

# Mental Health Law Briefing

Number 108

## The Mental Health Bill 2006

There have been various proposals brought forward by the government to amend the mental health legislation over the last eight years. Earlier this year the government announced a proposal to amend the current Mental Health Act, rather than provide a whole-scale replacement Act. The Queen's speech at the State Opening of Parliament on 15 November confirmed the government's intention to proceed with a Mental Health Amendment Bill and the Bill was then duly published on 17 November.

The key thrust of the Bill is to address various themes that the government maintain that require alteration, namely:

- **Plugging the Bournemouth gap** – Introducing safeguards for Bournemouth patients namely individuals who lack capacity to decide about their care but are deprived of their liberty. The Bill proposes to amend the Mental Capacity Act<sup>1</sup> by introducing a regime of Protective Care Orders.
- **Modernising mental health legislation** – allowing a broader range of professionals to carry out the functions under the Mental Health Act and establishing a Community Treatment Order to enable patients to receive supervised treatment in the community.
- **Ensuring the availability of psychiatric treatment** – Amending the definition of mental disorder and abolishing the treatability test to ensure that individuals with serious mental disorders receive treatment to protect them and the public from harm.

The existing Mental Health Act 1983 will therefore be amended:

1. To broaden the range of professionals undertaking the roles of RMO and ASW.
2. To set a maximum period for referral by hospital managers to the Mental Health Review Tribunal.
3. To simplify and provide a single definition for "mental disorder".
4. To abolish the treatability test and replace this with a test based upon the availability of "appropriate treatment".
5. To amend the current Mental Health Act provisions regarding nearest relatives, in particular, to enable patients to apply for the displacement of their nearest relative.
6. To introduce supervised community treatment orders.

The Mental Health Bill can be viewed at:

[http://www.dh.gov.uk/PolicyAndGuidance/HealthAndSocialCareTopics/MentalHealth/MentalHealthArticles/fs/en?CONTENT\\_ID=4140596&chk=GudftE](http://www.dh.gov.uk/PolicyAndGuidance/HealthAndSocialCareTopics/MentalHealth/MentalHealthArticles/fs/en?CONTENT_ID=4140596&chk=GudftE).

For further details of the proposed alterations please refer to our Mental Health Law Briefing Number 100.

<sup>1</sup> Which comes into force on 1 April 2007

The proposals have already been subject to criticism by bodies such as the Law Society. The Mental Health Act Commission have also commented on the draft Bill in detail in Policy Briefing Issue 16 dated November 2006.

It is already clear that the proposals have and will attract less than full support from stakeholders in many different areas of mental healthcare.

**Andrew Parsons**  
**© RadcliffesLeBrasseur**  
**December 2006**

For more information on Mental Health Law contact Andrew Parsons at RadcliffesLeBrasseur on 020 7222 7040, or email [andrew.parsons@rlb-law.com](mailto:andrew.parsons@rlb-law.com).

Out of office emergency advice available 24hrs on 07802 506 306.

Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

Future editions can be received by email. Please e-mail: [marketing@rlb-law.com](mailto:marketing@rlb-law.com) or telephone 020 7227 7476.