



Mental Health Alliance response to the Government's announcement of plans to amend the 1983 Act

On 23 March 2006, the Government announced that it planned to amend the Mental Health Act instead of publishing a complete new Bill. The decision to abandon previous plans was widely welcomed; but caution was expressed about what the Government intended to proceed with.

The Alliance, a group of 77 organisations working together for a better Mental Health Act, has considered the Government's new plans. Based on the information currently available to us, this is our response.

'Introduce supervised treatment in the community for patients following an initial period of detention and treatment in hospital.'

The Alliance broadly welcomes the decision to limit compulsory treatment outside hospital to those already detained on a treatment section of the Act. We are concerned, however, that very wide restrictions could be placed upon people living in the community - such as setting curfews and preventing people from going out to certain places such as the pub. We believe supervised community treatment should be limited to a small, defined group of vulnerable patients and have time limits attached.

While some members of the Alliance are opposed to any form of compulsory treatment in the community, given the Government's commitment to introducing it we accept it is necessary to consider how it will be introduced in a constructive manner and with appropriate safeguards.

'Expand the skill base of professionals who are responsible for the treatment of patients treated without their consent.'

The Government is pressing ahead with its plans to widen the range of clinicians and social care professionals able to exercise statutory functions - replacing the Responsible Medical Officer with a Clinical Supervisor and the Approved Social Worker with the Approved Mental Health Practitioner. This needs to be done with great care. People coming new to statutory roles need proper training, regulation and professional support and they should not be put in place until a capable workforce is identified and prepared.

‘Improve patient safeguards by taking order-making powers with regard to the Mental Health Review Tribunal.’

Currently, patients who do not exercise their rights to appeal to the Mental Health Review Tribunal are automatically referred at six months. The proposed new power will allow the Government to reduce the time delay before patients get automatic referrals to the Mental Health Review Tribunal, and the Alliance broadly welcomes this. It is important that sufficient resources are made available to ensure that all patients are given speedy access to the Tribunal. A set of workable deadlines, similar to those proposed for elective surgery in the NHS Plan, should be published with the Bill.

‘Introduce a new, simplified single definition of mental disorder throughout the Act. Keep, as recommended by the Joint Committee, the exclusion for drug and alcohol dependency, and preserve the effect of the Act as it relates to people with learning disabilities.’

We do not oppose a single definition of mental disorder but only if it is accompanied by strict and tight conditions for compulsion. One of our major concerns is that the Government is planning to remove most of the exclusions from the current Act which prevent behaviours such as ‘immoral conduct’ or ‘sexual deviance’ from being seen in themselves as mental disorders.

‘Replace the so-called ‘treatability’ test with a test that appropriate treatment must be available. The availability of appropriate treatment will be a requirement for all groups of patients, regardless of their particular diagnosis.’

This is a worrying development. We believe that all treatment provided under compulsion must provide a ‘therapeutic benefit’ to the individual. The Government’s proposals for an appropriate treatment test is too vague and uncertain and therefore not suitable to use when considering the use of coercion.

‘Amend the current Act to remedy an ECHR incompatibility in relation to the Nearest Relative. Bring the Act into line with the Civil Partnership Act 2004 in relation to the Nearest Relative provisions.’

We are disappointed that the Government has decided not to replace the ‘nearest relative’ with the ‘nominated person’ which is more likely to be someone in whom the patient has trust and confidence. We are also very concerned that patients would have to go through the County Court system in order to displace their nearest relatives - which has proved to be incomprehensible and inaccessible for many disabled people.

However, we welcome the Government’s decision not to abolish the powers of the nearest relative. This maintains an important safeguard for the patient, in that the nearest relative will have the power to discharge them from compulsion.

‘Introducing the Bournemouth safeguards, through amending the Mental Capacity Act 2005, for people who lack capacity and are deprived of their liberty but do not receive mental health legislation safeguards.’

It is important that sufficient safeguards must be provided for Bournemouth patients and we will be examining the detail of the Government’s plans when they are finally published.

In addition to these changes, the Mental Health Alliance believes the Government should take this opportunity to modernise other aspects of the Mental Health Act. We call upon the Government to put forward amendments to:

- Provide a right to independent advocacy for all those sectioned under the Act, from the point they are detained.
- Introduce the right for patients and carers to demand and receive a full assessment of all their health and social care needs before a crisis point is reached.
- Begin the Act with a set of principles to underpin the way the Act is applied, for example of using the least restrictive alternative and of race equality.
- Ensure that patient autonomy must be respected unless the patient's ability to make decisions about medical treatment is significantly impaired.

The Alliance also believes that amending the Mental Health Act requires the full involvement of professionals, patients and families. We call upon the Government to:

- Consult those affected by the legislation on proposals to be put before Parliament.
- Ensure the Race Equality Impact Assessment of the Bill covers the full Act as amended; not just the amendments.
- Arrange for pre-legislative scrutiny of the proposals.
- Publish the draft amended Code of Practice at the same time as the Bill.

Core members: Afiya Trust, British Association of Social Workers, British Psychological Society, Caritas- Social Action, College of Occupational Therapists, Ethnic Health Forum North West, Hafal, IMHAP, King's Fund, Manic Depression Fellowship, Mental Health Foundation, Mental Health Nurses Association, Mind, National Autistic Society, NUS, Rethink severe mental illness, Revolving Doors Agency, Richmond Fellowship, Royal College of Nursing, Royal College of Psychiatrists, Sainsbury Centre for Mental Health, SANE, SIRI, Together, Turning Point, UK Fed of Smaller Mental Health Agencies, UKAN, UNISON, United Response, Voices Forum, Witness, Young Minds

Associate members: ADSS, African Caribbean Community Initiatives, Age Concern England, Alcohol Concern, AWAAZ (Manchester), AWETU, Black Majority Church Consultative Consortium, BME Mental Health Network, British Institute of Human Rights, British Medical Association, Carers UK, Church of England Mission & Public Affairs Council, Confederation of Indian Organisations, Democratic Health Network, Depression Alliance, Drugscope, East Dorset MH Carers Forum, Family Welfare Association, GMC, Haldane Society, Having a Voice, Homeless Link, HUBB Mental Health User Group, Imagine, JAMI, Justice, Law Society, LGA, Liberty, Manchester Race and Health Forum, Mencap, NHS Confederation, Race on the Agenda (ROTA), RADAR, Royal College of GPs, Sign, Social Action for Health, Social Perspective Network, Somali Mental Health Project, Southdown Housing Association, Supporting Carers Better Network, University of London Union (ULU), UK Council for Psychotherapy, West Dorset Mental Health Forum, Women in Secure Hospitals (WISH)

For more information about the Mental Health Alliance, visit: www.mentalhealthalliance.org.uk

Contact: Anna Bird, Mental Health Alliance, c/o SCMH, 134-138 Borough High St, SE1 1LB