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## Mental Health Bill needs radical overhaul

### PRESS NOTICE

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Government plans to reform mental health provision will force too many people into compulsory treatment and will erode their civil liberties.

That is the conclusion of a Joint House of Commons and House of Lords Committee that recommends the draft Mental Health Bill gets a radical overhaul before it is put to the vote.

MPs and Lords believe the bill places too great an emphasis on protecting the public from a small minority of dangerous mentally ill people. The Committee believes this will be at the expense of the civil rights of the majority who pose no risk to others.

### Compulsion

The Committee accepts the merits of having a broad definition of mental disorder, but the draft Bill needs to have clear exclusions ensuring that legislation cannot be used as a means of social control.

The Committee fears that the powers granted in the current bill could potentially be used as the equivalent of a mental health ASBO - enforcing treatment on those who might be a 'nuisance' but who do not pose any significant risk to the public.

Under current proposals, treatment can be enforced simply 'for the protection of other persons'. The Committee believes that conditions should be tightened to ensure that legislation cannot be used inappropriately. It concludes:

- That people should only be forced into compulsory treatment if they pose a significant risk of serious harm to others.
- That patients should never be treated under compulsion unless their decision making is impaired.
- That compulsory treatment must be of therapeutic benefit to them.

The wide definition of treatment in the bill means people diagnosed with personality disorders or learning disabilities could be detained on the grounds of public safety rather than benefit to their health. Not all treatments may help a patient to recover from their mental illness, yet doctors may be forced to detain them regardless.

### Separate Legislation

MPs and Lords also recommend that people who cannot benefit from treatment - which includes dangerous and severe personality disorders (DSPD) - should be dealt with by separate legislation.

As a consequence of the inclusion of criteria of therapeutic benefit and impaired decision making (see above), a small group of people with DSPD may not meet the conditions for the use of compulsory powers, hence the need for separate legislation.

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What the Bill should focus on:

The Committee takes the view that the primary purpose of mental health legislation should be to improve services and safeguards for patients and to reduce the stigma of mental disorder. It also considers the fundamental principles underpinning the legislation must be set out on the face of the Bill. This will provide clear guidance for professionals and tribunals and provide assurances to users of mental health services.

Whilst the Committee supports compulsory treatment in the Community it believes it should be more restricted than under current proposals. There should be clear criteria about who can be treated at home and time limits should be set as to the length of their treatment. The Committee are concerned that people could be treated indefinitely with little hope of ending their compulsory treatment.

Finally, MPs and Lords also have major concerns about the resources needed to implement the Bill. Without adequate staffing and funding, the new tribunal, for example, will fail to improve patient safeguards, and mental health could remain the 'Cinderella service' of the NHS.

Lord Carlile said:

“This is an important reminder to the Government that the Bill is fundamentally flawed. It is too heavily focused on compulsion and currently there are neither the financial resources nor the workforce to implement it.”

Far too many people could be forced into treatment unnecessarily. They can be detained even though the treatment they receive does not help their condition. And they can be detained compulsorily even if they are perfectly capable of making their own decisions.

The Committee believes that this is well beyond what is required and that ministers should consider redrafting significant sections of the Bill.

It is of the view that at present, the draft Bill is too focused on addressing public misconception about violence and mental illness, and does not do enough to protect patients' rights.

### **Joint Committee on the Draft Mental Health Bill First Report Summary**

The Joint Committee on the draft Mental Health Bill was appointed to examine the draft Mental Health Bill which was published on 8 September 2004. The purpose of pre-legislative scrutiny is to examine draft legislation and, on the basis of consultation, to recommend improvements before a Bill proper is introduced into Parliament. In 1998 the Government announced their intention to undertake the first comprehensive review of mental health law since the 1950s, taking into account developments such as the adoption of the European Convention of Human Rights. The draft Bill is part of that process and follows the publication in 2002 of a previous draft Bill which was widely criticised.

More than 450 written submissions were received and oral evidence was heard from 124 witnesses, including professionals, carers and service users. The Joint Committee were anxious to hear from those who have been subject to compulsion under the Mental Health Act 1983. Having considered all the evidence, the Committee reached the view that the Government should proceed with the Bill, but only with significant amendments, as proposed in their report.

The Committee regarded the primary purpose of mental health legislation to be the improvement of services and safeguards for patients and to reduce the stigma of mental disorder. To this end, the fundamental principles underpinning the legislation had to be set out on the face of the Bill. This would provide clear guidance for professionals and tribunals and provide assurances to users of mental health services. The principles in the new Scottish Act serve as an excellent model. In addition, the principles should reflect the need to protect the public from the small minority of mentally disordered people who pose a risk of harm.

The Committee accepted the merits of having a broad definition of mental disorder, but considered the Bill needed to have clear exclusions ensuring that the legislation cannot be inappropriately used as a means of social control. A broad definition of mental disorder also necessitated that the conditions on the use of compulsion are tightly drawn. A range of changes were recommended that would tighten the conditions and ensure that this legislation cannot be used inappropriately. In particular, the Committee have proposed that the threshold for risk of harm to others should be raised and that compulsion should only be used where a treatment is available which would be of therapeutic benefit to the patient.

It considered that legislation should take greater account of a person's ability to make decisions about his treatment and recommended that a new condition be met before compulsory powers can be used which is that a person's ability to make a decision about accepting treatment is significantly impaired as a result of mental disorder. Where a person's decision making is unimpaired, he should be able to reject treatment.

As a consequence of the inclusion of criteria of therapeutic benefit and impaired decision-making, a small group of people with dangerous and severe personality disorder (DSPD) may not meet the conditions for the use of compulsory powers. The Committee did not believe that this group should be dealt with by mental health legislation. Separate legislation should be introduced to manage individuals with DSPD.

The introduction of non-residential orders will regularise the current use of leave and guardianship provisions. However, the Committee took the view that the use of these orders is appropriate only in a relatively small number of cases. The Bill should delineate clearly the clinically identifiable group of persons to whom such orders can be applied and it should limit and control the length of time patients can be subjected to such orders. In addition, there should be a duty on health and local authorities to provide adequate care for non-resident patients without placing undue burdens on families and carers.

The inclusion in the draft Bill of a section dedicated to children and adolescents was welcomed as was most of its provisions. The Committee expressed the opinion that it would like to see the Bill limit and control the use of adult wards for the treatment of under 18s subject to compulsion, and to require the involvement of specialists in child and adolescent mental health in both the assessment of and the tribunal hearings for under 18s.

The Committee was pleased to see the enhanced safeguards in the draft bill. It welcomed, in particular the new Mental Health Tribunals, the right to an Independent Mental Health Advocate and the placing of care plans on a statutory footing. It also recommended the retention of the Mental Health Act Commission as the best vehicle for visiting and inspection.

The Committee expressed major concerns about the resources needed to implement the Bill. It lacked confidence in the Government's models and underlying assumptions used to predict the funding and staff required to make the new provisions work. Without adequate staffing and funding, the Committee considered the new tribunal, for example, would fail to improve patient safeguards, and mental health could remain the "Cinderella service" of the NHS.

The draft Bill proposes several changes in professional roles. The Committee broadly favoured these changes, and believed that they are in line with modern interdisciplinary and team-based working practices. It recommended that the Bill should be amended so as to provide for the creation of national training standards and monitoring.

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