



Mental Health Alliance

Criminal Justice System Resolving disputes as to receiving hospitals

House of Lords Committee Stage briefing

Amendment

After Clause 20

Insert the following new Clause—

"() Resolving disputes as to receiving hospitals

(1) The 1983 Act is amended as follows.

(2) In section 35 (remand to hospital for report on accused's mental condition), after subsection (4), insert the following—

"(4A) Where a court has remanded an accused person under this section and hospital trusts cannot agree to which hospital a person should be sent, the Secretary of State shall resolve the dispute."

(3) In section 36 (remand of accused person to hospital for treatment), after subsection (3), insert the following—

"(3A) Where a court has remanded an accused person under this section and hospital trusts cannot agree to which hospital a person should be sent, the Secretary of State shall resolve the dispute."

Purpose of the amendment

To provide that where courts wish to send an offender on remand to a hospital and hospital trusts cannot agree to which hospital the person should be sent, there is a duty placed on the Home Secretary to resolve the dispute.

Reason for the amendment

This proposal is based on one of the recommendations of the Joint Parliamentary Scrutiny Committee on the draft Mental Health Bill 2004. Evidence was presented to the Scrutiny Committee that on occasion where courts wish to make an order sending an offender or person on remand with a mental disorder to a hospital, disputes can arise as to which hospital the offender or person held on remand should be sent – typically about whether medium or maximum security is required. If the parties cannot reach agreement, there is no means of resolving the matter and it can end up with the judge imposing a prison sentence.

Section 39 of the Mental Health Act 1983 provides that whenever a court is considering making a hospital order it may ask the appropriate Health Authority or Primary Care Trust to provide information as to the availability of suitable hospital places for the person in question. According to a Home Office Circular (No.66/90) "there is no longer any scope for disputes between Health Authorities as to responsibility for [providing a bed]", because [inter alia] the first authority approached by a court can only pass on responsibility with the agreement of the second authority to whom it intends to pass on responsibility".

However this statement does not advise on how agreement can be reached when there is a dispute between the parties. We believe that this needs to be resolved in legislation and that a specific duty should be placed on the Home Secretary.

An analogous situation to this exists under Section 32(3) of the National Assistance Act 1948, whereby it falls to the Secretary of State to determine which local authority is responsible for people for whom more than one local authority has a caring responsibility where there is a dispute. It therefore appears to be in keeping with this provision that the Home Secretary should be given a similar responsibility for mentally disordered offenders.

In its response to the Scrutiny Committee's report the Government agreed that there is merit in having a system for resolving disputes between trusts about which hospital should take a patient. However they disagreed that this is something to go on the face of legislation and instead promised to consider how far this problem can be tackled through non-statutory mechanisms. We are not aware that any progress has been made on this matter.