

A Clinician's Brief Guide to the Mental Health Act

Fifth edition

Cambridge University Press & Assessment

978-1-009-17830-3 — A Clinician's Brief Guide to the Mental Health Act

Tony Zigmond , Nick Brindle

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University Printing House, Cambridge CB2 8BS, United Kingdom
One Liberty Plaza, 20th Floor, New York, NY 10006, USA
477 Williamstown Road, Port Melbourne, VIC 3207, Australia
314–321, 3rd Floor, Plot 3, Splendor Forum, Jasola District Centre, New Delhi – 110025, India
103 Penang Road, #05-06/07, Visioncrest Commercial, Singapore 238467

Cambridge University Press is part of the University of Cambridge.
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www.cambridge.org
Information on this title: www.cambridge.org/9781009178303
DOI: 10.1017/9781009178297

First edition © The Royal College of Psychiatrists 2011
Second edition © The Royal College of Psychiatrists 2012
Third edition © The Royal College of Psychiatrists 2014
Fourth edition © The Royal College of Psychiatrists 2016
Fifth edition © The Royal College of Psychiatrists 2022

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First published 2011, second, third and fourth editions published by Gaskell, The Royal College of Psychiatrists. This fifth edition published by Cambridge University Press 2022

A catalogue record for this publication is available from the British Library.

Library of Congress Cataloging-in-Publication Data

Names: Zigmond, Tony, author. | Brindle, Nick, author.
Title: A clinician's brief guide to the Mental Health Act / Nick Brindle, Consultant Old Age Psychiatrist, Leeds and York Partnership NHS Foundation Trust; Tony Zigmond, Consultant General Adult Psychiatrist, RCPsych Lead on Mental Health Law.

Description: Fifth edition. | Cambridge, United Kingdom ; New York, NY : Cambridge University Press, 2022. | Includes bibliographical references and index.

Identifiers: LCCN 2022970036 (print) | LCCN 2022970037 (ebook) | ISBN 9781009178303 (paperback) | ISBN 9781009178297 (epub)

Subjects: LCSH: Mental health laws—England. | Mental health laws—Wales. | Great Britain. Mental Health Act 2007. | Great Britain. Mental Health Act 1983. | Mental health personnel—Great Britain—Handbooks, manuals, etc.

Classification: LCC KD3412 .Z54 2022 (print) | LCC KD3412 (ebook) | DDC 344.4104/4—dc23/eng/20220228

LC record available at <https://lcn.loc.gov/2022970036>

LC ebook record available at <https://lcn.loc.gov/2022970037>

ISBN 978-1-009-17830-3 Paperback

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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, the *Reference Guide to the Mental Health Act* 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.

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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).

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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.

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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 Practice and a revised Reference Guide. 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.

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Preface to the Fifth Edition

The law, perhaps even more than clinical medicine, is in a state of unremitting development and elaboration. New statutes are passed and changes to the interpretation of existing Acts may modify or transform what was previously accepted practice. It can be difficult for clinicians, and others, to keep up to date. For example, since publication of the fourth edition:

- There have been many noteworthy cases relating to a person's Article 5 rights under the European Convention on Human Rights, i.e. the right to liberty and security. These cases are important in many clinical settings because they affect how the right is to be interpreted and the complex rules for when and how a patient may be deprived of their liberty.
- Of relevance to clinical practice is that there are now different decisions for which capacity may need to be assessed in relation to a patient's application to, and representation at, the Tribunal. The Tribunal is the legal forum which determines whether grounds for detention under the Mental Health Act exist.

These and other changes due to court judgments are discussed. England and Wales are also on the cusp of important legal and practice changes as a result of the Mental Capacity Amendment Act 2019, which received royal assent in May 2019. This will introduce a new process for authorising deprivations of liberty (the Liberty Protection Safeguards), replacing the Deprivation of Liberty Safeguards introduced in 2008. In the final chapter, we briefly discuss proposals to reform the Mental Health Act to address issues relating to the rising rates of people being detained and the disproportionate number of people from black and minority ethnic groups detained under the Mental Health Act. Some readers may notice that T. Z. is an author despite the statement in the preface to the fourth edition that he wouldn't be. This was at the request of N. B.

List of Abbreviations

A&E	Accident and Emergency
AC	Approved Clinician
AMCP	Approved Mental Capacity Professional
AMHP	Approved Mental Health Professional
AWOL	absent without leave
BIA	Best Interests Assessor
BNF	British National Formulary
CAMHS	Child and Adolescent Mental Health Services
CCG	Clinical Commissioning Group
CQC	Care Quality Commission
CTO	Community Treatment Order
DHSC	Department of Health and Social Care
DoL	Deprivation of Liberty
DoLS	Deprivation of Liberty Safeguards
DSM	Diagnostic and Statistical Manual of Mental Disorders
ECHR	European Convention on Human Rights
ECT	electroconvulsive therapy
ECtHR	European Court of Human Rights
FTT	First-Tier Tribunal (Mental Health)
GMC	General Medical Council
GPwSI	General Practitioner with a Special Interest
HM	Hospital Manager
HRA	Human Rights Act 1998
ICD	International Classification of Diseases
IJ	Inherent jurisdiction
IMCA	Independent Mental Capacity Advocate
IMHA	Independent Mental Health Advocate
LPS	Liberty Protection Safeguards
MCA	Mental Capacity Act 2005
MHA	Mental Health Act 1983
MM	Medical Member of the Tribunal (see below)
ND	Nominated Deputy
NP	Nominated Person
NR	Nearest Relative
RB	Responsible Body
RC	Responsible Clinician
RMP	Registered Medical Practitioner
SCT	Supervised Community Treatment
SOAD	Second Opinion Appointed Doctor
FTT	First-Tier Tribunal (Mental Health)