Mental Health Act 2007: Workbook

Section 12(2) Approved Doctors Module
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Introduction

About this workbook

This workbook is for those directly involved in the provision of mental health and learning disability services when fulfilling role as a doctor under section 12(2) of the Mental Health Act 1983 (the 1983 Act).

Its aim is to outline the changes made to the 1983 Act by the Mental Health Act 2007 (the 2007 Act) so as to equip approved doctors with the knowledge and understanding they need to perform their statutory functions under the legislation, and within the framework of the relevant secondary legislation.

The workbook is designed for use by experienced professionals, who have previously undertaken the role under section 12.

Except where noted otherwise in the workbook, these changes to the 1983 Act will come into force on 3 November 2008.

The material in this workbook is consistent with the workshop module and has been designed to provide support for those people who prefer to work on their own or are unable to attend a workshop session. It is important to recognise that it is not guidance and should not be used to inform legal decision making.

How to use the workbook

The workbook contains a series of practical activities designed to help you expand and apply your skills and knowledge of the law and practice as it now stands. It is important that you take time to do the activities as skill development depends on practice.

To gain the most benefit from this workbook:

- Allocate dedicated time to complete the workbook
- If possible, find somewhere quiet and without interruptions
- Ensure you have a copy of the Mental Health Act 1983 Code of Practice for Wales, the Mental Health (Hospital, Guardianship, Community Treatment and Consent to Treatment) (Wales) Regulations 2008, and the Mental Health Act 2007
- Discuss your answers with a colleague to ensure you have explored the relevant issues and you can relate it to your work as a hospital manager.
### Point to note

This module concentrates on the statutory roles and responsibilities of approved doctors as defined by section 12(2), including those that apply during the initial assessment and decision making stages prior to an application for admission to hospital or reception into guardianship being made.

There is a separate workbook for approved clinicians and responsible clinicians that considers the procedures and practices that apply once a patient has been initially detained under the Mental Health Act. You may have studied that module before embarking on this one; if so you will find that there are some sections of this workbook that re-examine material you have already studied. You may skip past these sections if you feel that you do not need to study them again.

Before studying either of these workbooks, you should have already completed the Core Module workbook. These materials build on the information which that contains.

### Module objectives

After studying this workbook you will be able to:

- Outline the roles and responsibilities of approved mental health professionals in the assessment process

- Identify factors to be taken into account when applications are made under sections 2, 3 and 4 of the Act

- Explain the changes to the rules governing admission for 16 and 17 year olds in relation to those with parental responsibility

- Explain about new powers to ‘take and convey’ under guardianship

- Explain that persons will be able to be transferred between places of safety, and consider implications for the assessment process.
Overview

Role of the approved doctor

The overall role of the 'approved doctor' remains broadly the same as it was before the amendments were introduced by the 2007 Act. You will be fully familiar with this role.

Medical recommendations continue to be required in support of an application for a patient's admission to hospital or an application for guardianship under Part 2 of the Mental Health Act 1983.

The principal changes for approved doctors brought about by the 2007 Act relate to the specific grounds on which such medical opinions must be based. This is covered in detail in this workbook.

Duties of the approved doctor

As you will already appreciate, then, the overall duties of a doctor acting under section 12 remain much as they were previously. Before moving on, let's briefly recap on those duties as they are set out in:

- Section 2 Admissions for Assessment
- Section 3 Admission for treatment
- Section 7 Guardianship.

In each of these cases, an application must be founded on the written recommendations of two registered medical practitioners, including in each case a statement that in the opinion of the practitioners the relevant conditions for the proposed action are complied with.

The specific conditions for action vary for each section; we will be looking at them in more detail shortly.

For all of these circumstances, section 12 of the Act sets out that of the medical recommendations given for the purposes of any such application:

- one must be given by a practitioner who has special experience in the diagnosis or treatment of mental disorder, and
- one should be given by a practitioner who has previous acquaintance with the patient.
Point to note

It is possible for one of the doctors providing the recommendations to satisfy both of these requirements simultaneously.

Under section 4 (Admission for assessment in cases of emergency), an emergency application may be founded on one medical recommendation. This should be given, if practicable, by a practitioner who has previous acquaintance with the patient.
**Provision of medical recommendations**

We will move on now to look in more detail at the roles and responsibilities of doctors when providing the medical recommendations in support of an application for admission or guardianship. We will be concentrating primarily on those parts of the process where arrangements and procedures have been changed by the 2007 Act.

We will also look at the part played by the approved mental health professional (AMHP) in this process, since their work and that of the doctors are so closely interlinked.

Approved doctors and AMHPs also need to be familiar with the *Mental Health (Hospital, Guardianship, Community Treatment, and Consent to Treatment) (Wales) Regulations 2008*.

**Point to note**

If you have already worked through the 'Core Module' and the 'Approved and Responsible Clinicians Module', you should find very little that is new to you in the concepts that underpin these responsibilities.

**Admission for assessment or for treatment**

An application for admission for assessment or for treatment may be made by either:

- the patient's nearest relative, or
- an AMHP.

We shall be looking in detail in this section at how this works when the application is made by the AMHP.

The basic process when the AMHP makes the application remains much as before. It can be summarised as follows:

- **Appointment of AMHP**
  
  Local Social Services Authorities (LSSAs) are responsible for approving and appointing professionals to act as AMHPs to receive referrals for undertaking assessments under the Act. By virtue of Regulations made under the 2007 Act (the *Mental Health (Approved Mental Health Professionals) (Wales) 2008*), the AMHP no longer has to be a registered social worker, but may now be drawn from a wider group of professionals (first level nurses, occupational therapists and psychologists in addition to social workers).
• **Medical recommendations**  
The two doctors (possibly just one in an emergency) undertake an assessment out of which may come a written recommendation for the person's admission.

• **AMHP assessment**  
On receipt of a referral, the AMHP will co-ordinate the assessment process and make an independent assessment to determine whether the grounds for detention under the 1983 Act are met.

• **AMHP application**  
If the AMHP considers that the grounds for detention are met and that detention in hospital is in all circumstances the best option for the patient, the AMHP may make an application to the managers of the relevant hospital. The AMHP may also, if appropriate, make an application for the reception of the patient into guardianship.

**Point to note**

You will appreciate that it is very much the role of the AMHP to organise and co-ordinate the whole process so that appropriate action is taken.
Case study 1: Alun

Let's move on to look at what all this means in practice. Rather than discussing things from an 'academic' viewpoint, we will work through a typical example of the type of case that you may be called on to handle in your role.

Read through the information about Alun and then work through the questions that you will find in the following section.

At the end of the section, you will find some feedback showing the correct answers together with some practical guidance.

Then you will progress to some more questions about the next stage in the process. And so on.

As you work through the questions, you may find that you need to consult the following reference materials:

- The Mental Health Act 1983 (as it has been amended by the Mental Health Act 2007)
- The Mental Health Act 1983 Code of Practice for Wales
- The Mental Health (Hospital, Guardianship, Community Treatment and Consent to Treatment) (Wales) Regulations 2008

Background details

Alun is a 45 year old single man who lives on his own in a housing association house on a large urban estate. He has no known recent history of significant mental health problems, but referrals have recently been made to the local community mental health team by his GP and by the housing association because of serious concerns about his mental health.

The picture emerging is that he has become increasingly reclusive and has rejected all contact with his family, neighbours and officials, although he still seems to be surviving in his own way. His property and garden are also in a state of increasing neglect. What has particularly focussed attention on Alun is that the housing association is upgrading the estate and he is the only tenant who is not cooperating with this process.
A support worker from the community mental health team responded to the referrals by trying to visit Alun but he would not open the door to her, and her only contact was through a closed window, with Alun signing he was “OK”. The support worker spoke to one of Alun’s sisters, Mrs Griffiths, who lives a short drive away and used to visit him weekly, until he refused contact with her. Mrs Griffiths was very concerned about Alun and expressed a view that he is mentally ill because he was acting out of character. The support worker has also spoken to Alun’s GP who too is concerned but was unsure what could be done because Alun was “choosing to be reclusive”.

The support worker became concerned that Alun’s well-being was being threatened by his own behaviour; that he was in effect becoming a danger to himself. Her concern became great enough for her to recommend that the community mental health team take further action and, specifically, that a formal mental health assessment be undertaken. She felt that this could provide a route to a solution that would help to deal with the risk that Alun was posing to himself. The LSSA arranged for an AMHP to consider Alun’s case on their behalf.

Alun continued refusing to co-operate with those who are trying to help him, and if he were to continue in this manner, it would have been difficult to make an assessment of him. The AMHP therefore decided as a first step to seek a magistrates warrant under section 135 of the Act to “search for and remove” Alun to “a place of safety” in order to assess whether he should be detained in hospital for assessment (under section 2) and then, if necessary, for treatment (under section 3).

**Stage 1 – Application for admission**

Alun has been removed to a place of safety (in fact, to hospital) where he may be detained for up to 72 hours for the purpose of enabling him to be examined by the registered medical practitioners and to be interviewed by the AMHP.
Activity

Consider the following questions, giving full explanations for your answers.

1. Do the examining doctors have to consult anyone else before making a recommendation?

2. What are the main issues that should be addressed by the doctors in deciding whether an application for admission is appropriate?
3. Following the amendments made by the 2007 Act, section 118(2D) of the 1983 Act requires that "In performing functions under this Act, persons ...shall have regard to the Code". Which of the Code's guiding principles do you think are most applicable to the examining doctors in Alun's case?

4. In considering Alun's case, what options for action under the 1983 Act are available? Which of those options do you consider is likely to be the most appropriate?
5. In considering an application for admission for assessment under section 2 of the 1983 Act, what are the criteria that would need to be met?

6. What are the criteria that would need to be met for Alun to be admitted to hospital under section 3 for treatment?
7. In terms of the criteria for admission under section 2 or section 3, how should the term 'mental disorder' be interpreted?

8. One of the grounds for admission under section 3 is that appropriate medical treatment must be available for the individual. Does this mean that a person may be admitted only if there is a probability that they can be treated successfully?
9. If the doctors decide that Alun's admission for assessment under section 2 is appropriate, how is this recorded?
Activity feedback

Here are the suggested answers. Check yours against them.

1. Do the examining doctors have to consult anyone else before making a recommendation?

You will already be aware that the examining doctors must come to an independent decision. However, that does not mean that the decision is taken in isolation. Effective communication and co-operation between the various parties is essential.

Chapter 2 of the Code of Practice for Wales makes it clear that at least one of the doctors undertaking the medical assessment should discuss the assessed needs of the patient with the applicant. In this case, this is the AMHP, but it could in some circumstances be the nearest relative.

If possible, it is recommended that both of the doctors should be involved in this consultation.

Clearly, the two doctors should also discuss the patient’s case with each other. Ideally, they would examine the patient together, but it may not always be practicable for them both to attend at the same time.

2. What are the main issues that should be addressed by the doctors in deciding whether an application for admission is appropriate?

Each doctor will make an independent judgement of:

- whether the statutory criteria for detention under the Act are met
- whether detention is necessary for further assessment and/or medical treatment in hospital (i.e. that informal admission would not be appropriate)
- relevant factors concerning the patient's situation
- whether a hospital place is available.

If satisfied on all these, the doctor will provide a recommendation setting out those aspects of the patient’s symptoms and behaviour on which that conclusion is based.
The Code of Practice for Wales sets out a number of the factors that the doctor(s) should take account of. These include:

- the patient's past and present wishes and feelings, including their view of their own needs
- the patient’s cultural background and social and family circumstances
- the nature of the mental disorder and its likely course
- other forms of potential care or treatment
- the needs of the patient’s carers, family and others with whom the patient lives
- the need for others to be protected from the patient
- the effect on the patient and those close to him/her of a decision whether to admit or not under the Act.

3. Following the amendments made by the 2007 Act, section 118(2D) of the 1983 Act requires that "In performing functions under this Act, persons ...shall have regard to the Code". Which of the Code’s guiding principles do you think are most applicable to the examining doctors in Alun’s case?

The doctors must have regard to the 'guiding principles' and, although all nine are important, it is useful to think about which may be most applicable in Alun's situation.

One of the principles is that patient well-being and safety should always be at the heart of decision-making. This then must be one of the main considerations.

It is also a principle that patients should be involved in the planning, development and delivery of their care and treatment to the fullest extent possible.

In this respect, the Code of Practice for Wales also sets out that due consideration must be given to "the patient’s past and present wishes and feelings, which includes the patient’s view of their own needs". In Alun's case, this becomes important because - on the face of it - he does not seem to believe that he needs any help.

It would seem that in this case weighing up Alun’s “wishes and feelings” on the one hand, and concerns for his “well-being and safety” on the other will be the most critical part of the process.
4. In considering Alun’s case, what options for action under the 1983 Act are available? Which of those options do you consider is likely to be the most appropriate?

Under the provisions of the Mental Health Act, there are four principal courses of action that are available.

- Section 2: Application for admission for assessment
- Section 3: Application for admission for treatment
- Section 4: Application for admission for assessment in cases of emergency
- Section 7: Application for guardianship.

These options are unchanged by the amendments made by the 2007 Act, although the criteria applying to them has changed slightly.

On balance, at the moment it would seem that the first of these - Application for admission for assessment - is likely to be the most appropriate.

At present, it is not clear whether Alun needs longer term hospitalisation for treatment. Neither does the case seem to present any element of urgency such that emergency procedures are justified.

5. In considering an application for admission for assessment under section 2 of the 1983 Act, what are the criteria that would need to be met?

Before supporting an application for a person to be detained under the Mental Health Act section 2, the doctor must be sure that both of the following criteria are met:

- The person is suffering from a mental disorder of a nature or degree which warrants their detention in hospital for assessment (or for assessment followed by medical treatment) for at least a limited period.
- The person needs to be detained in the interests of their own health or safety or with a view to the protection of other persons.

Clearly, the doctors have a particular responsibility for assessing whether the patient is suffering from mental disorder within the meaning of the Act, and for assessing its seriousness and the need for further assessment and/or medical treatment in hospital.
6. What are the criteria that would need to be met for Alun to be admitted to hospital under section 3 for treatment?

Before he could be detained for treatment under section 3, the doctor would have to be sure that in Alun's case all the following grounds are met:

• He is suffering from a mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment in hospital, and

• It is necessary for his own health or safety or for the protection of other persons that he should receive such treatment and it cannot be provided unless he is detained under this section, and

• Appropriate medical treatment is available for him.

7. In terms of the criteria for admission under section 2 or section 3, how should the term 'mental disorder' be interpreted?

The legislation defines mental disorder as 'any disorder or disability of the mind'. Clearly this definition would include clinically recognised mental illnesses. It would also, for example, encompass forms of personality disorder.

8. One of the grounds for admission under section 3 is that "appropriate medical treatment" must be available for the individual. Does this mean that a person may be admitted only if there is a probability that they can be treated successfully?

No, it does not. The appropriate medical treatment test is a new addition to the grounds for detention under the 1983 Act, introduced by the 2007 Act.

This replaces the previously used 'treatability' test. The treatability test required the decision-makers to determine whether medical treatment was 'likely to alleviate or prevent deterioration in the patient's condition'.

This requirement no longer applies, so the potential outcome of the treatment is no longer an issue in the decision making process.
9. If the doctors decide that Alun's admission for assessment under section 2 is appropriate, how is this recorded?

There are statutory forms for this purpose, according to whether the recommendation is made jointly by two doctors or otherwise.

The doctor(s) complete the relevant form(s) and it is given to the AMHP.

Amongst other things, the form contains a declaration by the doctor(s) that:

- The patient is suffering from mental disorder of a nature or degree which warrants detention in hospital for assessment

- The patient should be detained:
  - in the interests of their own health, or
  - in the interests of their own safety, or
  - with a view to the protection of others.

- That informal admission is not appropriate.

**Signpost**

There are new statutory forms brought in by the *Mental Health (Hospital, Guardianship, Community Treatment and Consent to Treatment) (Wales) Regulations 2008* that will be used by approved doctors. It would be worthwhile when you have the opportunity to locate the relevant statutory forms, in particular those to be used for recording medical recommendations. Take a few moments to read through them and familiarise yourself with the contents.

Similarly, there are new forms for use in applications for admission for treatment and for guardianship. The AMHP then can complete an application for admission for assessment and send it to the managers of the appropriate hospital.
**Admission process - summary**

Let us now take a few minutes to recap on the information we have drawn out about the roles of the doctors (and the AMHP) in the admission process.

**Responsibilities of the doctors**

The two doctors (possibly just one in an emergency) undertake an assessment out of which may come written recommendations for the person's admission.

At least one of the doctors undertaking the medical assessment should discuss the assessed needs of the patient with the applicant (usually the AMHP).

Each doctor will make an independent judgement of:

- whether the statutory criteria for detention under the Act are met
- whether detention is necessary for further assessment and/or medical treatment in hospital (i.e. that informal admission would not be appropriate)
- factors concerning the patient's situation
- whether a hospital place is available
- Once the doctors have come to a decision that it would be appropriate to make a recommendation for compulsory measures, the report should be made on the appropriate statutory form.

**Responsibilities of the AMHP in the assessment**

The AMHP who is assessing a patient for possible admission under the Act has overall responsibility for coordinating the process of assessment and, where he or she decides to make an application, for implementing that decision.

You will already be aware that amongst other things, the AMHP must:

- identify him/herself to other parties
- interview the patient in a suitable manner
- identify the patient’s nearest relative
- consult with others who have been involved with the patient's care
- make an independent decision on whether to apply for compulsory admission.
Point to note

There is no obligation on an AMHP to make an application for admission just because the statutory criteria are met. The duty arises only if the AMHP is satisfied that such an application should be made.
Grounds for detention

In the previous section, we touched on (and briefly ran through) the criteria for detention under the 1983 Act. As an experienced professional you will already be familiar with the principles that underpin these grounds.

However, it is important to recognise that following the 2007 Act there are some significant changes. It will be worthwhile to spend a few minutes to look at them in a little more detail.

Signpost

If you have already worked through the workbook for "Approved Clinicians and Responsible Clinicians", you will have covered these changes in some detail. Unless you wish to refresh your memory, you may omit the next section and proceed direct to page 26.

What is new in these criteria?

The main changes to the 1983 Act made by the 2007 Act are:

- Definition of mental disorder:
  The legislation now defines mental disorder as 'any disorder or disability of the mind'. This new definition provides a single, simplified definition rather than specifying categories of disorder.

- Criteria for detention:
  If patients are to be detained for treatment under section 3 and related sections of Part 3, there is an important addition to the criteria that 'appropriate medical treatment' must be available.

  This means that a patient may be compulsorily detained (or have their detention renewed) only if medical treatment is available for them which is appropriate taking into account the nature and degree of their mental disorder and all the other circumstances of their case.
  At the same time, the so-called 'treatability test' has been abolished.

We will look in a little more detail at what each of these means in practice.
Definition of mental disorder

The definition of mental disorder has been amended to 'any disorder or disability of the mind'. This new definition provides a single, simple definition rather than specifying categories of disorder.

So what does qualify as mental disorder?

- Clearly this definition would include clinically recognised mental illnesses such as schizophrenia, bipolar disorder, anxiety or depression, as well as personality disorders, eating disorders, autistic spectrum disorders and learning disabilities
- It would also, for example, encompass forms of personality disorder
- Disabilities of the brain would not be classified as mental disorders unless they give rise to a disability or disorder of the mind as well.

This simplified definition means that some people who would not previously have 'qualified' now may fall within the definition.

Point to note

The fact that a person suffers from a mental disorder does not, of itself, mean that any action can or should be taken in respect of them.

Action can be taken only where all the relevant criteria are met.

Exclusions from the operation of the Act

Learning disability

A person may not be considered to be suffering from a mental disorder solely as a result of having a learning disability, unless that disability is associated with abnormally aggressive or seriously irresponsible conduct.

Point to note

The wording is very explicit that any abnormally aggressive or seriously irresponsible conduct must be associated with a learning disability. It does not have to be caused by the learning disability.
Drug or alcohol dependence

The legislation contains an important exclusion stating that 'dependence on alcohol or drugs is not considered to be a disorder or disability of the mind'.

This is important because dependence on alcohol and drugs is generally regarded clinically as a mental disorder. However, under the wording of the exclusion, no action can be taken under the Act simply because a person is dependent on alcohol or drugs.

Point to note

This does not mean that such people are excluded entirely from the scope of the 1983 Act. A person who is dependent on alcohol or drugs may also suffer from another mental disorder which warrants action, sometimes arising as a direct result of such dependency, which will mean that they may be made subject to compulsion under the 1983 Act.

'Appropriate medical treatment' for the patient

Overview

As we have seen, before a person can be subject to powers of detention under section 3 of the Act, the following three grounds must be met:

- The patient must be suffering from mental disorder which makes it appropriate for him to receive medical treatment in hospital
- It is necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment and it cannot be provided unless he is detained
- Appropriate medical treatment is available.

The latter of these - the 'appropriate medical treatment test' - is a new addition to the grounds for detention under the 1983 Act, introduced by the 2007 Act.

This new test replaces the previously used 'treatability' test. The treatability test required the decision-makers to determine whether medical treatment was 'likely to alleviate or prevent deterioration in the patient's condition'. This requirement no longer applies.

Point to note

The appropriate medical treatment test does not apply to section 2 of the 1983 Act (admission for assessment).
To understand clearly what this new test means to you when fulfilling your role as a section 12 doctor, there are three questions to which you need to know the answers:

1. **What is meant by 'appropriate'?**

Section 3(4) of the Act sets this out quite explicitly:

'*In this Act, references to appropriate medical treatment, in relation to a person suffering from mental disorder, are references to medical treatment which is appropriate in his case, taking into account the nature and degree of the mental disorder and all other circumstances of his case.*'

It is perhaps worth pointing out that this wording does not indicate that such treatment has to be the most appropriate treatment. That a treatment is simply appropriate will be enough to satisfy the requirement.

2. **What is meant by 'medical treatment'?**

There are two factors to consider:

- **Types of treatment**
  
  The definition of medical treatment in section 145 of the Act reads:

  *'Medical treatment includes nursing, psychological intervention and specialist mental health habilitation, rehabilitation and care.'*

  This definition covers medical treatment in its normal sense as well as the other forms of treatment mentioned.

- **Purpose of treatment**

  The legislation also stipulates that medical treatment *'shall be construed as a reference to medical treatment the purpose of which is to alleviate, or prevent a worsening of, the disorder or one or more of its symptoms or manifestations.'*

  **Point to note**

  An important factor here is that this is about the purpose of the treatment, rather than being about its likely outcome (as was the case in the previous 'treatability' test).

3. **What is meant by 'available'?**

Finally, the test requires that appropriate treatment is actually available for the patient. It is not enough that appropriate treatment exists in theory for the patient's condition.
When making a recommendation for admission for treatment, the doctors will be expected to indicate at which hospital or hospitals such appropriate medical treatment will be available for the patient.

Overall then, as an examining doctor, you will need to be sure that any recommendations that you make take full account of these revisions to the criteria for detention.
Conflicts of interest

The 2007 Act introduces a new section 12A to the 1983 Act which deals with conflicts of interest and enables further provision to be made by regulations. The purpose of this is to avoid a situation which compromises (or could be seen to compromise) the objectivity or independence of the decision making process.

These provisions are discussed at some length in the Approved Clinicians and Responsible Clinicians Module, but given that they relate to the role of approved doctors for the purposes of undertaking assessment and making recommendations, it will be worthwhile for us to recap briefly on the Mental Health (Conflicts of Interest) (Wales) Regulations 2008 (“the Conflicts Regulations”), which set out circumstances in which potential conflicts will arise.

You must always bear in mind that section 12(3) specifies quite clearly that "No medical recommendation shall be given for the purposes of an application ...if the circumstances are such that there would be a potential conflict of interest for the purposes of regulations under section 12A".

There are various situations which might give rise to a conflict of interest.

Work relationships

The Conflicts Regulations provide that an assessor (which includes a section 12 doctor) has a potential conflict of interest where he or she is working in a direct line management relationship with another assessor.

There will also be a conflict of interest if all three assessors (i.e. both doctors and the AMHP) come from the same team, and work together for clinical purposes on a routine basis.

In these circumstances a maximum of two of the assessors may come from the same team. This will mean that an alternate third assessor must be sought.

Where the nearest relative is making an application for admission to hospital, the medical practitioners should not be under the immediate direction of, or in the employment of, the nearest relative. Similarly they may not make a recommendation if they employ the nearest relative, or have them work under their direction.

There may also be potential for conflict of interest in situations where assessors have professional relationships with each other that are not line management relationships.
Financial reasons

The Conflicts Regulations provide that an assessor will have a conflict of interest if he or she stands to make financial gain from whether or not they make an application or provide a medical recommendation.

Point to note

This does not apply to the payment of any fee paid to a doctor for the purposes of considering whether to make a recommendation in consequence.

Related individuals

If an assessor is related to another assessor, the patient or the patient’s nearest relative, that assessor should withdraw from the application process.

The Conflicts Regulations set out the nature of the personal relationships where this applies.

Other circumstances

There may be circumstances not covered by the conflicts regulations where the doctor nonetheless feels that there is (or there could be perceived to be) a potential conflict of interest. If this is the case, they should consider withdrawing from the application process. Chapter 3 of the Code of Practice for Wales explores these other circumstances in more detail.
Places of safety

Movement of a person to or between places of safety

The 1983 Act provides for various situations in which a person may be moved to a place of safety, but two changes have been introduced by the 2007 Act. As a doctor approved under section 12 you will need to have an understanding of these as they can have an impact on the assessment process.

Point to note

It is the ability to transfer a person from one place of safety to another that is new in the 2007 amendments.

Powers to remove

Section 135:
Warrant to search for and remove patients

Powers of entry under section 135(1) or (2) may only be exercised by a warrant, and are used by a police constable (in effect any police officer) when the AMHP believes it is necessary to gain access to a mentally disordered person who is not in a public place and, if necessary, remove them to a place of safety.

In executing a warrant under section 135(1), the police officer must be accompanied by an AMHP and a doctor.

Where the warrant is for a patient who is liable to detention or recall, the police officer may be accompanied by a doctor and/or by any person authorised under the Act to take or retake the patient. It is good practice for the police officer to be accompanied by the patient’s responsible clinician.

Point to note

In such cases, it is in reality the AMHP rather than the police who takes the lead. The AMHP will secure the warrant from the magistrate; the police (and the doctor) then accompany the AMHP to execute it.
Section 136: Mentally disordered persons found in public places

Section 136 allows for the removal to a place of safety of any person found in a place to which the public have access, who appears to a police officer to be suffering from mental disorder and to be in immediate need of care or control.

Removal to a place of safety may take place if the police officer believes it necessary in the interests of that person, or for the protection of others.

The purpose of removing a person to a place of safety in these circumstances is to enable examination by a doctor and for an interview by an AMHP. The purpose of the examination and interview is to ensure any necessary arrangements are made for the person’s care and treatment.

When the examination has been completed within the 72 hour detention period, or if the doctor has concluded that the person is not mentally disordered, the authority to detain the patient ceases.

What is an appropriate place of safety?

In identifying the most appropriate place of safety, consideration must be given to the availability and appropriateness of facilities, depending on each individual circumstance.

A person thought to be suffering from mental disorder should be detained in a hospital if possible. Only in exceptional cases would a police station be the most appropriate environment for them to be examined for the purpose of considering whether an application for detention under the 1983 Act should be made.

Every effort must be made to ensure that a police station is only used where it is absolutely necessary to provide short-term containment. This may be, for example, where the person is considered too violent for the available hospital, or poses a high risk to others patients or staff.

Transfer

The Act allows for the patient to be taken to one or more places of safety before the end of the 72-hour period.

The person may be taken to the second or subsequent places of safety by a police officer, an AMHP or a person authorised by either the police officer or the AMHP.
Power to 'take and convey' for guardianship

A new subsection (7) of section 18 provides that a reference to a patient's being 'returned' to a place where they are required to be, includes provision for the patient to be taken there for the first time.

This change covers all patients under the 1983 Act, including those subject to guardianship.

Point to note

From a practical viewpoint, this can have a bearing on the judgement as to whether guardianship is appropriate. Under the previous arrangements, if it was impractical to take and convey the person to the place they were required to reside in the first instance, there might be little value in seeking guardianship.
Informal admission of patients aged 16 or 17

The 2007 Act has made some new provisions for the treatment of young people.

In particular, changes have been made to the rules governing the informal admission of patients aged 16 or 17 years to hospital or registered establishment for treatment for mental disorder.

Where such patients have the capacity to consent to the making of such arrangements, they may consent or refuse consent, and their decision cannot be overridden by a person with parental responsibility for them.

This means that:

- If the patient consents, he/she can be admitted to hospital and their consent cannot be overridden by a person with parental responsibility refusing to consent to admission
- If the patient does not consent, he/she cannot be informally admitted on the basis of consent from a person with parental responsibility.

In the latter case, the young person could nevertheless be admitted to hospital against his/her wishes for compulsory treatment, provided of course that the person meets the relevant grounds.

Point to note

This provision has been in force since 1 January 2008.
Final Quiz

You have now completed this workbook.

Before leaving this topic completely, here are some questions to help you check how much you have learned from your studies.

Here are some questions for you. In each case you should mark all of the options that apply with a 'tick'. Put a 'cross' against the options that are not appropriate.

<table>
<thead>
<tr>
<th>Question</th>
<th>True?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Before an application for admission to hospital for treatment under section 3 of the 1983 Act may be made by the AMHP, which of the following criteria must be met?</td>
<td></td>
</tr>
<tr>
<td>The person is suffering from a mental disorder of a nature or degree which makes it appropriate for them to receive medical treatment in hospital.</td>
<td></td>
</tr>
<tr>
<td>It is necessary for the person's own health or safety or for the protection of other persons that he or she should receive such treatment.</td>
<td></td>
</tr>
<tr>
<td>It will facilitate the provision of the treatment if the person is detained in hospital.</td>
<td></td>
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<tr>
<td>2. Which of the following statements are true in respect of the medical recommendations given for the purposes of admission under sections 2 or 3 of the 1983 Act?</td>
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<tr>
<td>One of the medical recommendations must be given by a practitioner who has special experience in the diagnosis or treatment of mental disorder.</td>
<td></td>
</tr>
<tr>
<td>One of the medical recommendations must be given by a practitioner who has not had any previous acquaintance with the patient.</td>
<td></td>
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<td></td>
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</table>
3. Which of the following would need to be true to satisfy the 'appropriate medical treatment test'?
   - The treatment proposed must take account of the nature and degree of the patient's mental disorder.
   - The treatment proposed must be actually available to the patient.
   - The treatment proposed must be likely to alleviate or prevent deterioration in the patient's condition.

4. When considering admission for assessment under section 2 of the 1983 Act, which of the following should the examining doctors be prepared to certify?
   - The patient is suffering from mental disorder of a nature or degree which warrants detention in hospital for assessment.
   - The patient should be detained in the interests of their own health, or safety, or with a view to the protection of others
   - That informal admission is not appropriate

5. Which of the following would be classed as a 'conflict of interest' where a doctor approved under section 12(2) of the 1983 Act is examining an individual with a view to considering providing a medical recommendation?
   - The doctor is related to the individual's nearest relative.
   - The doctor will receive a fee for examining the individual for the purposes of considering whether to make a recommendation.
   - The doctor is working in a direct line management relationship with another assessor.
6. Which of the following statements are true where an individual has been removed to a place of safety under sections 135 or 136 of the 1983 Act?

- The patient may be detained only for a maximum of 48 hours.

- A police station should only be used as a place of safety in exceptional circumstances.

- The patient may be transferred between places of safety during the period of detention.
Final Quiz - Feedback

Here are the suggested answers. Check yours against them.

<table>
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<td>✔</td>
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<tr>
<td>treatment.</td>
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<tr>
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<td>❌</td>
</tr>
<tr>
<td>detained in hospital.</td>
<td></td>
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</table>

The specific requirement is that "treatment cannot be provided unless the person is detained" under section 3 of the Act. The doctor making the recommendation will be expected to explain why this is so. In addition, appropriate medical treatment must be available for the person.

2. Which of the following statements are true in respect of the medical recommendations given for the purposes of admission under sections 2 or 3 of the 1983 Act?

   One of the medical recommendations must be given by a practitioner who has special experience in the diagnosis or treatment of mental disorder. ✔    ❌

   One of the medical recommendations must be given by a practitioner who has not had any previous acquaintance with the patient. ❌    ✔

   One of the medical recommendations should be given by a practitioner who has previous acquaintance with the patient. ✔

One of the medical recommendations must be given by a practitioner who has special experience, and one of the medical recommendations must be given by a practitioner who has special experience. It is possible for either one of the doctors providing the recommendations to satisfy both of the above requirements simultaneously.
3. Which of the following would need to be true to satisfy the 'appropriate medical treatment test'?

- The treatment proposed must take account of the nature and degree of the patient's mental disorder.
- The treatment proposed must be actually available to the patient.
- The treatment proposed must be likely to alleviate or prevent deterioration in the patient's condition.

The test requires that treatment be "appropriate in the patient's case, taking into account the nature and degree of the mental disorder and all other circumstances of his case".

The Act does stipulate that 'medical treatment' "shall be construed as a reference to medical treatment the purpose of which is to alleviate, or prevent a worsening of, the disorder or one or more of its symptoms or manifestations." This wording is very specifically about the purpose of the treatment, rather than being about its likely outcome.

4. When considering admission for assessment under section 2 of the 1983 Act, which of the following should the examining doctors be prepared to certify?

- The patient is suffering from mental disorder of a nature or degree which warrants detention in hospital for assessment.
- The patient should be detained in the interests of their own health, or safety, or with a view to the protection of others.
- That informal admission is not appropriate.

The doctors should satisfy themselves that all of these apply; the relevant statutory forms contain a declaration to this effect.
5. Which of the following would be classed as a 'conflict of interest' where a doctor approved under section 12(2) of the 1983 Act is examining an individual with a view to considering providing a medical recommendation?

- The doctor is related to the individual's nearest relative.  
  - ✓

- The doctor will receive a fee for examining the individual for the purposes of considering whether to make a recommendation.  
  - ✗

- The doctor is working in a direct line management relationship with another assessor.  
  - ✓

The conflicts regulations provide that any assessor will have a conflict of interest if he or she stands to make financial gain from whether or not they make an application or provide a medical recommendation. However, this does not apply to the payment of any fee paid to a doctor for the purposes of considering whether to make a recommendation.

6. Which of the following statements are true where an individual has been removed to a place of safety under sections 135 or 136 of the 1983 Act?

- The person may be detained only for a maximum of 48 hours.  
  - ✗

- A police station should only be used as a place of safety in exceptional circumstances.  
  - ✓

- The patient may be transferred between places of safety during the period of detention.  
  - ✓

The patient may be detained for a maximum of 72 hours. The Act allows for the patient to be taken to one or more places of safety before the end of the 72 hour period.

Only in exceptional cases would a police station be the most appropriate environment for the person to be examined and assessed.