

# The Mental Health Bill

## *Plans to amend the Mental Health Act 1983*

### The definition of mental disorder

The Government intends to change the way the Act defines mental disorder, so that the same, simplified definition applies throughout the Act. This will make the Act easier to use and help to ensure that nobody who needs to be subject to the Act is arbitrarily excluded. These amendments will complement the changes the Government intends to make to the criteria for detention.

#### How the Act currently defines mental disorder

Section 1 currently defines mental disorder as 'mental illness, arrested or incomplete development of the mind, psychopathic disorder and any other disorder or disability of mind'. It then describes four specific categories of mental disorder:

- **mental illness:** not defined;
- **severe mental impairment:** a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously irresponsible conduct on the part of the patient concerned;

### Setting the scene

The Government has put in place a comprehensive strategy to reform and modernise mental health care to deliver high quality, accessible services that meet the mental health needs of the whole community. Updating the Mental Health Act 1983 is part of this strategy.

The Mental Health Act allows the small number of patients with mental health problems who are at risk of harming themselves or, more rarely, others, to receive compulsory treatment. The Government's forthcoming Bill aims to reform and modernise this legislation so that the law better supports the way services are delivered to these patients.

It proposes changes in six key areas:

- Supervised community treatment;
- Definition of mental disorder;
- Criteria for detention;
- Mental Health Review Tribunal;
- Professional roles and Nearest relative.
- The Bill will also amend the Mental Capacity Act to fill the Bournewood gap.

- **mental impairment:** a state of arrested or incomplete development of mind (not amounting to severe mental impairment) which includes significant impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously irresponsible conduct on the part of the patient concerned;
- **psychopathic disorder:** a persistent disorder or disability of mind (whether or not including significant impairment of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the patient concerned.

Some parts of the Act apply to all mental disorders. Others apply only to some or all of the four specific categories.

Section 1(3) says that no-one is to be dealt with under the Act as having a mental disorder: 'by reason only of promiscuity, or other immoral conduct, sexual deviancy or dependence on alcohol or drugs'. These are known as the "exclusions".

## What changes are the Government proposing to make?

**Introducing a new, simplified definition of mental disorder** to make the Act easier to use. The Government intends to simplify the definition of mental disorder, so that it more straightforwardly covers all disorders and disabilities of mind.

**Abolishing the separate categories of mental disorder** to further simplify the Act and to help ensure that nobody who needs compulsion is arbitrarily excluded on the basis of a legal classification. The use of four separate categories of mental disorder risks arbitrary and unnecessary distinctions, does not relate to the categories used by clinicians and encourages some patients and their lawyers to argue about legal classifications in the hope of securing

inappropriate discharge. Decisions ought to be based on the needs of patients and the degree of risk posed by their disorder, not on their diagnostic label.

The removal of the categories will mean that certain sections of the Act will in future cover certain mental disorders not currently covered by any of the categories. That will include, for example, mental disorders arising out of injury or damage to the brain in adulthood. This may mean that some people who cannot now be brought under compulsion could be in the future – which is a good thing if, as a result, they get the treatment they need. The Government does not expect this to affect many people.

**Preserving the effect of the Act as it applies to learning disability.** The effect of abolishing the four categories will be that all the powers in the Act will in future apply to all types of mental disorder. However, for those parts of the Act currently limited to particular categories of disorder, there will be a new special provision about learning disability. It will mean that learning disability will only be treated as a mental disorder for those purposes if it is associated with abnormally aggressive or seriously irresponsible conduct on the part of the patient concerned.

This special provision will preserve the way the Act operates now in relation to learning disability. It will only apply to learning disability and not, for example, to autistic spectrum disorders (ASD), because the intention is to preserve the effect of the Act, not to change it. At present, ASD, per se, is not covered by the definition of mental or severe mental impairment. The Government believes that the minority of people with ASD who might need compulsory treatment will be better served by not being subject to any limitation in the Act.

As now, no-one will be subject to compulsion under the Act simply because they have a learning disability. The use of compulsion is based on needs and risk, not diagnosis. Even though it is obviously a very different kind of

disorder to mental illness, the Government does not believe it would be right to exclude learning disability from the Act entirely. Doing so would risk the minority of people with learning disabilities who need compulsory treatment not getting it, or leave clinicians feeling they have to apply an inappropriate diagnostic label to enable them to give someone the treatment they need.

The changes will ensure that the Act can, as now, still be used for the very small minority of people with learning disabilities who may need and benefit from compulsion, whether or not they are also suffering from a mental illness or another mental disorder. In particular it will ensure they can still be diverted from prison to hospital should they be convicted of an offence.

**Removing the exclusion for promiscuity and other immoral conduct** because it is obsolete. Promiscuity and immoral conduct are not mental disorders so it is unnecessary to exclude them from the definition. For the same reason, there are no plans to introduce new exclusions for things like cultural, political and religious beliefs or anti-social behaviour. Such beliefs and behaviours are not mental disorders – although sometimes anti-social behaviour can be a symptom of an underlying mental disorder.

**Removing the exclusion for sexual deviancy** because it has sometimes resulted in patients who need compulsory treatment for mental disorder being excluded because their disorder manifests itself in sexual deviancy or offending. The absence of this exclusion will not mean that the Act can be used on the basis of a person's sexual orientation as there is now no question that homo- or bi- sexual orientation is a mental disorder any more than heterosexual orientation.

**Retaining the exclusion for dependence on alcohol and drugs – probably in a reworded form** to make clear that the Act is not (and never has been) to be used to force people who are suffering from no other mental disorder to accept treatment for substance dependence. The exclusion may however, be re-worded to make it even clearer that people who are dependent on

alcohol and drugs are not excluded from the scope of the Act if they also suffer from another mental disorder (even if that other disorder is related to their alcohol or drug use).

The exclusion will not extend to substance misuse because misuse by itself is not a mental disorder and so does not need to be excluded.

## Further information

For further information on the Mental Health Act 1983 and the amending Bill, links to statistics on the use of the current Act and additional briefing sheets on key policy areas visit:

<http://www.dh.gov.uk/MentalHealth>

Telephone: 020 7972 4477

Email: [MentalHealthBill@dh.gsi.gov.uk](mailto:MentalHealthBill@dh.gsi.gov.uk)

For an on-line version of the Mental Health Act 1983 visit: [www.imhap.co.uk](http://www.imhap.co.uk)

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