

# Mental Health Law Briefing

Number 98

## Civil Partnerships

### Civil Partnerships – the affect on Mental Health Law

The Civil Partnership Act 2004 came into force on 5 December 2005 permitting same sex civil partnerships. One of the most publicised early partnerships was that of Elton John and his long-term partner, David Furnish.

The Act gives civil partners many of the same rights as married couples and like an ordinary marriage, a civil partnership can be annulled or dissolved.

The Act amends much of the existing legislation expressly to include a civil partner in references to “spouse”, “husband” or “wife”. However, such amendments are dependent upon expressly amending stated legislation and as far as the Mental Health Act is concerned, although some amendments are made, one area in particular appears to have been overlooked.

### Legal Issues Affected

- Section 12(5) of the Mental Health Act prohibits medical recommendations being provided by certain classes of individual or relatives of those individuals. A civil partner of a doctor is added to the list of prohibited individuals.
- A civil partner is included within the definition of “close relative” as referred to in Section 25C of the Mental Health Act which excludes such a close relative from providing a supervision application.
- Somewhat surprisingly, Section 26 of the Mental Health Act has not been amended to include a civil partner as ranking in the same priority as a husband or wife when determining an individual’s nearest

relative. Accordingly, a civil partner only acquires the right of nearest relative once the partners have been living together for a period of not less than 6 months pursuant to Section 26(6). This is surely a lacuna and an oversight by the Government?

- Healthcare professionals often come across references to next of kin. In fact this has very little legal meaning or effect and a civil partner has no greater (or lesser) standing than anyone else claiming to be an individual’s next of kin.
- Where one of the parties seeking to enter into a civil partnership is detained under the long term detention section of the Mental Health Act (ie excluding sections 2, 4, 5, 35, 36 and 136), the Civil Partnership Act deals with the specific requirements arising. These include:
  - A supporting Statement must be produced which was made not more than 21 days before the partnership is entered into.
  - Such supporting Statement must be made by the establishment where the person is detained.
  - The Statement must record that the responsible authority has no objection to that establishment being specified as the place where the person is to register as a civil partner<sup>1</sup>.

<sup>1</sup> The responsible authority for these purposes, where the person is detained in hospital, is the hospital’s managers (as defined in Section 145 (1) of the Act).

## Government announces shake-up of Inquest Procedure

The Government have announced that they will be changing the current procedures for Inquests. Changes will include:

- Relatives will be able to ask for a second opinion on a “suspicious”<sup>2</sup> death
- Judges instead of Coroners will handle complex or controversial matters
- Suicide and child death Inquests can be held in private to reduce “pain and grief”
- A Chief Coroner for England and Wales will hear appeals against Coroners’ rulings
- Coroners will be given new powers to obtain evidence

At the moment the information available is only outline and many of these proposals will require detailed legislation. Further briefings will be provided in due course, however, it would seem that Inquests are likely to become even more “legal” and those attending Inquests will need advice and representation.

## GMC Guidance for Doctors in Management

The GMC has published new guidance for Doctors who act as Managers, as well as those who work in managed environments. Although the GMC most obviously regulates Doctors’ clinical practice, their guidance also provides standards and rules for Doctors who work in a management role. The guidance makes it plain that doctors remain responsible to the GMC for their actions even if someone other than a doctor could have performed the same role (and would in that circumstance not be subject to such regulation). The guidance expands the previous guidance on matters such as:

- Making sound decisions in difficult situations
- Managing resources and planning work to maximise benefits
- Understanding what is affordable and achievable

## New Blog!

Coming shortly, our new mental health law blog for news and law on mental health visit [www.mentalhealthlawblog.co.uk](http://www.mentalhealthlawblog.co.uk)

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<sup>2</sup> Undefined