Reforming the Mental Health Act 1983

SUMMARY

The Government’s White Paper Reforming the Mental Health Act (‘the White Paper’) was published in December 2000 in two parts. Part I - The New Legal Framework sets out the proposed changes to the Mental Health Act 1983 (MHA 1983). Part II - High Risk Patients describes the reform of laws and services in relation to people with mental disorder who are considered to be a high risk to others, in particular those individuals described as ‘dangerous people with severe personality disorder’. This briefing summarises the White Paper’s main proposals.

BACKGROUND

The review of the MHA 1983 was one of the key features of reform outlined in the Government’s paper Modernising Mental Health Services: Safe Sound and Supportive, published in 1998. Two other important areas of reform identified by the Government were to increase the level of investment in mental health services and improve standards through initiatives such as the National Service Framework for Mental Health.

In July 1998 the Government announced the appointment of an Expert Committee to advise on how the MHA 1983 should be reformed in order to:

‘support effective delivery of modern patterns of clinical and social care for people with mental disorder and to ensure that there is a proper balance between safety (both of individuals and the wider community) and the rights of individual patients’.


OVERVIEW OF THE PROPOSALS

Fundamental Principles

- The areas covered will include the need to be fully compatible with the Human Rights Act 1998 and ensuring that formal powers are only be used with good cause and after alternatives have been considered.

Compulsory Powers

- The legislation will be based on a broad definition of ‘mental disorder’ covering: ‘any disability or disorder of mind or brain, whether permanent or temporary, which results in an impairment or disturbance of mental functioning’, although further conditions will need to be met before compulsory powers are used.

1 This legislation applies to England and Wales only. A review of legislation in Scotland is underway.
Save for emergency situations, there will be three stages of compulsory powers (see below).

An individual will be discharged from compulsory powers when the conditions for continued use of compulsion are no longer met.

**Formal assessment will proceed a compulsory care and treatment order**

- **Stage 1** - a preliminary examination by two doctors and a mental health professional with training in the new legislation who will consider whether compulsory powers should be used.

- **Stage 2** - a formal assessment period (up to 28 days). No treatment (other than urgent treatment) may be given without the person’s consent before a written care plan has been completed - save for exceptional circumstances this must be done within three days. Individuals treated under formal powers for more than a few days must have a care plan which is based on a full assessment of their health and social care needs. The White Paper expects that many people will be discharged from formal powers within the first 28 days.

**The Mental Health Tribunal will authorise Care and Treatment Orders**

- **Stage 3** - care and treatment under compulsory powers can only continue beyond the first 28 days if this is authorised by the Mental Health Tribunal (with a legally qualified chair and two other members with experience of mental health services). The Tribunal must be satisfied that the conditions for continuing compulsory care and treatment are met.

**Care and Treatment Orders may apply both in hospital and the community**

- The Tribunal will be able to decide whether detention in hospital is necessary. If the individual is not detained, the Tribunal must specify what elements of the care plan are compulsory and the consequences of non-compliance.

- Tribunals may make the first two care and treatment orders for up to a period of six months. Subsequent care and treatment orders can be made for up to 12 months at a time.

**Right to request a review by the Mental Health Tribunal**

- Individuals subject to formal assessment (Stage 2) may request a review at any time and the hearing must take place within seven days of receipt of the application.

- Individuals subject to compulsory care and treatment orders lasting for more than three months may apply to the Tribunal once during the period of such an order.

**Compulsory Powers and the Courts**

- Courts will have powers to remand for a mental health assessment.

- If a person is convicted, courts will have a range of options. Subject to the nature of the offence and nature and degree of the mental disorder, these could include: sentencing to prison; making a care and treatment order; adding a restriction order to a hospital-based care and treatment order (so the person will be managed under the supervision of the Home Secretary) or; making a hospital and limitation direction (allowing the person to be transferred from hospital to prison if treatment in hospital is no longer necessary).
‘High Risk Patients’

- There will be powers to make individuals who pose a significant risk of serious harm to others as a result of their mental disorder subject to compulsory care and treatment. In such cases it will not be necessary for the care plan to directly treat the mental disorder so long as the plan is considered necessary to manage the behaviours arising from the mental disorder. This is intended to address the Government’s concern that a significant number of people with personality disorder who pose a risk to others cannot be detained under the MHA 1983 because it is not clear whether their personality disorder can be treated.

- Additional resources will be provided over the next 3 years for the development of new specialist services for those who are high risk as a result of a severe personality disorder.

The Nominated Person

- The nearest relative is to be replaced by a nominated person - the person to be consulted by the clinical team when the individual is subject to compulsory powers.

- The nominated person will be chosen by the mental health professional responsible for co-ordination of action following the decision to apply compulsory powers. The Mental Health Tribunal may appoint an alternative nominated person, for example where it is impracticable or inappropriate for the person nominated to act on the person’s behalf.

Access to Specialist Advocacy Services

- Health and social care services providers will be required to ensure that individuals subject to compulsory care and treatment powers have access to independent specialist advocacy services. These services will be additional to the right to legal representation at Tribunal hearings.

Advance Statements

- Clinical teams will be expected to help patients develop advance agreements (statements in which individuals have stated what sort of treatment they would prefer if their mental disorder deteriorates).

- When a person is subject to formal assessment and initial treatment, the clinical team will be expected to take account of any recent advance agreement.

Safeguards for patients treated without the use of compulsory powers

- A raft of safeguards for people who lack capacity and need treatment for their mental disorder and are cared for in hospital, residential care homes or similar establishments (but not to individuals living in their own home) will be introduced.

- The proposed safeguards include a requirement of the doctor in charge of the person’s care to arrange a full assessment of the patient and develop a care plan to cover all aspects of care.
THE IMPLICATIONS

While there are some important and positive proposals in the White Paper, such as the introduction of a right of access to independent specialist advocacy, other areas raise serious concerns. For example the fear of being made subject to community treatment orders may discourage many people with mental health problems from seeking help.

The Mental Health Alliance (a consortium of over 50 organisations, of which the Mental Health Foundation is a member) has highlighted a series of common concerns in relation to the White Paper which include the following points:

- The compulsory powers will in practice lead to an increase in the numbers of people subject to compulsion.
- Given that there are no safeguards for people with long-term incapacity who need care and treatment for their mental health problems the safeguards set out in the White Paper and Making Decisions (proposals for making decisions on behalf of mentally incapacitated adults) should be introduced as a matter of urgency.
- Clinical teams must be required to follow advance statements unless there are compelling reasons for acting otherwise, which must be recorded in writing.
- The need for the proposed sweeping powers in respect of high risk patients, such as the detention of non-offenders regardless of whether they are treatable or not, is questionable.

REFERENCES


The Mental Health Alliance (February 2001) The White Paper - Reforming the Mental Health Act 1983 - A briefing from the Mental Health Alliance.

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