The Mental Health Act 1983 provides for the compulsory admission and treatment of persons with mental disorder. Underpinning all legislation in the UK relating to detention is the European Convention on Human Rights (ECHR). There are a number of Articles of major relevance to clinical practice but Article 5, the right to liberty and security of person, is the right that most directly affects the drafting and application of mental health law. Article 5 is a limited right in that there are specific explicit circumstances defined in the Article when it does not apply:

5.1 Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: …(e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants.

Convention rights have been incorporated into domestic law by the Human Rights Act (HRA) 1998. The HRA 1998 enables people to have cases involving possible breaches of their human rights heard in a UK court. It places a duty on public authorities to act in accordance with the Convention and obliges judges to interpret the law in line with the Convention. This module dealt with the criteria and definitions for detention provided by the Mental Health Act 1983.

Definition of mental disorder

- Within the Act, ‘mental disorder’ is defined as any disorder or disability of the mind.

- The Code of Practice includes a comprehensive list of conditions which could fall within the definition of mental disorder. This list should not be seen as exhaustive and illustrates how the judgement and discretion of the practitioner should be brought into the decision to recommend detention. The guidance demonstrates that difference should not be confused with disorder; no-one should be considered to be mentally disordered solely because of their political, religious or cultural beliefs, values or opinions.

- In considering what could be a mental disorder as part of the criteria for detention it is worth focusing on the following specific areas: learning disability, alcohol and drugs and personality disorder.

Nature or degree?

- When recommending detention in hospital the medical practitioner is required to confirm that ‘...this patient is suffering from a mental disorder of a nature or degree which’ either ‘warrants the detention of the patient in hospital for assessment’ (Section 2) or ‘makes it appropriate for the patient to receive medical treatment in hospital’ (Section 3).

- 'Nature' is the course of a disorder and the consequences of it. 'Degree' is the presentation at that point in time.

Aspects of risk

- The presence of risk is the key determinant in the decision-making process of a mental health act assessment. It should be considered not just as the adverse effects on others but also as the impact of ongoing mental health problems on the individual and their life.

- The risks to be considered during a mental health act assessment are: risk to health, risk to own safety and the protection of others.
Appropriate medical treatment is available

- When making a medical recommendation, each recommending doctor is required by the MHA 1983 to confirm that ‘appropriate medical treatment is available’ to the patient.

- The definition of medical treatment at s.145 is broad: it ‘...includes nursing, psychological intervention and specialist mental health habilitation, rehabilitation and care... the purpose of which is to alleviate or prevent a worsening of the disorder or one or more of its symptoms or manifestations.’

- The Code of Practice Chapter 6 offers helpful guidance on the application of the appropriate treatment ‘test’. The Code makes it clear that the terms ‘purpose’, ‘appropriate’ and ‘available’ act together to ensure that patients receive treatment according to the guiding principles of the Act.

Warrants detention in hospital

- The word ‘warrants’ is included to ensure that detention is used when essential and that patients cannot be lawfully detained if there is an alternative. When considering alternatives it is essential that practitioners adhere to the Guiding Principles.

- The alternatives could be thought of as either clinical management alternatives such as changes to the treatment plan or involvement of more intensive interventions, or other statutory provisions.

Further reading


Useful websites

Mental Health Law Online