

MENTAL HEALTH (DISCRIMINATION) (No. 2) BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Mental Health (Discrimination) (No.2) Bill as brought from the Commons on 3rd December 2012. They have been prepared by the Cabinet Office, with the consent of Lord Stevenson of Coddenham, the Peer in charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
2. The Notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill.

SUMMARY

3. The purpose of the Mental Health (Discrimination) (No.2) Bill is to contribute to removing the stigma associated with mental illness.
4. The Bill repeals section 141 of the Mental Health Act 1983, removing the provision under which MPs and members of the devolved assemblies and parliament lose their seats if they are detained under the Act for more than six months. It also abolishes any common law which disqualifies a person from membership of the House of Commons on grounds of mental illness.
5. The Bill also amends the Juries Act 1974 so that it no longer excludes from jury service those people voluntarily receiving regular treatment for a mental health disorder but who are not resident in a hospital or similar institution.
6. The Bill revokes provisions contained in the Companies (Model Articles) Regulations 2008 and related regulations which provide for the termination of a company director's appointment by reason of that person's mental health.

BACKGROUND

7. In January 2010, the Speaker's Conference on Parliamentary Representation published its final report (available at <http://www.publications.parliament.uk/pa/spconf/239/239i.pdf>). Amongst other matters, it considered attitudes towards mental illness and the disqualification

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as brought from the House of Commons on 3rd December 2012 [HL Bill 62]*

of MPs on the ground of their mental health. Among its conclusions was the following recommendation:

We have seen the evidence that, fearful of stigma, disabled people and those with illnesses sometimes fail to make their impairments public. There is a danger, therefore, that s141 might deter Members from admitting their mental health problems and seeking suitable treatment. So, from a purely medical point of view, the section may not operate in the best interests of MPs. Section 141 is a vivid, continuing and unfair symbol of the particular and potentially harmful stigma that attaches to mental illness.

We believe that s141 of the 1983 Mental Health Act is unnecessary and damaging. It embodies attitudes which stigmatise and sap the confidence of people with mental illness. Section 141 should be repealed as soon as practicable. [Recommendation 63]

8. On 3rd February 2011, the Government announced its intention to repeal section 141 of the Mental Health Act, when a suitable legislative vehicle became available.

TERRITORIAL EXTENT

9. The substantive clauses of the Bill have the same extent as that of the provisions they are amending, so that clauses 1 and 3(1) extend to England, Wales, Scotland and Northern Ireland, and clauses 2 and 3(2) and (3) to England and Wales.
10. Since company law is a transferred matter under the Northern Ireland Act 1998, Westminster will not normally legislate with regard to transferred matters without the consent of the Northern Ireland Assembly. The consent of the Assembly is being sought.

No other consents of the Scottish Parliament, the Northern Ireland Assembly or the National Assembly for Wales are required. However, their Presiding Officers/Speakers and Ministers in Scotland, Northern Ireland and Wales have been consulted about clause 1, given that the same grounds for disqualifying MPs apply to Members of the Scottish Parliament, Northern Ireland Assembly and National Assembly for Wales and section 141 of the Mental Health Act 1983 also applies to those Members.

COMMENTARY ON CLAUSES

Clause 1: Members of Parliament etc.

11. Clause 1 removes a discriminatory measure affecting Members of Parliament and members of the devolved bodies. *Subsection (1)* repeals section 141 of the Mental Health Act 1983. Its effect will mean MPs and members of the devolved bodies will no longer automatically lose their seats if they are detained in hospital under the Mental Health Act for more than six months.

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12. *Subsection (2)* abolishes any common law rule underpinning the procedural mechanism of section 141, which would either prevent a person from being elected as, or disqualify them from their position as, an MP or member of a devolved body on the ground of mental illness. Although it is not clear how the courts would interpret the rule today, the leading commentators say that there has been a common law rule that says “idiots are disqualified for election to Parliament and lunatics are disqualified in their non-lucid intervals” (Parker’s Law and Conduct of Elections, paragraph 5.6). Each of the Scotland Act 1998, the Northern Ireland Act 1998 and the Government of Wales Act 2006 provides that a person who is disqualified from being a member of the Westminster Parliament is disqualified from being a member of the Scottish Parliament, Northern Ireland Assembly or National Assembly for Wales, as the case may be.
13. *Subsection (3)* gives effect to the Schedule which contains consequential amendments of Acts of Parliament, including those which have the effect equivalent to that set out in Clause 1, in respect of:
- Members of the Scottish Parliament (*Paragraph 2*)
 - Members of the National Assembly for Wales (*Paragraphs 3 and 5*)
 - Members of the Northern Ireland Assembly (*Paragraph 4*)

Clause 2: Jurors

14. At present section 1(1) of the Juries Act 1974 provides that a “mentally disordered person” is not qualified to serve as a juror. Paragraph 1 of Schedule 1 to the Juries Act 1974 includes within the definition of “mentally disordered person” people who suffer, or have suffered, from a mental disorder (within the meaning of the Mental Health Act 1983) and as a result are either resident in a hospital or similar institution or regularly attend a medical practitioner for treatment.
15. Clause 2 removes all references to the disqualification of a “mentally disordered person” from the Juries Act 1974 and more clearly defines the persons who are disqualified for jury service for reasons related to a mental health condition. The primary practical effect of Clause 2 will be to qualify a person voluntarily receiving regular treatment for a mental disorder, but not resident in a hospital or similar institution, to serve as a juror.
16. Clause 2 provides that persons liable to be detained under the Mental Health Act 1983 and those who are resident in a hospital on account of a mental disorder (as defined by the Mental Health Act 1983) will, as now, be disqualified from jury service. Clause 2 does not otherwise affect qualification for jury service under the Juries Act 1974, so that, for example, a person subject to guardianship or a community treatment order under the Mental Health Act 1983 will continue to be disqualified for jury service.

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Clause 3: Company directors

17. Clause 3 makes changes to model articles of association concerning provisions which terminate a company director's appointment on the ground of mental health. It applies to the model articles for private companies limited by shares, private companies limited by guarantee and public companies, under the Companies (Model Articles) Regulations 2008, and those for RTM (right to manage) companies under the RTM Companies (Model Articles) (England) Regulations 2009 and the RTM Companies (Model Articles) (Wales) Regulations 2011. Model articles of association are applied to a company by default at the time of incorporation if it does not supply its own articles, or to the extent that they are not excluded or modified in any articles that the company supplies.
18. *Subsections (1) and (2)* remove the requirement that a company director's appointment should automatically terminate if his or her rights or powers have been restricted by a court order on mental health grounds.

Clause 4: Commencement, extent and short title

19. *Subsection (1)* provides that clauses 1 and 3 come into force two months after Royal Assent.
20. *Subsection (2)* provides that clause 2 will be brought into force by means of an order made by the Secretary of State. It also provides a power to make savings and transitional provisions in connection with the coming into force of clause 2. This will enable secondary legislation to be made to ensure clarity about which disqualification provisions apply where a summons is issued under section 2 of the Juries Act 1974 at around the same time as the new disqualification provisions come into force
21. *Subsections (3) and (4)* deal with the extent of the Bill and *subsection (5)* contains its short title.

FINANCIAL EFFECTS

22. It is considered that the provisions contained within the Bill will have no substantial effect on public expenditure.

PUBLIC SERVICE MANPOWER

23. The provisions contained within the Bill have no substantial effect on public service manpower.

IMPACT ASSESSMENT

24. The provisions contained within the Bill do not require an Impact Assessment.

EUROPEAN CONVENTION ON HUMAN RIGHTS

25. Since the Bill is a Private Member's Bill the duty on a minister under section 19 of the Human Rights Act 1998 to make a statement about the compatibility of the provisions of the Bill with the Convention rights does not arise. The Government does, however, consider that the Bill is compatible.
26. Each of the three substantive clauses engages a Convention right. The duty in Article 3 of Protocol 1 to hold free elections includes a right to stand for election. Jury service has been held to be a normal civil obligation under Article 4 and Article 14 on discrimination has been held to apply in such a case. The right to engage in business is a civil right and Article 6 has been held applicable in cases involving the disqualification of company directors and fitness to act as a chief executive. However, none of the provisions of the Bill interferes with any of these rights or obligations. Rather, the Bill removes, or reduces the effect of, provisions which might be considered to amount to discrimination within Article 14. Nor does the Government consider that a defendant in a criminal case would be able to argue that the changes on eligibility for jury service amounted to a breach of the Article 6 right to a fair trial.

COMMENCEMENT

27. Clauses 1 and 3 of the Bill will come into force two months after Royal Assent; clause 2 will come into force by means of an order made by the Secretary of State.

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