Lord Dennis Stevenson and Charles Walker MP, supported by the Royal College of Psychiatrists, Mind and Rethink Mental Illness, are working on a campaign to repeal four areas of discrimination against those with mental health conditions in UK laws and regulations. These relate to MPs, Jurors, Company Directors and School Governors.

Key Provisions of the Bill

- Section 141 of the Mental Health Act 1983, under which a Member of the House of Commons, Scottish Parliament, Welsh Assembly or Northern Ireland Assembly automatically loses their seat if they are detained under the Act for more than six months, would be repealed.
- The Juries Act 1974 would be amended to overturn the blanket ban on jury service for people with a mental disorder.
- The Companies (Model Articles) Regulations 2008 would be amended so that a person no longer ceases to be a director of a public or private company purely ‘by reason of their mental health’.
- The School Governance (Constitution) (England) Regulations 2007 would be amended so that individuals detained under the Mental Health Act would no longer be prevented from holding or continuing to hold office as school governors.

In April 2011, Lord Stevenson introduced the Mental Health (Discrimination) Bill 2011 which aims to repeal the discriminatory provisions in each of these four areas. The Bill will receive its Lords second reading on Friday 25 November 2011.

In February 2011 the new Mental Health Strategy, No Health without Mental Health, was published, setting out the Government’s new mental health policy for the next decade. It contains six objectives, one of which is that ‘fewer people will experience stigma and discrimination’.

This goes to the heart of the arguments for removing the discriminatory provisions highlighted in the Private Members’ Bill.

This briefing contains a summary of the Bill proposals and an outline of the discriminatory provisions.
Background

1. MPs and Section 141 of the Mental Health Act 1983

Discriminatory Provisions

Section 141 of the Mental Health Act 1983 sets out a process by which MPs are to vacate their seats if they have a mental health condition and are authorised to be detained under mental health legislation for a period of six months or more. The process involves the Speaker of the House of Commons receiving reports from registered medical practitioners. If the Speaker receives two such reports, six months apart, that the MP is detained in this way, the Speaker lays both reports before the House of Commons and the MP's seat automatically becomes vacant. Section 141 also applies to devolved assemblies, with the presiding officer of each assembly performing the functions of the Speaker.

There are no provisions to remove an MP if he or she suffers from a physical illness, even if the illness (e.g. a serious stroke or cancer) is very debilitating and substantially affects the person's ability to perform their parliamentary functions. Furthermore, a person who lacks mental capacity may also be detained, for up to 12 months, under the Deprivation of Liberty Provisions in the Mental Capacity Act 2005, but does not thereby automatically lose his or her seat as a result.

The Government has already made clear its intention to repeal provisions relating to MPs (Section 141 of the Mental Health Act). The Deputy Prime Minister’s announcement was included as part of the launch of the Government’s Mental Health Strategy in February, in which the removal of discrimination and stigma is stated as one of six priorities.

Deputy Prime Minister Nick Clegg said at the time:

"we are announcing that we are repealing an old-fashioned outdated law which means that MPs at the moment are disqualified from being MPs if they have a mental health problem which goes on for more than six months. We are scrapping that - it is a relatively symbolic thing because it has never been used - but it nonetheless shows that we are determined to root out that stigma”

The Ministerial Statement stated that the law was:

'symptomatic of an outdated attitude towards mental illness which is out of touch with the modern understanding of mental health. It treats mental ill health differently from physical ill health. It sends out the message that if you have a mental health condition, your contribution is not welcome in public life. That is a message this Government wish to change.’

Amendment to the Mental Health Act 1983
Section 141 of the Mental Health Act 1983 is repealed.
2. **Jury Service**

**Discriminatory Provisions**

The Juries Act 1974 states that “mentally disordered persons” are ineligible for jury service.

By Schedule 1 to the Act a mentally disordered person is defined as,

A person who

*suffers or has suffered from a mental disorder within the meaning of the Mental Health Act 1983*

1. and for that reason is resident in a hospital or similar institution or

2. regularly attends for treatment from a medical practitioner or a person for the time being under a guardianship order under section 7 of the Mental Health Act or a community treatment order under s17A of that Act or

3. lacks capacity within the Mental Capacity Act to serve as a juror.

This is discriminatory because it provides a blanket ban on jury service for people with a mental disorder, which is not based on an individual’s capacity to serve as a juror. People with a physical illness are not banned on the basis of their illness, however unwell they are, so long as they retain mental capacity.

Many people with a mental disorder covered by these provisions are quite capable of participating in a jury. Those who are regularly receiving medical treatment are likely to include many people who participate fully in social, economic and political life. They may take medication in order to stabilise their condition just as a person with high blood pressure or a heart condition might take medication.

There are, moreover, many people who are prominent in society who are thus disqualified and juries are denied the experience of people who have direct knowledge of mental illness. This can be particularly relevant in criminal cases where the nature of a person’s state of mind is relevant to the court. It also means that a whole sector of society is effectively disenfranchised from participation in public life as a citizen.

**Amendments to the Juries Act 1974**

(1) Schedule 1 to the Juries Act 1974 is amended as follows.

(2) For paragraphs 1 and 2 substitute—

“A person for the time being liable to be detained under the Mental Health Act 1983”
3. Company Directors

Discriminatory Provisions

The model articles of association introduced under the Companies Act 2006 provide for a director’s appointment to be terminated on mental health grounds in certain circumstances (see in bold below). All companies are required by the statute to have model articles and these operate when the company has failed to draw up its own, and may also become part of a bespoke set. There are three sets of model articles - for private companies limited by shares; those limited by guarantee and public companies. Set out in the Companies (Model Articles) Regulations 2008, they all include the same provision regarding termination of a director’s appointment.

Termination of director’s appointment

18. A person ceases to be a director as soon as -

(a) that person ceases to be a director by virtue of any provision of the Companies Act 2006 or is prohibited from being a director by law;
(b) a bankruptcy order is made against that person;
(c) a composition is made with that person’s creditors generally in satisfaction of that person’s debts;
(d) a registered medical practitioner who is treating that person gives a written opinion to the company stating that that person has become physically or mentally incapable of acting as a director and may remain so for more than three months;
(e) by reason of that person’s mental health, a court makes an order which wholly or partly prevents that person from personally exercising any powers or rights which that person would otherwise have;

It is unclear what purpose is served by sub-paragraph (e) or what it aims to cover. An order made by the Court of Protection for instance to appoint a deputy to manage the affairs of an individual is based on a lack of mental capacity, not an individual’s mental health. It appears from the history of the provision that it was intended to cover decisions of mental health review tribunals which lead to detention of an individual under the Mental Health Act.

For the same reasons, as stated above, it is stigmatising for mental health to be singled out, together with bankruptcy, and for a person to be automatically deprived of their directorship because of a period of mental ill health, however short. Paragraph (d) by contrast applies equally to mental and physical health.

Amendments to the Companies (Model Articles) Regulations 2008

In the Companies (Model Articles) Regulations 2008 (S.I. 2008/3229)—
(a) paragraph 18(e) of Schedule 1 is revoked;
(b) paragraph 18(e) of Schedule 2 is revoked; and
(c) paragraph 22(e) of Schedule 3 is revoked.
4. School Governors

Discriminatory Provision

Schedule 6 of the School Governance (Constitution) (England) Regulations 2003, which was amended by Regulation (2)(c) of the School Governance (Constitution, Procedures and New Schools) (England) (Amendment) Regulations 2004 reads:

"A person is disqualified from holding office or continuing to hold office as a governor of a school at any time when he is detained under the Mental Health Act 1983."

The 2003 Constitution Regulations, as amended, were then replaced by the School Governance (Constitution) (England) Regulations 2007 and the 2004 amendment was carried forward so that the disqualification operates only when a person is detained under the Mental Health Act. It is not clear whether this operates as a suspension or termination of the appointment.

While a person who is detained under the Mental Health Act is not likely to be able to carry out many, if any, of the functions of the school governor during the time s/he is detained, this may only be for a very short time and might not interrupt their normal participation as a school governor in a substantial way. Yet is it not clear that the person will be entitled to resume their role once the detention period has elapsed.

At a more fundamental level, this is a stigmatising provision because it singles out mental health as grounds for loss of a person’s position together with bankruptcy and a term of imprisonment of more than three months. This suggests a level of culpability, when in fact it is a health condition that is involved.

Amendment to the School Governance (Constitution) (England) Regulations 2007

In Schedule 6 to the School Governance (Constitution) (England) Regulations 2007 (S.I. 2007/957), paragraph 4 is revoked.
Stigma

The impact of discriminatory attitudes towards mental health problems should not be underestimated. In September 2011, the Time To Change campaign surveyed 2700 people with mental health problems to find out more about the impact of stigma and discrimination, with the following results:

- **80%** of respondents said they had experienced stigma and discrimination as a result of their mental health problems.
- When asked what this stigma and discrimination had stopped people doing, the areas with the most responses were:
  - Attending social engagements - **60%**
  - Looking for work, or returning to work - **49%**
  - Getting out and about, for example to the shops - **41%**
  - Having a relationship - **35%**
  - Joining a group or club - **29%**

- When asked what this fear and worry about stigma stopped them doing, the areas with the most responses were:
  - Telling an employer or potential employer about a mental health problem - **67%**
  - Telling friends about a mental health problem - **62%**
  - Applying for a job - **50%**
  - Telling family about a mental health problem - **46%**
  - Going out and about, for example to the shops or pub - **37%**
  - Seeking professional help for a mental health problem - **36%**

About us

The Royal College of Psychiatrists, Mind and Rethink Mental Illness have worked together to inform debate from the perspective of mental health services and those who use them.

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## Case Studies

Pippa, a Rethink member, told the charity: “When I received my summons to serve on a jury I was excited and interested. Then I read the form and realised that I am not qualified for jury service because I have a mental illness and regularly attend for treatment by medical practitioners. I was horrified to be banned along with serious offenders.”

A teacher who contacted Rethink Mental Illness said “A letter came through the door in late November, and on the first page it explained that I had no choice but to attend for jury service within two weeks. Then I turned over the page, and reasons for not attending were required, together with who was not eligible to attend jury service.

On the form it suggested that I would not be eligible if I was regularly seeing a Psychiatrist, and then I felt deflated, and realised that the sender had no idea of my situation. [The] implications of [the] stigma I felt were very real. If I am able to teach university students Third World Development, and ESOL students IT, then obviously my state of mind couldn’t be too bad. I have been trained as a teacher and to be very aware of equal opportunities, and disabilities, and in some respects this is a kick in the teeth to all of that.”