The application must include two medical recommendations and a care plan detailing the care and treatment proposed for the patient. The patient, their named person and their primary carer are all entitled to have any objections heard by the Tribunal.

The MHO who is making the application should explain to the patient what their rights are. For example, to challenge the application and have their views heard by the Tribunal. He/she should also give the patient information about independent advocacy services which can help support them to ensure their views are heard. If the patient needs help in contacting independent advocacy services, their MHO should help them with this.

Once the Tribunal has received an application for a CTO, it will contact the patient and their named person to give them details about the hearing.

The patient and or their named person may decide to seek legal advice from a solicitor who can advise them further about

their rights. They will be entitled to non-means-tested Legal Aid to cover the cost of the solicitor's advice and having them act at any hearing. If they want to challenge the application, a solicitor might also be able to get an independent medical report to help them to do this.

The Tribunal has to give a range of people, including the patient and their named person, the chance to have their views heard, and to give evidence in support of their case. The Tribunal will weigh up all of the information and evidence it has received before reaching a decision. If the patient has made an Advance Statement about medical treatment, then this must be taken into account by the Tribunal when considering the proposed care plan.

A CTO lasts for 6 months initially, but can then be extended for a further 6 months, and after that can be extended for 12 months at a time. It can be based in a hospital or in the community. If it is based in the community, then it can include various requirements. For example, that the patient lives at a certain address, attends certain services at particular times, or attends a particular place for treatment.

19. Interim Compulsory Treatment Order

In some circumstances – for example, if the Tribunal has been asked to approve a CTO but decides it needs further information before it can make a final decision and it will take some time to get that information - they may decide to make an Interim (temporary) CTO. This can last for up to 28 days. When it expires, the Tribunal can make another Interim CTO, but the maximum

time anybody can be held on an Interim CTO is 56 days. If a patient is put on an interim CTO, they can be subject to the same range of requirements as if they were on an actual CTO.

Before the Tribunal can make an Interim CTO, it has to give a range of people, including the patient and their named person, the chance to have their views heard and to give evidence. It also has to be sure that certain criteria are met - these are similar to the criteria for making a CTO.

20. Short Term and Emergency Powers

In addition to the Compulsory Treatment Order, the Act established various short-term powers, some of which are intended for dealing with emergency situations – to protect the patient and/or the public.

Removal to Place of Safety

If someone in a public place appears to have a mental disorder and be in need of care and treatment, the police can take that person to a place of safety – preferably a hospital, but it may be a police station. The person can be kept there for up to 24 hours to allow an assessment to be carried out about whether arrangements need to be made for the person's care and treatment.

Nurse's Holding Power

If a patient who is in hospital, receiving treatment on a voluntary basis, decides to leave the hospital, an appropriately qualified

nurse can hold the patient for up to 2 hours to allow a doctor to come and assess the patient and decide whether detention in hospital is appropriate. The period can be extended by another hour once the doctor arrives.

Emergency Detention

This allows a person to be detained in hospital for up to 72 hours where hospital admission is required urgently to allow the person's condition to be assessed. It must be recommended by a doctor. If possible, the agreement of a Mental Health Officer (MHO) - a social worker specially trained in mental health - will also be obtained.

It is anticipated that where a patient with mental disorder comes under the Act, he or she will benefit from having a named person who will be kept informed of their status and can undertake certain functions for the patient. An exception is where the patient becomes subject to Emergency Detention. Their nearest relative *must* be informed and, if the nearest relative does not reside with the patient, any person who resides with them *must* also be informed. The patient's named person must also be informed - but only where the identity of the named person is known.

Short-term Detention

This allows someone to be detained in hospital for up to 28 days. It must be recommended by a specially trained doctor (a psychiatrist), and agreed by an MHO.

21. When is compulsory treatment necessary?

As stated, a patient can only be given treatment against their will if there is an order under the Act to say they must accept it, even if they do not agree that this is necessary.

Note that if a patient is *unable* to give consent, they may be treated for mental disorder under another law called the Adults with Incapacity (Scotland) Act 2000, which has a different set of rules and procedures than those covered in this guide.

Whether or not a patient will receive compulsory treatment will depend on the type of compulsory power/order they are under. If they are on:

- An emergency detention certificate – the patient can only be given treatment if it is needed urgently or if they are being treated under the Adults with Incapacity Act.
- short-term detention certificate - they can be given treatment without their consent.
- A compulsory treatment order – they can be given treatment without their consent - but only if a mental health tribunal has authorised this when making the order.

There are conditions that need to be met before these powers can be used. The wording of these conditions varies slightly depending on the type of order, but as a reminder - in general terms they are that:

- The patient has a mental disorder.
- Medical treatment is available which could stop their condition getting worse, or help treat some of their symptoms.

- If that medical treatment was not provided, there would be a significant risk to the patient or to others.
- Because of the patient's mental disorder, their ability to make decisions about medical treatment is significantly impaired.
- The use of compulsory powers is necessary.

22. Treatment that can be given under an Order.

The Act says a patient can only be given compulsory treatment for a mental disorder or the effects of a mental disorder. It does not include treatment for physical illness unless they are the cause or result of a mental disorder. Compulsory treatment for a mental disorder can include nursing care, psychological treatments, rehabilitation, education or training in work, social and independent living skills, as well as treatment with drugs and other physical treatments, for example electro-convulsive therapy (ECT). Some of these treatments are subject to special safeguards.

Anyone giving treatment to a patient under the Act is required to follow the principles set out in the Act.

23. The doctor's role and responsibilities

The Act encourages professionals who are caring for a patient to involve them in making decisions about their treatment. The Act also gives the patient the right to have the help of an independent advocacy worker - to help them express their opinions and wishes about treatment. If they have made an

Advance Statement, it will be taken into account, if they are being treated under the Act.

The doctor should discuss with the patient the treatment available before making a decision on the way they should be treated, taking into account the principles of the Act. He/she should give the patient information about what a treatment involves, any side effects it might have, and describe any alternative treatments.

The patient can be given treatment where they are able to consent to receiving it, and where their consent is recorded in writing. The doctor should assess the patient's ability to make decisions about any treatment he/she thinks the patient should receive.

If the doctor thinks that the patient is not able to consent to receiving a treatment, he/she must consider the reason for that, and take into account the patient's previously stated views – if they have made an Advance Statement - and the views of the patient's named person. The doctor must also consider the likelihood of the treatment making the patient better, or stopping them from getting worse. If, after considering all this, the doctor still thinks it is in the best interest of the patient that they have a certain course of treatment, then the doctor can give the treatment, but must record the reasons for this in writing.

24. Physical force when giving treatment

If a patient is in hospital and subject to compulsory powers, the Act only allows the use of force where this is necessary, and only for as long as is necessary. Force cannot be used to give treatment in a person's own home. However, if they are subject to a Compulsory Treatment Order that authorises compulsory treatment in the community then, under certain circumstances, they can be taken to hospital and treatment can be given there - forcibly, if necessary.

If a patient has been given treatment against their will and feels that unnecessary force was used, then they can make a complaint about this, perhaps with the support of their named person or independent advocate. Or the named person can make a complaint in his or her own right, irrespective of the patient's wishes.

25. Treatments with special safeguards

If the patient is subject to an order that authorises compulsory treatment, the Act contains special rules about the types of treatment that they can be given. Some of these treatments have certain safeguards.

In some cases, one of the safeguards is a requirement for a "second opinion". The Mental Welfare Commission has a duty under the Act to help protect the welfare of people with mental disorder. One of the Commission's responsibilities is to appoint independent second opinion doctors who have to agree to certain treatments being given under the Act. These second opinion doctors are called 'designated medical practitioners'.

The Commission is informed about all treatment that requires a second opinion, and is also notified whenever urgent treatment is given. The Commission checks that these treatments are given in accordance with the rules in the Act.

Medication beyond 2 months

If the doctor wishes the patient to continue to have medication after 2 months of treatment, this can only be given where he/she thinks it is in the patient's best interests and:

- The patient is able to consent, and has given their consent in writing or,
- They are not able to consent, or refuse to consent, but an independent second opinion doctor has examined them and said that they should have the treatment.

Electro-convulsive therapy (ECT)

If the doctor thinks it is in the patient's best interests to be given ECT, then they can be given it if:

- The patient is able to consent, and has given their consent in writing or
- They are not able to consent, but a second opinion doctor has examined them and said that they should have the treatment.
- But a patient **cannot** be given ECT where they are considered as being able to consent to it, but have refused to give such consent.

There are similar safeguards for any other electrical or magnetic treatments that affect the brain.

Artificial nutrition

Feeding by a tube into the stomach or intravenous feeding may be given if the patient is starving themselves because of a mental disorder such as anorexia nervosa or depression. A second opinion is required if the patient does not consent to the artificial nutrition.

Neurosurgery for mental disorder (NMD)

There are several safeguards for neurosurgery and similar treatments affecting brain tissue. If the doctor thinks that you the patient needs this treatment and that he/she is capable of consenting, the treatment may only go ahead if:

- The patient gives their consent in writing.
- A second opinion doctor certifies in writing that the patient is able to consent and does consent, and that the treatment is in their best interests *or*
- Two people, neither of whom is a doctor, appointed by the Mental Welfare Commission, certify that the patient is able to consent and that they have consented in writing.

If the doctor considers that the patient is not able to consent to NMD, they can only be given the treatment provided that:

- The patient does not resist or object to the treatment
- A second opinion doctor and two other people, who are not doctors and who have been appointed by the Mental Welfare Commission, agree that it is in the patient's best interests *and*
- The treatment has been authorised by the Court of Session.

What if treatment is needed urgently?

If a patient is detained in hospital under the Act, they can be given treatment without the need to involve a second opinion doctor where it is needed urgently to:

- save the patient's life,
- prevent serious worsening of their condition,
- reduce serious suffering on the patient's part, or
- stop the patient from behaving violently, or being a danger to themselves or others.

Before giving the treatment, the doctor must consider the likely risk to the patient. And they must later inform the Mental Welfare Commission what treatment was given and why it was given if these powers are used to treat a patient urgently.

Special safeguards for children

Before any of these treatments – Medication beyond 2 months, ECT, Artificial nutrition, or NMD - can be given to a child aged under 18, at least one of the medical opinions must be from a child specialist.

When the order is related to a criminal offence

If the patient is subject to an order which has been made during criminal proceedings (see later), their doctor should be able to confirm whether the rules about medical treatment set out in this booklet apply to them.

26. Objecting to Compulsory Treatment

If the patient (or their named person) doesn't think the principles set down in the Act are being applied to their care and treatment, whether by an individual or organisation – they are advised, in the first instance, to discuss their concerns with their Mental Health Officer (MHO), or Responsible Medical Officer (RMO). They may want some help and support from an Independent Advocacy Service. Where the patient or their named person does not agree with the treatment, the doctor should explain to them why he/she thinks it is in the patient's best interests.

If still not satisfied, the patient and/or their named person can contact the Mental Welfare Commission for Scotland who will provide free information and advice. If they agree that the principles are not being applied in a particular case, they can take this up with the health professionals providing the care.

Finally, if the patient or their named person is still unhappy about their treatment, or being subject to compulsory powers, then they may be able to apply to the Mental Health Tribunal to review the case. They can appeal to the Tribunal against a short-term detention. If the patient is on a Compulsory Treatment Order, then they can appeal, or ask the Tribunal to change the requirements in the order, if the patient has been on it for longer than 3 months. The named person may appeal on the patient's behalf.

If the patient or their named person wants to appeal, then they should consider seeking advice from a solicitor. Non-means-tested Legal Aid will be available to assist them with their appeal.

PART SIX
THE MENTAL HEALTH TRIBUNAL

The Mental Health Tribunal for Scotland is an independent organisation introduced by the Mental Health Act 2003. Its creation marked a fundamental change in the way decisions are made about long term compulsory care and treatment of people in Scotland who have a mental health disorder. It aims to provide a responsive, accessible, independent and impartial service. Its role is to make decisions about a patient's care and treatment – but only if they are subject to compulsory powers under the Act.

Contact details

The Tribunal Administration is based in Hamilton, Lanarkshire. All communication and papers should go through that office.

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

27. Mental health tribunals

The Mental Health Tribunal (the umbrella organisation) hears cases by means of numerous mental health tribunals held in venues across Scotland. Each of the tribunals has a panel of three members – legal, medical and general. The legally qualified member will chair the hearing. Medical members are psychiatrists. General members are people with some special interest in mental health including nurses, social workers,

psychologists and service users and carers. All have relevant qualifications and experience in dealing with people with mental health disorders. None of the panel should have had any previous connection with the service user.

Tribunals should be as informal and comfortable as possible for all those concerned, in order to encourage them to participate in the proceedings. They will listen to all those they believe are involved in the welfare of the individual concerned. They look at all the relevant information in order to decide what care and treatment is in the best interest of the service user.
Tribunals consider the following types of proceedings:

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

28. Appeals, applications and reviews

If the Mental Welfare Commission has concerns about a patient's care or their order, it can refer the case to the Tribunal for consideration. If a patient is unhappy with their Compulsory Treatment Order, they have the right to ask the Mental Health Tribunal to review it. Their named person can apply independently to the MHT for a review, on their behalf.

Both should be entitled to free legal advice and assistance to help with this. A solicitor can help organise an appeal.

If the patient and/or their named person doesn't have a solicitor, then they can telephone or write to the Tribunal Administration (see contact details above), telling them they would like to make an appeal against an order. They will need to provide details of the patient's name, the name of their doctor and the hospital in their order. The Administration will advise if an appeal is possible and if so, how to go about it.

A Mental Health Officer will make an application to the Tribunal for a Compulsory Treatment Order to be approved if he/she thinks that a patient needs compulsory treatment for more than 28 days. If the patient is already subject to a Compulsory Treatment Order, their Responsible Medical Officer might apply to the Tribunal for changes to the care and treatment plan. The Tribunal is required to review a patient's case at least once every two years.

The Tribunal will also consider a patient's case they are in hospital as a result of criminal proceedings. The RMO might apply to the Tribunal for changes to the patient's care and treatment plan, and the patient and/or their named person can ask the Tribunal to review their case.

The patient and/or their named person can also ask the Tribunal to review their case if they think they are being held in conditions of greater security than are necessary. This right to review only applies to people in the State Hospital in Carstairs.

29. Tribunal Procedures and Administration

In regard to an application from a Mental Health Officer for a Compulsory Treatment Order - if the patient, their named person and everyone else agrees with the changes or extensions to care and treatment that are being asked for, the Tribunal can consider a case without asking everyone involved to be present and give their views. However, if there is disagreement, a hearing must be held.

The Tribunal Administration team will ensure that the patient and their named person receive information about the time and place of the hearing, and will send them copies of any relevant reports or papers. If the patient and/or their named person have any questions about the hearing, they can contact the Tribunal Administration. They may want to seek legal advice from a solicitor who can advise them about their rights. They will be entitled to non-means-tested Legal Aid which will cover the cost of advice and having a solicitor to act for them at the hearing.

The hearing will usually be held in a place near the patient. Their local authority and Health Board will have made suitable accommodation available for hearings. This could be in a local hospital or other facilities. However, in some cases all or part of a hearing may be held via a video or telephone link.

The patient and/or their named person may be able to claim travel and other expenses. The Tribunal Administration will give them information about this, and they can speak to the clerk on the day about getting these paid.

In addition to the patient's named person, if they have a welfare guardian or welfare attorney, they will also be invited to attend

the hearing along with any other person with an interest who the Tribunal thinks should be allowed to speak. This might include the patient's carer, independent advocacy worker or community psychiatric nurse. The patient's Responsible Medical Officer, Mental Health Officer, and possibly their General Practitioner may also be invited to the hearing. If the patient's RMO or MHO is making an application, it is expected that he/she will be present at the hearing.

Curator ad litem

In some circumstances, the Tribunal may appoint a solicitor to act as *curator ad litem* - to represent the patient's interests in the proceedings. This might be where they don't have anyone else who can represent their interests, or don't have the capacity to instruct their own solicitor. This differs from the usual solicitor's role, which is to act only on the client's instructions.

30. How a hearing is conducted

The panel at a tribunal are allowed a degree of flexibility in deciding how best the hearing should be conducted, but the following might be regarded as a reasonable description of what might typically occur.

When the patient and their named person arrive, the tribunal clerk should show them where the waiting room, hearing room and other facilities are situated. Later, the convenor of the tribunal will explain the rules about the hearing, why it is taking place, who is there and what will happen.

Tribunal proceedings will be recorded, but only to ensure that a full and proper record is available if anybody later decides to appeal against the tribunal's findings.

During the course of the hearing, people involved in the patient's care and treatment will make their views known, and present information relevant to the case. The three members of the tribunal will read, listen to and discuss the information as it is presented.

If the hearing is about an application for a Compulsory Treatment Order, the papers will include reports from two doctors and from the Mental Health Officer. For other hearings the papers will usually include a report from the Responsible Medical Officer and sometimes a report from the MHO.

The tribunal will try to reach a decision on the day of the 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 the patient gets the care and treatment they need until a final order is put in place.

31. The tribunal's decision and right of appeal

The tribunal may let the patient and their named person know its decision on the day, at the end of proceedings, or may send its decision to them in writing after the hearing. The tribunal will also let the other 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 the case came to the tribunal through the court system, a copy of the decision will also be sent to the court.

If the patient and/or their named person are unhappy with the tribunal's decision, they may be able to appeal to the Sheriff Principal and then to the Court of Session for a review of the decision. The tribunal will explain this when they give their decision.

PART SEVEN
CRIMINAL PROCEEDINGS

Those who have (or *may* have) a mental illness and are subject to criminal proceedings – after becoming involved in some way with the police and courts - are dealt with under the Criminal Procedure (Scotland) Act 1995, which gives the courts powers to ensure that a person receives proper care and treatment. The courts can use this law at any stage of criminal justice proceedings; from when the person is first arrested up until the time when the court makes its final decision about their case.

32. Overseen by the courts

While those subject to criminal proceedings are dealt with under the Criminal Procedure Act, they are still covered by the Mental Health Act's guiding principles. The main aim of the principles is to ensure that all those subject to the Act are treated with respect. Anyone who is carrying out duties, or giving treatment - doctors, nurses and social workers - has to follow the principles set out in the Act.

The main difference between those with mental health problems who are subject to criminal proceedings and those who are not is that the treatment and care of the former is overseen by the courts, while the rest come under the jurisdiction of the Mental Health Tribunal.

33. When the powers in the Act might be used

There are strict conditions in the Act about when its powers might be used if a person is involved with the criminal justice system. These vary depending on the circumstances but in general terms they are:

- that the person has a mental disorder
- medical treatment is available which could stop their condition getting worse, or help treat some of their symptoms
- if that medical treatment were not provided, there would be a significant risk to the person or to others
- that the use of the compulsory powers is necessary (i.e. taking into consideration all the circumstances of the case, there is no other way of providing the person with care and treatment).

Medical treatment can include: drug treatments, nursing, care, psychological interventions, electro-convulsive therapy (ECT), habilitation and rehabilitation. 'Habilitation' and 'rehabilitation' cover things like education and training for work, and social and independent living skills.

34. Support in a hospital, or the community

The Act allows people to receive care and treatment for their mental disorder when they are, or have been, involved in criminal proceedings. Where the police, prosecutor, court, defence solicitor, etc. are concerned about a person's mental health, they may request a mental health assessment. This will help decide whether treatment might be necessary, and how best to deal with the case.

When a person is involved in criminal justice proceedings, they can have their own solicitor to help them and give them legal advice about their case. They might also be able to obtain independent psychiatric reports, which the court may consider alongside other reports that the court or the prosecutor has obtained. The solicitor will be able to determine whether the person is entitled to Legal Aid.

If the person subject to criminal proceedings is already in hospital but is not sure what kind of order they are on, their doctor should be able to explain this to them. Alternatively, an independent advocate might be able to help them find out. The patient may need to ask their doctor or a nurse on their ward for the name of their appointed Mental Health Officer (MHO) - a social worker who deals specially with people with mental disorder – and how to contact them. Their MHO can advise about independent advocacy services (and how to contact them) and explain the person's legal rights under the Act. They may also be able to assist the patient with important matters in their life. For example, if the patient has children, the MHO can help them to keep in contact. At the same time, if the patient wishes, their MHO can speak to others who may be important to them - such as relatives, friends or carers - to help them understand what the patient is going through and/or ask them for their views on what might be helpful to the patient.

If the person subject to criminal proceedings is living in the community, their MHO can make sure that they get an assessment of their community care needs, to which they are entitled.

35. Orders under criminal proceedings

The Act provides for a number of different orders, as described below:

Assessment Order

If a person has been given bail or has been remanded in custody (prison) before their trial, the court may detain them in hospital for up to 28 days to allow a specially trained doctor (a psychiatrist) to carry out an assessment of their mental health. The psychiatrist will prepare a report to help the court to decide whether the person is fit to stand trial and if they need to stay in hospital for treatment in the meantime.

The court can only make this order if it is recommended by a doctor who has examined the person. The police, the prosecutor or the court can arrange for this to be done. The court can make this order at any time from before the trial begins, right up until the court makes its final decision about the case. It can be extended for 7 days (on top of the 28 days) if the psychiatrist needs further time to decide whether the person needs to remain in hospital for treatment.

There is no right of appeal under the Act against this order. However, the psychiatrist has a responsibility to notify the court at any time if the person's circumstances change and the order needs to be cancelled or changed in some way.

Treatment Order

If the person has been given bail or has been remanded in custody (prison) before their trial, the court may detain them in hospital for treatment of their mental disorder. The court

can only make this order if it has been recommended by two doctors, one of whom must be a psychiatrist, who have examined the person. There is no fixed time limit on this order. It can last until the court makes its final decision about the case, or possibly commits the person to hospital under another order.

There is no right of appeal under the Act against this order. However the psychiatrist has a responsibility to notify the court at any time if the person's circumstances change and the order needs to be cancelled or changed in some way.

Temporary Compulsion Order

If the court has decided that the person's trial cannot start or cannot continue because the person is considered to be unfit to stand trial (because of their mental health), the court may detain them in hospital for treatment under this order.

The court can only make a Temporary Compulsion Order if it has been recommended by two doctors who have examined the person. Once the order is made, the court may go on to examine the facts of the case by carrying out a procedure called an "Examination of Facts". This allows the court to find out if the person carried out the act with which they have been charged. There is no fixed time limit on this order. It can last until the court makes its final decision about a person's case, or possibly commits them to hospital under another order.

There is no right of appeal under the Act against this order.

Acquitted but detained

If, at the end of an Examination of Facts or a trial, the court is not satisfied beyond reasonable doubt that the person did the act with which they were charged, the court must acquit them, which means that they are cleared of the charge. However if the court has received recommendations from two doctors that the person needs care and treatment for a mental disorder, the court may then detain the person for 6 hours so that a doctor can examine them. The examining doctor's responsibility is to determine whether the person does require care and treatment and if they do, what needs to happen next. The examination should be carried out in hospital, if possible, but if not it could take place in the court holding cells.

Alternatively, if at the end of an Examination of Facts or a trial, the court is satisfied beyond reasonable doubt that the person did do the act with which they were charged - but acquits them (clears them of the charge) on the grounds of insanity - the court may detain the person in hospital for further assessment under an order called an Interim Compulsion Order (see below). If the court considers that the person requires treatment in hospital, it can detain them in hospital under an order called a Compulsion Order which might have a Restriction Order attached.

Remand on bail for enquiry

If the person has been convicted of an offence for which the punishment is imprisonment, the court may grant them bail for 3 weeks, with the condition that they attend a hospital so that they can be examined by one or possibly two doctors. The court may make this order where it wants further information

about a person's mental health before it makes a final decision about the case. The court can only make this order if a doctor who has examined the person has recommended it.

A condition of the bail might be that the person must reside in hospital for a specific period for the examinations to be carried out. If they leave the hospital before they have been discharged, or before the period of bail expires, they will be breaching the conditions of bail and be making themselves open to further criminal proceedings.

There is a right of appeal if a person is refused bail, and against any conditions of their bail where it has been granted.

Committal to hospital for enquiry

If a person has been convicted of an offence for which the punishment is imprisonment, the court may commit them to hospital for 3 weeks so that they can be examined by one or possibly two doctors.

The court may make this order where it wants further information about the person's mental health before it makes a final decision about their case. It can only make the order if a doctor who has examined the person has recommended it.

If a person has been committed to hospital under this order and they leave, they will be committing an offence for which they could be arrested and returned to court. The order can be extended once for a further 3 weeks.

There is a right of appeal against being committed to hospital.

Interim Compulsion Order

If a person has been convicted of an offence for which the punishment is imprisonment, instead of imposing a prison sentence, the court can detain the person in hospital for 12 weeks so that a thorough assessment of their mental health and possible treatments can be carried out before the court makes a final decision about their case.

For the order to be made the court must have reports from two doctors stating that it is necessary. It may be that the doctors have not been able to form a clear view of what, if any, mental disorder the person may have and what treatment should be recommended. This order can be extended every 12 weeks for up to one year.

There is a right to appeal to the court against the order being made, but not against it being renewed. The person's psychiatrist has a responsibility to notify the court at any time if their circumstances change and the order needs to be cancelled.

CONTACT INFORMATION

Mental Health Tribunal for Scotland
1st Floor, Bothwell House,
Hamilton Business Park,
Caird Park, HAMILTON. ML3 0QA
Tel: 01698 390 000
Service user and carer freephone:
0800 345 70 60
web: www.mhtscot.gov.uk

User And Carer Involvement
Kindar House, The Crichton,
Bankend Road, Dumfries, DG1 4ZZ
Tel: 01387 255330
E: info@userandcarer.co.uk
Web: www.userandcarer.co.uk

NSF (Scotland)
2 Gordon Street, Dumfries
DG1 1EG Tel: 01387 255072
E: nsfdgclo@aol.com
Web: www.nsfscot.org.uk

Alzheimer Scotland
1 Gordon Street, Dumfries
DG1 1EG Tel: 01387 261303
E: DumfriesServices@alzscot.org
Web: www.alzscot.org

SAMH
Cumbrae House
15 Carlton Court, Glasgow
G5 9JP Tel: 0141 568 7000
Email: enquire@samh.org.uk
Web: www.samh.org.uk

Princess Royal Trust For Carers
2-6 Nith Street, Dumfries
DG1 2PW Tel: 01387 248600
E: dgalcarers@btopenworld.com
Web: www.carers.org

Scottish Government
St Andrew's House, Edinburgh
EH1 3DG
Tel: 0131 556 8400
Web: scotland.gov.uk (Mental Health)

Dumfries & Galloway Council
Council Offices
English Street, Dumfries
DG1 2DD Tel: 01387 260000
E: CIS@dumgal.gov.uk
Web: www.dumgal.gov.uk

D&G Citizens' Advice Bureau
81-85 Irish St., Dumfries
DG1 2PQ Tel: 01387 252456
Web: www.cas.org.uk

People's Advocacy & Support Service
Buccleuch Street, Dumfries
DG1 2AT Tel: 01387 247237
E: info.pas@btconnect.com

Disability Alliance
88-94 Wentworth St., London
E1 7SA
Tel: 0207 2478776
E: office.da@dial.pipex.com
Web: www.disabilityalliance.org

Mental Welfare Commission for Scotland
Floor K Argyle House
3 Lady Lawson Street
Edinburgh, EH3 9SH
Tel: 0800 389 6809
Web: mcwscot.org.uk

Glossary - General

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

Advance Statement: a document setting out how a person wishes to be treated if, in the future, they become unwell and unable to express their views.

Carer: any person who provides, on a regular basis, a substantial amount of care for, and support to, a service user – but not as part of their paid employment.

Compulsory Treatment Order (CTO): initiates a course of compulsory care and treatment, based in a hospital or in the community. Lasts for 6 months initially, but can then be extended.

Curator ad litem: a solicitor appointed to represent a person who, in the opinion of the Mental Health Tribunal or a court, is unable to make decisions for themselves.

Declaration: is the form of words employed by a service user to ensure that an individual isn't appointed to act as their named person. Must be witnessed.

Designated medical practitioner: The Mental Welfare Commission keeps a list of experienced consultant psychiatrists who have the right qualifications and experience to give independent second opinions under the Act. The list includes child specialists.

Emergency detention: when a person is detained in hospital for up to 72 hours while their condition is assessed.

Independent Advocacy: a free service open to every person with a mental disorder, providing help in many ways from supporting a service user at a mental health tribunal to dealing with housing problems.

Mental Disorder: a term used in the Mental Health Act to cover mental illness including dementia, learning disability or personality disorder.

Mental Health Tribunal for Scotland: makes decisions about the care, treatment and other matters relating to those who are subject to compulsory powers under the Mental Health Act.

mental health tribunal: *The* Mental Health Tribunal will arrange a local

hearing, known somewhat confusingly as *a* mental health tribunal, to consider individual cases.

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

Mental Welfare Commission: protects the rights and welfare of everyone with a mental illness or learning disability – activities include monitoring how the Mental Health Act is working, encouraging best practice, publishing information and guidance, and carrying out visits to patients.

Named Person: chosen by a service user (or can be appointed by a mental health tribunal) to represent their interests should they become subject to compulsory treatment under the Mental Health Act.

Nomination: is the form of words used in the appointment of a named person by a service user. Must be witnessed.

Nurse's Holding Power: a patient receiving treatment on a voluntary basis who wishes to leave hospital can be held for up to 2 hours to allow a doctor to come and assess them.

Personal Statement: explains what a person would like done (other than care and treatment – which is covered in an Advance Statement) if they become unwell in the future. For example, if they are taken into hospital, who will look after their children or pets.

Primary Carer: the person who provides all or most of the care and support for a service user.

Removal to place of safety: if someone in a public place appears to have a mental disorder and be in need of care and treatment, they can be taken by the police to a place of safety – preferably a hospital – for up to 24 hours for assessment by a doctor.

Responsible Medical Officer (RMO): is a medical practitioner, usually a consultant psychiatrist, who is responsible for the service user's care and treatment.

Service User: is a person using mental health services, either in hospital or in the community.

Short-term detention: when someone is detained in hospital for up to 28 days.

Voluntary patient: someone who agrees to accept treatment for their mental disorder and who is not subject to compulsory powers under the Act.

Witness: someone qualified to witness a service user's Nomination (or Declaration or Revocation) of their named person, or Advance Statement – can be a medical practitioner, clinical psychologist, occupational therapist registered with the Health Professions Council, a registered nurse, social worker, solicitor or certain persons providing, or managing the provision of, certain care services.

Glossary - Criminal Proceedings

Assessment Order: an order made by the court which authorises hospital detention for up to 28 days so that the person's mental condition may be assessed.

Compulsion Order: an order made by the court which authorises compulsory measures (either hospital or community based) for a period of 6 months, if not otherwise renewed.

Criminal Procedure (Scotland) Act 1995: this act sets out the orders that a court can make when it is dealing with a case which involves a person with mental disorder.

Hospital Direction: an order made by the court in addition to a sentence of imprisonment. It allows the person to be detained in hospital for treatment of their mental disorder and then transferred to prison to complete their sentence once hospital treatment is no longer required.

Interim Compulsion Order: an order made by the court which authorises hospital detention for 12 weeks (but can be renewed regularly for up to one year) so that the court can gather further specific evidence on the person's mental condition.

Restriction Order: an order made by the court which can be added to a Compulsion Order. It means that the measures specified in the Compulsion Order are without limit of time and that the person cannot be transferred to another hospital or given leave from the hospital without the agreement of the Scottish Ministers.

Transfer for Treatment Direction: an order made by the Scottish Ministers to allow the transfer of a prisoner to hospital for treatment of a mental disorder.

Treatment Order: an order made by the court which authorises hospital detention for treatment of a person's mental disorder.

Appendix 1: Suggested form for Nomination of Named Person.

Keep a list of everybody who receives a copy of this document.

NOMINATION OF NAMED PERSON
MADE UNDER
THE MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003

Full name of person making this nomination:.....
Address of person making this nomination: .....
.....
.....

I hereby nominate*.....** (name) ***of **.....**
.....
.....
(address) **to be my Named Person with regard to the Mental Health (Care and Treatment) (Scotland) Act 2003.**

Signature: ..... Date: .....

WITNESS CERTIFICATE

I hereby declare that I am of the opinion that at the time of making this nomination, …… (name of person making nomination) ***understands the effects of nominating a person to be their Named Person, and that*** (he/she) ***has not been subject to any undue influence. I hereby witness*** (his/her) ***signature*.**

Signature of witness:..... Date: .....

Full name of witness:.....
Address of witness: .....
.....
.....

Designation of witness:.....
(State occupation or category which enables the witness to act as a 'prescribed person' - a clinical psychologist entered on the British Psychological Society's register of chartered psychologists, a medical practitioner, an occupational therapist registered with the Health Professions Council, a person employed in the provision of (or in managing the provision of) a care service, a registered nurse, a social worker or a solicitor.)

Appendix 2: Suggested form for Declaration re. Named Person

Note: You are advised to keep a list of everybody who has received a copy of this document.

DECLARATION WITH REGARD TO NAMED PERSON
MADE UNDER THE
MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003

Full name of person making declaration .....

Address of person making declaration: .....

.....

.....

I hereby declare that*……** (name) ***should NOT be my Named Person with regard to the Mental Health (Care and Treatment) (Scotland) Act 2003.

Signed: .....Date:.....

WITNESS CERTIFICATE

I hereby declare that I am of the opinion that at the time of making this declaration,*……** (name of person making declaration) ***understands the effects of making this Named Person declaration, and that (he/she) ***has not been subject to any undue influence. I hereby witness*** (his/her) ***signature.***

Signature of witness: ..... Date: .....

Full name of witness: .....

Address of witness: .....

.....

.....

Designation of witness:.....
(State occupation or category which enables the witness to act as a 'prescribed person' – see Appendix 1)

Appendix 3: Suggested form for Revocation of Nomination of Named Person.

Note: You are advised to send a copy of this document too all those who received a copy of the original nomination - keep an updated list of everybody who receives a copy of documents relating to the named person.

REVOCATION OF NOMINATION OF NAMED PERSON
MADE UNDER THE
MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003

Full name of person revoking nomination: .....

Address of person revoking nomination: .....
.....
.....

I herby revoke the nomination made by me on ..... (date of nomination**). I no longer wish.....(**name**) to be my Named Person with regard to the Mental Health (Care and Treatment) (Scotland) Act 2003.**

Signed: ..... Date: .....

WITNESS CERTIFICATE

I hereby declare that I am of the opinion that at the time of revoking this nomination, ... (name of person revoking nomination) ***understands the effects of revoking their Named Person nomination, and that*** (he/she) ***has not been subject to any undue influence. I hereby witness*** (his/her) ***signature.***

Signature of witness:..... Date:.....

Full name of witness: .....
Address of witness: .....
.....
.....

Designation of witness: .....
(State occupation or category which enables the witness to act as a 'prescribed person' – see Appendix 1)

Appendix 4: Suggested form for Revocation of Declaration re. Named Person.

Note: You are advised to send a copy of this document too all those who received a copy of the original declaration - keep an updated list of everybody who receives a copy of documents relating to the named person.

REVOCATION OF DECLARATION WITH REGARD TO NAMED PERSON MADE UNDER THE MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003

Full name of person revoking declaration: .....

Address of person revoking declaration: .....

.....

.....

I herby revoke the declaration made by me on ..... (date of declaration) **that.....** (name) **should not be my Named Person with regard to the Mental Health (Care and Treatment) (Scotland) Act 2003.**

Signed: ..... Date: .....

WITNESS CERTIFICATE

I hereby declare that I am of the opinion that at the time of revoking their declaration ..... (name of person revoking declaration) ***understands the effects of revoking their Named Person declaration, and that*** (he/she) ***has not been subject to any undue influence. I hereby witness*** (his/her) ***signature*.**

Signature of witness: ..... Date: .....

Full name of witness:.....

Address of witness: .....

.....

.....

Designation of witness:.....
(State occupation or category which enables the witness to act as a 'prescribed person' – see Appendix 1)

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