

SAMH'S VIEW: COMPULSORY CARE & TREATMENT

DATE ISSUED

NOVEMBER 2019

POLICY LEAD

SUZANNE
MARTIN

FOR REVIEW BY:

ONGOING

ABOUT THE SAMH'S VIEW SERIES

SAMH's View statements set out SAMH's position on a particular policy topic. They are produced by the Public Affairs team.

Context

Sometimes people's mental illness will deteriorate to a point where they are treated without giving their consent. This is called compulsory or non-consensual treatment. The Mental Health (Care and Treatment) (Scotland) Act 2003 allows for compulsory treatment, and also provides safeguards to protect people's rights when they are being treated against their will.¹ The principles of the Act, known as the Millan Principles, include commitments to the use of least restrictive alternatives, equality and reciprocity.²

The Scottish Government announced in March 2019 that it will undertake a review of the Mental Health Act.³ SAMH welcomes this announcement. Since the introduction of the Act there have been significant developments in international and domestic mental health case law.

Key points

- The United Nations Convention on Rights of People with Disabilities (UNCPRD) states that mental capacity should not be used as justification for denying people the right to make decisions about their care and treatment.⁴
- The European Court of Human Rights (ECHR) has ruled that involuntary treatment does not follow from detention, rather there must be separate safeguards for the administration of involuntary treatment.^{5, 6}
- 2018/19 saw the highest number of Compulsory Treatment Orders since the Act came into force – 6,038 – while the number of Emergency Detention certificates increased by 56.5% over a 10 year period.⁷
- In 2016/17 the Mental Welfare Commission (MWC) had a record of 301 Advance Statements in Scotland, a sixth of which (55) were overturned.⁸
- The overall occupancy rate for mental health beds in Scotland is 84%.⁹
- A 2017 report by the MWC showed that 89 out of 400 patients in hospital had been delayed in moving to a low secure or community setting.¹⁰
- In 2015 SAMH campaigned for people to be given the right to challenge their security status. As a result, this right was extended to people in medium secure wards, but not those in low secure wards.
- De facto detention is when a person agrees to receive treatment under the threat of being detained formally should they refuse.
- Only five out of 14 NHS Board areas have strategic advocacy plans in place and, while statutory funding for independent advocacy has decreased by 4%, demand has increased by 11.5%.^{11, 12}

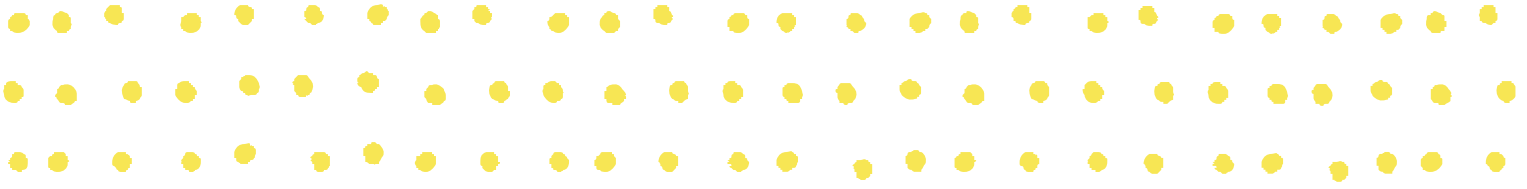


SAMH wants to see the Scottish Government's review process:

- Consider the development of non-discriminatory legislation, which does not use mental illness or disorder to justify compulsory care and treatment, while still ensuring access to support.
- Explore how future legislative changes can give effect to the rights, will and preferences of individuals receiving compulsory care and treatment.
- Explore the use of a single judicial forum to oversee all compulsory care and treatment, taking learning from the Mental Health Tribunal.
- Consider separate safeguards for the administration of involuntary treatment.
- Explore how the Millan principles can be met, particularly reciprocity, to ensure that people are receiving person-centred support.

SAMH also calls for:

- The Scottish Government to undertake a public awareness raising campaign, to inform people about their rights under mental health legislation, with a view to decreasing de facto detention and increasing the use of advance statements and named persons.
- The Scottish Government to take action to reduce the number of advance statements that are overturned.
- The right to challenge security status to be extended to people being cared for and treated in low secure wards.
- For people under the age of 16 to be given the right to nominate their named person, with appropriate safeguarding measures.
- The Scottish Government to provide sustainable funding for independent advocacy services for people experiencing mental illness, to ensure that they can access independent advocacy as is their right within legislation.
- The Community Care and Health (Scotland) Act 2002 to be amended so people receiving social care on a compulsory basis under the Mental Health (Care and Treatment) (Scotland) Act 2003 are not charged for their care.



Further detail:

FURTHER GUIDANCE

- [The Mental Welfare Commission – The Mental Health Act](#)
- [The Mental Welfare Commission – Rights in Mind](#)
- [SAMH – Legislation Information](#)
- [The Scottish Human Rights Commission](#)

Notes

- ¹ [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#)
- ² The Mental Welfare Commission, [Principles of the Act](#)
- ³ Scottish Government, [Review of the Mental Health Act](#), March 2019
- ⁴ UNCRPD, [General Comment No. 1](#), April 2014
- ⁵ ECHR, [Case of X. v. Finland](#), July 2012
- ⁶ Scottish Human Rights Commission, [Submission to Scottish Parliament petition PE1667](#), December 2017
- ⁷ The Mental Welfare Commission, [Mental Health Act monitoring data 2018/19](#), October 2019
- ⁸ The Mental Welfare Commission, [Mental Health Act monitoring report 2016-17](#), May 2018
- ⁹ Scottish Government, [Inpatient Census 2019](#), October 2019
- ¹⁰ The Mental Welfare Commission, [Visiting and Monitoring Report: medium and low secure forensic wards](#), August 2017
- ¹¹ The Mental Welfare Commission, [Visiting and Monitoring Report: the right to advocacy](#), March 2018
- ¹² The Scottish Independent Advocacy Alliance, [A Map of Advocacy across Scotland 2015-2016](#), 2017