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978-1-909-72662-8 — A Clinician's Brief Guide to the Mental Health Act
Tony Zigmond , Nick Brindle
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A clinician's brief guide to the Mental Health Act

Fourth edition

Tony Zigmond and Nick Brindle

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Preface to the first edition

This is a ‘how to’ book. It is designed as an easy-to-read and interesting guide to understanding those parts of the Mental Health Act 1983 that clinicians need in their daily practice. It covers civil and court detentions, Community Treatment Orders, consent to treatment and giving written and oral evidence for Mental Health Tribunals. It also includes relevant aspects of the Human Rights Act 1998, the Mental Capacity Act 2005 (including the Deprivation of Liberty Safeguards) and illustrative case law. Although it should be of particular interest to doctors seeking approval under section 12 and doctors and other clinicians wishing to become Approved Clinicians in England, it will aid understanding of the processes for all users of the Mental Health Act.

More detailed guidance can be found in the Mental Health Act Codes of Practice,^{1,2} the *Reference Guide to the Mental Health Act*³ and many other texts. Acts of Parliament and secondary legislation such as Statutory Instruments can be read and downloaded from the internet – but make sure that you are reading the updated (post-2007 amendments) version. These are readily searchable electronically, so to avoid cluttering the text with numbers we have not cited chapter and verse when using short quotations from Acts.

Acronyms and abbreviations abound in mental health legislation. We have used very few of these, but readers may find those listed on p. x useful when reading other sources.

Preface to the second edition

The Health and Social Care Act 2012 has made a number of amendments to the Mental Health Act 1983.

The most significant change, in relation to matters dealt with in this book, relates to the authorisation for prescribing medication for the treatment of mental disorder to patients on a Community Treatment Order. Other changes include amendments required by the abolition of Primary Care Trusts and Strategic Health Authorities and the establishment of the National Health Service (NHS) Commissioning Board and Clinical Commissioning Groups. The main issues are:

- ▶ the provision of section 117 aftercare
- ▶ the duty to provide information to local social services about bed provision both for the admission to hospital of emergencies and for children and young people
- ▶ the duty to provide information to the courts about bed availability
- ▶ approval mechanisms for section 12 doctors and Approved Clinicians.

Other changes relate to the provision of Independent Mental Health Advocates and regulation of Social Workers.

Further amendments remove some of the powers of the Secretary of State. These include the authority to move detained patients from one high secure hospital to another and to discharge detained NHS patients from private hospitals (the Act also removes the right of NHS bodies to do the latter). The power to grant ‘pocket money’ to in-patients is also removed in England (but not in Wales).

Preface to the third edition

The main statutory changes since the second edition are as follows.

- ▶ Primary legislation:
 - ▶ Mental Health (Discrimination) Act 2013. This reduces discrimination in three areas. It repeals section 141, which said that if a Member of Parliament (MP) was detained under the Mental Health Act for more than 6 months they would lose their seat (an MP has to be imprisoned for over a year to lose their seat, and doesn't lose their seat at all if unable to attend Parliament owing to physical illness). It amends the Juries Act 1974, so that people aren't excluded from jury service just on the grounds that they're having treatment for a mental illness. And it amends the Companies (Model Articles) Regulations 2008 so that a person can continue to be a director of a company even though a court has made an order, on grounds of their mental health, that prevents them from exercising the powers or rights they would otherwise have.
- ▶ Secondary legislation:
 - ▶ Tribunal directions for Responsible Clinician's reports for tribunal hearings
 - ▶ Amendments to Tribunal rules:
 - ▷ to make the medical examination discretionary (except in section 2 cases, where there is to be no change)
 - ▷ to allow any member of the tribunal to view the medical records (rather than just the Medical Member)
 - ▷ to require either a medical examination or a finding that one is unnecessary or not practicable before a Tribunal can proceed in the patient's absence
 - ▷ Secretary of State's 2014 instructions with respect to the exercise of approval functions for section 12 and Approved Clinician approval.

Other changes are due to court judgments. The most difficult areas are the interface between the Mental Health Act and the Mental Capacity Act and the continuing dilemma of what, exactly, amounts to deprivation of liberty.

There is also revised guidance in relation to applying for section 12 and/or Approved Clinician approval.

Preface to the fourth edition

Since publication of the third edition the Care Act 2014 has amended section 117 of the Mental Health Act 1983 (MHA). It now includes a definition of aftercare services: such services (a) meet a need arising from or related to a person's mental disorder; and (b) reduce the risk of deterioration of a person's mental condition (and, accordingly, reduce the risk of the person requiring re-admission to hospital for treatment for the disorder). This replaces the previous judicial interpretation. Which local authority has to pay for a person's section 117 aftercare has also been changed. It is now the authority in which the person was 'ordinarily resident' immediately before detention.

There is a revised MHA Code of Practice¹ and a revised Reference Guide.³ Leaving aside changes required because of amendments to the MHA and other new statutes since the previous Code was written (e.g. the Health and Social Care Act 2012 and the Care Act 2014), the tone of the new Code is very different from its predecessor. There is much more emphasis on human rights and equality (including the Human Rights Act and other relevant legislation) with significant changes to the Principles underpinning use of the MHA.

As always, there is a great deal of new case law.

It may also be noticed that Nick Brindle has joined Tony Zigmond as author. T. Z. retired from clinical practice some years ago and, given that this is a clinician's guide, he decided that a well-informed practising psychiatrist was a necessary addition to the authorship. This is T. Z.'s final edition of *A Clinician's Brief Guide to the Mental Health Act*, but he is sure that it will continue to be updated as necessary. He is extremely grateful to all those who have encouraged him, praised and, most importantly, bought the book.

Common abbreviations and terms

AC	Approved Clinician
AMHP	Approved Mental Health Professional
BIA	Best Interests Assessor
CCG	Clinical Commissioning Group
CPA	Care Programme Approach
CQC	Care Quality Commission
CTO	Community Treatment Order
DoLS	Deprivation of Liberty Safeguards
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
FTT	First-Tier Tribunal (Mental Health)
HIW	Healthcare Inspectorate Wales
HM	Hospital Manager
HRA	Human Rights Act 1998
IMCA	Independent Mental Capacity Advocate
IMHA	Independent Mental Health Advocate
LD	Learning Disability (i.e. intellectual disability)
LSSA	Local Social Services Authority
MCA	Mental Capacity Act 2005
MHA	Mental Health Act 1983
MM	Medical Member of the Tribunal (see below)
ND	Nominated Deputy
NR	Nearest Relative
RC	Responsible Clinician
RMP	Registered Medical Practitioner
SCT	Supervised Community Treatment
SOAD	Second Opinion Appointed Doctor
Tribunal	First-Tier Tribunal (Mental Health)