

Number 54

Stop Press: The Draft Mental Health Bill

The long awaited new Mental Health Bill was published in draft on 25th June 2002. It is open to a twelve month consultation period. This bulletin comprises a brief summary only, and is intended to be the first in a series of bulletins analysing the new proposals, to be published periodically.

The New Legislation

The definition of mental disorder

Despite the media interest in the way the new law will affect Dangerous Serious Personality Disordered individuals, the Bill is silent on this issue. Instead, it introduces a single concept of mental disorder - in contrast with the complex definitions in the Mental Health Act 1983 (the 1983 Act) - defined as, "any disability or disorder of mind or brain which results in an impairment or disturbance of mental functioning". There is no reference, as there is under the existing law, to treatability.

The use of compulsory powers

The simplified framework under the new Rules is expected to ensure, where possible, that people are treated without the use of compulsory powers and are more effectively protected from inappropriate treatment. Compulsory powers will only be available where:

- The person has a mental disorder;
- The disorder is of a nature or degree which requires specialist mental health treatment to be provided;
- The treatment is necessary for the patient's health or safety or for the protection of others and the treatment cannot be provided unless the patient is subject to the provisions of the new Act; and
- Appropriate treatment for the persons mental disorder is available.

The new Bill does away with the existing concept that compulsory treatment can only be provided in hospital. The expectation is that compulsory treatment will be given in the least secure setting possible.

The single pathway

The new Bill incorporates the Care Programme Approach into law, and provides for the use of compulsory powers only on the basis of assessed need and individual care plans. It sets out a single pathway by which compulsory care and treatment will be given to a patient, and this involves three stages, as follows.

Stage 1 The patient will be subject to a preliminary examination which can be requested by anyone. It must be carried out by two registered medical practitioners and an approved mental health professional, who will together decide whether the patient meets the conditions for use of the compulsory powers. There will be limits on the circumstances in which the compulsory

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powers may be used. At this stage patients cannot be treated without their consent except in an emergency.

Stage 2

This involves a formal assessment of the patient's health and social care needs and the provision of initial treatment under the compulsory powers. The assessment will take place either in hospital or the community, and the formal assessment period and initial compulsory treatment will be limited to 28 days, unless reviewed by the new Mental Health Tribunal (MHT) or (in the case of criminal offenders) by the Court. A preliminary care plan will be drawn up with which compulsory treatment provided during the 28 day period must accord. Patients will have the right to challenge the decision to treat them compulsorily during this period, by applying to the MHT.

This stage provides for the appointment of a Clinical Supervisor who will be responsible for the patient's assessment and any treatment provided in accordance with the new Act. The patient will choose a nominated person (replacing the "nearest relative" under the 1983 Act) who will represent the patient's interests. The patient will also be given access to new specialist mental health advocacy services.

Stage 3

If the MHT does not discharge the patient by the end of the 28 day period, then it has the power to make a first Mental Health Act Order which can last for up to 6 months. The MHT can make a second order, also lasting 6 months. Subsequent treatment orders can be made for periods up to 12 months. Again, compulsory elements of the care plan, and any other conditions relating to the patient's treatment, must be included within the order.

Patients will have the right, as now, to apply to the MHT for discharge from liability to assessment and/or from treatment orders.

For offenders, similar powers will apply but will be exercisable by the Courts. There will be special requirements in relation to offenders, for example allowing the Court to add a Restriction Order to a Mental Health Order, and these substantially reflect the current position under Part III of the 1983 Act.

Special safeguards apply for treatments such as ECT (which must be authorised by the MHT or the Court unless there is an emergency). The new Bill also incorporates new safeguards for patients with long-term incapacity who cannot consent to treatment but are nonetheless compliant. These include the right to apply to the MHT for discharge.

The full text of the bill, consultation document and explanatory notes are available on the Department of Health's website. However, for further information and comment please contact the RLB Mental Health Team who will be monitoring developments closely and who will be offering training sessions, first at management level and later at clinical level. Details of these courses will appear in later Mental Health Law briefings and on our website.

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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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