

# The Mental Health Bill

## *Plans to amend the Mental Health Act 1983*

### General Information about the Mental Health Act 1983

#### Introduction

On 23 March 2006 the Government announced its plans to amend the Mental Health Act 1983. The objectives of these changes are to:

- ensure that patients receive the treatment they need to protect them and the wider public from harm
- support modernisation of mental health services
- strengthen patient safeguards
- remedy Human Rights incompatibilities.

A list of the planned changes is in the *Setting the Scene* section. More information is available on each of these changes in separate briefing sheets – see end. **The purpose of this briefing sheet is to give general information about the 1983 Act to set the context for the planned changes.**

#### What is mental health law for?

Mental health law is about providing the legal authority to take steps to protect people suffering from mental disorders and the wider public from any potential harm arising from the effects of those disorders. This may include detention in hospital, treatment without consent, guardianship and other forms of restriction on patients designed to help manage their disorder

### Setting the Scene

The Government has put in place a comprehensive strategy to reform and modernise mental health care to deliver high quality, accessible services that meet the mental health needs of the whole community. Updating the Mental Health Act 1983 is part of this strategy.

The Mental Health Act allows the small number of patients with mental health problems who are at risk of harming themselves or, more rarely, others, to receive compulsory treatment. The Government's forthcoming Bill aims to reform and modernise this legislation so that the law better supports the way services are delivered to these patients.

It proposes changes in six key areas:

- Supervised community treatment
- Definition of mental disorder
- Criteria for detention
- Mental Health Review Tribunal
- Professional roles, and
- Nearest relative.

The Bill will also amend the Mental Capacity Act to fill the Bournemouth gap.

safely. It is also about setting clear rules for the use of these powers and establishing effective safeguards against their inappropriate use.

Most countries have mental health law to set out the circumstances in which a person with a mental disorder can be treated without their consent and the safeguards that must be provided for them. There has been mental health law of this kind in the UK since the early 19th century.

The current legislation is based on the Mental Health Act 1959 which replaced the complex enactments in force before then. After significant amendment in 1982, the legislation was consolidated in the Mental Health Act 1983, which is the Act now in force. That Act has been amended over time, most significantly by the Mental Health (Patients in the Community) Act 1995. The Act provides for the lawful application of compulsion to people with mental health problems where it is necessary for their health and safety and/or that of others. It balances an individual's rights with the need to prevent harm.

## How many people are treated under mental health law?

As many as 1 in 6 adults are affected with a mental illness at any one time. At some time in their life, 1 in 4 people will seek help for mental health problems.

The great majority of people with mental health problems never need to be treated compulsorily. Most voluntarily seek treatment. Only a very small minority of people with mental health problems need to be treated compulsorily.

For detailed information about patients detained under the Mental Health Act 1983, see the information sources listed at the end of this briefing sheet. In summary, at 31 March 2005, there were 14,700 patients detained in hospital in England under the Mental Health Act 1983, of whom 12,100 were in NHS facilities and 2,500 in independent hospitals. The number of episodes of detention under the Act in 2004/05 was 46,700 (in 2004/05, there were 1,402 admissions under the Mental Health Act 1983 in Wales). A proportion of those detained under mental health legislation are within the criminal justice system.

## How does the Act work?

**Part 1** of the Act defines mental disorder and related expressions. It is the starting place for everything else in the Act. [It is to be simplified by the Bill.<sup>1</sup>

**Part 2** deals with the civil powers of compulsion (ie powers which are not related to criminal cases). They are:

- detention in hospital for assessment for up to 28 days under section 2 (application for admission for assessment)
- detention in hospital for treatment for up to 6 months initially (renewable thereafter) under section 3 (application for admission for treatment)
- reception into guardianship
- after-care under supervision.

It sets out:

- the functions and duties of Approved Social Workers (ASWs) in making applications
- the rights of nearest relatives to make applications, to be consulted before ASWs make an application, and to object to admission for treatment
- criteria which must be met before an application can be made
- the medical recommendations required to support applications, including urgent admission for assessment for up to 72 hours on the basis of a single recommendation under section 4
- the absolute right of nearest relatives to discharge from guardianship and their qualified right to discharge from detention
- the role of the Responsible Medical Officer (RMO) in granting leave, renewing detention, discharging patients and blocking discharge by nearest relatives where patients are likely to act in a manner dangerous to themselves or others

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<sup>1</sup> See the briefing sheet on the definition of mental disorder for further information

- the powers of hospital managers to discharge patients, and their duty to consider doing so whenever a patient's detention is renewed
- procedures to be included in regulations for the transfer of patients between hospitals within England and Wales and between detention and guardianship
- the arrangements for patients absent without leave
- the procedure for applications to the county court to displace nearest relatives and the effect on patients subject to admission for assessment.

The criteria for detention and the arrangements for displacing nearest relatives are to be amended by the Bill. Both ASWs and RMOs are to be renamed and the role extended to other suitably qualified professionals. After-care under supervision is to be abolished, and a new regime of supervised community treatment (SCT) introduced.<sup>2</sup>

**Part 3** concerns people suffering from mental disorder who are detained under criminal charges or a criminal conviction. It gives the courts the power to make a hospital or guardianship order as an alternative to a criminal justice disposal. It sets out the criteria and procedures to be followed by the courts and the Home Secretary including the medical evidence required in each case. Some criteria are to be amended by the Bill.<sup>3</sup>

Where it is necessary to protect the public from serious harm, the court may also make a restriction order, under s.41, which means that the person may not be given leave of absence, transferred between hospitals or discharged without the consent of the Home Secretary.

The Home Secretary has the power to transfer prisoners to hospital for treatment for mental disorder, under s.47 (for sentenced prisoners) and s.48 (for unsentenced prisoners). Prisoners transferred to hospital may (and in some cases must) be subject to a restriction direction

under s.49, which has the same effect as a restriction order.

The court may make a hospital direction and limitation direction under s.45A; the patient made the subject of such directions is treated in all respects as a prisoner transferred under the Act who is subject to a transfer and restriction direction. At present, such a direction may only be given to a person suffering from psychopathic disorder.

**Part 4** deals mainly with the compulsory treatment of patients detained in hospital under the Act. In particular it provides that:

- patients (whether or not detained) may not be given psychosurgery (or other treatments specified in regulations) unless they consent and the treatment is approved by a second opinion appointed doctor (SOAD) and two other people appointed by the Mental Health Act Commission (MHAC)
- except in emergencies, detained patients may not be given medication (after an initial three month period) or (by virtue of regulations) electro convulsive therapy (ECT) unless the RMO certifies that they have consented, or, if they cannot or do not consent, unless the treatment is certified by a SOAD
- in any other case detained patients may be treated for mental disorder without their consent at the direction of their RMO.

**Part 5** deals with the Mental Health Review Tribunals (MHRT), the independent judicial bodies with the power to discharge patients from compulsion. It sets out:

- the composition of the MHRTs and the power of the Lord Chancellor to make rules about how it works
- the rights of different classes of patients and (where relevant) their nearest relatives to apply to the MHRT
- the duties of hospital managers to refer civil patients and unrestricted Part 3 patients to the MHRT at certain points
- the equivalent duty of the Home Secretary to refer restricted patients, and the discretion of

<sup>2</sup> See the briefing sheets on professional roles and supervised community treatment for further information

<sup>3</sup> See the briefing sheet on the criteria for detention for further information

the Secretary of State, the National Assembly for Wales (NAW) and the Home Secretary to refer other patients at any time

- the general discretion of the MHRT to discharge (except restricted patients)
- the duty of the MHRT to discharge where criteria for detention are not met
- its duty to discharge restricted patients conditionally (rather than absolutely) if the MHRT believes the patient should remain liable to recall to hospital.

The rules for hospital managers' referrals to the MHRT are to be amended by the Bill – see briefing sheet on Tribunals.

**Part 6** deals with cross-border transfers of patients to Scotland and to and from Northern Ireland, the Isle of Man, and the Channel Islands and the return of patients absconding across those borders. There is also a procedure for removing detained patients without the right of abode in the UK from England, Wales and Northern Ireland.

**Part 7** deals with the management of the property and affairs of people who lack capacity to do so themselves because of mental disorder. It is repealed by the Mental Capacity Act 2005 which is intended to come into force in April 2007.

**Part 8** deals with various functions of public authorities, including duties on:

- local social services authorities (LSSAs) to approve and employ a sufficient number of ASWs
- local NHS bodies and LSSAs to provide after-care for people discharged from detention
- the Secretary of State for Health (and NAW) to publish a Code of Practice
- the Secretary of State (and NAW) to delegate to MHAC the function of keeping the operation of particular parts of the Act under review, including visiting and interviewing detained patients.

**Part 9** sets out a number of offences in respect of the Act, including ill-treatment or neglect of patients and assisting patients to absent themselves without leave.

**Part 10** contains miscellaneous provisions, including:

- confirmation that nothing in the Act prevents people being treated or admitted to hospital informally for mental health care
- duties on hospital managers to give patients and (unless the patient objects) nearest relatives, information about their detention
- rules about withholding post to and from patients (which mostly apply only to patients in high security psychiatric hospitals)
- the granting of magistrates' warrants to enter premises and take patients to a place of safety for up to 72 hours
- police officers' power to remove people found in public places who appear to be suffering from mental disorder and detain them in a place of safety for up to 72 hours while arrangements are made for their treatment or care
- general provisions about custody, conveyance and detention
- protection from liability for acts done under the Act, unless done in bad faith or without reasonable care
- procedures for vacating the seats of Members of Parliament (etc) suffering from mental illness
- definitions of key terms used in the Act.

## Further information

For further information of the Mental Health Act 1983 and the amending Bill, including links to statistics on the use of the current Act, visit:

<http://www.dh.gov.uk/MentalHealth>  
Telephone: 020 7972 4477

Email: [MentalHealthBill@dh.gsi.gov.uk](mailto:MentalHealthBill@dh.gsi.gov.uk)

For an on-line version of the Mental Health Act 1983 visit: [www.imhap.co.uk](http://www.imhap.co.uk)  
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