

Glossary

Introductory notes:

This glossary was prepared in part from the glossary from the Mental Health (Care and Treatment) (Scotland) Act 2003: Code of Practice, and the glossary of Legal Terms on the Judiciary of Scotland website.

This glossary uses the term '**mental disorder**.' This is a legal term which comes from the Mental Health (Care and Treatment) (Scotland) Act 2003 ('the 2003 Act'). It means a mental illness, a learning disability and a personality disorder.

All references to '**the 1995 Act**' refer to the Criminal Procedure (Scotland) Act 1995.

All references to '**the tribunal**' are to the Mental Health Tribunal for Scotland.

All references to '**Rules**' are to the Mental Health Tribunal for Scotland (Practice and Procedure) (No.2) Rules 2005.

Adjournment: An interruption to the proceedings when the tribunal stops the hearing for part of a day or for a longer period.

Advance statement (section 275 of the 2003 Act): A written, witnessed document setting out the way the person making it would like to be treated, or not treated, if they were to become mentally unwell in the future.

Advocate (sometimes called Counsel): A lawyer who is a member of the Scottish Bar. An advocate has the right to appear before any court in Scotland or the UK Supreme Court. (Not to be confused with an independent advocate/ advocacy worker)

Affidavit: A signed statement made on oath.

Affirmation: An undertaking given by a witness, who does not wish to swear an oath, to tell the truth when giving evidence in court.

Approved medical practitioner (sometimes called an AMP, section 22 of the 2003 Act): A medical practitioner who has been approved by an NHS Board or by the State Hospitals Board for Scotland as having special experience in the diagnosis and treatment of mental disorder.

An approved medical practitioner will be a psychiatrist or a medical practitioner with specialist experience of working in mental health services.

Assessment order (section 52D of the 1995 Act): An order imposed by a criminal court relating to a person prior to trial, or after conviction but before sentencing. It authorises hospital detention for up to 28 days so that the person's mental health may be assessed. Medical treatment under Part 16 of the Act may be given to a

person in certain circumstances. It may be extended once only for a period of seven days.

Care plan (section 76 of the 2003 Act): A document prepared by the person's responsible medical officer for a person subject to a compulsory treatment order. It lays out the forms of medical treatment and the other services the person will be receiving while subject to the order. (see also proposed care plan and Part 9 care plan)

Carer: Someone who provides a substantial amount of informal care for a person on a regular basis. It might be a friend or family member. (See also primary carer)

Code of practice (section 274 of the 2003 Act): The Mental Health (Care and Treatment) (Scotland) Act 2003 Code of Practice is a statutory document in three volumes which gives guidance about the 2003 Act and promotes good practice.

Community mental health team (sometimes called a CMHT): A team of different professionals who provide treatment and support to a person for their mental health, in the community. The team might include psychiatrists, social workers, psychologists, nurses and other professionals.

Community psychiatric nurse (sometimes called a CPN): A specialised mental health nurse who supports people within their community. The CPN might meet the person at home or at a clinic. (see also registered nurse mental health)

Compulsion order (sometimes called a CO, section 57A of the 1995 Act): A final order imposed by a criminal court which authorises hospital detention or compulsory powers in the community for a period of six months. It can be renewed for six months at the first renewal. After that it can be renewed for periods of 12 months. (see also restriction order)

Compulsory treatment order (sometimes called CTO, section 64 of the 2003 Act): An order granted by the tribunal which lasts for six months. It can be renewed for six months at the first renewal. After that it can be renewed for periods of 12 months.

A compulsory treatment order can be hospital based, including measures which authorise detention in hospital and giving the person medical treatment.

A compulsory treatment order can be community based, including measures which require the person to do things like attending appointments, to live at a particular address and to allow professionals to visit the person at home.

Conjoined hearing: Where there are two or more sets of proceedings before the tribunal which relate to the same person, the tribunal may hear them at the same time.

Continuing attorney (sometimes called financial attorney, or attorney): Someone formally chosen by a person to make decisions about that person's finances. The power of attorney document must be witnessed, certified and

registered with the Office of the Public Guardian in Scotland. (see also Office of the Public Guardian in Scotland)

Convener (sometimes called a legal member): A lawyer who is one of three tribunal members who make the decision at a mental health tribunal. The convener introduces and chairs the hearing and might ask questions. The convener will be a solicitor, an advocate, a sheriff or the President of the Mental Health Tribunal for Scotland. (see also shrieval panel)

Court of Session: Scotland's highest civil court. The judges of the Court of Session are also the judges of the High Court of Justiciary, the supreme criminal court.

Cross border transfer (sections 289/ 290 of the 2003 Act): The process followed where a person receiving medical treatment for mental disorder is transferred into, or out of, Scotland.

Cross-examination: Questions asked of a witness on behalf of a party who has not led the witness.

Curator ad Litem (sometimes called a curator): Someone appointed by the tribunal to look after the interests of a person who does not have capacity to instruct a solicitor to represent them in proceedings before the tribunal. The curator will be a qualified solicitor, but they attend the tribunal to represent someone's interests, rather than to act on their instructions. The curator will be provided with information about the person so that they can do this.

Designated medical practitioner (sometimes called a DMP, section 233 of the 2003 Act): A medical practitioner appointed by the Mental Welfare Commission for Scotland. The designated medical practitioner is asked to provide a second medical opinion in respect of certain medical treatments being given under Part 16 of the 2003 Act. The DMP can access information about the person so that they can do this.

Determination: A formal decision made, for example by the tribunal or by the responsible medical officer.

Direction: An instruction issued to a party or other relevant person by the tribunal under the tribunal's procedure rules. A direction can be issued before the first hearing, or during or between hearings. It might be about reports or oral evidence the tribunal thinks it needs before making a final decision.

Emergency detention certificate (sometimes called an EDC, section 36 of the 2003 Act): A certificate authorising removal of a person to hospital within 72 hours, and detention for a period of 72 hours.

The certificate can be granted by a medical practitioner who has, where practicable, consulted and sought the consent of an MHO.

Escort nurse (sometimes called a nurse escort): A nurse who attends a tribunal in order to look after the welfare of a person during the whole hearing.

Nurse escorts do not give evidence or participate in the hearing.

Evidence in chief: This is the evidence first given by a witness on behalf of a party to proceedings.

Ex facie: A Latin term meaning 'on the face of it,' or 'evidently.'

Ex proprio motu: A Latin term meaning 'on the court's own initiative.'

Extension certificate (section 47 of the 2003 Act): A certificate that extends a period of short-term detention by three working days to allow for the preparation of an application for a compulsory treatment order.

Financial guardian (sometimes called a guardian): Someone appointed by the court to make financial decisions for a person who is unable to do so for themselves. (see also welfare guardian)

Full findings and reasons (sometimes called an FFR): A document setting out the tribunal's decision and reasons for it.

General member: A person who is one of three tribunal members who make the decision at the tribunal. The general member might ask questions at a hearing. General members come from a broad range of backgrounds and have experience or qualifications in health and social care services.

Hospital direction (section 59A of the 1995 Act): A final direction imposed by a criminal court in addition to a sentence of imprisonment. It allows the person to be detained in hospital for treatment for mental disorder and then transferred to prison to complete their sentence once detention in hospital is no longer required.

Independent advocate (sometimes called an advocacy worker): Someone who supports and enables a person to express their views about the decisions being made about their care and treatment, by being a voice for the person and encouraging them to speak out for themselves. All people with mental disorder have a right to this service, not only those who are subject to compulsory measures.

Independent advocates are employed by an advocacy organisation which is independent of the health board or local authority.

Inter alia: A Latin term meaning 'among other things'.

Interim: Another way of saying 'in the meantime'. For example, a temporary tribunal order made until a final order can be made.

Interim compulsion order (sometimes called an ICO, section 53 of the 1995 Act): An order imposed by a criminal court after conviction and before sentencing. It authorises hospital detention for assessment and treatment for a period of 12 weeks to allow further evidence to be obtained about the person's mental disorder and any risk that they may pose as a result. It may be renewed regularly for up to a maximum total period of 1 year. (see also **compulsion order**)

Interim compulsory treatment order (sometimes called an ICTO, section 65 of the 2003 Act): An order granted by the tribunal which lasts for up to 28 days, pending determination of a compulsory treatment order application. An unlimited number of interim orders can be granted as long as the total period authorised by the interim orders does not exceed 56 consecutive days. (see also compulsory treatment order)

Interlocutor: A formal order made by a court/tribunal containing its decision. The tribunal sometimes issues interlocutors for directions. (see also direction)

Interpreter (section 261 of the 2003 Act): A person whose job it is to change what someone else is saying into another language. This could include: BSL interpreters; lip speakers; Makaton; and deaf-blind communicators.

At a tribunal, it is the responsibility of the hospital managers to provide the appropriate assistance to a patient. It is the responsibility of the tribunal to provide appropriate assistance to other attendees, including the named person.

Jurisdiction: The power of a court or tribunal to consider particular cases as determined by factors such as location, or type of the case, or the residence or domicile of a person.

King's Counsel (sometimes called a KC, or senior counsel): A senior and experienced advocate on whom the King has conferred this honour.

Learning disability nurse: A qualified nurse who specialises in the provision of care for people with learning disability.

Listed initiator (section 257A of the 2003 Act): A person who can make, or 'initiate,' certain applications and appeals to the tribunal on behalf of another person who does not have capacity to exercise those rights themselves. This only applies where the person is over 16 and where there is no named person.

The listed initiator could be the person's welfare guardian, welfare attorney, primary carer or nearest relative. A primary carer or nearest relative cannot be a listed initiator if the person has made a written declaration precluding them from doing so.

The listed initiator is entitled to a type of legal aid (see also **non-means tested advice by way of representation**).

Lord Advocate: The senior Law Officer responsible for the prosecution of crime and investigation of deaths in Scotland, and the principal legal adviser to the Scottish Government. Referred to as 'Her Majesty's Advocate' in criminal matters and the 'Lord Advocate' in civil matters.

Medical member: A psychiatrist who is one of three tribunal members who make the decision at a mental health tribunal. The medical member might ask questions at the hearing.

Mental health officer (sometimes called an MHO, section 32 and 229 of the 2003 Act): A social worker who has completed specialist training in mental health and the use of the 2003 Act. The MHO has a number of specific responsibilities under the 2003 Act, including a duty to give a person information about their rights.

Mental health officers can apply to the tribunal for a compulsory treatment order. They can prepare reports and give evidence at a tribunal.

Mental health officer's report (sometimes called an MHO report, section 61 of the 2003 Act): A report prepared by the mental health officer as part of the application for a compulsory treatment order. It must detail background information on the person who is the subject of the application. MHOs might also prepare other types of report. (see also social circumstances report)

Mental health report (sometimes called a medical report, section 57/58 of the 2003 Act): A report required as part of an application for a compulsory treatment order. It is prepared by a medical practitioner who sets out the reasons why a compulsory treatment order is appropriate. Two mental health reports are required for the CTO application.

Mental Health Tribunal for Scotland (sometimes called MHTS or the tribunal): The tribunal that makes independent legal decisions about the compulsory treatment of people with mental disorder across Scotland.

Mental Welfare Commission for Scotland (sometimes called MWC or the Commission): The organisation that protects and promotes the human rights of people with mental illness, learning disabilities, dementia and related conditions. The Commission does this by visiting people, monitoring, carrying out investigations, providing information and advice, and influencing and challenging.

Misconceived case: This is when a tribunal is considering refusing an application due to a technical flaw/ procedural defect in it.

Motion: An application made in a court or tribunal for an order during the proceedings.

Multi-disciplinary team (sometimes called the MDT): A team of professionals working together to provide care and treatment to someone receiving mental health services. The membership of the team will depend on the person's needs.

Named person (section 250 of the 2003 Act): Someone formally chosen by a person to support them and to protect their interests in relation to decisions about their care and treatment. A person over 16 years old can nominate their own named person. A person under 16 years old will be given a 'default named person,' who is often a parent.

The named person is entitled to receive certain information, to be a party in tribunals, to make appeals and to a type of legal aid (see also **non-means tested advice by way of representation**).

Nearest relative (section 254 of the 2003 Act): There are occasions under the 2003 Act where the nearest relative can be given information about a person, such as when the person is removed to a place of safety.

Non-compliance procedures (sometimes called hospital recall, section 113-115 of the 2003 Act): Where a person does not comply with any community-based compulsory measure specified in a CTO or an interim CTO, the RMO can, in certain circumstances, take steps to have the person brought into hospital, and to detain the person for 72 hours.

The RMO may then grant a certificate to detain the person in hospital for a further period of 28 days, or until the expiry of the interim CTO.

Non-means tested advice by way of representation (sometimes called ABWOR): a type of legal aid available for patients, named persons and listed initiators at mental health tribunal proceedings.

Nurse's holding power (sometimes called nurse's power to detain, section 299 of the 2003 Act): A power to hold a person for up to three hours while awaiting a medical examination. It can be used by mental health nurses or learning disability nurses.

Observer: A person who has been given permission to watch and/ or listen to a hearing, usually as part of their training. The observer will not give evidence or participate in the hearing. The observer might be a trainee solicitor, mental health officer, doctor, advocacy worker or tribunal member.

Office of the Public Guardian in Scotland (sometimes called OPG or the public guardian): The official responsible for supervising powers and orders in relation to adults with incapacity under the Adults with Incapacity (Scotland) Act 2000, such as guardianship orders and powers of attorney.

Part 9 care plan (section 137 of the 2003 Act): A document prepared by the responsible medical officer for a person subject to a compulsion order. It lays out the forms of medical treatment the person will be receiving while subject to the order.

Place of safety (section 300 of the 2003 Act): A hospital, a care home, or any other suitable place where the occupier is willing to temporarily receive a person with mental disorder.

If no other place of safety is available, a police officer may remove a person to a police station, which should then be treated as a place of safety.

Primary carer: Someone who provides a person all or most of their care and support. There can only be one primary carer. Primary carers are invited to attend tribunals for the person they support. Someone who is employed to provide care, or does so as a volunteer for an organisation, cannot be a primary carer under the 2003 Act. (see also **carer**)

Proposed care plan (section 62 of the 2003 Act): A plan made as part of an application for a compulsory treatment order. It contains details of the medical treatment for mental disorder, the community care services, and any other forms of care and treatment which it is proposed to provide to the person if the compulsory treatment order is made. (see also care plan)

Recorded matter (section 64 (4) of the 2003 Act): When a tribunal makes a compulsory treatment order it can make a recorded matter. This specifies such medical treatment, community care services, relevant services, other treatment, care or service that the tribunal considers appropriate for the person to receive.

Registered nurse mental health (sometimes called RNMH or mental health nurse): A qualified nurse who specialises in the provision of care for people with mental health problems.

Removal order (section 293 of the 2003 Act): An order granted by a sheriff or a justice of the peace which authorises the mental health officer and other specified persons, as well as any constable of Police Scotland, to enter the premises of an individual at risk in order to remove them to a place of safety. The person at risk can be detained there for up to seven days. (see also place of safety)

Res judicata: A Latin term, meaning that the question between the parties has already been decided in another case.

Responsible medical officer (sometimes called RMO, section 230 of the 2003 Act): An approved medical practitioner who is appointed by the hospital managers to a person as soon as practicable after various 'events' taking place, for example a person being detained. (see also approved medical practitioner)

Restricted patient: Someone who has been made subject to a compulsion and restriction order (see also restriction order).

Restriction order (sometimes called a CORO, section 59 of the 1995 Act): An order imposed by a criminal court in conjunction with a compulsion order, where considered necessary for the protection of the public from serious harm. The measures specified in the compulsion order are then without time limit. (see also compulsion order)

Rule 58 hearing (sometimes called a hearing on the papers): This is when the tribunal decides a case without an oral hearing where certain conditions are met. Such cases are decided by the three tribunal members considering the written evidence only.

The tribunal will give notice to parties that a Rule 58 hearing is being considered. This type of hearing will only proceed if the patient does not seek an in-person hearing, and where no other relevant person has requested one.

Scottish Statutory Instrument (sometimes called an SSI or Scottish subordinate legislation): The form in which subordinate legislation, i.e. orders,

rules and regulations etc. made under an Act of the Scottish Parliament are made. (See also **Statutory Instrument**)

Sheriff: A judge who presides in the sheriff court.

Sheriff Principal: A judge appointed to be in charge of a sheriffdom, and responsible for the speedy and efficient disposal of business there.

Appeals against a decision of the tribunal can be made to the Sheriff Principal. (see also **summary application**)

Short-term detention certificate (sometimes called an STDC, section 44 of the 2003 Act): A certificate which authorises removal of a person to hospital and detention for up to 28 days.

A short-term detention certificate can only be granted by an approved medical practitioner, with the consent of a mental health officer.

Shrieval panel (schedule 2 of the 2003 Act): A list of sheriffs who have undergone additional training and who convene hearings for patients subject to a compulsion order and restriction order, or to a hospital direction or a transfer for treatment direction. (see also **compulsion and restriction order**, and also **convener**)

Social circumstances report (sometimes called an SCR, section 231 of the 2003 Act): A report prepared by a mental health officer to provide information about a person's background and circumstances. It should be prepared within 21 days of various 'events' taking place, for example a person being detained.

State Hospital (sometimes called Carstairs, or high security): A hospital which provides mental health care and treatment for patients requiring special security. Scotland's only state hospital is in Carstairs. Patients there come from Scotland and Northern Ireland.

Statute: An Act of a Parliament.

Statutory Instrument (sometimes called an SI or subordinate legislation): The form in which subordinate legislation, i.e. orders, rules and regulations etc. made under a UK Act of Parliament are made. (see also **Scottish Statutory Instrument**)

Summary application: The form of application in the sheriff court for a variety of statutory applications.

For example, an appeal to the Sheriff Principal against a decision of the tribunal must be brought by summary application.

Suspension certificate (sometimes called being 'out on pass', sections 41, 53, 127, 128 and Part 13 of the 2003 Act): A certificate which temporarily suspends the hospital detention requirement, or other requirements, under various compulsory orders and certificates.

Transfer (section 124 -126, section 178 and section 218 - 220 of the 2003 Act): Where the managers of a hospital or unit where a person is detained agree with the managers of another hospital or unit that the person will be transferred between hospitals.

Transfer for treatment direction (sometimes called a TTD, section 136 of the 2003 Act): An order made by the Scottish Ministers which allows the transfer of a prisoner and detention in hospital, in order to receive treatment for a mental disorder.

Treatment order (sometimes called a TO, section 52M of the 1995 Act): An order imposed by a criminal court relating to a person who is awaiting trial or sentence. It allows the transfer of a person, and detention in hospital in order to receive treatment for a mental disorder.

Ultra vires: A Latin term meaning 'without authority.'

Victim Notification Scheme (sometimes called CORO VNS): Where a victim of a person subject to a Compulsion Order and Restriction Order has the right to make representations in some types of tribunal proceedings.

Warrant (section 35 of the 2003 Act): An order granted by a sheriff or a justice of the peace which authorises a mental health officer and other specified persons, as well as any police constable of Police Scotland, to enter specified premises, to detain a person for up to three hours for a medical examination, and to access a person's medical records.

Welfare attorney (sometimes called an attorney): Someone formally chosen by a person to make decisions about that person's welfare if they become ill and are no longer able to make those decisions for themselves. The power of attorney document must be witnessed, certified and registered with the Office of the Public Guardian in Scotland. (see also **continuing attorney, and also Office of the Public Guardian in Scotland**)

Welfare guardian (sometimes called a guardian): Someone appointed by the court to make welfare decisions for a person who is unable to do so for themselves. (see also financial guardian)