

Number 79

New Draft Mental Health Bill Published

The Government finally published a revised draft of the Mental Health Bill on 8th September 2004.

The amended Bill will be subject to pre-legislative scrutiny by a joint parliamentary committee. The Committee have been asked to present its report by the end of March 2005.

On publishing this Bill the Government issued the following Press Release:

This revised Bill is the biggest reform of mental health legislation since the 1950's. It will provide improved safeguards for patients and better procedures for treatment to the small minority of people with mental health problems who need to be treated against their will to prevent them from harming themselves.

It also provides a diversion from prison for non-dangerous offenders with mental health problems and provides better protection to the public from those who are deemed a risk to others, by ensuring they receive the treatment they need.

Health Minister, Rosie Winterton, said:

"The revised Bill represents the first major overhaul of the legislation since the 1950s and is an integral part of the Government's wider strategy to improve mental health services for all; reflecting developments in human rights law and providing a legal framework in line with modern services and treatments.

We have held extensive discussions with stakeholders since we published a draft Bill for consultation in 2002 and we believe that we now have a Bill that puts a new focus on the individual, allowing compulsory powers to be used in ways that fit with patient's changing needs.

One of the fundamental aims of the Bill is to help make community care work for the people who need it most. Patients in the community who are ill and vulnerable or at risk will now be able to get the treatment they need.

Safeguards for patients will also be greatly strengthened with choice of representative, access to advocacy and all use of compulsory treatment beyond 28 days having to be authorised by a new independent Mental Health Tribunal.

People will only be subject to treatment under the Bill if they are at risk of harm to themselves or others. The Bill means that the small minority of people with mental health problems who need to be treated against their wishes, normally for their protection but occasionally to protect the public, will get the right treatment at the right time.

To make sure we get the legislation right, we have asked a Joint Parliamentary Committee to scrutinise the draft Bill, and we look forward to receiving their report".

MENTAL HEALTH LAW

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Home Office Minister, Paul Goggins, said:

“The provisions that enable dangerous and serious offenders to be detained in hospital for mental health treatment will stay in place. The vast majority of people with mental health disorders are not a risk to others, but a minority are – and the law obviously needs to recognise this.

We will not compromise public safety. If we are to protect the public we must ensure that those with a mental disorder who are a risk to others receive the high quality mental health treatment they need. The Bill will help to achieve this.

It also enables non-dangerous offenders who do not pose a risk to others to receive mental health treatment under sanction in the community. This means that the offender will receive the mental health treatment he or she needs to reduce the risk of re-offending”.

National Director for Mental Health, Louis Appleby, said:

“We are determined to develop an effective Act that best serves the interests of people with mental health problems. It will be for clinical and social care staff to decide whether, in their professional judgement, it is clinically appropriate to treat someone under the act. If they decide that they are not, then compulsory powers cannot be used.

The criteria for compulsory treatment under the Bill are carefully drafted – to make sure that only people who need compulsory treatment receive it. Mental health services will have a duty to respond to requests for assessment and patients who are treated under the Bill will have to have an individual care plan focussed on their individual needs”.

Having listened to stakeholders and responses to consultation, the Government has made significant changes to the 2002 draft of the Bill. The new draft has:

- changed the definition of mental disorder to emphasise that it is the effect rather than the underlying cause which is important;
- defined the conditions for compulsion differently, to raise the threshold for the health and safety of patients and to make clear that appropriate treatment must be available for the individual patient;
- meant that a period of hospital assessment will normally be a prerequisite to treatment subject to sanction in the community;
- extended the proposed functions of the Healthcare Commission;
- allowed people to refuse ECT (Electro Convulsive Therapy) if they retain mental capacity, and;
- increased the maximum sentence for people convicted of ill treatment or neglect of patients

The Pre-legislative scrutiny committee will take evidence from interested parties until 1st November and will give the issues consideration. It will then recommend to the Government whether any changes should be made to the draft Bill. Pre-legislative scrutiny provides a further opportunity for stakeholders to have an input in developing an effective piece of legislation.

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Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.
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¹ To obtain a copy of the revised draft of the Bill, an easy-to-read version and a summary of the responses to consultation please visit: <http://www.dh.gov.uk/publications>.

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