
References

- Bethlem and Maudsley NHS Trust (1983) *Mental Health Act 1983 Guidelines*. London: Bethlem and Maudsley NHS Trust.
- Bhatti, V., Kenney-Herbert, J., Cope, R., *et al* (1999) Knowledge of current mental health legislation among medical practitioners approved under Section 12(2) of the Mental Health Act 1983 in the West Midlands. *Health Trends*, **30**, 106–108.
- Blackie, J. & Patrick, H. (1990) *Mental Health. A Guide to the Law in Scotland*. Edinburgh: Butterworths.
- Blom-Cooper, L., Hally, H. & Murphy, E. (1995) *The Falling Shadow: One Patient's Mental Health Care 1978–1993*. London: Duckworth.
- Bluglass, R. (1983) *A Guide to the Mental Health Act 1983*. Edinburgh: Churchill Livingstone.
- Briscoe, O., Carson, D., d'Orban, P., *et al* (1993) The law, adult mental disorder and the psychiatrist in England and Wales. In *Forensic Psychiatry. Clinical, Legal and Ethical Issues* (eds J. Gunn & P. J. Taylor), pp. 21–117. Oxford: Butterworth Heinemann.
- Cope, R. (1995) Mental health legislation. In *Seminars in Practical Forensic Psychiatry* (eds D. Chiswick & R. Cope), pp. 272–309. London: Gaskell.
- Department of Health & Welsh Office (1999) *Code of Practice. Mental Health Act 1983*. London: Stationery Office.
- Eastman, N. & Peay, J. (1998) Bournemouth: an indefensible gap in mental health law. *British Medical Journal*, **317**, 94–95.
- & Peay, J. (1999) *Law Without Enforcement. Integrating Mental Health and Justice*. Oxford: Hart Publishing.
- Gostin, L. (1986) *Mental Health Services – Law and Practice*. London: Shaw and Sons.
- Hoggett, B. (1990) *Mental Health Law*. London: Sweet & Maxwell.
- Humphreys, M. S. (1997) Non-consultant psychiatrists' knowledge of emergency detention procedures in Scotland. A national survey. *Psychiatric Bulletin*, **21**, 631–635.
- (1998) Consultant psychiatrists' knowledge of mental health legislation in Scotland. *Medicine, Science and the Law*, **38**, 237–241.
- Jones, R. M. (1999) *Mental Health Act Manual*. London: Sweet & Maxwell.
- Mental Health Act Commission (1999) *The Mental Health Act Commission Eighth Biennial Report 1997–1999*. London: Stationery Office.
- National Confidential Inquiry into Suicide and Homicide by People with Mental Illness (1999) *Safer Services*. London: Department of Health.
- Royal College of Psychiatrists (1997) *Using the Mental Health Act. A Training Resource for Doctors*. London: Royal College of Psychiatrists.
- Schering Healthcare (1983) *A Guide to the Mental Health Act 1983 and Allied Legislation*. Burgess Hill, Sussex: Schering Healthcare.
- (1984) *A Guide to Parts of the Mental Health (Scotland) Act 1984 and Allied Legislation*. Burgess Hill, Sussex: Schering Healthcare.
- Wall, S., Churchill, R., Hotopf, M., *et al*, (1999) *A Systematic Review of Research Relating to the Mental Health Act 1983*. London: Department of Health.

Commentary

Fred Browne

Although practitioners will be most familiar with the mental health legislation in their own jurisdiction, there can also be value in studying other legal frameworks. I give here a perspective from Northern Ireland.

The central piece of mental health legislation in Northern Ireland is the Mental Health (Northern Ireland) Order 1986 (hereafter, the Order). The Order has been closely modelled on the Mental Health Act 1983 of England and Wales and the Mental Health (Scotland) Act 1984. However, the Order has unique and distinctive features that differentiate it from the mental health legislation in England, Scotland and Wales. The Order is also substantially different from the Republic of Ireland's Mental Treatment Act 1945.

Particularly at the present time, when reform of mental health legislation is being considered, it is important to be aware of these differences between the different jurisdictions and to assess their advantages and disadvantages.

Features of the Mental Health (Northern Ireland) Order 1986

It is not possible in a short article such as this to list all of the different features of the Order, but the following are among the more notable.

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Definition of 'mental illness'

The Order's definition of 'mental illness' is believed to be the first in UK legislation. It reads:

"'Mental illness' means a state of mind which affects a person's thinking, perceiving, emotion or judgement to the extent that he requires care or medical treatment in his own interests or the interest of other persons."

Unfortunately, the definition is circular and of limited value to those seeking guidance on whether an individual's mental disorder is of a nature and severity to warrant exercise of the powers of the Order (such as detention in hospital or the making of a guardianship order). However, this criticism illustrates the difficulty in providing a simple and practical definition of mental illness.

Exclusion of personality disorder as sole grounds for detention

The Order does not recognise a separate category of psychopathic disorder and does not allow for the detention and treatment of persons diagnosed with a psychopathic disorder, regardless of whether they are considered amenable to treatment. (People may, of course, be detained and treated under the provisions of the Order when personality disorder coexists with mental illness or severe mental impairment.) In the Brian Doherty inquiry, Fenton *et al* (1995) recommended that the Order be amended to make it similar to the Mental Health Act 1983, so that certain people with severe personality disorder could be detained. However, the majority of psychiatrists in Northern Ireland appear to favour the current arrangement.

Stringent criteria for admission and detention

Patients are generally detained under the Order when they suffer from mental illness or severe mental impairment and when "the failure to detain a patient or the discharge of a patient would create a substantial likelihood of serious physical harm". In determining this issue, the Order requires evidence of one or more of the following:

- (a) that the patient has inflicted, or threatened or attempted to inflict, serious physical harm on himself/herself; or
- (b) that the patient's judgement is so affected that he/she is, or would soon be, unable to protect himself/herself against serious physical harm and that reasonable provision for his/her protection is not available in the community; or

- (c) that the patient has behaved violently towards other persons; or
- (d) that the patient has behaved such that other persons were placed in reasonable fear of serious physical harm to themselves.

Thus, detention in hospital requires specific evidence about the nature of the harm that the patient has caused or may cause to self or others.

Unitary admission system

The Order provides for a period of assessment in hospital lasting up to 14 days, followed by detention for treatment, which lasts for 6 months in the first instance. Patients are admitted to hospital following a medical recommendation (usually completed by the patient's general practitioner) and by an application completed either by a nearest relative or by an approved social worker.

Regular review of patients by consultants

The Order ensures that a doctor assesses the patient immediately after admission to hospital and, if the admitting doctor is not a consultant, the patient is seen by a consultant within 48 hours of admission. If the patient is further detained, he/she will be seen again by a consultant within the first and second 7-day periods of the admission and at other specified intervals thereafter.

Non-discrimination against detained patients

Article 10 of the Order states that detention for assessment (for up to 2 weeks) need not be revealed under certain circumstances, for example, this information need not be declared to employers.

Managers' hearings

There are no routine managers' hearings, and the Mental Health Review Tribunal hears appeals against detention.

Patients involved in criminal proceedings

The Order requires that, when a hospital order is being made, the court must receive evidence from two medical practitioners, one of whom must be Part

It approved (in practice, a consultant) and give oral evidence. The receiving trust must be given an opportunity to make representation to the court, but the ultimate decision about the making of a hospital order lies with the court.

Sources of information

The main sources of information on mental health legislation in Northern Ireland are the Order itself and a *Guide and Code of Practice* (Department of Health and Social Services, 1986, 1992). A booklet entitled *A Practical Guide to the Mental Health (NI) Order 1986* has been produced by Conway *et al* (1986). Some psychiatric text books also contain information on the Order (e.g. Gunn & Taylor, 1993; Chiswick & Cope, 1995; Johnstone *et al*, 1998). Information on the use of the Order can be obtained from regular reports published by the Mental Health Commission. It should be noted that the Order has been amended by subsequent legislation, such as the Criminal Justice (NI) Order 1996. Practice has also been influenced by guidance from the Department of Health and Social Services (see, in particular, Department of Health and Social Services, 1996).

Induction and regular refresher training in the use of the Order was recommended in the Brian Doherty inquiry (Fenton *et al*, 1995). Unfortunately, this recommendation does not appear to have been implemented throughout the Province of Northern Ireland, and training in this important area remains patchy.

Research and the future

Little research has been carried out into the Order. This is perhaps related to the small size of the

Province and the underdevelopment of forensic psychiatry. It seems a shame that we may be embarking upon changing our mental health legislation without studying our existing provisions in detail. In addition to studying the Order itself there may be important lessons to be learnt from comparisons between the different laws and practices within the different jurisdictions in the UK and Ireland. Perhaps also there is a need for harmonisation between jurisdictions. For example, at present we have provision for the transfer of detained patients between England, Scotland, Wales and Northern Ireland. However, we do not have reciprocal legislation that allows for transfer of detained patients across the UK's only land-based border – that between Northern Ireland and the Republic of Ireland. Considering that the Royal College of Psychiatrists represents psychiatrists from all these jurisdictions, perhaps we should pay more attention to the differences in our mental health laws and the relationships between them.

References

- Chiswick, D. & Cope, R. (eds) (1995) *Seminars in Practical Forensic Psychiatry*. London: Gaskell.
- Conway, N., Henry, P. & McCloskey, G. (1986) *A Practical Guide to the Mental Health Order (N. I.) 1986*. Londonderry: Western Area College of Nursing.
- Department of Health and Social Services (1986) *The Mental Health (Northern Ireland) Order 1986: A Guide*. Belfast: DHSS.
- (1992) *Mental Health (Northern Ireland) Order 1986: Code of Practice*. Belfast: HMSO.
- (1996) *The Discharge from Hospital (or Prison) and the Continuing Care in the Community of Mentally Disordered People who are Thought Could Represent a Future Risk to Themselves or Others*. Belfast: Department of Health and Social Services.
- Fenton, G., Deane, E., Herron, S., *et al* (1995) *The Brian Doherty Inquiry*. Derry: Western Health and Social Services Board.
- Gunn, J. & Taylor, P. J. (eds) (1993) *Forensic Psychiatry. Clinical, Legal and Ethical Issues*. Oxford: Butterworth Heinemann.
- Johnstone, E. C., Freeman, C. P. L. & Zealley, A. K. (eds) (1998) *Companion to Psychiatric Studies* (6th edn). Edinburgh: Churchill Livingstone.