

Mental Health (Care & Treatment) (Scotland) Act (2003)

Practitioner Handbook

MHO Guidance

Introduction

The MHO service fulfils the Local Authority's duty to provide and manage a service for the population of East Ayrshire who experience mental disorder that requires statutory intervention.

Once you are appointed as the designated MHO, you are responsible for ensuring that the work you are undertaking is recorded and acknowledged. This is supported by specialist Admin support.

Accurate recording will ensure that the MHO levels of activity are captured and can objectively be reflected in business reporting.

This guidance is to support MHO's by providing a quick reference guide and should not be considered as a substitute for the legislation itself. The guidance includes links to relevant Codes of Practice, areas of legislation less commonly used and report templates for MHO's.

1. Consent Request for Section 36 or Section 44

As the duty MHO you will have received a call from Admin providing you with basic details in relation to the request for MHO involvement to consider consent to compulsory admission to hospital. The case will have been allocated to you on SWIFT for the purposes of consent request.

You will be required to provide verbal confirmation to Admin of the outcome of the consent request.

If consent is given to a section 44 short term detention you will be asked to confirm your availability to take the necessary report.

It is best practice as the consenting MHO to provide the required Social Circumstances Report, providing continuity for the patient as designated MHO throughout the statutory process. However, it is recognised that this is not always possible, hence the requirement to confirm ability to progress report with Admin.

In the event that the consenting MHO is unable to progress the accompanying SCR, Admin will notify the Mental Health Co-ordinator who will identify an alternative MHO for allocation of report.

2. Designated MHO – Short Term Detentions

For guidance see Code of Practice Volume 2

<http://www.gov.scot/resource/doc/57346/0017054.pdf>

Once you are appointed as designated MHO you are responsible for updating Admin and recording your statutory involvements.

2.1 The SCR Process

Admin will assign the SCR activity – sec 231(44). The MHO must complete and submit the SCR to the Mental Welfare Commission (providing copies to the RMO) no later than 21 days from the date of consent to detention.

Note – All contacts during the course of the short term detention should be recorded on SWIFT under Mental Health Case Note – Sec 44

2.2 Revocation of STDC or STDC allowed to lapse

It is not unusual for the STDC to be revoked (with the patient remaining as an informal patient, or being discharged home). This denotes the end of the statutory role as MHO, however good practice would require that the MHO make an initial assessment as to whether a **monitoring period** is required in order to determine a need for referral for support eg. to the ACM team, welfare rights, housing etc. The designated MHO must be satisfied that there is no further role for them and have completed a basic social work assessment (not in prescribed form).

Nomination of Named Person

The MHO should have a discussion with the patient exploring the patient's intention (or not) to nominate a Named Person.

Mental Health (Scotland) Act 2015

There will no longer be a 'default' named person (NP) only a nominated NP (except for patients under the age of 16, for whom the default NP is retained) as s. 251 (identification of a 'default' NP) of the 2003 Act has been repealed.

A nominated NP may not be appointed unless he/she has consented in the prescribed written form – there must be a docket to the nomination form recording consent and the signature on that docket must be witnessed by a prescribed person. Where the Tribunal is appointing a NP under s.257 of the 2003 Act, there must be written consent from the person to be nominated (which should be signed and signature witnessed by someone, not necessarily a prescribed person). The NP nominated by the Tribunal in this way ceases to be such on giving notice to the Tribunal, patient and local authority.

Advance Statement

The MHO should consider exploring the making of an Advance Statement with the patient.

<http://www.gov.scot/resource/doc/26350/0012826.pdf>

Closure

Once satisfied that there is no further role, the MHO must add a **Closing Summary** on SWIFT and alert Admin to requirement for Closure.

2.3 STD proceeds to CTO application

If you are made aware as MHO of the requirement for a CTO application you should alert Admin to this and confirm your ability to complete the application. The application (sec 63) can then be allocated to you on SWIFT by Admin.

If you are unable to complete the application, the case will require timeous identification of an alternative MHO. The Mental Health Co-ordinator must be contacted with a request to identify another MHO, providing the date by which the CTO application pack is due with the Tribunal.

Transfer of case to another MHO must be recorded on SWIFT.

3. CTO Application & Process

3.1 The making of a CTO

For guidance see Code of Practice Volume 2

<http://www.gov.scot/resource/doc/57346/0017054.pdf>

Please note that the MHO can only progress the CTO application (with associated duties of informing the patient and nominated Named Person of the intention to progress the application and advising them of their rights) once they are in receipt of the 2 medical reports (one of which must be provided by an AMP, usually the patient's RMO).

The CTO application must be made within 14 days, beginning with the date on which the medical practitioners examined the patient for the purpose of preparing their mental health reports. Where the medical practitioners examine the patient separately, the later of these dates marks the beginning of the 14 day period.

The MHO must lodge the CTO application with the Tribunal in advance of the expiry of the STDC. Failure to do so will result in the patient becoming informal with no authority for detention in hospital.

As long as CTO application is lodged before the expiry of the STDC, the Tribunal can extend the STDC for a period of 5 working days to enable all parties to receive papers and allow for the Tribunal scheduling.

3.2 The CTO Application – Section 63

Once you have submitted the CTO application to the Tribunal Service within the stipulated time frames you will be advised of the Tribunal Hearing date. The MHO must advise Admin of this date.

If the designated MHO is unable to attend the Tribunal Hearing the Mental Health Co-ordinator must be advised at the earliest possible opportunity in order to identify a suitable substitute MHO to attend on behalf of the designated MHO.

3.3 Tribunal Decision: Interim CTO

If the outcome of the Tribunal is an Interim CTO, Admin must record this on SWIFT as a new report allocation **Sec 231 (65)**

The SCR [sec 231(65)] must be completed by the MHO within 21 days of the granting of the Interim CTO – this may simply require the completion of a non-production SCR as a full SCR would normally have been completed relatively recently following the granting of the STDC.

Once the next Tribunal date is known it should be recorded on SWIFT as TRIBUNAL DATE.

Outcome of Tribunal should then be recorded by the MHO and Admin advised in order to update the legislation on the SWIFT client record.

3.1 Withdrawal of application

If the CTO application is withdrawn prior to the first Hearing, The MHO as applicant must notify the Tribunal Service and all relevant parties.

If the application is withdrawn after the granting of an Interim CTO, this responsibility falls to the RMO.

If the application is withdrawn at any stage of the process, the patient becomes informal and consideration of the MHO monitoring period should be considered.

The MHO must advise Admin of this in order to amend the legislation classification reflecting that the client is informal.

Once satisfied that there is no further MHO role, and/ or made referrals to identified agencies the MHO must add a case note providing a Closure Summary.

3.2 The CTO in action

The CTO application must be lodged with the Tribunal
Following the granting of the CTO the MHO must prepare a Social Circumstances Report (SCR) in accordance with the requirements of the legislation following a relevant event.

A section 231(64) report will be allocated to the MHO for completion with a due date of 21 days following the granting of the CTO.
(This may require only a non-production SCR with summary update following the earlier recently submitted SCR relating to the short term detention).

The MHO will set a due date of 6 months for the completion and submission of the section 86 report.

The MHO must then record any interventions and contacts during this period as MH – CTO case note.

Review of the CTO

There is a requirement that the CTO is further reviewed at 6 months and then on an annual basis.

At the first statutory review at 6 months the MHO will complete a section 86 report for submission to accompany the RMO's recommendation to renew the CTO without variation.

The MHO must advise Admin that the sec 86 report has been completed in order to capture the MHO activity on the SWIFT client record.

If the CTO is to continue, the MHO should set a reminder of 1 year for a further section 86 report to be completed.

The CTO will be considered by the Tribunal at the 2 year stage and when there is a submission by the RMO to extend and vary.



Microsoft Word 97
- 2003 Document

Period of CTO (2015 Act, ss. 1, 3–5)

There will be an adjustment to the period of a compulsory treatment order (CTO) in the following cases:

(a) Where there has been a short term detention certificate (STDC) followed by a compulsory treatment order (CTO), and the period of the STDC has been extended under s.47, then the 6 month CTO period is reduced by the extension period (up to 3 days), unless there has been an interim CTO.

(b) Where there has been a STDC followed by a CTO, and the period of the STDC has been extended under s.68 (the 5 day extension to enable a CTO application hearing to take place), then the 6 month CTO period is reduced by the extension period (up to 5 days), unless there has been an interim CTO.

(c) In both situations (a) and (b) above, the total interim CTO (ICTO) limit of 56 days will be reduced by the 3 or 5 days.

Although such a situation would be very unusual, the Act does not seem to envisage a situation where the STDC is extended by both periods (up to 3 days and then later up to 5). It seems that only one of the two applies. Where both extensions have taken place, it is not clear which should apply, but presumably the longer of the two. Also, it is provided that where a patient is detained on a s.113 certificate (non-compliance with CTO; 72 hour detention) an emergency detention certificate (EDC) or STDC may not be granted, on the basis that to do so would involve an extension of the length of the CTO to which the patient is subject.

Two year reviews

There is a new obligation upon the mental health officer (MHO) in such cases to prepare a report (referred to as a 'record') covering certain matters, which must be sent to the Tribunal, any named person, the patient's responsible medical officer (RMO) and the Mental Welfare Commission (MWC). This report should also be sent to the patient, unless the MHO considers that to do so would represent a risk of significant harm to the patient or others.

The report should include certain information, the main examples of which are the personal circumstances of the patient, the MHO's views on the extension of the CTO and things done by the MHO under s.85 (the duties of the MHO where the RMO intends to only extend a CTO).

Suspension of detention (2015 Act, ss. 7–10)

MHO's should note that the 2015 Act has introduced a number of changes.

A suspension certificate may authorise the suspension of the detention measure for a period of no more than 200 days within any 12 month period. Alternatively, it may specify a number of periods (each of any length), as long as they are all within a 6 month period. (The equivalent period for COs is 90 days/3 months.)

For the purposes of these 200/90 day periods, a “day” is a period of at least 8 hours within any 24 hour period (whether or not the period straddles two days). Where the measure to be suspended is not a detention measure, the maximum period will be 90 days (it is no longer 3 months).

The purpose for which the suspension certificate is granted must be recorded in it. It will no longer be possible to grant a suspension certificate for the duration of an event or series of events. These changes are designed to cure difficulties in the legislation as it currently applies, where the maximum suspension period is measured in “months”; in future, it will be measured in days, and a day is defined.

The ending of a CTO

In the event that the CTO is allowed to lapse at renewal, or is revoked by the RMO during the preceding period the MHO must advise Admin of this change in order that the client record on SWIFT can be updated to reflect the end of the legislation.

If an MHO Monitoring period is required the MHO should continue to record all contacts and interventions under MH – General Casenote.

Community CTO Recalls

A patient can be recalled to hospital under the following sections if he/ she is not compliant with the order:

s 112: For a period of 6 hours to administer medical treatment (NB. MHO consent is required).

s 113: For a period of up to 72 hours (in order to carry out a medical examination).

S 114: For up to 28 days to allow for a decision to be taken to make application to the Tribunal to vary the order (**s 92**) from a community based to a hospital based CTO (NB MHO consent is required).

The MHO must advise Admin of the use of this legislation to ensure that the SWIFT record is updated and the MHO should add a record of the contact under the relevant section.

If a variation is required:

MHO must advise Admin who will then add a **s 92 report** allocation for completion by the MHO.

Community based CTO's: use of section 44 detention

Where a patient is complying with the conditions of the community based CTO and his/ her mental health deteriorates despite this, then he/ she should be admitted to hospital in terms of s 44 (STDC) which suspends the CTO measures. Consideration must also be given as to whether the community based order should be varied to a hospital based CTO and if so, a **s 95** application to the tribunal must be progressed.

Following consent, the MHO must inform Admin of the STDC and the SWIFT record will be updated. Admin will add a **s231 (44)** (SCR) report allocation for completion by the consenting/ allocated MHO.

4. Duty to Inquire/ Place of Safety Warrants

4.1 Reference should be made to the 2003 Act and Code of Practice (Vol 1)

<http://www.scotland.gov.uk/Publications/2005/08/29100428/04289>

The request for the MHO service to be involved in a Duty to Inquire or Place of Safety Warrant application can be generated from a variety of sources.

It is important that even if the referral is made to you directly or is generated from your own caseload the issue must be discussed with the Mental Health Co-ordinator and action agreed.

This is a new referral to the MHO service and must be recorded as such with a s 33 action allocated to you as the MHO.

Legal Services must be notified at the initial consideration for a warrant application.

It is important to recognise that as a consequence of any of the above actions, there could present a need for further statutory involvement.

Follow-on Action – s 44 detention

The MHO must inform Admin who will update the legislation and a **s 231(44)** allocation for completion by the designated MHO.

The MHO will add a contact in [casenotes - short term detention]

Follow-on Action – AWIA action required

This will require an immediate referral for AWIA case conference to be convened.

Ending the Duty to Inquire process

The Duty to Inquire may not progress to further statutory involvement, however consideration should be given to the need for referral for further assessment and care management by the Mental Health Team.

Consideration should also be given to applying a one month monitoring period following the closure of the Inquiry and all contacts recorded in case notes under general case notes (MH Monitoring).

When follow up actions are completed the MHO should add an observation reflecting closure of the case – MH Closure Summary.

5. MHO Processes in Criminal Proceedings

Close reference should be made to the 2003 Act and the Code of Practice Vol 3

<http://www.gov.scot/Publications/2005/09/16121646/16474>

5.1 Assessment Orders (s 52D) and Treatment Orders (s 52M) CPSA 1995

These orders are made at Court and can be pre or post-conviction. Normally the MHO service will first receive notification that an order is made from Hospital Records (NB this can frequently cause delay in meeting the statutory requirement to prepare an SCR within the 21 day time frame therefore both Admin and the MHO should be alert to the date that the Order was made).

Admin will add sec 231(52D) or sec 231 (52M) for completion by the MHO.

In the case of a new referral, the Mental Health Co-ordinator will allocate the case to an MHO and the relationship will be added on SWIFT by Admin.

It is not necessary that an Assessment Order precedes the making of a Treatment Order. The point of entry to the MHO Service will be governed by the recommendation to Court from the Consultant Psychiatrist/ RMO who will provide the supporting medical reports.

Your involvement as MHO should be recorded by Admin and MHO under MH – Criminal Procedures Act. All contacts should be added under the heading Mental Health – AO.

The Assessment Order (or Treatment Order) could be ended at Court with no further action required by MHO services. The MHO should be alert to the Court outcome

and it is for the designated MHO, by now familiar with the circumstances of the case and the client, to decide if a period of MH Monitoring is required during which any appropriate referrals eg. ACM assessment or signposting to other services can be made.

If required – Admin will add MH – Monitoring with a due date of 1 month. Once the period is complete the MHO will add a MH – Closing/ transfer summary before case closure.

If a Treatment Order is made following an Assessment Order:

Admin will add a sec 231(52M) report for completion by the MHO to be completed and circulated to RMO and Mental Welfare Commission within 21 days. All contacts should be added under Mental Health – TO.

Continue involvement until Treatment Order is ended at Court.

Continue to MH Monitoring (if required) or add MH Closing/ Transfer summary.

5.2 Interim Compulsion Order (sec 53, Criminal Procedures (Scotland) Act 1995).

This disposal is often used should the Court wish to consider whether a Compulsion Order with Restriction Order (CORO) is necessary and the MHO should be alert to guidance and the assessment of serious risk of harm. Please refer to the Memorandum of Procedures.

www.gov.scot/Publications/2010/06/04095331/0

With the making of an Interim CO Admin will add a sec 231 (53) report for completion by the MHO to be completed within the 21 days time frame.

All casenotes should be completed under the heading 'MH- ICO'.

The MHO must keep a track of the Court Hearing date to consider the final disposal.

Before a final disposal is made, the Court should request an MHO report in terms of sec 57C.



MHO Report for
Court S57c or 59b.d

Admin will add this report for the MHO with a date set by the Court for completion. It may be useful to set this date 2 days prior to the deadline set by the Court.

Following the Court Hearing, the MHO will add a casenote under 'MH – Court Hearing Outcome' and advise Admin to add the legislation on the client SWIFT record as necessary.

5.3 Compulsion Order (sec 57A, Criminal Procedures (Scotland) Act 1995)

CO's can be either Hospital based or Community based.

A Compulsion Order is reviewed through civil procedures ie. by the MH Tribunal. As with any review, the focus will be on whether the criteria for the Order still apply. The significant difference being the absence of the 'significantly impaired decision-making' criteria. This criteria is not relevant in criminal procedure mental health disposals.

On the making of a Compulsion Order Admin will assign a sec 231 (57A) report to be completed by the allocated MHO within 21 days.

All subsequent casenotes should be added under 'MH – CO casenote'

The MHO should also set themselves a reminder of Tribunal Review Hearing for 6 months (set at 5 months for prompt).

Casenotes for Tribunal attendance and outcomes should be recorded under 'MH – Tribunal'.

At the first Tribunal, a copy of the original MHO report for the Court (s 57C Report) must be submitted. A supplementary update submitted alongside this is recommended as good practice.

1. Tribunal continues CO

The MHO should set a s 151/152 Review of CO and advise Admin of same.

All subsequent casenotes relating to statutory intervention should be recorded under 'MH – CO casenote'.

Continue as this, taking into account statutory review times and need to return to Tribunal should the CO be subject to changes.

2. Tribunal ends CO or CO is revoked by the RMO

MHO must advise Admin of revocation in order that the SWIFT record can be amended to reflect the change in legislation.

MHO will consider the need for the MHO Monitoring period and add 'MH – Monitoring' due date of 28 days if required.

Once monitoring period is concluded, the MHO will add a casenote under 'MHO Closing/ Transfer summary'.

6. Compulsion Order & Restriction Order's (CORO's)

Close reference should be made to Code of Practice Vol. 3

<http://www.gov.scot/Publications/2005/09/16121646/16474>

and the Memorandum of Procedures 2010

www.gov.scot/Publications/2010/06/04095331/0

The making of a CORO denotes that there is significant concern of risk to the public that requires that any changes to the order, or level of security within which the patient is accommodated and treated, will be subject to additional scrutiny of the Scottish Ministers.

There are two routes by which a CORO is established.

1. The mentally disordered offender is found **Insane in Bar of trial** and follows from an Examination of the Facts that has established beyond doubt that the offender committed the offence(s). The offender is not therefore convicted of the offence, although it should still appear on SCRO records.

The legislative recording of this is as a sec 57(A) and sec 57(B) CPSA 1995.

The link below will take you to the section in the Code of Practice that deals with Insanity.

<http://www.gov.scot/Resource/Doc/69582/0017815.pdf>

NB: The Court can make a **Temporary Compulsion Order (s 54 (2B) of the CPSA)**.

This should be treated as a relevant event and if referred to the service, the MHO would be required to provide an SCR. This is a rare occurrence. Follow the procedure for the Interim Compulsion Order but legislation recordings should denote the different route to compulsory treatment.

Admin will assign a s 231 (53) for completion by the allocated MHO within a period of 21 days.

All casenotes must be recorded under 'MH – ICO Casenote'

The MHO must advise Admin of when the SCR is completed and sent to reflect the activity on the SWIFT record.

2. The other route is when the mentally disordered offender is able to engage in the Court process, is convicted of the offence(s) and the Court is satisfied that the offending behaviour is linked to the mental disorder. The offending behaviour is of a nature that there is a risk of serious harm to the public and as such the additional scrutiny of the Scottish Ministers is required to decide on any significant changes in the level of security under which treatment is

provided and at all stages to recovery. A Restriction Order (without limit of time) is added to the Compulsion Order.

The Mentally disordered offender becomes subject to a sec 57(A) and sec 59 of the CPSA 1995.

Both routes to the CORO, whilst having different legislative backgrounds, then follow the same process of recording and involve the same responsibilities for the designated MHO.

The MHO should add a casenote under 'MH – Court Hearing Outcome'.

The MHO must advise Admin of the granting of the CORO in order to ensure that the SWIFT legislation record is updated and reflects status.

Admin will allocate a sec 231(57A & B) report for completion by the designated MHO within a 21 day period. The MHO must advise Admin of the reports completion and submission in order to ensure that the SWIFT record reflects this activity.

NB Good Practice requires this report to be sent to the Scottish Ministers as well as the RMO and MWC.

The CORO will be subject to annual review.

The MHO must advise Admin of the date for annual review and Admin will then assign a sec 186-189 (report to Shrieval Tribunal) to be completed and submitted to Tribunal by the designated MHO.

Good practice would require the MHO to prepare an updated report to be sent to the RMO. The RMO will forward this report to the Scottish Ministers as required in annual review.



MHO Report s184
&189 template.doc

If the CORO is one that is transferred to this authority, then there should already have been an SCR prepared by the original authority MHO. If this has not already been identified and added by Mental Health Co-ordinator/Admin, ensure you are aware of next dates for review and add the s184-189 report activity and due date.

Remember that there is a statutory duty for the Scottish Ministers to refer to Shrieval Tribunal every Two years. You will be notified of this date. You might also receive notifications of Tribunal should the patient wish to exercise his right for requesting a review of the order, or indeed an appeal against the level of security.

All casenotes throughout the period of the CORO should be added under 'MH – CORO Casenote'.

Changes in level of security / hospital/ or conditional discharge from CORO could necessitate inclusion in MAPPA if this occurs record all MAPPA interactions under MH – MAPPA.

At an appropriate time in the mentally disordered offenders' journey, he may be considered to have a release from the hospital condition of his CORO. He is then on conditional discharge and the designated MHO is the Supervising MHO during this period. You will be required to send reports to the Scottish Ministers at a frequency agreed with them.

When the date and frequency of reports has been identified:

The MHO must notify Admin in order to update the SWIFT record and assign the MHO Supervision report with a due date.

Again, during the course of the mentally disordered offender's journey, Shrieval Tribunal could be requested to consider whether the serious risk criteria of the CORO no longer applies. If it does not, they will revoke the Restriction Order. The Compulsion Order remains, therefore the process to follow is that for Compulsion Orders.

The MHO should set themselves a reminder of Tribunal Review Hearing for 6 months (set at 5 months for prompt) under MH- Tribunal Reminder (CO)
Casenotes should now be recorded under MH – CO casenote

Finally, the Shrieval tribunal could have considered that evidence presented was such that they afford an absolute discharge. This ends the statutory involvement and consideration for suitability of MHO monitoring should be given.

If MHO monitoring is appropriate;

All casenotes should be recorded as MH – Monitoring.

7. Hospital Direction, s 59A

Note: close reference should be made to Codes of Practice Vol 3

www.scotland.gov.uk/Publications/2005/08/29100428/04289

and also, Memorandum of Procedures 2010

www.scotland.gov.uk/Publications/2010/06/04095331/0

The Criminal Procedure Scotland Act 1995 (CPSA 95) also makes a provision at sentencing for mentally disordered offenders to be treated in hospital prior to a transfer to prison for completion of the remainder of the sentence. Whilst not mandatory, this disposal could have followed on from pre and post-conviction disposals for mental health treatment and as such, you are likely to have been the MHO involve in earlier stages.

The Order would follow from MHO report to court – but as part of the multi-disciplinary team, the option of Hospital Direction would have been discussed therefore you might be asked to prepare a report for court in terms of s57C of the CPSA 95 (please refer to earlier guidance **5.2**).

If a Hospital Direction is made, it is a 'relevant event' and is also subject to the scrutiny of the Scottish Ministers with a mandatory annual review [s 206(3)]. It is **not** reviewed by the Tribunal.

- Admin must add a new activity (class MHO reports) **s 231 (59A)** and assign to yourself with a due date of 20 days. Good practice would require this report to be sent to the Scottish Ministers.
- Add casenote 'MH – Hosp Direction casenote'

When the mentally disordered offender is transferred back to prison;

- Add casenote 'MH – Closing Summary/ Transfer' and advise Admin of closure for legislation update.
- Send message to Team Manager for closure on SWIFT

8. Supervision and Treatment Order (s 57(2) and Guardianship Orders (s 58)

Other disposals the Court might consider in Insane in Bar of Trial or Unfit to Plead circumstances, particularly if the offender 'lacks capacity' are the above disposals. In both options, the Court will refer to the MHO service for an MHO report.

A Case Conference will be required as a matter of urgency in these cases and it is also important to trigger the AWIA process. The conference should be used by the designated MHO to inform recommendations to the Court.

The link below will direct you to an explanation of the **Supervision & Treatment Order**

<http://www.legislation.gov.uk/ukpga/1995/46/schedule/4?view=plain>

Admin have been directed to consult with the MH Co-ordinator should any request for an MHO Court report be received. The MH Co-ordinator will decide on allocation and appointment of the MHO.

- You will receive the request for the report – **CPA s 57(2)** or **CPA s 58** to denote the report type requested.
- You should also advise the legislative assistance that an AWIA case conference will be convened.
- Case notes during this period should be under the context heading 'MH – general casenote'.

9. Transfer for Treatment Direction (s 136 of 2003 Act)

Note: Close reference should be made to Codes of Practice Vol 3,
<http://www.scotland.gov.uk/Publications/2005/08/29100428/04289>

And also the Memorandum of Procedures 2010

<http://www.scotland.gov.uk/Publications/2010/06/04095331/0>

If a sentenced prisoner requires hospital treatment for mental disorder, the Scottish Ministers will be asked to approve a transfer for Treatment Direction (TTD).

Notification that this has occurred will normally be received by Hospital Records. It is important to note the date on which the order was made (and for the MHO to be aware of the Earliest Date of Liberation (EDL) from sentence as further statutory measures may have to be considered and applied).

The TTD is made in terms of the Mental Health (Care & Treatment) (Scotland) Act 2003 as the need for compulsory measures has arisen post-sentencing. For the purposes of gathering accurate information in relation to mentally disordered offenders, the descriptor term adopted by East Ayrshire Council is that of MH Criminal Procedures Act. The process of TTD is overseen by Scottish Ministers and is subject to annual review.

- Casenotes during this period should be recorded under MH -TTD casenote.
- An SCR (s 231(136)) will require to be completed within the 21 day timescale and good practice would dictate that a copy is provided to the Scottish Ministers as well as to the RMO and MWC.
- A review under s.206(3) should be added (**s206(3) review TTD/ HD**) with a due date for 10 months hence to coincide with RMO mandatory review.
- Should the prisoner be transferred back to prison, add casenote 'MH – closing/ transfer summary' and advise closure with team manager and alert Admin to update SWIFT.

Should the prisoner remain unwell and the decision is made that they should remain in hospital after the EDL an application for a CTO will be required to be submitted by the MHO. **Note: an application for a CTO can be made up to 2 months before the TTD will end at the conclusion of the prisoner's sentence. If granted it will commence on the day of expiry of the TTD.**

- Admin will assign **s63 report** to denote a CTO application is being made and will apply a due date for submission.
- Follow the process for CTO application, making note of Tribunal Date and Tribunal Outcome.
- At the time when one order ends and another starts then the legislation tab will need updated.

AWIA – MHO REPORTS AND ACTIVITIES

10. This process applies to both private Guardianship Applications and LA Guardianship/Intervention orders Applications

Reference should be made to the Codes of Practice for Local Authorities:

<http://www.scotland.gov.uk/Publications/2008/03/20114619/0>

MHO's are regularly called upon to write suitability reports for Welfare Intervention orders, Welfare Guardianship Orders, for Local Authority Applications Welfare Guardianship applications in private cases.

Upon allocation of an AWIA(2) report, the Legislative Assistant must be advised of the allocation. This will usually be the responsibility of the Mental Health Co-ordinator in respect of private welfare guardianship allocations as they are responsible for the allocation of the MHO, however in cases where a decision has been made at Case Conference to progress a Local Authority application, it is the responsibility of the Care Manager to **notify the Legislative Assistant**. The Care Manager must then contact the Mental Health Co-ordinator to identify allocation of an MHO to progress the report.

As MHO in Local Authority applications you will always be advised of Court Hearing dates. At times, attendance is essential and should be attributed to you accordingly.

It is less often the case that private applications will result in MHO appearance at Court, but it certainly not impossible.

Upon receipt of a request to provide a suitability report to accompany an application for a private welfare guardianship (with accompanying medical reports), the MHO has 21 days from the date of notice of intention to make such an application to the solicitor.

The Summary Application will be accompanied by two statutory medical reports* based on examinations and assessments of the adult carried out within the last 30 days.

(* One of the Statutory Medical reports to be prepared by 'relevant medical practitioner' AMP)

It is worth noting that the sheriff may consider an application accompanied by medical reports outwith the 30 day rule if satisfied that there has been no change in circumstances since the examination and assessment was carried out, which may be relevant to the matter set out in the report.

Once the Court outcome is known, the Legislative Assistance must be informed and the SWIFT record updated.

The MH Co-ordinator will be advised accordingly and will identify and progress allocation of the supervising/ authorised officer role.

Following the granting of an Order, the supervision responsibility will normally be transferred to the Care Manager who will then assume the role of supervising or authorised officer.

The following tool can be used to 'track' the Guardianship process for the practitioners involved.



GUARDIANSHIP
TRACKING.docx

10.1 Review of Guardianships

Reference should be made to

East Ayrshire Council AWIA Procedures and Practitioner Guidance.



ADULTS WITH
INCAPACITY GUARDI

A formal review must take place within the first 12 weeks of a guardianship being granted.

Following the changes introduced by the Amendment to Regulations concerning the Supervision of Welfare Guardians (June 2014) the frequency of supervision can be considered and varied by the Authorised/ Supervising Officer following the initial 3 month supervision and subsequent supervision visit following a period not exceeding 12 months.

An Adult and Guardian must agree with the decision to vary the terms of the supervision arrangements.

These arrangements can vary in a number of ways;

Vary the interval between visits (stipulating the agreed interval period)

Cease visits with the adult

Cease visits with the Guardian

Cease visits with the adult & Guardian

Information must be provided by the Authorised Officer on how contact can be made with the Local Authority if supervision visits are required to be reinstated.

The Authorised Officer must inform the Mental Welfare Commission using the prescribed form 'Form of Notice to the MWC'.

Any action taken on behalf of an adult should reflect these principles:

- be of benefit to the adult
- be the least restrictive thing to do in the circumstances
- take the past and present wishes and feelings of the adult into account

- take the views of the nearest relative and the primary carer (as well as other relevant people) into account.
- encourage the adult to use his/her existing skills.

10.2 Variation, Transfer, Termination or Renewal of an Order

Supervising/ Authorised officer) should refer to the following;

PROCEDURE NOTES FOR OFFICERS: Adults With Incapacity (Scotland) Act 2000 (East Ayrshire Health & Social Care Partnership)



10.3 Use of 13ZA

Reference should be made to;

EAC Procedure Note: Use of s. 13ZA.

Situations where s.13ZA cannot be used.

- Where there is a welfare guardian or welfare attorney with powers to make such decisions.
- Where there is an intervention order authorising the proposed steps.
- Where an application has been made but has not been determined for an intervention order or guardianship order relating to the proposed steps.
- Where the Adult expresses an objection to the proposed steps, whether verbally or by other means.
- Where the Adult has previously expressed a view that would be contrary to the proposed steps.
- Where either the nearest relative or any other family members do not agree with the proposed steps (positive agreement to be sought rather than reliance placed on absence of objection).
- Where there is disagreement between the professionals about the proposed steps

Procedural requirements where s. 13ZA is to be used.

- The decision is that of the Local Authority.
- There should be a formal procedure regarding decision making under s. 13ZA to ensure full consideration is given to all the requirements and that there is consistency of approach – AWIA Initial Case Conference is recommended.
- Prior to making any decision under s. 13ZA a comprehensive assessment of the Adult's needs will require to have been undertaken.

- There will require to be a considered view about the Adult's capacity, as defined in the AWI Act.
- The section 1 AWA principles will require to be invoked and the position recorded re:
 - Benefit to the Adult (this will need to identify specific benefits to the Adult of the actual proposed placement as opposed to the existing placement or indeed living at home).
 - Least restrictive option.
 - Current views of the Adult.
 - Past wishes of the Adult.
 - Views of the nearest relative and primary carer.
 - The views of any other person with an interest.
- An assessment will need to be undertaken of the extent to which the proposal will deprive the Adult of his liberty. If the proposal is significantly restrictive then the use of s. 13ZA may not be appropriate even for the initial move.
- Where consideration is being given to residential accommodation with nursing care, particular care should be taken to consider the proposed arrangements.
- Independent advocacy services should be provided for the Adult.
- All uses of s. 13ZA should be recorded.
- There should be procedures in place for monitoring and review to ensure that any use of s. 13ZA is followed up by a guardianship application.

The following AWIA Flowchart may act as a useful reference tool for practitioners involved in supporting AWIA processes.



AWI GUIDANCE
PROCESS FLOW CHART

DRAFT