Health Education England

MRCPsych General Adult Module

The Mental Health Act
(Semester 1)

Developing people
for health and
healthcare

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GA Module: Mental Health Act

Aims and Objectives

To develop an understanding of the aspects of the Mental Health Act relevant to General Adult Psychiatry

In particular: Sections 2, 3, 4, 5(2), 5(4), 136 and SCT

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GA Module: Mental Health Act

To achieve this

- Case Presentation
- Journal Club
- 555 Presentation
- Expert-Led Session
- MCQs

- Please sign the register and **complete the feedback**

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GA Module: Depression - 1

Expert Led Session

Mental Health Act

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The MHA

Guiding principles of the MHA:

- Least restrictive option and maximising independence
- Empowerment and involvement
- Respect and dignity
- Purpose and effectiveness
- Efficiency and equity

The MHA

Terminology

Mental disorder

- 'disorder or disability of the mind'
- extremely broad!
- exceptions:
  - if the sole mental disorder is *dependency* on drugs or alcohol (intoxication or withdrawal though are not excluded)
  - for S3 people with LD and no other mental disorder may only be detained 'if the disability is associated with abnormally aggressive or seriously irresponsible behaviour'

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The MHA

Terminology

For the purpose of the Act, a **Learning Disability** is:

‘a state of arrested or incomplete development of the mind which includes significant impairment of intelligence and social functioning’

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Terminology

- **Nature or Degree**:

"Nature" refers to the particular mental disorder from which the patient suffers, its chronicity, its prognosis and the patient's previous response to receiving treatment

"**Degree"** refers to the current manifestation of the patient's disorder

- Both are 'inevitably bound up'

The MHA

Terminology

Medical treatment:

- Includes 'nursing, psychological intervention and specialist mental health habilitation (learning new skills), rehabilitation (recover lost skills) and care.'
- The Act requires appropriate medical treatment to be available to a patient in order to meet the criteria for **Section 3 detention or a CTO**
- This does not have to be the ideal treatment nor does it have to address every aspect of the patient's condition.
- It is available even if refused by the patient.
- The ward milieu may be sufficient to qualify for appropriate medical treatment

The MHA

Terminology

- **RMP (Registered Medical Practitioner) – 'doctors':** need a licence to practice from the GMC (unless acting solely as a medical member of a tribunal)

- **AC (Approved Clinician)**: a RMP, nurse, psychologist, OT, SW who has been approved as an AC and thus may be 'in charge of the treatment of an informal in-patient and so may make a recommendation under S5(2)

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Terminology

- **S12 approved Doctor**: a medically qualified doctor who has been recognised under section 12(2) of the MHA as having specific expertise in the diagnosis and treatment of mental disorder.

The MHA

Terminology

- **RC (Responsible Clinician)**: is the AC with overall responsibility for care of patents being assessed/treated under the MHA.
- A patient may only have one RC at any one time but may have more than one AC looking after different aspects of their care at any one time
- **Nominated Deputy**: an RMP or AC who has been nominated by the RMP or AC in charge of an informal patient to act on their behalf with respect to S5(2)

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Terminology

- **Nearest relative**: defined by a set list; spouse/civil partner>child over 18 (oldest first)>parents (oldest first) etc

- **SOAD** (Second Opinion Appointed Doctor): appointed by CQC to provide a second opinion for medical treatment for a detained patient (or CTO patient)

The MHA

Process

- RMPs must 'make a direct personal examination of the patient' to complete the medical recommendation
- If neither RMP has previous knowledge of the patient, it is recommended that both are S12 approved
- No more than 5 days between the two medical recommendations (days of the recommendations aren't counted)
- AMHP has 14 days from the last med rec to make the application (and within 24 hrs for S4)
- Should avoid RMPs and AMHPs with conflicts of interest (eg all in same team etc)

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Guide to completing medical recommendations

Gold-standard criteria used to test the medical recommendations for detention:

- Clear evidence to support the presence of a mental disorder
- A statement indicating its nature and / or degree
- Why was detention in the interests of patient's health, safety or the protection of others
- Why management in the community was not possible
- Why informal admission was not possible

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The MHA

Structure of the Act

- **Part 1**: brief, describes the purpose of the act
- **Part 2**: compulsory admission to hospital and guardianships (sections related to civil detention and compulsion)
- **Part 3**: court and prison transfers
- **Part 4**: consent to treatment
- **Part 5**: tribunals

The MHA

Section 2 - Admission for Assessment:

- To be used if extent of nature / degree of condition is unclear
- ***Requires*:** two RMPs (one S12 approved and the other with previous acquaintance of the patient or two S12 approved doctors) and the applicant (AMHP or NR)
- ***Duration:*** up to 28 days (shorter if discharged by RC, NR, Hospital Managers or Tribunal)
- Cannot be renewed!

The MHA

Section 2:

***Grounds*:**

- patient is suffering from a mental disorder of a nature or degree which warrants detention in hospital (for assessment and treatment)
- patient ought to be so detained in the interests of their own health or safety or safety of others
- Factors to consider: the health / safety of the patient, protection of others, alternatives to detention (informal admission or community management)

The MHA

Section 3 - Admission for Treatment

- *Requires*: as above (same as S2 requirements) & NR must not object to the application
- Duration: 6/12 or longer if renewed or patient is AWOL
- Discharge possible by RC, NR, Hospital Managers, Tribunal
- Grounds: similar as for S2 and **appropriate medical treatment must be available in hospital**
- **S117 aftercare**: pts are entitled to this free of charge until it is decided this is no longer necessary

The MHA

Section 4 (admission for assessment in case of emergency)

- *Requires*: 1RMP, and an applicant (AMHP or NR)
- *Duration*: 72 hours or earlier if discharged by RC
- If is converted to S2 by the completion of the other medical recommendation the 28 days for the S2 starts at the commencement of the S4
- *Grounds*: urgent requirement for detention in which the delay for a S2 would cause an unacceptable delay

The MHA

Section 5(2):

- Holding powers used by RMP or AC in charge of the patient or their nominated deputy (e.g.: on call junior doctor)
- *Duration*: 72 hours or as soon as patient has been assessed for detention under S2 or 3 or is moved from the hospital where they are held
- *Grounds*: the RMP/AC/nominated deputy believes there are grounds for detention under S2 or 3

The MHA

S5(4) (Nurses' holding power)

- A qualified mental health or LD nurse may detain an informal patient for up to 6hrs, which gives time for the assessment for S5(2) to be completed.

The MHA

S7 (Guardianship)

- For patients who do not require admission to hospital, but need close supervision and some control in the community as consequence of their mental illness
- *Requires*: same as for S2; patient must be at least 16
- *Grounds*: patient suffers from a mental disorder of a nature or degree which warrants this for their own welfare or the protection of others
- *Authorises*: a decision where the patient must live, a requirement to *attend* medical treatment, work, training or education (although these may then be declined), access to the patient by the RMP, AMHP etc

The MHA

- **S135 and 136** (not actually in Part 2 of the Act)

- **S135** (Warrant to search for and remove patients)
- **S135 subsection 1**: allows an AMHP to gain a warrant allowing a police officer to enter premises in order to allow an assessment where 'there is reasonable cause to suspect that a person believed to be suffering from mental disorder

a) has been or is being ill-treated, neglected or kept otherwise than under proper control

b) being unable to care for himself'

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The MHA

- **S135 subsection 2** allows a constable to enter premises to take or retake a person already detained under the MHA to a place of safety

- **S136**: enables a constable to remove a person found in a public place to a ‘place of safety’ if it is thought that they are suffering ‘from mental disorder and to be in immediate need of care or control’

The MHA

S136:

- *Duration*: 24 hours (extendable by 12 hours by the RMP) or until assessed by an RMP or AMHP
- The patient may move from one place of safety to another in this time
- *Purpose*: 'to permit assessment'

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Transfer between hospitals:

- Patients may be transferred if they are detained i.e.: this is allowed therefore by S4, 2 & 3 but not S5(2).

Detention in general hospital:

- There needs to be a RC in that hospital (which could occur via a service level agreement with the local MH hospital)
- A general hospital can receive patients on S17 leave and use S5(2)

Section 17 leave

S17 leave (leave of absence from hospital):

- Leave to detained patients which is granted by the RC
- Can be indefinite or for a specific time / occasion
- Does not apply to S5(2), 5(4), 135 and 136 for which leave cannot be granted or to forensic sections e.g.: S35, 36 and restriction orders etc
- If leave is long-term, CTO should be considered
- Only RCs can grant leave thus senior trainees cannot
- Only the RC can rescind leave, this must be in writing

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S18 (Returning of patients who are AWOL)

- S18 can be used for cases of: absence from hospital without S17 leave, CTO recalls and guardianships
- S18 does not apply if: absence is over 6 months or if detention has expired
- Patient may be brought back by hospital staff, an AMHP or police (S135 still required to enter private property)
- For S3, if patient has been absent >28 days, they must be examined by the RC within 7 days to record that ongoing detention is required (section lapses if this is not completed)

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Community Treatment orders

CTO

- To be consider if patient has a history of repeated admissions, failure to follow the care plan, taking into account the patient's attitude and insight to treatment.

- Can only be applied from S3 (not S2)

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CTO

Conditions:

- they make themselves available for examination by the RC or SOAD if they are required to take medication

- they make themselves available for examination by RC for renewal of the CTO

- Other conditions may be added e.g.: where they live, supervision, medication etc as long as the restrictions do not constitute a deprivation of liberty (see PJ's case and the Supreme Court decision)

- Conditions are necessary to ensure the patient receives treatment, prevent the risk of harm to self / others and is necessary to protect patient's heath and safety

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CTO

Recall to hospital:

- can only be done by RC
- can be considered if conditions are breeched or if patient requires medical treatment in hospital
- must be done in writing
- patient must immediately return to hospital if handed the recall - will be formally AWOL the next day if placed through letter box or on 2nd working day if posted 1st class

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The MHA

CTO

- May be recalled to any hospital
- Duration of up to 72 hours
- RC can cancel the recall at any time
- If detained under S2, CTO continues; under S3 CTO is cancelled

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CTO

Revocation

- If the patient requires admission for > 72 hours AND patient meets criteria for detention under a treatment order
- Treatment order starts again (i.e. 6/12)
- Requires RC and AMHP
- Requires ref to Tribunal

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Consent to Treatment

CTT (Part IV of the MHA)

- Includes use of medication, nursing, psychological intervention, specialist mental health rehabilitation and habilitation and care

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Part IV

- **S57:** covers neurosurgery for mental disorders and the surgical implantation of hormones to reduce male sex drive

- **S58** covers medication (after an initial 3 month period)

- **S58A** covers ECT and medication administered for ECT

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Section 58

Capacitous consenting patients: RC certifies the medication categories, max doses and route including 'prn' – completes the **T2** form

Capacitous refusing or incapacitous patients:

- SOAD certification of treatment is required (**T3**)
- SOAD may amend the treatment plan of the RC
- There is no appeal against the SOAD's treatment plan

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Section 58A (ECT):

- **ECT** requires capacitous consent or SOAD
- Cannot be given if capacitous refusal (except in an emergency under S62)
- SOAD authorisation for ECT required if patient lacks capacity. SOAD consults the written treatment plan, 2 professionals involved in the patient's treatment (not the RC) and examines the patient. Cannot override advanced directive or objection from court or health and welfare attorney.

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Section 62

- Can override the requirements for S58 or 58a
- Any RMP or AC who is a nurse prescriber may authorise this

- **Urgent means:**

- immediately necessary to save a patient's life;
- prevent a serious deterioration (mustn't be irreversible);
- to alleviate serious suffering
- is the minimum intervention to prevent the patient's behaving violently
- being a danger to themselves

The MHA

Section 63

- Medical treatment that does not require the patient's consent
- Broad definition of medical treatment (nursing, care, psychological treatment etc)
- Medical treatment can be given for the 'causes or consequences' of mental disorder being treated under the Act (S2, 3)
- Can also include e.g. medical treatment of a paracetamol OD

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Part IV and CTOs (medication for mental disorder)

- **CTO patients in the community** (after the 1st month in the community) require Part 4a certificate signed by RC if patient is capacitous and consenting or SOAD if incapacitous or not consenting

- SOAD authorisation required if patient becomes incapacitous (but can continue with the meds if consenting whilst waiting if stopping would cause serious suffering)

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Part IV and CTOs patients on recall:

No certificate required if <1/12 since start of CTO, otherwise:

- Capacitous and consenting, can be treated with authority of RC
- Capacitous and refusing or incapacitous: requires SOAD or S62 if urgent
- Incapacitous can be required to take medications from Part 4a

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Part IV and CTOs

- If a patient's CTO is revoked, so that the patient is once again detained in hospital for treatment, treatment can be given on the basis of a Part 4A certificate only until a section 58 or section 58A certificate can be arranged

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‘Forensic’ sections

Part III – Courts and Prisons

May be admitted to hospital under:

- **Pre-trial orders:** S35, 36
- **Post trial orders:** 37/41, 38
- **Transfer Orders:** 47/49, 48/49

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Part III

S35:

- Remand to hospital for report on accused's mental condition
- Duration 28 days, renewable up to 12 weeks
- Requires one 1 RMP to give evidence to the court
- Treatment: cannot give medication without consent
- Disposal: returns to court (cannot be moved, given leave or discharged)

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Part III

S36:

- Remand of accused (un-sentenced) prisoner to hospital for treatment
- Requires x 2 RMPs, 1 S12 approved
- Treatment can be given under Part IV
- RC cannot move, give leave or discharge
- Duration is 28 days and can be extended up to 12/52
- Disposal: return to court

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Part III

S37 (Treatment Order):

Like a S3 imposed after conviction instead of imprisonment

Restriction order (S41) may be imposed by the court and restrict discharge, movement, leave and can only be granted by the MOJ; often a 'conditional discharge' will be made

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Part III

S38 (Interim Hospital Order):

- Used following conviction and before sentencing, when it is likely but not totally clear that a S37 will be required
- Duration : 12/52 renewable to 12/12
- Disposal: return to court

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Part III

S47 (transfer of a sentenced prisoners to hospital):

- Transfer for treatment from prison to hospital of a person who is serving a sentence
- Inevitably with a S49 restriction (restricts discharge, leave)
- Prisoner returns to prison

S48 (transfer of an un-sentenced prisoners to hospital):

- Temporary transfer from prison for treatment when on remand (can be used only for prisoners in need of urgent treatment for mental illness or severe mental impairment)

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Reference:

- A Clinician's Brief Guide to the Mental Health Act, Tony Zigmond, RCPsych Publications
- Mental Health Act Manual, 21st Edition, Richard Jones
- The Maze A Practical Guide to the Mental Health Act 1983

Recommended reading:

- Code of Practice

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Any Questions?

Thank you….. MCQs next...

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MCQs

1. To prevent deprivation of liberty occurring:

A. There is no requirement to consider what restrictions are placed before entry into a care home
B. Involvement of advocacy services should be avoided
C. It is vital to consider all aspects of the care plan
D. There is no need to involve carers or relatives in planning care
E. Talk to the family

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MCQs

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C. It is vital to consider all aspects of the care plan
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E. Talk to the family

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MCQs

2. The deprivation of liberty safeguards:

A. Were introduced to prevent deprivation of liberty in a person's own home
B. Facilitate protection of people other than the relevant person from harm
C. A primary care trust may be responsible for providing the appropriate standard authorisation
D. The supervisory body issues an urgent deprivation of liberty authorisation
E. Can be used only in patients with cognitive impairment

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MCQs

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MCQs

3. The 2007 amendments to the Mental Health Act abolished the following classifications:

A. Mental illness
B. Psychopathic disorder
C. Mental impairment
D. Severe mental impairment
E. All of the above

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MCQs

3. The 2007 amendments to the Mental Health Act abolished the following classifications:

A. Mental illness
B. Psychopathic disorder
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MCQs

4. Under the amended Act, a patient can be detained if the following conditions for treatment are met

A. Treatment is legal
B. Treatment is offered by a psychiatrist
C. Treatment is available and appropriate
D. Treatment has an effect on risk
E. Treatment will cure the mental disorder

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MCQs

4. Under the amended Act, a patient can be detained if the following conditions for treatment are met

A. Treatment is legal
B. Treatment is offered by a psychiatrist
C. Treatment is available and appropriate
D. Treatment has an effect on risk
E. Treatment will cure the mental disorder

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MCQs

5. The provision in the amended Act that helps to uphold the human rights of a patient with personality disorder is:

A. Ease of discharge
B. Provision of statutory advocacy service
C. Right to refuse treatment if the patient possesses capacity
D. Regular contact with „nearest relative"
E. More frequent tribunal hearings

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MCQs

5. The provision in the amended Act that helps to uphold the human rights of a patient with personality disorder is:

A. Ease of discharge
B. Provision of statutory advocacy service
C. Right to refuse treatment if the patient possesses capacity
D. Regular contact with “nearest relative”
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Any Questions?

Thank you.