Implementing the Mental Health Act 2007

Forensic Faculty Annual Residential Meeting 2009

Dr Frank Holloway

South London and Maudsley NHS Foundation Trust
Chair Rehabilitation and Social Psychiatry Faculty
Implementing the Mental Health Act 2007

or

On being a small cog in a very large machine
Implementing the Mental Health Act 2007

- Health warning
- The legislation and after
- Media
- Implementation: actors and actions
- Oddities/Succesess/Reflections
Implementing the Mental Health Act 2007

Health warning!

- Local role in Mental Health Act training
- Member of the MHA Implementation Group for the Trust
- Member of National Advisory Group for S12 Training
- Now involved in Approved Clinician training
- Not a lawyer or a Forensic Psychiatrist
- Strong views about the rights and wrongs of the MHA 2007: but these are irrelevant!
Implementing the Mental Health Act 2007

The legislation and after

Mental Health Act (2007) received Royal Assent on 19th July 2007

Implementation timescale initially unclear

Bulk of the Act came into force on 3rd Nov 2008

We still await implementation of:
- Deprivation of Liberty Safeguards
- Independent Mental Health Act Advocates

Due April 2009
Implementing the Mental Health Act 2007
Implementing the Mental Health Act 2007

The legislation and after...

**MHA 2007 amends MHA 1983:**
- Multiple changes including: broad definition of mental disorder;
- appropriate treatment test; “new roles”;
- SCT/CTO...

**MHA 2007 amends MCA 2005:**
- Deprivation of Liberty Safeguards
Implementing the Mental Health Act 2007
The legislation and after...

Oct 2007

- Mental Health (Hospital, Guardianship and Treatment) Regulations 2008;
- Mental Health Act 1983 (Independent Mental Health Advocates) Regulations 2008;
- Mental Health (Approval of Persons to be Approved Mental Health Professionals) (England) Regulations 2008;
- Mental Health Act 1983 (Approved Clinician) Directions 2008;
- Mental Health (Conflicts of Interest) (England) Regulations 2008;
- Mental Health (Mutual Recognition) (England and Wales) Regulations 2008;
- Mental Health Act 2007 (Commencement No [to be inserted] and After-care under Supervision: Savings, Modifications and Transitional Provisions) Order 2008; and
The legislation and after...

Statutory instruments...

<table>
<thead>
<tr>
<th>Regulations, Directions and Commencement Orders</th>
</tr>
</thead>
<tbody>
<tr>
<td>Signed 7th May 2008</td>
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<tr>
<td>Laid before Parliament 7th May 2008</td>
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<tr>
<td>Laid before Parliament 16th Dec 2008</td>
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</tbody>
</table>

Approved Clinician role

Conflicts of Interest

Wording of the new forms

IMHAs
The legislation and after...
Reference guide to the Mental Health Act 1983

Implementation of the Mental Health Act 2007

Transitional Arrangements

Prepared by: Mental Health Act Implementation Team, Department of Health

Mental Health Act 2007

Guidance on the extension of victims’ rights under the Domestic Violence, Crime and Victims Act 2004

Mental Health Act 2007 (Commencement No. 5 and Transitional Provisions) Order 2008 – guidance on transfers between places of safety

SECTIONS 135 AND 136 OF THE MENTAL HEALTH ACT 1983
Media supporting implementation

Generic material

Workbook to Support Implementation of the Mental Health Act 1983
Brief Workbook to Support Implementation of the Mental Health Act 2007

SCT/CTO
New roles
IMHA

From NIMHE/CSIP

A must-read
Update: 9.10.08

Forms will be available to pre-order from Monday 13 October.

They will be despatched from the following Monday (20 October).

The regulations to correct a few mistakes in the forms included in the original regulations have now been laid. They are at:

# Reference Guide to MHA 2007

## Appendix A

### List of statutory forms

<table>
<thead>
<tr>
<th>Form</th>
<th>Purpose</th>
<th>Regulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>A1</td>
<td>Section 2 – application by nearest relative for admission for assessment</td>
<td>41(1)(6)(B)</td>
</tr>
<tr>
<td>A2</td>
<td>Section 2 – application by an approved mental health professional for admission for assessment</td>
<td>41(1)(6)(H)</td>
</tr>
<tr>
<td>A3</td>
<td>Section 2 – joint medical recommendation for admission for assessment</td>
<td>41(1)(6)(Q)</td>
</tr>
<tr>
<td>A4</td>
<td>Section 2 – medical recommendation for admission for assessment</td>
<td>41(1)(6)(X)(X)</td>
</tr>
<tr>
<td>A5</td>
<td>Section 3 – application by nearest relative for admission for treatment</td>
<td>41(1)(6)(S)</td>
</tr>
<tr>
<td>A6</td>
<td>Section 3 – application by an approved mental health professional for admission for treatment</td>
<td>41(1)(6)(Q)</td>
</tr>
<tr>
<td>A7</td>
<td>Section 3 – joint medical recommendation for admission for treatment</td>
<td>41(1)(6)(Q)</td>
</tr>
<tr>
<td>A8</td>
<td>Section 3 – medical recommendation for admission for treatment</td>
<td>41(1)(6)(X)(X)</td>
</tr>
<tr>
<td>A9</td>
<td>Section 4 – emergency application by nearest relative for admission for assessment</td>
<td>41(1)(6)(H)</td>
</tr>
<tr>
<td>A10</td>
<td>Section 4 – emergency application by an approved mental health professional for admission for assessment</td>
<td>41(1)(6)(H)</td>
</tr>
<tr>
<td>A11</td>
<td>Section 4 – medical recommendation for emergency admission for assessment</td>
<td>41(1)(7)(F)</td>
</tr>
<tr>
<td>H1</td>
<td>Section 5(2)(i) – report on hospital in-patient</td>
<td>41(1)(g)</td>
</tr>
<tr>
<td>H2</td>
<td>Section 9(4)(i) – record at hospital in-patient</td>
<td>41(1)(j)</td>
</tr>
<tr>
<td>H3</td>
<td>Sections 2, 3, and 4 – record of detention in hospital</td>
<td>44(4) and (5)</td>
</tr>
<tr>
<td>H4</td>
<td>Section 19 – authority for transfer from one hospital to another under different managers</td>
<td>7(2)(a) and 7(3)</td>
</tr>
<tr>
<td>H5</td>
<td>Section 20 – renewal of authority for detention</td>
<td>13(1), (2) and (3)</td>
</tr>
<tr>
<td>H6</td>
<td>Section 21B – authority for detention after absence without leave for more than 28 days</td>
<td>14(1)(X)(a) and (b)</td>
</tr>
<tr>
<td>G1</td>
<td>Section 7 – guardianship application by nearest relative</td>
<td>5(1)(a)(B) and (1)(B)</td>
</tr>
<tr>
<td>G2</td>
<td>Section 7 – guardianship application by an approved mental health professional</td>
<td>5(1)(a)(B) and (1)(B)</td>
</tr>
<tr>
<td>G3</td>
<td>Section 7 – joint medical recommendation for reception into guardianship</td>
<td>5(1)(a)(6)</td>
</tr>
</tbody>
</table>

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**Form G4** Section 7 – medical recommendation for reception into guardianship

**Regulation 5(1)(a)(5)****

**Form G5** Section 7 – record of acceptance of guardianship application

**Regulation 5(2)****

**Form G6** Section 19 – authority for transfer from hospital to guardianship

**Regulation 7(4)(a), (b) and (c)****

**Form G7** Section 19 – authority for transfer of a patient from the guardianship of one guardian to another

**Regulation 8(1)(a), (c) and (d)****

**Form G8** Section 19 – authority to transfer from guardianship to hospital

**Regulation 8(2) and (4)****

**Form G9** Section 20 – removal of authority for guardianship

**Regulation 13(4) and (5)****

**Form G10** Section 21B – authority for guardianship after absence without leave for more than 28 days

**Regulation 14(2)(a) and (b)****

**Form M1** Part 6 – date of reception of a patient in England

**Regulation 15(2), 15(3)(a) and (b)****

**Form M2** Section 25 – report barring discharge by nearest relative

**Regulation 25(1)(a) and (b)****

**Form T1** Section 37 – certificate of consent to treatment and second opinion

**Regulation 27(1)(a)****

**Form T2** Section 38D(a) – certificate of consent to treatment

**Regulation 27(2)****

**Form T3** Section 38D(b) – certificate of second opinion

**Regulation 27(3)****

**Form T4** Section 38A – certificate of consent to treatment (patients at least 18 years old)

**Regulation 27(3)(b)****

**Form T5** Section 38A(b) – certificate of consent to treatment and second opinion (patients under 18)

**Regulation 27(3)(b)****

**Form T6** Section 38A(c) – certificate of second opinion (patients who are not capable of understanding the nature, purpose, and likely effects of the treatment)

**Regulation 27(3)(b)****

**Form CTO1** Section 17A – community treatment order

**Regulation 6(1)(a) and (b) and 6(2)(a)****

**Form CTO2** Section 17B – variation of conditions of a community treatment order

**Regulation 6(2)(b)****

**Form CTO3** Section 17E – community treatment order, notice of recall to hospital

**Regulation 6(3)(a)****

**Form CTO4** Section 17E – community treatment order, record of patient’s detention in hospital after recall

**Regulation 6(3)(b)****

**Form CTO5** Section 17F(a) – revocation of community treatment order

**Regulation 6(3)(a) and (b)****

**Form CTO6** Section 20A – authority for transfer of recalled community patient to a hospital under different manager

**Regulation 9(2)(a) and (5)****

**Form CTO7** Section 20A – community treatment order, report extending community treatment period

**Regulation 13(6)(a) and (b) and 13(7)****

**Form CTO8** Section 21B – authority for extension of community treatment period after absence without leave for more than 28 days

**Regulation 14(3)(a) and (b)****

**Form CTO9** Part 6 – community patients transferred to England

**Regulation 16(4) and (5)****

**Form CTO10** Section 4A – authority for assignment of responsibility for community patient to a hospital under different managers

**Regulation 17(3)(a) and (b) and (d)****

**Form CTO11** Section 64C(a) – certificate of appropriateness of treatment to be given to community patient (Part 4A certificate)

**Regulation 28(1)****
Media supporting implementation

**Statutory Forms**

- A 1-11 Admission
- H 1-6 Hospital
- T 1-6 Treatment Provisions (Pt 4)
- CTO 1-11 Community Treatment Orders
- G 1-10 Guardianship
- M 1-2 Miscellaneous
Media supporting implementation

Textbooks
Implementing the Mental Health Act 2007

Implementation: actors and actions

- Parliament
- Department of Health
- NIMHE/CSIP
- SHAs
- Trusts
- LSSAs
- MHRT
- MHAC
- Training providers (not discussed)
Parliament

- Regulations
- Directions
- Commencement Orders
- Codes of Practice
Department of Health

- Developed the legislation
- Overview of implementation (?)
- Produced Codes of Practice and Reference Guide
- Commissioned NIMHE/CSIP
NIMHE/CSIP

This is a list of the key deliverables and activities the NIMHE Implementation Programme has been commissioned to undertake by the Department of Health. This work involves all the regions and workstreams of the Programme and until the end of the programme.

National Service User & Carer (SUOS) Group - Monthly
Regional Implementation Steering Group meetings – Monthly
Publish regular Update bulletin – Ongoing
Stakeholder Awareness – Ongoing
Develop and support shared action plans with SHAs - Feb 08
Commissioning Strategy for Independent Mental Health Advocacy – Mar 08
Supervised Community Treatment (SCT), Model for planning - April 08
Independent Mental Health Advocacy – Good Practice Guide (Web based resource) – April 08
Recruit national trainers – April 08
Develop training materials for Independent Mental Health Advocates – May 08
SCT Practitioner Guide – June 08
Best Practice Guidance Sec135/ 136 – July 08
Process re-engineering Mental Health Review Tribunal (MHRT) Appeals process – July 08
New guidance re MHRT booking procedures – July 08
Mental Health Act Administrators Guidance Tool – August 08
Collate National ‘Implementation Self Assessment Tool’ results to inform planning – August 08
Independent Mental Health Advocate, National Advocacy Qualification – Sept 08
Develop a system of monitoring Independent Mental Health Advocates services – Sept 08
Publish New Roles Guidance - Oct 08
Evaluate effectiveness of programme of implementation - Dec 08
Work to support the introduction of Independent Mental Health Advocates and age-appropriate accommodation/environments will continue beyond November 2008.
DH/NIMHE/CSIP

National Advisory Groups for Approved Clinician and Section 12 roles

NIMHE/CSIP

Training materials
ISAT
Supporting “new roles” pilots
Strategic Health Authorities

Clear responsibilities under MHA 2007 in relation to the Approved Clinician role:

- Hold a list of Approved Clinicians transitioned across
- Approve new Approved Clinicians
- Approve AC Training Courses

Very patchy uptake of these responsibilities though situation now stabilising
Mental Health Act 2007 – IMPLEMENTATION SELF ASSESSMENT TOOL (ISAT):

A self assessment tool for NHS Trusts, Foundation Trusts, Primary Care Trusts and independent sector (private and voluntary) hospitals and Local Authorities to support implementation of reforms to the mental health legislation.

The ISAT will be of most interest to organizations providing services to patients detained under the legislation plus those providing services for children and young people (CYP) aged under 18 on a voluntary or detained basis. However, it also provides a useful framework for health and social care commissioners and others with an interest in implementation of the new legislation.

**RED**: The organization does not meet the standard statement.

**AMBER**: The organization has made progress (50% of the task completed) towards meeting the standard statement but further action is necessary to fully comply. The action required column should indicate the work necessary to achieve full compliance.

**GREEN**: The organization, following consultation with relevant stakeholders, fully meets the standard statement.

69 standards in 7 domains
## Mental Health Trusts: ISAT

| A. LEADERSHIP |
| B. POLICY AND PLANNING |
| C. PATIENTS AND CLIENT CENTRED APPROACHES |
| D. PARTNERSHIP WORKING |
| E. HUMAN RESOURCE MANAGEMENT |
| F. CLINICAL SYSTEMS AND PROCESSES FOR QUALITY IMPROVEMENT |

- (informing, training in assessments (including risk assessments), appropriate treatments, report writing, electronic and written care records arrangements, sensitive approaches to going into homes...) |

| G. FINANCIAL MANAGEMENT |
Mental Health Trusts: Training

No national framework (or requirements for training for Section 12 Approved doctors, Approved Clinicians or other staff)

Training media not available until late in the day

Trusts required to enter into “training contracts” with NIMHE/CSIP which envisaged cascade training
2007 MHA
CONVERSION COURSES
FOR SLaM & I.O.P DOCTORS

Monday 30th June
Friday 18th July
Thursday 28th August
Monday 29th September
Friday 17th October
Friday 20th November
Friday 12th December
Mental Health Trusts: Policies

Many, many policies to write or re-write because of MHA 2007

e.g. Supervised Community Treatment
ECT
Consent to Treatment
DoLS
Local Social Services Authorities

Approved Mental Health Professional transitional Training

Registration of AMPHS

Registration of DoLS assessors
Receiving social care DoLS assessments
Mental Health Review Tribunal

Changed at the same time to include an “upper tribunal”

New practice directions relating to requirements for reports – available only very recently

PRACTICE DIRECTION HEALTH EDUCATION AND SOCIAL CARE CHAMBER MENTAL HEALTH CASES

1. This Practice Direction applies to a “mental health case” as defined in Rule 1(3) the Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008 (“the 2008 Rules”).
Mental Health Act Commission

About to be absorbed into the Care Quality Commission

Massive increase in Second Opinion Appointed Doctor workload with Part 4A

Redesign of working practices in train
Implementing the Mental Health Act 2007

Oddities

The material required for training came very, very late.

The statutory forms were available days before implementation.

Transitional arrangements for Approved Clinicians were (and remain) obscure.

We await definitive documentation on the future of S12 approval training and AC reaccreditation.

Reforming MHRTs at the same time as implementing MHA 2007 was eccentric.

Failure of MHAC to predict SOAD demand.
Implementing the Mental Health Act 2007

Successes

For RCPsych: agreement that being on the Specialist Register “signs off” the Approved Clinician competencies

Locally: perhaps not such a big deal
Implementing the Mental Health Act 2007

Reflections

Evaluation issues
Disconnect between political process, DH and operational issues
Revealed some lack of professional interest/knowledge in Mental Health Act

Awaiting non-doctor ACs, IMHAs and DoLS
Implementing the Mental Health Act 2007

The elephant in the room...