

Mental Health Bill 2006 Summary Guide

Mental Health Bill 2006
Summary Guide

DH INFORMATION READER BOX

Policy HR/Workforce Management Planning Clinical	Estates Performance IM & T Finance Partnership Working
Document Purpose	For Information
ROCR Ref:	Gateway Ref: 6807
Title	Mental Health Bill – summary guide
Author	DH
Publication Date	17 Nov 2006
Target Audience	MPs, peers, media, wide range of stakeholders, public
Circulation List	
Description	The booklet summarises the objectives and the contents of the Mental Health Bill 2006 and provides contact details for getting further information.
Cross-Ref	
Superseded Docs	N/A
Action Required	N/A
Timing	N/A
Contact Details	Carla Baker Department of Health 133-155 Waterloo Road London SE1 8UG Tel: 020 7972 4729 www.dh.gov.uk
For Recipient's Use	

Mental Health Bill 2006

Introduction

The Government has introduced a Bill to make a range of amendments to the Mental Health Act 1983. The new Bill will also amend the Mental Capacity Act 2005.

This guide explains briefly what the Government is aiming to change and why. If you want more information than is contained in this guide, see the section on accessing further information at the end of the booklet.

Summary

The changes are needed in order to:

- **help ensure that people with serious mental disorders can be required, where necessary, to receive the treatment they need to protect them and the public from harm** – this will be achieved through amending the 1983 Act to simplify and modernise the definition of mental disorder and the criteria for detention; to introduce supervised community treatment; and to abolish finite restriction orders.
- **bring mental health legislation into line with modern service provision** – by allowing a broader range of professionals to carry out functions within the 1983 Act and by enabling people to be treated in the community where appropriate.
- **strengthen patient safeguards and tackle human rights incompatibilities** – by introducing the Bournemouth safeguards, through the Mental Capacity Act, for people who lack capacity to decide about their care, are deprived of their liberty to protect them from harm, but are not covered by the 1983 Act safeguards; by introducing, in the 1983 Act, new grounds for the displacement of nearest relatives and allowing for the first time patients to make applications for displacements; and by speeding up access to the Tribunal for those who do not apply under that Act.

Work began on reforming mental health legislation in 1998, and there have been many stages to the development of the current legislation. Throughout the development of the Bill, the Government has consulted widely with relevant stakeholders, and the Bill is the product of a detailed analysis of the issues and thorough consideration of the wide range of views expressed.

The Mental Health Act 1983

What is the Mental Health Act 1983 about?

Mental health law is primarily about providing the legal authority to take steps to protect people experiencing a mental health problem and the wider public from any potential harm arising from the effects of that problem. This may include detention and treatment in hospital without consent, guardianship and other forms of restriction on patients designed to help manage their condition safely. It is also about setting clear rules for the use of these powers so that the person concerned, their family and professionals fully understand the processes, procedures and roles under the Act. This includes establishing effective safeguards against the inappropriate use of the powers.

Most countries have mental health law to set out the circumstances in which a person with a mental health condition can be treated without their consent and the safeguards that must be provided for them. There has been mental health law of this kind in England and Wales since the early 19th century.

The current legislation is the Mental Health Act 1983. That Act is based on the Mental Health Act 1959 which replaced the law in force before then. After significant amendment in 1982, the legislation was consolidated in the Mental Health Act 1983. The 1983 Act has been amended over time, most significantly by the Mental Health (Patients in the Community) Act 1995. Except in a few areas, the 1983 Act applies only to England and Wales.

Why the Government is changing the Mental Health Act 1983

The objectives of the changes are to:

- help ensure that people with serious mental health problems receive the treatment they need to protect them and the wider public from harm
- bring legislation into line with developments in the provision of mental health services, in particular the development of community-based services and of new ways of working
- strengthen patient safeguards and remedy an incompatibility with Human Rights law.

What changes is the Government intending to make to the 1983 Act?

In order to achieve the objectives outlined above, the Government intends to make a number of changes to the 1983 Act. These are summarised below. Against each item is the clause reference in the Bill.

The main changes are:

- (i) **introducing supervised treatment in the community** (clauses 25-29), which will be available for suitable patients following an initial period of detention and treatment in hospital. This will help ensure that patients comply with treatment and enable action to be taken to prevent relapse.

People whose mental health problem would be a risk to their own health or safety or the safety of others if they did not continue to receive their treatment when discharged from hospital could be considered for supervised community treatment. Decisions as to whether a patient should be subject to supervised community treatment will be based on a clinical judgement of the person's condition and circumstances. An appropriate package of treatment and support services will be put in place by the NHS and local authority before a patient leaves hospital on supervised community treatment. Once in the community, patients with capacity to consent can only be treated if they consent to the treatment. If necessary, patients would be recalled to hospital for compulsory treatment.

The introduction of supervised community treatment reflects modern service provision enabling patients with serious mental health problems to be treated outside hospital where it is appropriate. It will reduce the risk of social exclusion, which is associated with detention in hospital for long periods of time. For many patients, supervised community treatment will be preferable to continuing detention in hospital.

Supervised community treatment will also be available for offenders with a mental health condition who have been detained in hospital under Part 3 of the 1983 Act, unless they are also subject to restrictions under the Act, in which case the long established provisions for conditional discharge will continue to apply.

- (ii) **broadening the range of professionals** (clauses 8-20) who can take on key roles in the Mental Health Act. The Bill proposes to remove the current demarcation of professional roles, in favour of a new approach which ensures that professionals with the right skills, experience and training can carry out important functions not currently open to them.

The 1983 Act has functions assigned to approved social workers (ASWs) – for example, to make applications to admit patients for assessment or treatment or to guardianship – and to responsible medical officers (RMOs) – who are in charge of the patient's treatment and who can normally decide when patients can be discharged and allowed leave of absence from hospital. Those functions will be opened up to other

professionals if they have the necessary skills, experience and training. For example, nurses, occupational therapists and psychologists might take on the functions currently carried out by ASWs, and nurses, occupational therapists, psychologists and social workers might take on the current RMO functions.

The person carrying out the ASW role will now be described as the approved mental health professional (AMHP). The training, which will be approved by the General Social Care Council and the Care Council for Wales, will be based on the current ASW training. This will prepare AMHPs to bring a social care perspective and to act independently. Local authorities will be responsible for approving AMHPs to carry out their functions under the Act.

The person carrying out the RMO role will now be described as the responsible clinician. The responsible clinician will have to be trained and approved to take on their role.

This development reflects modern NHS practices which have moved towards a more “competency-based” approach to roles and responsibilities.

- (iii) improving patient safeguards by creating a set maximum period before which all civil patients must be referred by the hospital managers to the tribunal, and taking a power to allow the Secretary of State for Health and Welsh Ministers to reduce the time before a patient’s case is automatically referred to the **Mental Health Review Tribunal** (MHRT) if the patient has not applied and no one has done so on their behalf (clauses 30-31). The power will be used when the Secretary of State or Welsh Ministers feel that the workforce and resource implications have been fully considered and it is clear that the change can be made without adverse effects on clinical care.

The MHRT is an independent judicial body that considers whether a patient should continue to be detained under the Mental Health Act. A patient can make an application to the MHRT for discharge from detention, and the rights to apply will not change under the new provisions. The provisions will extend the right to apply to the MHRT to patients on supervised community treatment and introduce a new safeguard of an automatic referral by the hospital managers whenever a community treatment order is revoked.

- (iv) introducing a **simplified single definition of mental disorder** throughout the Act and abolishing the current four separate categories of mental disorder (clauses 1-3). This will make the Act easier to use and will complement the changes the Government intends to make to the criteria for the use of compulsion. It will also help ensure that no-one fails to receive the treatment they need because their condition happens not to fall within one of the four current categories of mental disorder.

The abolition of the categories of disorder will not change the way the Act deals with learning disability. In those parts of the Act which currently only apply to particular categories of mental disorder, learning disability will still only be treated as a mental disorder if it is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned.

Dependence on alcohol and drugs will continue to be excluded from the definition of mental disorder for the purposes of the Act – so that it still cannot be used to force people who are experiencing no other mental disorder to accept treatment for substance dependence.

The exclusions for promiscuity, other immoral conduct and sexual deviancy will be removed. Neither promiscuity nor immoral conduct by itself is a mental disorder, so the exclusion is obsolete. Sexual orientation (homo-, hetero- and bi-sexuality) alone is not regarded as a mental disorder. But there are disorders of sexual preference which are recognised clinically as mental disorders and some of these may be considered “sexual deviance” in the terms of the current exclusion (for example paraphilias like fetishism or paedophilia) and the Act will now apply to these disorders in the same way as it applies to other mental disorders.

- (v) introducing a new requirement that **appropriate treatment must be available** if patients are to be subject to detention for treatment or to the new regime of supervised community treatment (clauses 4-5). This is designed to ensure that no-one will be detained for treatment or be subject to supervised community treatment unless suitable treatment is available for them.

It will not be enough for treatment to exist in theory. It must actually be available for the patient and be appropriate not only to their medical condition but to their circumstances as a whole. When thinking about whether appropriate treatment is available, decision-makers will have to consider not only the clinical factors but also, for example, how far from the patient’s home the service is, what effect it will have on the patient’s contact with family and friends and whether it will be culturally appropriate.

The new appropriate treatment test will take the place of the so-called treatability test, which has contributed to certain groups of patients being labelled untreatable and denied the services they need. Unlike the so-called treatability test, the new test will apply equally to all patients regardless of the type of disorder from which they are suffering. The overall effect will be to strengthen the criteria for compulsion – continuing to ensure compulsion can only be used where properly justified and for a proper clinical purpose, while removing arbitrary distinctions between different types of disorder.

- (vi) amending the current Act to remedy an Human Rights incompatibility in relation to the **nearest relative** (NR) (clauses 21-24). 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 detention and to receive certain information about the patient. The amendment will, for the first time, give patients the ability to apply to the county court to have their NR displaced, an important new safeguard for patients. It will also allow an NR to be displaced on the new grounds that they are unsuitable to act as such. The Bill also proposes to bring the NR provisions in the Act into line with the Civil Partnership Act 2004 by giving a civil partner equal status to a husband or wife.

- (vii) abolishing **finite restriction orders** (clause 33). This will ensure that where the crown court makes a restriction order for the protection of the public, the safeguards do not end arbitrarily. The Bill will remove the possibility of restrictions being made for a limited period, so that they may remain in force for as long as the offender's mental health problem poses a risk of harm to others.

There are some other minor changes, in particular bringing arrangements for NHS foundation trust "hospital managers" into line with those for NHS trusts (clause 35). This will allow NHS foundation trusts to arrange for their power of discharge to be exercised on their behalf by people appointed specifically for the purpose who are neither directors nor employees of the trust as well as by their non-executive directors. This will give foundation trusts more flexibility to provide a good, responsive service to detained patients, as well as allowing non-executive directors to concentrate on their wider contribution to the governance of the trust.

How did the Government reach decisions about making these changes?

Proposals for updating mental health legislation have been the subject of development and discussion for the last eight years:

- in July 1998 Frank Dobson, then Secretary of State for Health, announced the first fundamental review of mental health legislation since the 1950s
- at the same time an expert committee, chaired by Professor Geneva Richardson, was set up
- this committee produced *Review of the Mental Health Act* which was published, alongside a Green Paper, in November 1999
- a White Paper, *Reforming the Mental Health Act*, was published in December 2000
- a draft Bill was published for consultation in June 2002
- in September 2004, a draft Bill was published for pre-legislative scrutiny by a joint committee of the Houses of Parliament
- the pre-legislative scrutiny committee published its report in March 2005

- the Government published its response in July 2005
- in March 2006, the Government announced that it had decided not to replace the 1983 Act in its entirety, but to amend the existing Act, to bring in the key changes necessary to ensure that patients received the treatment they needed to protect them and the public from harm and to remedy the breaches of the ECHR.

Who will be affected?

Only a very small minority of people with mental health problems need to be treated compulsorily under mental health legislation.

For detailed information about patients detained under the Mental Health Act 1983, see the information sources listed at the end of this booklet. In summary, at 31 March 2005, there were 14,700 patients detained in hospital in England under the Mental Health Act 1983 (and 545 in Wales).

This is a very small proportion of the people who have a mental health condition. At any point in time, one in six of the population has a common mental health problem; and one in three people has a problem at some time in their lives.

The Mental Capacity Act 2005

What is the Mental Capacity Act 2005 about?

The Mental Capacity Act 2005, which is due to be implemented in April 2007, reforms and updates the current law where particular decisions need to be made on behalf of others who lack mental capacity to make those decisions. The Act will govern decision-making on behalf of persons aged 16 or over generally, both where they lack mental capacity at some point in their lives and where they have lacked capacity since birth. It covers a wide range of decisions, on personal welfare as well as financial matters by attorneys or court-appointed “deputies”, and clarifies the position where no such formal process has been adopted.

Why the Government is planning to make changes to the Mental Capacity Act 2005

The changes are intended to rectify the breach of the law identified by the European Court of Human Rights in its 5 October 2004 judgement in the Bournemouth case. This arises in respect of people with a mental health problem who lack capacity to consent to care or treatment and in whose best interests it is to be cared for or treated in circumstances that amount to deprivation of liberty – and because they are not detained under the Mental Health Act 1983 do not have the safeguards under the 1983 Act.

The Bournemouth provisions reflect the Government’s policy that nobody should be deprived of liberty unnecessarily. Where a person is subject to a regime which could be seen as depriving an individual of liberty, the Government expects the regime to be changed wherever practicable. Only exceptionally, where it is in the best interests of an individual, would an authorisation be given. The relevant provisions are therefore designed to strengthen the rights of hospital patients and those in care homes, as well as ensuring compliance with the European Convention on Human Rights (ECHR), in particular with Article 5, which was infringed in the Bournemouth case.

What changes is the Government planning to make to the 2005 Act?

The proposed Bournemouth provisions (clause 38) will cover patients in hospitals, and people in care homes registered under the Care Standards Act 2000, whether placed under public or private arrangements. The provisions will apply to people aged 18 and over who suffer from a disorder or disability of mind, who lack capacity to give informed consent to

the arrangements made for their care or treatment and for whom care or treatment in circumstances that amount to a deprivation of liberty within the meaning of Article 5 of the ECHR is considered to be necessary in their best interests.

The Bournemouth provisions will introduce important new safeguards for these groups.

Key features of the provisions include:

- authorisation of deprivation of liberty by the “supervisory body” (the relevant local authority (where the person is in a care home) or the relevant Primary Care Trust or, in Wales, the National Assembly for Wales (where the person is in a hospital))
- before authorisation may be given, the supervisory body must have obtained assessments of the person in order to ensure that they meet the required conditions (including independent assessment that deprivation of liberty is necessary in their best interests to protect them from harm)
- in giving authorisation, the supervisory body should determine its duration on a case by case basis taking account of the individual’s circumstances, and duration may not exceed twelve months
- every person will have someone “independent” of the supervisory body and the relevant hospital or care home to represent their interests for the duration of the authorisation
- a decision to deprive a person of liberty may ultimately be challenged by the person concerned or by the person appointed to represent their interests, by means of an application to the Court of Protection
- all concerned will have to act in the best interests of the person and in the least restrictive manner.

How did the Government reach decisions about making these changes?

As explained above, these changes result from a judgement of the European Court of Human Rights. The Government undertook a formal three-month consultation on the issue between March and June 2005 after informal discussions with interested parties following the judgement. The Government’s proposed solution has been shaped by the views expressed in the informal and formal consultations.

Who will be affected?

Those who are likely to receive these additional safeguards will mainly be those with significant learning disabilities or elderly people suffering from dementia, but will include a minority of others who have suffered physical injury.

The Government considers that there are likely to be very few people of unsound mind and who lack capacity who need to be deprived of liberty in ECHR terms. A precise estimate could not be obtained without an exercise to examine the circumstances of all individuals judged to be in the at-risk group. Our estimate is that 5,000 people will be subject to a Bournemouth assessment, of whom 25 per cent (1250 people) at any one time are likely to be deprived of liberty. In the short term however, as the new provisions bed in, we have made provision for a substantially higher number of assessments (21,000) and a correspondingly higher number of authorisations (5250), falling over time to the lower estimate.

FINDING YOUR WAY AROUND THE MENTAL HEALTH BILL 2006

The Annex to this guide is designed to help you find your way around the Bill.

WHAT ARE THE TIMESCALE FOR INTRODUCING THE CHANGES AND THE PLANS FOR IMPLEMENTATION?

Time will be needed, after the Bill has received Royal Assent, to prepare for implementation. For example, professionals will need to be trained on the changes.

For planning purposes, the Government is working on the assumption that the new Act, subject to Parliamentary approval, will be implemented in April 2008.

In the meantime, work is underway to prepare for implementation. This includes preparation of secondary legislation and plans for revising the Codes of Practice for the Mental Health Act 1983 and the Mental Capacity Act 2005.

RACE EQUALITY IMPACT ASSESSMENT

The Government has carried out an assessment of the Bill, including the Bournemouth provisions, to look at its impact on race equality. The Government recognises that the effects of the Mental Health Act apply disproportionately to some black and minority ethnic groups. Following its assessment of the race impact, the Government has put in place a number of strands of work to help ensure the delivery of race equality. Further information is available on the Race Equality Impact Assessment – see end of this guide.

WHAT IS HAPPENING ABOUT CHANGES WHICH WERE IN THE 2004 DRAFT MENTAL HEALTH BILL AND ARE NOT IN THE MENTAL HEALTH BILL 2006?

Many of the changes set out in 2004 draft Mental Health Bill are not relevant now that the 1983 Act will be amended instead.

For those that are still relevant, with the move to an amending Bill rather than a Bill to replace the current Act, the Government has had to prioritise the changes that can be made.

There are a number of elements that were in the Bill – or the Government indicated in its response to the pre-legislative scrutiny committee report might be included in the Bill – that the Government plans to pursue through guidance in the Mental Health Act Code of Practice, for example:

- the importance of consulting with patients and their carers and notifying them about key events
- the scope for patients to make advance statements
- the importance of information sharing and the scope to do this within the data protection rules.

The Government is also looking at other possible mechanisms – for example, in relation to the development of advocacy.

A number of other changes cannot or will not be taken forward, for example, the restrictions on free aftercare under s117 of the 1983 Act.

WHICH PARTS OF THE UK WILL BE COVERED BY THE BILL?

The Mental Health Bill 2006 covers the same countries as the Acts that it is amending. Apart from some relatively minor elements, this means that the Bill applies to England and Wales only.

HOW MUCH WILL THE NEW LAW COST TO IMPLEMENT?

The additional public sector costs are estimated to be approximately £22 million in the first full year of implementation: about £10 million for the amendments to the Mental Health Act 1983 and £12 million for the amendments to the Mental Capacity Act 2005. These costs will rise to about £34 million (£31 million for the 83 Act and £3 million for the Mental Capacity Act) once steady state has been reached in 2014/15.

Detailed information is available in the Regulatory Impact Assessment – see below.

WHAT ABOUT THE PROVISION OF SERVICES FOR PEOPLE WITH MENTAL HEALTH PROBLEMS?

This Bill is about legal processes, and not about the provision of services for people with mental health problems. The Government has a wide-ranging programme to improve services for people with mental health problems and to promote good mental health. By improving the services to promote better mental health, the Government wants to reduce the need to use compulsory powers.

WHERE CAN I FIND OUT MORE?

For further information on the Mental Health Act 1983 and the amending Bill, visit:

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

If you have queries, contact the Mental Health Bill Team:

Telephone: 020 7972 4477 (office hours only)

Email: MentalHealthBill@dh.gsi.gov.uk

For an on-line version of the Mental Health Act 1983 visit: www.imhap.co.uk
(The Department is not responsible for the content on this site.)

For further information on the Mental Capacity Act 2005, visit:

<http://www.dca.gov.uk/legal-policy/mental-capacity/index.htm>

Briefing sheets on key policy areas are available by visiting www.dh.gov.uk/MentalHealth

Alongside the Bill, the Government has published Explanatory Notes, a Regulatory Impact Assessment, a Race Equality Impact Assessment, an easy read version of the Bill and a draft revised Code of Practice. All of these are available on the Department of Health's website.

Annex: Finding your way around the Bill

This note contains six tables intended to help you find your way around the Mental Health Bill:

- Table 1 directs you to clauses relevant to key topics
- Table 2 directs you to clauses which amend particular sections of the Mental Health Act
- Table 3 directs you to clauses which insert whole new sections into the Mental Health Act
- Table 4 directs you to clauses which amend particular sections of the Mental Capacity Act
- Table 5 directs you to clauses which insert whole new sections into the Mental Capacity Act
- Table 6 directs you to clauses which amend parts of other Acts.

(1) By topics

Topic	Relevant clauses
Definition of mental disorder, categories of mental disorder, exclusions and learning disability qualification	Clause 1 (new definition and abolition of categories) Clause 2 (learning disability) Clause 3 (exclusions) Schedule 1 (abolition of categories – detail)
Criteria for detention, “appropriate treatment” and “treatability”	Clauses 4 and 5
Approved mental health professionals and approved social workers	Clauses 17-20 (approval and training) Schedule 2 (detailed amendments)
Responsible clinicians, approved clinicians and responsible medical officers	Clauses 8-16
After-care under supervision (abolition)	Clauses 29 and 46
Supervised community treatment (SCT) and community treatment orders	Clause 25 (procedures and criteria) Clause 26 (relationship with leave of absence) Clause 27 (medical treatment of patients recalled from SCT) Clause 28 (medical treatment of patients on SCT) Clause 6 (SOAD certificates)
Medical treatment (see also SCT above)	Clause 7 (definition)
Nearest relatives	Clauses 21-24

(1) By topics – *continued*

Topic	Relevant clauses
Mental Health Review Tribunals	Clauses 30-31
Cross border transfers	Clause 32 and Schedule 5
Restriction orders	Clause 33
NHS Foundation Trusts	Clause 35
Bournewood safeguards	Clause 38 and Schedules 6, 7 and 8
Mental Capacity Act (see also Bournewood safeguards)	Clause 39

(2) By sections of the Mental Health Act which are amended by the Bill

Section Number	Section Title	Amended by
1	Application of Act: mental disorder	Clauses 1-3
3	Admission for treatment	Clause 4 and Schedule 1
4	Admission for assessment in cases of emergency	Schedule 2
5	Application in respect of patient already in hospital	Schedule 3
7	Application for guardianship	Schedule 1
10	Transfer of guardianship	Schedule 2
11	General provisions as to applications	Schedules 2 and 10
12	General provisions as to medical recommendations	Clause 15
13	Duty of ASWs to make applications	Schedule 2
14	Social reports	Schedule 2
16#	Reclassification of patients	Schedule 10
17	Leave of absence	Clauses 8 and 26
18	Return and readmission of patients absent without leave	Schedules 2 and 3
20	Duration of authority	Clauses 4 and 8 and Schedules 1 and 3
21	Special provisions as to patients absent without leave	Clause 30 and Schedule 3
21A	Patients who are taken into custody or return within 28 days	Schedule 3
21B	Patients who are taken into custody or return after more than 28 days	Clause 8 and Schedules 2 and 3
22†	Special provisions as to patients sentenced to imprisonment etc	Schedule 3
23	Discharge of patients	Clauses 8 and 35 and Schedule 3

(2) By sections of the Mental Health Act which are amended by the Bill – continued

Section Number	Section Title	Amended by
24	Visiting and examination of patients	Clause 8 and Schedule 3
25	Restrictions on discharge by nearest relative	Clause 8 and Schedule 3
26	Definition of relative and nearest relative	Clause 24
27	Children and young persons in care	Clause 24
29	Appointment by court of acting nearest relative	Clause 21 and Schedules 2 and 3
30	Discharge and variation of orders under s29	Clause 22 and Schedules 2 and 3
32	Regulations for the purpose of Part 2	Clause 35 and Schedule 3
33	Special provisions as to wards of court	Schedule 3
34	Interpretation of Part 2	Clause 8 and Schedule 10
35	Remand to hospital for report on accused's mental condition	Clause 9 and Schedule 1
36	Remand of accused person to hospital for treatment	Clauses 5 and 9 and Schedule 1
37	Powers of courts to order hospital admission or guardianship	Clauses 4 and 9 and Schedule 1
38	Interim hospital orders	Clause 9 and Schedule 1
40	Effect of hospital orders, guardianship orders and interim hospital orders	Schedule 2
41	Powers of higher courts to restrict discharge from hospital	Clauses 9 and 33 and Schedule 3
42	Powers in relation to patients with restriction orders	Clause 33
44	Committal to hospital under s43	Clauses 9 and 33
45A	Power of higher courts to direct hospital admission	Clauses 4 and 9 and Schedules 1 and 10
45B	Effect of hospital and limitation directions	Clause 9
47	Removal to hospital of persons serving sentences of imprisonment	Clause 4 and Schedules 1 and 10
48	Removal to hospital of other prisoners	Clause 5 and Schedule 1
49	Restriction on discharge of prisoners removed to hospital	Clause 9
50	Further provisions as to prisoners under sentence	Clause 10
51	Further provisions as to detained persons	Clauses 5 and 10 and Schedule 1

(2) By sections of the Mental Health Act which are amended by the Bill – continued

Section Number	Section Title	Amended by
52	Further provisions as to persons remanded by magistrates' courts	Clause 10
53	Further provisions as to civil prisoners and persons detained under the Immigration Act 1971	Clause 10
54	Requirements as to medical evidence	Clause 10
55	Interpretation of Part 2	Clause 10 and Schedule 10
56†	Patients to whom Part 4 applies	Clause 27
57	Treatment requiring consent and a second opinion	Clauses 6 and 11
58	Treatment requiring consent or a second opinion	Clauses 6 and 11
61	Review of treatment	Clauses 11 and 27
62	Urgent treatment	Clause 11
63	Treatment not requiring consent	Clause 11
64	Supplementary provisions for Part 4	Clauses 6 and 11
65	Mental Health Review Tribunals	Clause 31
66	Applications to tribunals	Clauses 23 and 29 Schedules 1, 3 and 10
67	References to tribunals by SofS concerning Part 2 patients	Clauses 12 and 29 Schedule 3
68†	Duty of managers of hospitals to refer cases to tribunals	Clause 30
69	Applications to tribunals concerning patients subject to hospital and guardianship orders	Schedules 3 and 5
71	References to SofS concerning restricted patients	Clause 30
72	Powers of tribunals	Clause 4 and Schedules 1, 3 and 10
73	Power to discharge restricted patients	Clause 4
75	Applications and references concerning conditionally discharged restricted patients	Clause 34
76	Visiting and examination of patients	Clause 12 and Schedules 3 and 10
77	General provisions concerning tribunal applications	Schedule 3
78	Procedure of tribunals	Clause 31

**(2) By sections of the Mental Health Act which are amended
by the Bill – continued**

Section Number	Section Title	Amended by
79	Interpretation of Part 5	Clauses 12 and 31 and Schedule 5
80	Removal of patients to Scotland	Schedule 5
81	Removal of patients to Northern Ireland	Clause 33 and Schedule 5
81A	Transfer of responsibility for patients to Northern Ireland	Clause 33 and Schedule 5
82	Removal to England and Wales of patients from Northern Ireland	Schedule 5
82A	Transfer of responsibility for patients to England and Wales from Northern Ireland	Schedule 5
84	Removal to England and Wales of offenders found insane in Channel Islands and Isle of Man	Clause 33
85	Patients removed from Channel Islands or Isle of Man	Schedule 5
85A	Responsibility for patients transferred from Channel Islands or Isle of Man	Schedule 5
86	Removal of alien patients	Schedule 1
87	Patients absent from hospitals in Northern Ireland	Schedule 2
88	Patients absent from hospitals in England and Wales	Schedules 2 and 5
89	Patients absent from hospitals in the Channel Islands or Isle of Man	Schedule 2
90	Regulations for the purpose of Part 6	Schedule 5
91	General provisions as to patients removed from England and Wales	Clause 33 and Schedule 5
92	Interpretation of Part 6	Schedules 5 and 10
114†	Appointment of ASWs	Clause 17
115†	Powers of entry and inspection	Schedule 2
117	After-care	Schedule 3
118	Code of practice	Clause 13 and Schedules 2 and 3
119	Practitioners approved for purposes of Part 4 and s118	Clause 28
120	General protection of detained patients	Clause 13 and Schedule 3
121	Mental Health Act Commission	Clauses 13 and 28 and Schedule 3

(2) By sections of the Mental Health Act which are amended by the Bill – continued

Section Number	Section Title	Amended by
127	Ill-treatment of patients	Schedule 10
128	Assisting patients to absent themselves without leave	Schedule 3
132	Duty of managers of hospitals to give information to detained patients	Schedule 3
133	Duty of managers of hospitals to inform nearest relatives of discharge	Schedule 3
134	Correspondence of patients	Clause 13
135	Warrant to search for and remove patients	Schedule 2
136	Mentally disordered persons found in public places	Schedule 2
138	Retaking of patients escaping from custody	Schedules 2 and 3
141	MPs suffering from mental illness	Schedules 1 and 3
143	General provisions as to regulations, orders and rules	Clauses 30 and 37 and Schedule 10
145	Interpretation	Clauses 4, 7, 13 and 37 and Schedules 1, 2, 3 and 10
146	Application to Scotland	Schedule 3
Schedule 1, Part 1	Application of certain provisions to patients subject to hospital and guardianship orders	Clause 30 and Schedules 3 and 10
Schedule 1, Part 2	Application of certain provisions to patients subject to hospital and guardianship orders	Clauses 10 and 26 and Schedule 3
Schedule 2	Mental Health Review Tribunals	Clause 31

† Section substituted in its entirety # section repealed in its entirety.

(3) By new section of the Mental Health Act inserted by the Bill

New section	Subject	Inserted by
17A to 17G	Supervised community treatment	Clause 25
19A	Supervised community treatment	Schedule 3
20A& 20B	Supervised community treatment	Clause 25
62A	Treatment of patients on recall from SCT or revocation of SCT	Clause 27
64A to 64K	Medical treatment of patients on SCT	Clause 28
68A	Tribunals	Clause 30
80ZA, 80B, 80C, 80D, 81ZA, 83ZA, 85ZA	Cross-border arrangements	Schedule 5
114A	Approval of courses etc for approved mental health practitioners	Clause 16
132A	Duty of hospital managers to give information to community patients	Schedule 3
142A	Regulations as to approvals of practitioners for the purposes of section 12	Clause 16
142B	Delegation of powers of managers of NHS Foundation Trusts	Clause 35

(4) By sections of the Mental Capacity Act which are amended by the Bill

Section	Subject	Amended by
6	Restrictions on section 5	Clause 38
11	Restrictions on donees of lasting power of attorney	Clause 38
20	Restrictions on deputies	Clauses 38 and 39
28	Mental Health Act matters	Clause 28
35	Independent mental capacity advocates	Schedule 6
37	Independent mental capacity advocates (serious medical treatment)	Clause 28
35, 38 to 40	Independent mental capacity advocates	Schedule 8
42	Codes of practice	Schedule 8
50	Application to the Court of Protection	Schedule 8
64	Interpretation	Schedule 8
Schedule 4	Existing enduring powers of attorney	Schedule 1

(5) By new section of the Mental Capacity Act inserted by the Bill

New section	Subject	Inserted by
4A	Restrictions on deprivation of liberty	Clause 38
4B	Deprivation of liberty for life-sustaining treatment	Clause 38
16A	Mental Health Act patients etc	Clause 38
21A	Powers of the Court in relation to Bournemouth	Schedule 8
39A to 39C	Independent mental capacity act advocates in relation to Bournemouth	Schedule 8
Schedule A1	Bournemouth safeguards	Schedule 6
Schedule 1A	Bournemouth and the Mental Health Act	Schedule 7

(6) Amendments (etc) of other Acts (etc)

Act (etc)	Provision	Amended by
Administration of Justice Act 1960	Inserts new section 5A – power to order continuation of community treatment order	Schedule 4
Armed Forces Act 2006 (and Air Forces Act 1955, Army Act 1955 and Naval Discipline Act 1957)	Remission of certain patients subject to hospital and restriction orders for trial (ss171, 116B, 116B and 63B respectively)	Clause 14
Care Standards Act 2000	Codes of practice (s62)	Clause 19
	Definition of mental disorder (s121)	Schedule 1
Colonial Prisoners Removal Act 1884	Transfer of “criminal lunatics” (s10)	Clause 33
Contempt of Court Act 1981	Proceedings in England and Wales (s14)	Schedule 1
Courts-Martial (Appeals) Act 1968	Implementation of authority for retrial etc (s20)	Clause 19
	Detention of accused (s43)	Clause 19
	Inserts new section 43A continuation of community treatment order	Clauses 19
Criminal Appeal Act 1968	Supplementary provisions as to retrial (s8)	Clause 19
	Inserts new section 37A continuation of community treatment order on appeal by the Crown	Clause 19
Criminal Procedure (Insanity) Act 1964	Remission of certain patients subject to hospital and restriction orders for trial (s5A)	Clause 14
Family Law Act 1996	Remand for medical examination and report (s48)	Schedule 1

(6) Amendments (etc) of other Acts – continued

Act (etc)	Provision	Amended by
	Power of magistrates' court to order hospital admission (s51)	Schedule 1
Housing Act 1996	Remand for medical examination and report (s156)	Schedule 1
Juries Act 1974	Mentally disordered persons etc (Sch 1)	Clause 19 and Schedule 1
Local Authority Social Services Act 1970	Social services functions of local authorities (Sch 1)	Schedule 8
Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 (S.I. 2005/2078)	Amends Articles 1, 8 & 12 and removes Articles 2 and 3	Schedule 5
National Assistance Act 1948	Removal to suitable premises of persons in need of care and attention (s47)	Schedule 8
National Health Service Act 2006	Interpretation – definition of illness (s275)	Schedule 1
	NHS Foundation trust constitutions (Sch 7)	Clause 35
National Health Service (Wales) Act 2006	Interpretation – definition of illness (s206)	Schedule 1
Police and Justice Act 2006	Anti-social behaviour injunctions: power of arrest and remand (s27)	Schedule 1



© Crown Copyright 2006

Produced by Department of Health

271888 1p 2k Nov 06 (CWP)

Produced by COI for the Department of Health

If you require further copies of this title quote
271888/Mental Health Bill 2006: Summary Guide and contact:

DH Publications Orderline

PO Box 777,

London SE1 6XH

Email: dh@prolog.uk.com

Tel: 08701 555 455

Fax: 01623 724 524

Textphone: 08700 102 870 (8am to 6pm Monday to Friday)

271888/Mental Health Bill 2005: Summary Guide may also be made available
on request in braille, on audio, on disk and in large print.

www.dh.gov.uk/publications