

# The Mental Health Bill

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

### Nearest Relatives

The Government wants to extend to patients the right to make an application to displace their Nearest Relative (NR) and enable county courts to displace a NR where there are reasonable grounds for doing so. The provisions for determining the NR will be amended to include Civil Partners amongst the list of relatives.

#### Who is the Nearest Relative?

Under the 1983 Act, each patient (except for a restricted patient) has a Nearest Relative, where such a person can be identified. The NR is the person nearest the top of a specified hierarchy of relatives, starting with the spouse. A relative who lives with, or provides substantial care to the patient is given preference over other relatives. Any person who has lived with the patient for at least five years is considered a relative. The NR must be over 18 years of age.

The NR cannot refuse to be the NR though there is no obligation for them to exercise their powers. The NR can delegate their role to another person but not the patient. The county court can transfer the functions of the NR to someone else in certain, very limited circumstances.

### 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.

## What does a Nearest Relative do?

The NR has various powers such as the power to discharge the patient from compulsion, to apply for or to block detention, to request a review of their detention and to receive certain information about the patient.

## Why are changes needed?

The changes will rectify an incompatibility with the European Convention on Human Rights for determining who can be the NR. Currently, NR provisions could leave a patient in a situation where their NR may be someone who poses a risk to their health or well-being. This has been held to breach the human rights of the patient by the European and domestic courts.

The change will also mean that the NR provisions are brought in line with the Civil Partnership Act 2005, putting civil partners on an equal footing to spouses.

## What changes are the Government proposing to make?

### Enabling patients to apply to the county court

The Government intends to allow patients to apply to the county court for the displacement of their NR. Currently a relative of the patient, anyone living with the patient, or an approved social worker can apply and the court may displace a NR who is too ill to act as the NR or is using their powers unreasonably. The court can also appoint someone to act as the NR where there is no one on the list of relatives. The patient will also be able to apply on these grounds and on a new basis.

## Introducing a new basis for displacing the NR

In addition, the patient; an approved mental health professional; any relative of the patient and anyone living with the patient, will be able to apply to the county court on broader grounds where it is reasonable that the person should not be able to act as the NR. This will provide a way to displace a NR, who is, for example, abusive to the patient.

## Extending the period of the court order.

Where the county court appoints a NR where there is no NR, displaces the NR because they are too ill to act, or displaces the NR on other reasonable grounds, the court will now be able to make their order for an indefinite period. Applications to the court can be made to change or end orders that displace the NR.

## Maintain the safeguards provided by NR

The important safeguard provided by powers of the NR will remain unchanged and will be extended to Supervised Community Treatment (SCT). It is important that patients have an independent person who they know and who is able to exercise the rights accorded them in the Act. Whilst we will be taking a power with regards to hospital manager's referrals to the Mental Health Review Tribunal (MHRT), the authority to detain patients for compulsory treatment will remain with doctors and approved mental health professionals<sup>1</sup>. The role of the NR is an important patient safeguard in this respect.

## Include Civil Partners in the list of Relatives

A civil partner is not currently recognised as a relative for the purposes of determining the NR and so there will be an amendment to the Act in line with the Civil Partnership Act 2005 to address this.

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1 See briefing sheet on professional roles for further information

## 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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