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ADVICE NOTES

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Much of our work is at the complex interface between the individual's rights, the law and ethics and the care the person is receiving. We promote best practice in applying mental health and incapacity law to individuals' care and treatment.

The Commission produces good practice guidance on a range of subjects related to mental health and incapacity legislation in Scotland. We encourage ethical practice that respects the rights of the individual and we provide good practice guidance to promote best practice.

We aim to ensure that care, treatment and support are lawful and respect the rights and promote the welfare of individuals with mental illness, learning disability and related conditions. We do this by empowering individuals and their carers and influencing and challenging service providers and policy makers.

Good practice topic guides

Often, our guidance can be lengthy depending on the subject matter, but we wanted to produce shorter, easily accessible guides on a variety of subjects in addition to our usual guides.

We hope that this guide will be used by staff, service users and carers and help to uphold individuals' rights under the Act and improve good practice across Scotland.

This guide is about....

Before the Mental Health (Care and Treatment) (Scotland) Act 2003 (the Act), there were no provisions for compulsory treatment in the community, except under "leave of absence" from hospital, which was allowed by the Mental Health (Scotland) Act (1984).

A compulsory treatment order (CTO) allows for a person to be treated for their mental illness, learning disability or related disorder. A CTO will set out a number of conditions that the person will need to comply with. These conditions may include that the person is liable to be detained in hospital.

When the CTO does not authorise detention in hospital, this is commonly known as a community compulsory treatment order (CCTO).

In line with the principle of least restriction, the use of CCTOs has been growing incrementally since their introduction in Scotland in 2005.

We are regularly asked about what can be done when someone subject to a CCTO is not complying with the requirements of the order or has become unwell.

This guide details the provisions available within the Act. The principle of ensuring the minimum restriction on the freedom of the patient that is necessary must be taken into account by those who are carrying out functions under the Act.

Detaining someone in hospital against their wishes is a severe restriction and should only ever happen when less restrictive interventions have proved to be ineffective.

Non compliance or illness?

We are often asked about whether a non compliance order (section 113) should be used or a short term detention certificate or emergency detention certificate instead.

It is not appropriate to use a non compliance order to admit a person who complies with the CTO but becomes ill and may need compulsory admission. In these circumstances, the person should be assessed for detention under a short term detention certificate or an emergency detention certificate if indicated.

Where there is doubt as to whether the person may or may not be complying, it is better to assess for a short term detention certificate or an emergency detention certificate.

COMPULSORY COMMUNITY TREATMENT

Non compliance with community treatment is covered under chapter 5 of the Act from Section 112 through to 123.

The code of practice, volume two at chapter six, covers non compliance with a community based compulsory treatment order or interim compulsory treatment order.

Section 112, failure to attend for medical treatment

Section 112 refers to patients subject to a CTO or interim CTO where there is an attendance requirement under section 66(1) (c) or those subject to a compulsion order (CO) where there is an attendance requirement under 57A (8) (c) of the Criminal Procedure (Scotland) Act 1995 (the 1995 Act).

Section 112 of the Act allows the patients responsible medical officer (RMO) to compel the patient to attend a specified place at a specified time with a view to the patient being given medical treatment for their mental disorder. This section is intended to be used where a patient who is required to accept medical treatment under their CCTO, has refused to comply with requests to take their medication.

If the patient has not complied with the attendance requirement, then the RMO can have the patient taken into custody and conveyed to the specified place where they were to receive their medical treatment or to **any** hospital.

The RMO needs to consult with and obtain the consent of a mental health officer (MHO) before exercising this power and, where practicable, it should be the MHO with responsibility for that patient's case. Medical treatment must **never** be forcibly administered to the patient in their own home.

Section 112 gives staff the power to take into custody and convey the patient to hospital but does not provide the authority to force entry to a property. If forcible entry and assistance from the police is necessary, then an application will need to be made for a section 292 removal warrant. Local psychiatric emergency plans should be in place to cover this.

The patient can be detained at that place or hospital for no more than 6 hours from the point of arrival. Form CTO7 needs to be completed by the RMO. This is not a statutory form but its use is strongly recommended. The form is completed after the patient has attended for medical treatment, it is not completed prior to the treatment but staff need to be clear under what authority they are acting and that it has been authorised by the RMO.

Once the form is signed there is no timescale under the Act for when the authority expires if it has not been used. It is important to ensure that the criteria for section 112 continues to be met and if circumstances change and the authority is no longer required than the form should be made void.

A copy of the completed form is sent to the Commission.

If it is likely that physical restraint will be required then the care team must carefully consider the care plan for this.

Section 112 allows the patient to be taken to any hospital. This is probably the safest option for the patient and staff to give immediate access to medical assistance if required. The care team should also consider how they will transport the patient to the hospital and who will accompany them. Local psychiatric emergency plans should be in place to cover this.

Recall to hospital under section 113

Section 113 refers to patients subject to either a CTO, interim CTO or CO that do not authorise detention in hospital and the patient fails to comply with one or more measures authorised by that order.

Section 113 of the Act allows the patient to be taken into custody and conveyed to a hospital if they fail to comply with any authorised measure in the order and their health is likely to deteriorate as a result.

Section 113 lasts for up to 72 hours beginning with the patient's arrival in hospital but the RMO can revoke it earlier if indicated.

Section 113 cannot be used for a patient on a CCTO who has already been admitted informally to hospital but then changed their mind about agreeing to admission. An emergency or short term detention certificate would be the appropriate route.

Admission under section 113 does not require the consent of an MHO.

Prior to the patient being returned to hospital under section 113, the RMO must have taken reasonable steps to contact the patient following their failure to comply and to afford the patient a reasonable opportunity to comply with the measures.

It must also be apparent that there would be a significant deterioration in the patient's mental health if they were to continue to fail to comply with the measures and it is a matter of urgency to exercise the power. A patient may not be complying with a compulsory measure (e.g. to attend a particular appointment) but non compliance in itself should not result in return to hospital. Refer to code of practice volume 2 chapter 6 for further information.

Recall under section 113 requires the RMO to consider the grounds for detaining the patient in hospital because of non compliance with the measures in the order. Form CTO8 is a notification that this has happened. It is completed by the RMO after the patient has been admitted, not before. If the RMO is not available to do this then they can make arrangements for another AMP to do this. This is not a statutory form but its use is strongly recommended. There is no form that actually authorises the admission. Staff will need to be clear under what authority they are acting and that it has been authorised by the RMO.

There may be occasions when there is a separate RMO for community and in-patient treatment. If this is the case then we think the patient, if necessary, should be

recalled by the community RMO under section 113 because of non-compliance with the measures in a community.

We think the community RMO should complete the CTO8 form and record the examination after admission by filling in part (b) on page three of the form.

Section 113 gives staff the power to return the patient to hospital but does not provide the authority to force entry to a property. If forcible entry and assistance from the police is necessary then an application will need to be made for a section 292 removal warrant. The care team also should consider how they will transport the patient to the hospital and who will accompany them. Local psychiatric emergency plans should be in place to cover this.

The section 113 comes to an end if the person is detained under section 114 during that period of time or it is revoked by the RMO.

There is no form for revocation of section 113 but we advise the reasons for this should be carefully documented in the patient's case file.

There is no right of appeal to the Mental Health Tribunal for Scotland (the Tribunal) during this 72 hour period.

During the 72 hour period of the section 113 the compulsory measures specified in the CTO, interim CTO or CO are suspended except the giving of medical treatment under part 16.

Further detention in hospital under section 114/115

A person cannot be detained in hospital under a section 114/115 unless first admitted under a section 113. There is no direct entry to section 114.

Section 114 relates to a patient subject to a CTO/CO and section 115 relates to a patient subject to an interim order.

The RMO must consult and get the consent of the MHO before granting either and also consult with the named person where practicable.

The section 114 takes effect from the day it is granted and authorises detention for up to 28 days. The section 115 takes effect from the day it is granted and authorises detention up to the expiry of the interim order.

For section 114/115, this is form CTO9 and is completed by the RMO.

The period of detention should be used to consider whether an application to vary the order to include hospital detention will be necessary. Should the RMO want to revoke the certificate then form REV 3 should be completed.

Where it looks likely that the patient will require detention beyond 28 days, we advise making an early application to the Tribunal to vary or extend and vary the order on a full or interim basis.

The application to vary should be made to the Tribunal as soon as possible to ensure the hearing takes place before the end of the 28 day period.

For section 114 there is no provision for the order to be extended to allow the Tribunal to hold a hearing. Section 114 is not extended by the application to vary.

It is possible under section 106 of the Act for the Tribunal to grant an interim variation of a CCTO without holding an evidential hearing. We strongly advise that the Tribunal is contacted as early as possible during the section 114 if it appears that detention in hospital beyond the period of the section 114 may be needed.

During the 28 day period of the section 114, the compulsory measures specified in the CTO, interim CTO or CO are suspended except the giving of medical treatment under part 16.

Both the patient and the named person have the right to apply to the Tribunal to have the certificate revoked.

Hospital managers must notify the patient, their named person, welfare guardian or welfare attorney of the granting of the certificate as soon as is practicable.

The Commission and the Tribunal must be notified within 7 days of the granting of the certificate.



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