Reforming The Mental Health Act

Summary

Introduction

This booklet brings together the executive summaries of the two parts of the Mental Health White Paper **'Reforming the Mental Health Act' – Part 1 'The new legal framework' and Part 2 'High risk patients'.** The White Paper sets out the Government's plans for new mental health legislation which will:

- form part of new arrangements for improving the quality and consistency of health and social care services for the many people who suffer from mental health problems; and,
- provide a new structure for the application of compulsory powers of detention for assessment and treatment for the small minority of those who pose a serious threat to the safety of others as a result of their mental disorder.

New mental health legislation will provide a single framework for the application of compulsory powers for care and treatment. This will include:

- common criteria;
- a common pathway for assessment;
- the approval of a plan of care and treatment by the Mental Health Tribunal; and,
- an improved and more consistent set of safeguards for all patients.

But within that overall framework, a wide range of different services and approaches is required. The two parts of this White Paper recognise what is perhaps the most important of these distinctions, by setting out the arrangements for the high risk group separately.

- **Part One – 'The new legal framework'** sets out the Government's plans for new mental health legislation. It explains how new mental health legislation will operate for patients generally.
- **Part Two – 'High risk patients'** sets out specific arrangements for the small minority who pose a significant risk of serious harm to other people as a result of their mental disorder.

Foreword

Millions of people face a mental illness at some point in their lives. That is why improving mental health services is a priority for the Government.

First we have made investment a priority. More staff, more beds and more services are being made available particularly for those with the most serious mental health problems. The *NHS Plan*, published in July, outlined further new resources and the development of further new services over the next few years including for those who are dangerous and severely personality disordered.

Second, we have made reform a priority. For the first time mental health services in all parts of England are having to operate to new national standards and similar measures will be introduced in Wales. While there are very real problems and pressures, progress is being made towards plugging gaps in provision and modernising services.

This White Paper details how we will now underpin these improvements in mental health services with reforms to mental health laws.

The current 1983 Mental Health Act is largely based on a review of mental health legislation which took place in the 1950s. Since then the way services are provided has dramatically changed. The current laws have failed properly to protect the public, patients or staff.

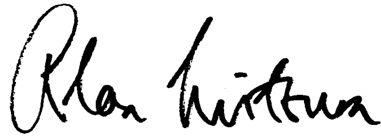
Under existing mental health laws, the only powers compulsorily to treat patients are if they are in hospital. The majority of patients today are treated in the community. But public confidence in care in the community has been undermined by failures in services and failures in the law. Too often, severely ill patients have been allowed to drift out of contact with mental health services. They have been able to refuse treatment. Sometimes, as the tragic toll of homicides and suicides involving such patients makes clear, lives have been put at risk. In particular, existing legislation has also failed to provide adequate public protection from those whose risk to others arises from a severe personality disorder. We are determined to remedy this.

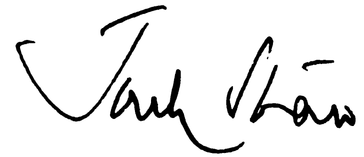
Of course the vast majority of people with mental illness represents no threat to anyone. Many mentally ill patients are among the most vulnerable members of society. But the Government has a duty to protect individual patients and the public if a person poses a serious risk to themselves or to others.

Part One of this White Paper sets out a new legal framework for when and how care and treatment should be provided without the consent of a person with a mental disorder in their interests or in the interests of public safety. Removing an individual's liberty against their will is a very serious step to take so the White Paper outlines how safeguards will be improved.

Part Two of this White Paper sets out how laws and services will be strengthened to safeguard the public against those who pose the greatest risk, including dangerous people with severe personality disorder.

These changes amount to the biggest shake up in mental health legislation in four decades. They will strengthen the current laws. They will introduce new safeguards for patients. They will improve protection for the public. The safety of the public and of patients will be enhanced as a result.





Alan Milburn **Jack Straw**

Part 1

The new legal framework

1 Improving the quality and consistency of health and social care services for the many people who suffer from mental health problems is one of this Government's main priorities. The vast majority of patients with mental illness pose no threat to other people and in many cases are among the most vulnerable in our society.

Extra investment in services and national standards of care

2 Reforming mental health legislation is the third element in the Government's strategy for modernisation of mental health services. **First, we have made investment a priority**. Extra investment already committed will create, by April 2001, almost 500 extra secure beds, over 320 24-hour staffed beds, 170 assertive outreach teams and access to services 24 hours a day, seven days a week, for all those with complex mental health needs. The *NHS Plan* announced a further £300m investment to provide better and faster care to people with mental health problems who need treatment and support, including new services for children and adolescents.

3 **Second, we have made reform a priority.** We have established for the first time new national standards for the care and treatment of mental illness in the *Mental Health National Service Framework*. The *NHS Plan* has set out further initiatives to improve mental health services, to close any remaining gaps in services and to provide more effective and accessible community based support.

A new landscape

4 **Third, we now make law reform a priority in order to provide mental health services with an up to date legal framework.** The last full review of mental health legislation took place in the 1950s. The Mental Health Act 1983 is largely based on the outcome of that review. Since then there have been major changes in mental health services. New drug treatments, different patterns of care which now see more people treated in the community rather than in institutions, and a wider role for other therapeutic approaches, have all made for a markedly different landscape. Modern mental health legislation needs to reflect that landscape.

The scope of new mental health legislation

5 The vast majority of people receive care and treatment on a voluntary basis. However there will always be some people with mental disorder who are either unable or unwilling to seek care and treatment. They may not realise, or not accept, that such care and treatment will be in their best interests if it helps prevent their condition from getting worse or makes it less likely that they will harm themselves or pose a risk to other people.

6 The principles of common law do not always provide the sort of robust framework that is needed to protect people from the effects of serious mental disorder and to enable action necessary to prevent serious harm. The Government has a duty to set out a clear framework in mental health legislation for determining when and how care and treatment for mental disorder may be provided without consent in the best interests of a patient or to prevent serious harm to other people.

Safeguarding human rights

7 Mental health legislation necessarily includes powers to place significant restrictions on the personal liberty of patients, in particular the freedom to refuse care and treatment. Any new mental health legislation must be fully compatible with the Human Rights Act 1998. This White Paper outlines a new framework for mental health legislation that will include a broad definition of mental disorder covering any disability or disorder of mind or brain, whether permanent or temporary, which results in an impairment or disturbance of mental functioning. This wide definition of mental disorder will be matched by criteria that set clear limits to the circumstances in which compulsory powers may be used. A diagnosis of mental disorder alone would never be sufficient to justify use of compulsory powers.

8 Use of compulsory powers will generally only be appropriate if a person is resisting care and treatment needed either in their best interests or because without care and treatment they will pose a significant risk of serious harm to other people. The new legislation will set out the matters that the clinical team should take into account in determining whether care and treatment from specialist mental health services is in a patient's best interests and what should be covered in the care and treatment plan.

9 The new legislative framework will include a significant range of new safeguards. New legislation will introduce:

- a new independent tribunal to determine all longer-term use of compulsory powers;
- a new right to independent advocacy;
- new safeguards for people with long-term mental incapacity;
- a new Commission for Mental Health;
- statutory requirement to develop care plans.

Patient focus

10 Fundamental principles to underpin the new legislation will be set out in a way that provides a clear context for decisions about when and how its powers should be used. New legislation will focus on meeting the needs of individual patients and addressing any risk that they pose to themselves or to other people in a way that is fair and equitable and fully protects their rights and those of others. It will encourage a new patient focus to take account of the characteristics, abilities and diverse backgrounds of individual patients.

New procedures for use of compulsory powers

11 Where people with mental health problems may need compulsory care and treatment, there will be a new three-stage process that applies in all cases (except for offenders, for whom assessment will be ordered by the Court, and for prisoners, by the Home Secretary):

Stage 1 – preliminary examination

- Decisions to begin assessment and initial treatment of a patient under compulsory powers will be based on a preliminary examination by two doctors and a social worker or another suitably trained mental health professional that a patient needs further assessment or urgent treatment by specialist mental health services and, without this, might be at risk of serious harm or pose a risk of serious harm to other people.

Stage 2 – formal assessment and initial treatment under compulsory powers

- A patient will be given a full assessment of his or her health and social care needs and receive treatment set out in a formal care plan; the initial period of assessment and treatment under compulsory powers will be limited to a maximum of 28 days; after that continuing use of compulsory powers must be authorised by a new independent decision making body, the Mental Health Tribunal, which will obtain advice from independent experts as well as taking evidence from the clinical team, the patient and his or her representatives, and other agencies, where appropriate.

Stage 3 – care and treatment order

- The Tribunal – or the Court in the case of mentally disordered offenders – will be able to make a care and treatment order which will authorise the care and treatment specified in a care plan recommended by the clinical team. This must be designed to give therapeutic benefit to the patient or to manage behaviour associated with mental disorder that might lead to serious harm to other people. The first two orders will be for up to 6 months each; subsequent orders may be for periods of up to 12 months.

Care and treatment in the community

12 Under the 1983 Act powers to require compliance with treatment are linked to detention in hospital. This does not allow the flexibility for compulsory powers to be used in a way that fits with a patient's changing needs. Nor does it support the processes of individual care planning that are needed to ensure that compulsory treatment will result in good health outcomes for patients and reduced risk. At the moment clinicians have to wait until patients in the community become ill enough to need admission to hospital before compulsory treatment can be given. This prevents early intervention to reduce risk to both patients and the public.

13 We will therefore introduce new provisions so that care and treatment orders may apply to patients outside hospital. This will mean that patients need not be in hospital unnecessarily and need not suffer the possible distress of repeated unplanned admissions to acute wards. There will be no powers for patients to be given medication forcibly except in a clinical setting. But steps will be specified in community orders to prevent patients, if they do not comply with their order, becoming a risk to themselves, their carers, or the public. Both patients and the public interest will be better served as a result.

Better information and advice

14 Patients who are subject to care and treatment under compulsory powers may need help to understand how those powers work. We will take measures to help to ensure that every patient will be informed about the particular powers that apply in his or her case. Patients who want to challenge the use of compulsory powers will continue to have the right to free legal representation. But we will also give them a new right of access to advice and support from independent specialist advocacy services. The new Patient Advocacy Liaison Service will provide access to these specialist schemes.

15 According to independent inquiries a significant factor in many of the homicides and suicides that have taken place over the last decade has been a breakdown in communication and exchange of information between the local services charged with caring for and treating mentally ill patients. New mental health legislation will also introduce a new duty covering the disclosure of information about patients suffering from mental disorder between health and social services agencies and other agencies, for example housing agencies or criminal justice agencies.

New safeguards for children and young people

16 We will introduce additional measures where existing safeguards for patients are not sufficiently robust. We believe it is essential that there are special measures to safeguard and promote the welfare of children and young people with mental health problems. Under new legislation the Mental Health Tribunal will be required to obtain specialist expert advice on both health and social care aspects of the proposed care plan and to consider, in particular, whether the location of care is appropriate. Decisions taken in respect of children will be subject to a clear principle that the interests of the child must be paramount. There will be changes in the provisions regarding the right of a young person between the ages of 16 and 18 to refuse consent to care and treatment for mental disorder.

New safeguards for people with long-term mental incapacity

17 We will also introduce provisions to protect the rights of people with long-term mental incapacity who need care and treatment for serious mental disorder. In many cases such patients do not resist care and treatment but are unable to consent to it. They are, potentially, particularly vulnerable to abuse or neglect and we must ensure that their best interests are properly considered and protected. This can only be achieved through an independent consideration of the care that they receive for their mental disorder. We will place a duty on the clinical supervisor responsible for the care and treatment of a patient with long-term mental incapacity to carry out an assessment and obtain an independent second opinion.

A new Commission for Mental Health

18 We will establish a new Commission for Mental Health to look after the interests of all people who are subject to care and treatment under powers in the Act. The Commission will carry specific responsibilities for monitoring the use of formal powers, providing guidance on the operation of those powers, and assuring the quality of statutory training provided for practitioners with key responsibilities under the new legislation and for specialist advocacy services.

Part 2

High risk patients

1. Public protection is one of the Government's highest priorities. Public protection and the modernisation of mental health powers and services are complementary aims. New, more transparent powers, clearer pathways and processes, and more resources for specialist services will both provide greater protection to the public and improve the quantity of services for the individuals themselves. Part Two of this White Paper shows how these changes will operate for the high risk group within the context of extra resources for improved specialist services.

Patients who pose a significant risk of serious harm to others

2. The vast majority of people treated under mental health legislation are treated in their own best interests, in many cases to protect them from self-harm. By contrast, there are a smaller number of people with mental disorder who are characterised by the risk that they present to others. This group includes a very small number of people detained under civil powers, and others who are remanded or convicted offenders.

3. Within this wider group are a number of individuals whose risk is as a result of a severe personality disorder. A narrow interpretation of the definition of the 'treatability' provision in the 1983 Act, together with a lack of dedicated provision within existing services, means that current arrangements for this group are inadequate both to protect the public and to provide the individuals themselves with the high quality services they need.

The criteria

4. New criteria for compulsory treatment under the Act will form a key part of these changes. These criteria will provide clear authority for the detention for assessment and treatment of all those who pose a significant risk of serious harm to others as a result of a mental disorder. The criteria will achieve this by dealing separately with those who need treatment primarily in their own best interests and those who need treatment because of the risk that they pose to others. In high risk cases, the use of compulsory powers will be linked to the availability of a treatment plan needed either to treat the underlying mental disorder or to manage behaviours arising from the disorder.

Assessment

5. Legislation must also respond to the various ways in which such individuals come to the notice of statutory agencies. The White Paper sets out the processes for initial and more detailed assessment for such high risk individuals in the community. In some cases, these people will already be under the supervision of the probation service. Others may be known to mental health or social services or may come to the notice of the police in

the course of their work. Powers in the Criminal Justice and Court Services Act 2000, expected to be implemented in April 2001, will mean that the police and probation services will be under a new statutory duty to assess and manage relevant sexual or violent offenders. Under new mental health legislation, the relevant statutory agencies will be able to refer the individual for an initial assessment and, if the initial criteria are satisfied, apply for a 28 day period of compulsory care and treatment to allow for more detailed assessment. Beyond 28 days, compulsory care must be authorised by a new independent decision making body – the Mental Health Tribunal – which will obtain advice from independent experts as well as taking evidence from the clinical team, the patient and his or her representatives, and other agencies, where appropriate.

6. These arrangements will be sufficiently flexible both to provide for the immediate healthcare needs of individuals and to ensure that they are kept in the appropriate degree of security. In addition to existing facilities, assessment facilities for those who are dangerous and severely personality disordered (DSPD) are being established for the in-depth assessment needed for this group.

7. Arrangements for the assessment of those already serving prison sentences will also be improved by the creation of a new power for the Home Secretary to direct such individuals for assessment. In the case of those who may be DSPD, these assessments could be carried out in specialist facilities in either the Prison Service or the NHS.

8. For those before the Courts for an offence, there will be a new single power for the Court to remand for assessment and treatment.

Treatment

9. Under new legislation, the Tribunal – or the Court in the case of mentally disordered offenders – will be able to make a care and treatment order which will authorise the care and treatment specified in a care plan recommended by the clinical team. This must be designed to give therapeutic benefit to the patient or to manage behaviour associated with a mental disorder that might lead to serious harm to other people. The first two orders will be for up to 6 months each; subsequent orders may be for periods of up to 12 months. Where treatment is authorised under the legislation, individuals will be transferred to appropriate NHS facilities taking account of any security risks that they pose. Wherever possible, treatment will be specifically aimed at addressing the underlying mental disorder. But in all high risk cases, treatment will be designed both to manage the consequences of a mental disorder as well as to enable the individuals themselves to work towards successful re-integration into the community.

Safeguards and oversight

10. The Government is committed to ensuring that any new arrangements are fully compliant with the Human Rights Act 1998. The White Paper sets out safeguards and protections for those to be detained under the Act. These will apply equally to this high risk group. The introduction of a requirement that all longer-term care and treatment orders are authorised by a body independent of the clinical team is a key way in which the new legislation will protect patient rights. But all those detained under compulsory powers will also have the right to:

- free legal representation;
- access to independent specialist advocacy services; and,
- provisions to cover the use of certain specified treatments for mental disorder and all long-term treatment without consent.

11. The White Paper also sets out new arrangements for the oversight of the new legislation and for the provision of annual reports through the creation of a new Commission for Mental Health.

Developing services for those who are DSPD

12. However, in the case of those who are dangerous as a result of a severe personality disorder, legislative changes alone are not enough. New powers must be backed up by a programme of service development that will begin to provide the capacity and specialist approaches to treatment and assessment that this group needs. Resources allocated within the recent Spending Review across the Department of Health, Home Office and Prison Service include an additional £126m over the next three years for the development of new specialist services for those who are high risk as a result of a severe personality disorder.

13. The Government recognises the importance of building a secure evidence-base for these services and is therefore committed to a series of pilot projects to test out new approaches. The assessment process is already being piloted in both NHS and Prison Service high security settings and the first treatment pilot will begin in 2001. These pilot projects will be rigorously and independently evaluated as part of a comprehensive research agenda.

14. Capacity for the pilots will be created through a programme of refurbishing existing accommodation and new builds. Over the next three years this will provide:

- 320 additional specialist places across the Prison Service and the NHS; and,
- 75 hostel places.

The pilots will also inform subsequent decisions on the nature, scale and pace of any further expansion of services beyond this first phase.

Sharing information

15. Improved public protection also relies on the effective co-operation of the various statutory agencies. The Criminal Justice and Court Services Act 2000 has already placed a new statutory duty on police and probation services to establish arrangements for assessing and managing the risks posed by relevant sexual and violent dangerous offenders. In respect of those who are mentally disordered, new mental health legislation will build on this approach by introducing a new duty covering the disclosure of information about patients suffering from mental disorder between health and social services agencies and other agencies, for example housing agencies or criminal justice agencies.

16. We will also introduce new arrangements for the provision of information to victims of mentally disordered offenders who have committed serious violent or sexual offences and who have been given a care and treatment order by the Courts rather than a prison sentence.

This is the summary version of the Reforming The Mental Health White Paper.
This summary and the full document can be found on the internet at the following websites:
www.doh.gov.uk/mentalhealth
www.homeoffice.gov.uk
www.hmprisonservice.gov.uk

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