

**A Guide to the Report from the  
Joint Committee on the  
Draft Mental Health Bill**



**House of Lords and House of Commons**

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# What is in this Guide?

Introduction	Page 1
What is the Draft Mental Health Bill?	Page 1
What is the Joint Committee on the Draft Mental Health Bill?	Page 1
About this Guide	Page 2
History behind the Mental Health Bill	Page 2
The main points of the Draft Mental Health Bill	Page 5
<b>The Draft Mental Health Bill and the Report</b>	<b>Page 7</b>
Part 1 - How things should be done	Page 7
Part 2 - What should happen if you need treatment under the Mental Health Bill?	Page 12
Part 3 - What should happen if you need treatment and have broken the law?	Page 18
Part 4 - Moving to another Country	Page 21
Part 5 - Special sorts of treatment	Page 22
Part 6 - Children	Page 24
Part 7 - When the police are involved	Page 26
Part 8 - Support, Representatives and Advocacy	Page 27
Part 9 - What to do if you do not agree with the Mental Health Tribunal	Page 30
Part 10 - A new Inspection Organisation	Page 31
Part 11 - Breaking the Law	Page 33
Part 12 - Information and putting things right	Page 34
What the words mean	Page 36

# Introduction

## What is the draft Mental Health Bill?

The draft Mental Health Bill is a legal document. It is difficult to understand. It was published by the Department of Health in September 2004.



It was called the draft Bill because it had to be looked at by a special committee in Parliament (the Scrutiny Committee) who said what they thought about it before a new version of the Bill is published.



This guide is a report from the Joint Committee on the Draft Mental Health Bill.

A Bill does not become a law until it has been agreed by Parliament. It is then called an Act. This will happen later.



## What is the Joint Committee on the Draft Mental Health Bill?

The Joint Committee on the Draft Mental Health Bill was a group of people from the House of Commons and the House of Lords. It was their job to look at the draft Bill and check it.



They asked the public and people who use mental health services as well as expert people what they thought about it.



They then wrote a report on what they thought should be changed.

The Committee had to finish its report by 31 March 2005, and therefore it had to concentrate on the *most* important parts of the Bill. It had to leave some things for other people to comment on.



## About this Guide

This guide is an easy read version of the Report from the Joint Committee on the draft Mental Health Bill.



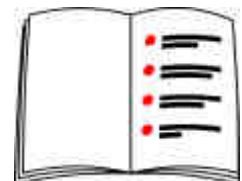
We have put into boxes some of the things the Committee said.



We have also put into this guide some of the things the draft Bill said.



Words that are very hard to understand are listed at the back of this guide.



## History behind the draft Bill

There has been Law in the UK about mental health issues for the last 300 years.



In the past, people with mental ill health and mental disorders were seen as different to other people. It was felt such people should be separated from the rest of society.



More than 100 years ago, big buildings (asylums) were built to keep people away from the community. Even into the 1990's, care was often given in large hospitals.



There were problems over the treatment people had, the abuse they suffered, and their lack of rights. It was decided to try to treat people with mental disorders more like people with all kinds of other illnesses, and that treatment could take place in the community if the patient agreed to it.



With people discovering new medicines it was proved that some people could get better from mental ill health.

Since the 1983 Mental Health Act, the rights of people with mental ill health have been seen as very important.



A small number of people with mental disorders are a danger to the public. Mental Health law has to look at the balance between people's rights and keeping other people safe.



Over the past 10 to 15 years some people began to think that the public may need a bit more protection (to be kept safe).

A new Bill has been written partly because some people worry about the balance between rights and protection.



## What the Committee Report says:

- The Committee agreed that it is very important to look after the rights of patients, but that it is also important to protect everyone from harm.
- However, the Committee thought that the most important reason for having a new Bill was to make mental health care services better and to help the public understand about mental health issues.



# The Main Points of the draft Mental Health Bill

The new Bill replaces most of the 1983 Mental Health Act. Parliament is also looking at another Bill about helping people who are unable to make decisions for themselves.



The draft Mental Health Bill is broken up into 13 parts.

The draft Bill looks at what happens when a person (including a child) with a mental disorder can be treated without their agreement.



If a person is made to have treatment but they have not agreed to it, then the Bill is meant to look after their rights.



It is always best if a person agrees to and understands their treatment, but this is not always the case.

The Bill also has to meet Human Rights Law about when people are treated or made to stay in hospital against their will.



Independent people, such as advocates, will be involved to make sure people are treated well and understand what rights they have.



People might not always be treated in hospital, but in the community if that is felt to be the best place.

The Bill is only for people in England and Wales.



This Guide now looks at what the new draft Mental Health Bill says and what the Scrutiny Committee report says about it.



# The draft Mental Health Bill and the Report

## Part 1 - How things should be done



*Basic ideas - what the draft Bill says:*

Part 1 of the draft Bill says how things should be done if someone needs treatment for a mental health disorder and they have not agreed.



There are three basic ideas in the draft Bill that professionals must think about. They are that:

1. Patients should be part of making decisions.
2. Decisions are to be made fairly and openly.
3. Interference (giving treatment against a person's wishes) with patients should be kept to a minimum.



### What the Committee report says:

- The basic rights and rules at the beginning of the Bill should be more detailed so that everyone can understand what the Bill is trying to do, and what rights and duties they have.
- It should never be possible to ignore the basic rights and rules.



- The Bill should explain that 'interference with and restrictions of patients' must be kept to a minimum to protect their health and safety and that of other people.
- The Committee thinks the way things are done in Scotland is a good example of what should be done about basic rights and rules. The Scottish law has nine basic rights and principles.



### *Codes of practice (how to do things) - what the draft Bill says:*



Some of the things that should be done will be written in 'codes of practice'. Professionals must think about what the codes tell them to do if they treat someone.



The codes of practice will say:

1. How people should be treated by nurses and doctors when they are being treated without their agreement (consent).



Nurses and doctors will need to make sure that they treat people fairly and explain why they are doing things to help people get better.



2. What different professionals can do and advice about the best way to do their job.



There are different jobs that need doing by different people when someone is having treatment under the Mental Health Bill. Only people who have the right experience or exams can do that job. Some of these jobs have changed since the last Mental Health Act of 1983.



3. How professionals should work with the tribunal, complaints and appeal systems.



The codes of practice have not yet been written. The Bill has to be published before the codes of practice can be set out and talked about. This means that the Scrutiny Committee could not discuss everything they wanted to discuss.





**What the Committee report says:**

- The Committee was disappointed that the codes of practice were not yet ready for them to look at.





## *Tribunals - what the draft Bill says:*

There will be a new Mental Health Tribunal. The tribunal is a group that decides if someone should be treated or not. All patients will be able to have a tribunal within 28 days of the start of their assessment.



Where the tribunal decides that treatment without a patient's agreement (consent) must happen, then they can make a 'treatment order' for up to 6 months. Later on, a treatment order for up to 12 months can be made. The tribunal has to decide whether treatment without the patient's agreement should continue, each time they see the patient.



The Mental Health Tribunal will be given help and advice by a group of experts called the 'Expert Panel'.



Patients, and people who can speak up for a person (for example the 'nominated person'), can ask the tribunal for treatment to stop. They can also ask for the patient to be treated in the community instead of in hospital.



In some cases, patients or those who speak for them can complain or make an appeal about decisions the tribunal has made by going to a separate Mental Health Appeal Tribunal.





## What the **Committee** report says:

- The **Committee** thinks the tribunal should be made up of three people in almost all situations.
- Tribunals need to think about social and housing needs as well as medical needs.
- There should be a clear difference between the two different types of tribunals - the ordinary tribunal and the one that looks at appeals.
- The **Committee** is worried whether the new tribunals will have enough money and people to do all of the work properly. It thinks the **Government** needs to think more about this before the **Bill** becomes law.
- The **Government** needs to show where the members of tribunals will come from.



## Part 2 - What should happen if you need treatment under the Mental Health Bill?



*The situations when someone can be treated against their will - what the draft Bill says:*

Part 2 is the main part of the Bill. It says who can be treated against their will, and what must happen if someone needs treatment for a mental disorder.

In the past, a person was seen to have a mental disorder if he or she had certain illnesses or conditions. The Bill changes this. It would mean people could have a mental disorder if they behave in certain ways because of some problem in the mind, even if we do not know exactly why this is happening.



### **What the Committee report says:**

- The Committee agrees with the Government that treatment without consent has to be based on behaviour, on what the person does, rather than the cause.
- But the Committee thinks people with learning disabilities or autistic spectrum disorders should not be seen as mentally disordered unless they are a danger to themselves or others.



• The Committee also thinks that people should not be seen as mentally disordered because of cultural or political beliefs, sexual orientation, or misuse of drugs or alcohol.



• The codes of practice should take into account people's different cultural and political beliefs.



There are rules that say who can see or examine a patient. There are also rules on what decisions professionals can make before someone is made to have any treatment that they do not agree to.



The main rules for treatment without consent are:

1. A person has to have a 'mental disorder'.



2. A person must need special treatment to be given by mental health services because their mental disorder is serious.

3. The treatment is needed because a person might seriously hurt him or herself, or hurt other people.

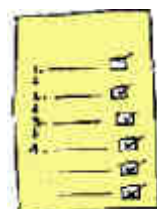


4. The treatment cannot be given in any other way.

5. The right treatment has to be available for that person.



A person can only be made to have treatment when it has been agreed that these rules have been met and when they have an individual care plan.

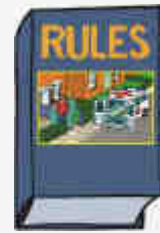


If a person does not agree with the assessment, their individual care plan or the time they have to stay in hospital, they may be able to go to the independent Mental Health Tribunal and ask for a new decision.



### What the Committee report also said:

- The Committee thought the rules for who can be treated against their will are too weak and should be tightened.
- People should only be treated against their wishes if they are not fully able to make decisions themselves about their treatment.
- People should only be treated against their wishes when this will help them. There should be a different Bill for people who have a mental disorder but cannot benefit from any kind of treatment.
- Danger to other people is only a good reason for treating someone without their consent when the risk is really serious.



# Links with other Bills

There was a lot of talk about whether someone was able to make a decision or not. It was clear that there were overlaps between the Mental Health Bill and the Mental Capacity Bill, although these were not talked about in detail in the Bill.



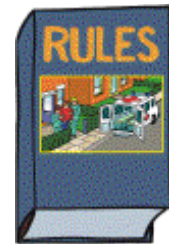
## What the Committee report said:

- The link between the Mental Health Bill and the Mental Capacity Bill needs to be clearly explained so patients, lawyers and doctors can make the right decisions.



## *How things are done - what the draft Bill says:*

There are lots of rules and guidelines that must be followed before anyone is made to have any treatment.



## What the Committee report says:

- The care plan should be discussed with the patient to make sure he or she understands and agrees as far as possible.



- There should be a duty on the Health Authority to provide the care set out in the care plan (with some limits).

- There should be free aftercare for people who have been treated without their consent.



### *Treatment in the Community - what the draft Bill says:*

People were worried that lots of people might be treated against their wishes in the community and that there could be lots of rules, like a house arrest.



### **What the Committee report says:**

- Treatment against a person's wishes, in the community, must be clearly set out in the code of practice. It must only happen to a very small number of people in special situations.



The draft Bill allows for both assessment and treatment to happen in the community. Some people are concerned about this. They think that if people are not 'mentally disordered' enough to need to be in hospital for treatment, then they are not ill enough to be treated against their will at all.



## What the Committee report says:

There must be a strict limit to what can happen to people being treated without their consent in the community.

- The assessment must take place in hospital.
- It must be proved that treatment makes things better for the patient.
- The rules have to be simple. They can only be about where the person lives and what treatment they have, nothing else.
- The treatment cannot go on for longer than 3 years.
- The only use of force can be to take the person to hospital.
- When people are treated without their agreement in the community, the Health and Local Authority must provide the level of care needed and not leave it all to families.



## Part 3 - What should happen if you need treatment and have broken the law?



### *What the draft Bill says:*

Part 3 of the draft Bill says what should happen if people that have broken the law need treatment under the Mental Health Bill.



It says that people with a mental disorder who go to court, should, as far as possible, be treated in the same way as any other patient.



The court can send people to hospital for reports or treatment before they decide what to do. This means the court can have all the information it needs to make a decision.



The court can make sure someone is treated in hospital.



People who are in prison can be sent to a hospital for reports and treatment.



### **What the Committee report says:**

- Part 3 of the Bill is very hard to read. It needs to be made easier.



- Danger needs to be thought about when making an assessment of offenders.
- The Mental Health Tribunal should have the power to order the transfer and leave of restricted patients.



Under the draft Bill the court can agree or change the care plan of the person. But there was a worry that the courts would not be expert enough to be able to do this properly. Some people wanted the Mental Health Tribunal to do this rather than the Courts.



### What the Committee report says:

- The court should make these decisions but there should be a duty on the judge to consult with a member of the Expert Panel when making decisions about a care plan.



There was discussion about people who are victims of mentally disordered offenders. It was felt important that victims should be able to feel safer, although there are problems over patient confidentiality (keeping things private).





## What the Committee report says:

- The Bill should be clear about what the word 'victim' means.
- Where someone is killed or hurt badly, there should be a written statement about the effect on the victim, used at the court or tribunal to help work out the risks.



## Part 4 - Moving to another country



### *What the draft Bill says:*

Part 4 of the bill says what the rules are for moving patients across borders to other areas, like Scotland or Northern Ireland.



This part of the draft Bill also says what the rules are for moving people into England or Wales.



### **What the Committee report says:**

- The Committee did not look at this part of the Bill in detail because very few people said they were worried about it.

# Part 5 - Special Sorts of Treatment



## *What the draft Bill says:*

Part 5 of the draft Bill is about special sorts of treatment a person can be given even if they do not want it or cannot say whether they want it.



There are clear rules about treatment of this sort and how it can be given. The High Court can decide that a patient can have one of these treatments if they have a mental health disorder that is not going to change for a long time. This applies even if they cannot say yes or no to the treatment.



## **What the Committee report says:**

- Treatments like brain surgery should never be used on patients who are unable to make decisions.
- If the patient can make decisions, brain surgery must never be used without a person understanding the operation and agreeing to it. Even then the tribunal also has to agree to it.
- Safeguards for any other powerful treatments (or unusually high doses of medicine) should be clearly written in the Bill. The safeguards should look at whether the patient can make decisions and agree to treatments.



- Other treatments like ECT (Electro - Convulsive Therapy) should only be given without the patient's consent if it is an emergency.



- A patient should never have more than two emergency ECT treatments.

- The Expert Panel should be able to say no to a patient having these special sorts of treatment if they think it would be wrong.



## Part 6 - Children



### *What the draft Bill says:*

Part 6 of the draft Bill is about the rules for children and young people under the age of 18.



Young people who are 16 or 17 must be treated in the same way and follow the same rules as for adults.



Children under 16 can be treated if their parents say they can be.

Children who are very seriously ill with a mental disorder will have special rules to make sure someone else looks at what is happening to them while they are in hospital.



### **What the Committee report says:**

- In order to be safe, the Bill should treat 16 and 17 year olds in the same way as under 16's.
- Under 18's should not be treated on adult wards if at all possible. They should be treated in places for younger people.



- Extra care should be taken with children. It is important that children and young people are seen by a doctor who is an expert in their age group.



- If a child's case is at tribunal, the member from the Expert Panel should be a child specialist.



- Child welfare guidelines should be included in the Bill.

- Care planning should be the same as the way it is done under the Childrens Act 1989.



- Education should still be provided for under 18's having treatment for a mental problem.

## Part 7 - When the Police are involved



### *What the draft Bill says:*

Part 7 of the draft Bill is about what happens if the police need to go to somebody's house and take them for treatment in an emergency.



The police can go into a person's house if someone seriously needs treatment.

The police need to go to court to get an order from the Magistrate. If it is very urgent the police can do something straight away if they have to. But the person they take away can only be held for 6 hours before they need to get a court order.



The person can be taken to a 'place of safety'. This is somewhere they can be looked after and not hurt themselves or anyone else, (such as a police station), for up to 3 days while waiting for an examination.



### **What the Committee report says:**

The Committee dealt with some of the things in this part of the Bill in other sections, for example part 8 about advocacy on page 27.

## Part 8 - Support, Representatives and Advocacy



*Named people (nominated persons) and carers - what the draft Bill says:*



Part 8 of the draft Bill is about getting advice, support and advocacy.

A patient can have an independent person to speak up and act for them. This person is called a 'nominated person'. The patient can choose somebody themselves or a special professional person can choose somebody for them.



The 'nominated' person will have the right to express the patient's feelings and wishes, and visit the person at 'any reasonable time'.



**What the Committee report says:**

- A nominated person should be able to ask for the patient to be sent home from hospital.
- A patient should be able to appoint a nominated person when he or she is well so they are ready to help right away if the patient is suddenly taken ill.



- Carers and patients may not always see eye to eye but unless the patient says they cannot, the carer should be told what is happening.



- If a patient has not chosen a nominated person before getting ill, and is so unwell that he or she is unable to choose one, then the carer or relative should have the rights of a nominated person.



### *Advocacy - what the draft Bill says:*

An independent Mental Health Advocacy Service will be set up for all people who are treated under the Bill against their wishes.



Patients will have a right to an advocate to help them find out about their rights and about what is happening to them, and why.



### **What the Committee report says:**

- The Government needs to look at the cost of setting up the independent advocacy service.
- Local Authorities will have to set out their plans for advocacy development and funding under law.



- A special body called the Mental Health Act Commission should check that advocates are up to standard and that they are doing their job well.



- Independent advocacy should be there for all mentally disordered people, right from the start of any problems.



- Patients should be able to meet their advocates in private.

- Advocates should not have access to patients' records without the agreement of the patient.



## Part 9 - What to do if you do not agree with the Mental Health Tribunal



### *What the draft Bill says:*

One of the aims of the Bill was to make patients safer.

Part 9 of the draft Bill is about what a patient can do if they do not agree with what the Mental Health Tribunal says.

In some cases, patients or the people who speak for them, can complain or appeal about decisions the tribunal has made by going to a separate tribunal (the Mental Health Appeal Tribunal). This is one of the places where the protection of people through the Bill is found.

If a patient is still not happy with a decision they might be able to go to the Court of Appeal.



### **What the Committee report says:**

- We have set out in part 1 on page 7 what the Committee had to say about the new tribunals.



## Part 10 - A New Inspection Organisation



### *What the draft Bill says:*

Part 10 of the draft Bill talks about the changes to the inspection organisation. The new organisation is called the Healthcare Commission, or CHAI.



CHAI will check that the Mental Health Law is working properly. They are able to inspect services and suggest changes when they think they are needed.

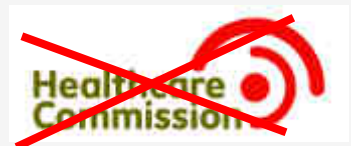


CHAI will also give information and advice to services.



### **What the Committee report says:**

- The Committee does not agree with the Government that the Healthcare Commission should take over inspection of mental health care. The Mental Health Act Commission, which we have now, is much better placed to check things are done properly in mental health services. The Mental Health Act Commission should stay.
- The Mental Health Act Commission should have greater powers to oversee different things.



- The organisation should do visits and interview patients, like they are at the moment.



# Part 11 - Breaking the Law



## *What the draft Bill says:*

Part 11 of the draft bill is about what will happen if people break the Mental Health Laws.



The law includes making sure that:

- People with a mental disorder are not treated badly or abused.
- Staff do not tell lies on purpose or make false papers.



## **What the Committee report says:**

- The Committee did not look at this part of the Bill in detail because not many people said they were concerned about it.

## Part 12 - Information and putting things right



### *What the draft Bill says:*

Part 12 of the draft bill is about information and making sure things like papers are right.

Services must make sure that the patient and their representatives (family, friends or advocate) know what is happening. This must be explained properly so that people understand.



Information must be given to people in a way they can understand as much as they possibly can.

Checks may be made over what a person is writing to other people to make sure that they and other people are safe.



There will be rules about who else can be told personal information.



Services must make sure people have money for personal things if they do not have any themselves.





## What the Report says:

- The Committee thought it was right to keep information about the patient private. It is very important for carers and relatives to talk to the medical people if the patient agrees to it. This is because carers and relatives can sometimes help explain what has happened in the past.



## What the words mean

<b>Advocacy</b>	Speaking up or speaking out for yourself or someone else.
<b>Advocate</b>	A person who speaks up for someone else.
<b>Assessment</b>	Deciding what a person needs.
<b>Codes of Practice</b>	A list saying how things should be done.
<b>Consent</b>	Saying yes to something, for example, treatment. Some people may not be able to say they want to be treated in a way that other people understand.
<b>Consultation</b>	Asking people what they think about something.
<b>Court of Appeal</b>	A Law court where some decisions made by tribunals can be looked at again.
<b>Department of Health</b>	The Government department that makes national plans for most health and care services.
<b>Draft Bill</b>	A Bill that needs checking before it is agreed.
<b>ECT</b>	Electro-Convulsive Therapy. A treatment that is thought to help people through an electrical charge into the brain.

<b>Expert Panel</b>	A group of people who know a lot about a subject.
<b>Human Rights Act</b>	A Law that makes clear the basic rights we all have.
<b>Independent Mental Health Advocacy Service</b>	A service giving access to advocacy.
<b>Individual Care Plan</b>	A plan written just for one person about their care.
<b>Learning Disability</b>	The term used by the Department of Health to describe 'learning difficulties'.
<b>Magistrate</b>	Or Justice of the Peace (JP). People who make decisions in smaller court cases.
<b>Mental Disorder</b>	Having a mental health problem or illness.
<b>Mental Health Appeal Tribunal</b>	A group who will look at the decision made by a tribunal again.
<b>Mental Health Tribunal</b>	A group that decides whether a person should be treated or not. The group includes a lawyer, a professional and a lay (ordinary) person.
<b>NHS Plan</b>	A new plan for the National Health Service.
<b>Nominated Person</b>	An independent person who can speak up and act for another.

**Psycho-surgery**

A type of treatment that involves surgery on the brain.

**Scrutiny Committee**

A group of people, often from both the House of Lords and the House of Commons, who look at a Bill. They hear what other people have to say about it and suggest changes that should be made.



