



Directors of Primary Care, Community and Mental
Health for Local Health Boards
Heads of Adult Social Services for Local Authorities
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Director

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Dear Colleagues

HEALTH AND SOCIAL CARE BILL – AMENDMENTS TO THE MENTAL HEALTH ACT 1983 AND THE MENTAL CAPACITY ACT 2005

The UK Government has recently published a Health and Social Care Bill, which makes a number of small amendments to both the Mental Health Act 1983 (the 1983 Act), and the Mental Capacity Act 2005 (the 2005 Act).

Because the Bill is largely concerned with the UK Government's plans for reform of the NHS in England, most amendments to the 1983 Act and the 2005 Act are consequential on those reforms and apply in relation to England. Some changes also apply in relation to Wales, and this letter sets out all of the changes in more detail. There is more information on the clauses of the Bill and the Bill in general, on Parliament's website at <http://services.parliament.uk/bills/2010-11/healthandsocialcare.html>

Amendments to the Mental Health Act 1983

The following changes are being made to the 1983 Act in relation to England, and will not have effect in relation to Wales –

1. Clause 30 of the Bill inserts three new sections into the 1983 Act (proposed sections 12ZA, 12ZB and 12ZC) concerned with the approval of section 12 doctors and approved clinicians. The Secretary of State's existing powers of approval are delegated to Strategic Health Authorities, but alternative arrangements (yet to be finalised) will apply in the future. The Bill provides flexibility for new approval powers in the future.
2. Clause 32 of the Bill transfers to GP commissioning consortia (and where relevant the NHS Commissioning Board) the duty of Primary Care Trusts (PCTs) to provide after-care under section 117 of the 1983 Act. At the same



time, other changes to section 117 seek to align the duties on the consortia and the Board with their functions under National Health Service Act 2006 (which is also amended by the Bill).

3. Clause 33 of the Bill removes the powers for the Secretary of State to make 'pocket-money' payments to in-patients of mental health hospitals.
4. Clause 35 of the Bill transfers the responsibility for arranging independent mental health advocacy services (under section 130A of the 1983 Act) from the Secretary of State to local authorities. Although the responsibility formally lies with the Secretary of State it is currently delegated to PCTs.

The provisions relating to independent mental health advocacy within the 1983 Act are also being amended by the recently passed Mental Health (Wales) Measure 2010. The changes proposed by the Bill take account of the changes made by the Measure, but the effect of the changes made by the Bill will not have effect in relation to Wales.

5. Clause 37 of the Bill transfers to GP commissioning consortia the duty of PCTs to give certain notifications to local social services authorities under section 140 of the 1983 Act.

Similar duties of provision of information to the criminal courts under section 39 of the 1983 Act are also amended (by paragraph 7 of Schedule 5 to the Bill), such that the duty of PCTs will be transferred to consortia and, where relevant, the Board.

6. Because Part 7 of the Bill will transfer the regulation of social workers in England from the General Social Care Council (GSCC) to the Health Professions Council (which will be renamed the Health and Care Professions Council), the Bill will also transfer the GSCC's role in approving training courses for approved mental health professionals in England under the 1983 Act. Amendments are therefore proposed to section 114A (such that it will apply only in relation to Wales), and introduces new section 114ZA to make provision in relation to England.

The following changes are being made to the 1983 Act, and will have effect in relation to both England and to Wales –

7. Clause 31 of the Bill will amend section 23 of the 1983 Act so as to remove the existing power of the Welsh Ministers to discharge people from detention and supervised community treatment (SCT) in independent hospitals. At the same time, the power of Local Health Boards (and the two NHS Trusts in Wales) to similarly discharge from detention and SCT in independent hospitals.
8. Clause 34 of the Bill removes section 123 of the 1983 Act, which is concerned with the transfer to and from special hospitals. Patients will still be able to transferred to or from such facilities, but the power of the Secretary of State or the Welsh Ministers to direct such transfers will be removed.

9. Clause 36 of the Bill removes the option in section 134 of the 1893 Act for people who do not wish to receive correspondence from detained patients to notify the Welsh Ministers of that wish. Where a person does not wish to receive correspondence they will still be able to notify the hospital managers or the approved clinician in charge of the patient's case.
10. At the same time as making these changes, clause 273 of the Bill will change the rules on when treatment of patients on supervised community treatment (SCT) needs to be approved by a Second Opinion Appointed Doctor (SOAD), and will apply in relation to both England and Wales.

It is proposed that a SOAD certificate of approval will no longer be required where the patient is consenting to the treatment in question, and has the capacity to do so. Instead, it would be sufficient for the approved clinician in charge of the treatment to certify the patient's consent. This will bring the system for SCT patients into closer alignment with the system for patients detained in hospital. Healthcare Inspectorate Wales, who make arrangements for SOADs in Wales, have been informed of these proposed changes.

Mental Capacity Act 2005

The following changes are being made to the 2005 Act in relation to England, and will not have effect in relation to Wales –

11. Paragraph 48 of Schedule 5 to the Bill will amend section 35 of the 2005 Act so as to make local authorities, instead of the Secretary of State, responsible for making arrangements to enable independent mental capacity advocates to represent and support specified persons.
12. Paragraph 51 of Schedule 5 to the Bill will make amendments to Schedule A1 of the 2005 Act. Schedules A1 and 1A are concerned with the Deprivation of Liberty Safeguards. Firstly the Bill will remove references to Primary Care Trusts and Strategic Health Authorities, and where relevant then also insert references to a local authority as the supervisory body if the relevant person is ordinarily resident in England.

If you would like more information on these proposed changes, please contact Claire Fife (029 2082 6988 or Claire.Fife@wales.gsi.gov.uk).



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