



Mental Health (Discrimination) (No 2) Bill

Bill 11 of 2012-13

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This briefing has been prepared for the Second Reading of the *Mental Health (Discrimination) (No 2) Bill* on 14 September 2012. The Bill is sponsored by Gavin Barwell MP, who was fourth in the 2012-13 ballot for Private Members' Bills.

The Bill is intended to reduce the stigma and negative perceptions associated with mental illness. It would repeal legislative provisions that can prevent people with mental health conditions from serving as Members of Parliament, members of the devolved legislatures, jurors, or company directors. It is based on a Bill with the same title introduced by Lord Stevenson of Coddensham in the previous Session. The Bill has the support of the Government and mental health charities.

The Bill had its First Reading on 20 June 2012 and was published, along with its Explanatory Notes, on 6 September 2012.

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Summary

The Bill is intended to reduce the stigma and negative perceptions associated with mental illness and enable people with mental health conditions to play a full part in public life. The Bill would repeal legislative provisions that can currently prevent people with mental health conditions from serving as Members of Parliament, members of the devolved legislatures, jurors, or company directors:

- Clause 1 would repeal section 141 of the *Mental Health Act 1983*, under which a Member of the House of Commons, the Scottish Parliament, the Welsh Assembly or the Northern Ireland Assembly automatically loses his or her seat if they are detained under the 1983 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.
- Clause 2 would amend the *Juries Act 1974* so that it no longer excludes people who are voluntarily receiving treatment for mental health conditions from jury service, provided they are not resident in a hospital, subject to certain conditions under the 1983 Act, or lacking capacity.
- Clause 3 would revoke provisions 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.

The Bill has the support of the mental health charities Mind and Rethink Mental Illness, and the Royal College of Psychiatrists and the Law Society. It is also backed by the Government, which has committed to tackling stigma and discrimination in its mental health strategy, *No Health without Mental Health* (February 2011).

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.

The Bill is modelled upon a Private Member's Bill of the same name introduced in the House of Lords by Lord Stevenson of Coddenham in the 2010-12 Session. In addition to the provisions referred to above, Lord Stevenson's Bill would also have amended the *School Governance (Constitution) (England) Regulations 2007* so that individuals detained under the *Mental Health Act 1983* would no longer be prevented from holding or continuing to hold office as a school governor. However, this disqualification has now been removed by [The School Governance \(England\) \(Amendment\) Regulations 2012](#), which made a number of amendments to the 2007 regulations.

1 Introduction

It is estimated that at least one in four people experience a mental health problem at some point in their life and that one in six adults has a mental health problem at any one time.¹ About one in 100 people have a severe mental illness, such as bipolar disorder or schizophrenia, and at the end of 2010/11 there were over 16,000 people detained in hospital under the *Mental Health Act 1983*.²

Stigma and experiences of discrimination affect significant numbers of people with mental health problems. In September 2011 Time to Change, an anti-stigma campaign led by the charities Mind and Rethink Mental Illness, surveyed 2700 people with mental health problems about the impact of stigma and discrimination. They found that 80 per cent of respondents said they had experienced stigma and discrimination as a result of their mental health problems. When asked what this fear and worry about stigma stopped them doing, 67 per cent said telling an employer or potential employer about a mental health problem - the area with the most responses; 50 per cent said it had stopped them applying for a job and 36 per cent said it had stopped them seeking professional help for their mental health problem.³

One of the six key objectives of the Government's mental health strategy is that fewer people will experience stigma and discrimination and that public understanding of mental health will improve.⁴ In addition to supporting efforts to repeal discriminatory legislative provisions the Government has announced that it is providing funding of up to £16 million to the Time for Change campaign, over the four years from 2011/12 to 2014/15.⁵

2 The *Mental Health (Discrimination) (No 2) Bill [Bill 11 2012-13]*

There have been a number of attempts to reduce the stigma around mental health by amending legislation that prohibits people with mental health conditions from serving in certain public roles. During a debate on mental health in June 2012 Gavin Barwell announced that, having come fourth in the Private Members' Bill ballot, he would be presenting a Mental Health Bill.⁶ He said this would be based on the *Mental Health (Discrimination) Bill [HL Bill 65]*, introduced by Lord Stevenson of Coddenham in the previous parliamentary Session, and he outlined the four aims of Lord Stevenson's Bill:

"...first, to repeal section 141 of the Mental Health Act 1983" [under which a MP or member of the devolved legislatures loses his or her seat if they are detained under the Act for more than six months];

"Secondly, the Bill would amend the Juries Act 1974 significantly to reduce and better define who is ineligible for jury service. At the moment, the Act says that mentally disordered persons are ineligible";

¹ Figures as reported in HM Government, *No Health without Mental Health – A cross-government mental health outcomes strategy for people of all ages*, Department for Health, February 2011, p8. See also: McManus S, Meltzer H, Brugha T et al. (2009) "Adult Psychiatric Morbidity in England, 2007: Results of a household survey". Leeds: NHS Information Centre for Health and Social Care.

² NHS Information Centre for Health and Social Care, *In-patients formally detained in hospitals under the Mental Health Act 1983 - Annual figures, England, 2010/11*

People may be formally detained in hospital for assessment or treatment under various sections of the *Mental Health Act 1983* in the interests of their own health or safety, or for the protection of other people.

³ Mind, Rethink and Royal College of Psychiatrists, *Mental Health (Discrimination) Bill 2012-13: House of Commons Second Reading Briefing*, August 2012

⁴ HM Government, *No Health without Mental Health – A cross-government mental health outcomes strategy for people of all ages*, Department for Health, February 2011

⁵ HC Deb 16 January 2012 c544-5W

⁶ HC Deb 14 June 2012 c542; *The Mental Health (Discrimination) (No 2) Bill [Bill 11] 2012-13*

“Thirdly, the Bill would amend the Companies (Model Articles) Regulations 2008, so that someone no longer ceased to be a director of a public or private company purely because of their mental health”; and

“Finally, the Bill would amend school governance regulations so that people detained under the Mental Health Acts would no longer be disqualified from holding office as school governors”.⁷

He welcomed changes that had already been made to school governance regulations:

I am delighted that the Government have dealt with one of those issues—the School Governance (England) (Amendment) Regulations 2012 came into force on 17 March, and rightly set the disqualification test as failure to attend six meetings in a period of six months without consent from the governing body. The Government made a public commitment, when they published their mental health strategy, to change the legislation in relation to Members of Parliament. I hope that they will support the rest of the Bill.⁸

During the debate, Paul Burstow, then Minister of State in the Department of Health, indicated that the Government would support Gavin Barwell’s Bill:

... One in five people still think that anyone who has a history of mental health problems should not be allowed to hold public office. How many former Presidents, Prime Ministers or Ministers would have been excluded if that view had been applied? [Hon. Members: “Churchill.”] Precisely. Such a law is as outdated as asylums and as outdated as many of the attitudes that sit behind it. It has to be consigned to the history books just like asylums have been, and under the coalition Government’s watch, it will be. I congratulate the hon. Member for Croydon Central (Gavin Barwell) on securing a slot for a private Member’s Bill on the subject.⁹

Shadow Secretary of State for Health Andy Burnham pledged Opposition support for the Bill:

Let me conclude with a point about stigma. I have picked up from today’s debate the fact that the hon. Member for Croydon Central (Gavin Barwell) is bringing forward a private Member’s Bill along the lines of the Bill introduced in the other place by Lord Stevenson, to whom this House should pay tribute. It is wonderful to hear that the hon. Gentleman will introduce that private Member’s Bill. Currently, a person who has had a serious breakdown and has been sectioned under the Mental Health Act 1983 is barred from being an MP, a juror, a school governor or a company director. What message does that send out? It says that recovery is not possible—a message that we might have put out about cancer in the ’50s or ’60s: “Once you have had it, it is a black mark; that’s it, you’re finished.” We urgently need to change that. Today’s debate has probably achieved some change. The Minister indicated his full support for the private Member’s Bill and I can pledge the full support of the Opposition for it. We wish the hon. Gentleman all good luck with it.¹⁰

⁷ HC Deb 14 June 2012 c542

⁸ HC Deb 14 June 2012 c542

⁹ HC Deb 14 June 2012 c528. Press coverage on the backbench business debate on mental health on 14 June noted that several MPs had spoken about their own experience of mental illness; see Juliette Jowit, “[Mental health problems no longer a bar to becoming an MP](#)”, *Guardian*, 14 June 2012; and Daniel Martin, “[Series of MPs admit to suffering mental illness for the first time including OCD and postnatal depression](#)”, *Daily Mail*, 15 June 2012.

¹⁰ HC Deb 14 June 2012 c534

The Cabinet Office have produced a factsheet on the Bill for Members of Parliament,¹¹ and Mind, Rethink and the Royal College of Psychiatrists have prepared a joint briefing.¹² The Cabinet Office have also produced the Bill's Explanatory Notes.¹³

2.1 Previous Private Members' Bills

In April 2011 Lord Stevenson of Coddenham introduced the *Mental Health (Discrimination) Bill [HL Bill 65 of 2010-12]*¹⁴ as a Private Member's Bill in the House of Lords, with the support of various organisations including Mind, Rethink and the Royal College of Psychiatrists.¹⁵ It received an unopposed second reading in the Lords on 25 November 2011.¹⁶ In his opening speech, Lord Stevenson explained the purpose of his Bill:

The Bill has a simple purpose: to remove the last significant form of discrimination in law in our society. ... It is astonishing to most people ... that there remain disgustingly blatant discriminations against those suffering from mental ill health. If you are an MP, school governor or company director, depending on the precise circumstances, you can be removed from your job automatically or at the will of colleagues as a result of mental health problems.¹⁷

All who spoke in the debate supported the Bill; and Baroness Bottomley of Nettlestone and Lord Wallace of Saltaire (speaking for the Government) noted that the Bill was in line with the Government's strategy for mental health, *No Health without Mental Health*.¹⁸ Lord Wallace said that, subject to certain Government amendments, the Government would support the Bill, although he anticipated it having to be re-introduced in the 2012-13 Session to allow time for it pass both Houses:

... the Government have already publicly committed to the repeal of Section 141 of the Mental Health Act 1983 and that, as has already been mentioned, we stated last February that the section would be repealed when a suitable legislative vehicle became available. This Bill seems to be that suitable legislative vehicle, and we are glad to see that it is linked with similar amendments on the role of company directors, school governors and jurors. On the question of jury service, the Government have been considering the detail of what is proposed and wish to ensure that any amended provisions are fair and effective. They support the principles underlying the Bill, including Clause 2 on jury service, and propose that the clause should remain in the Bill. However, it is possible that my noble friend the Deputy Leader of the House and his colleagues at the Ministry of Justice might bring forward a government amendment at a later stage.

Given the lateness of this Second Reading in the Session, it may not be possible, even with the best of good will, for the Bill to complete all of its stages before the Session ends, let alone to take it through the Commons as well. If, however, it fails to be carried during this Session, the Government hope that it will be reintroduced at the beginning

¹¹ Available from the Library

¹² Mind, Rethink and Royal College of Psychiatrists, *Mental Health (Discrimination) Bill 2012-13: House of Commons Second Reading Briefing*, August 2012

¹³ *Explanatory Notes to the Mental Health (Discrimination) (No 2) Bill [Bill 11] 2012-13*

¹⁴ *Mental Health (Discrimination) Bill [HL Bill 65] 2010-12*. See House of Lords Library Briefing Note, 11 November 2011

¹⁵ Mind, Rethink and Royal College of Psychiatrists, *Mental Health (Discrimination) Bill 2011: House of Lords Second Reading Briefing*, 25 November 2011

¹⁶ HL Deb 25 November 2011 cc1283-1290

¹⁷ HL Deb 25 November 2011 c1284

¹⁸ HL Deb 25 November 2011 c1285, cc1289-1290; HM Government, *No Health without Mental Health – A cross-government mental health outcomes strategy for people of all ages*, Department for Health, February 2011

of the next Session, and can assure the House that it will have the Government's support. We look forward to seeing it on the statute book.¹⁹

The Bill did not make any further progress during the 2010-12 session, but was reintroduced with minor changes by Lord Stevenson on 15 May 2012 as the *Mental Health (Discrimination) Bill [HL Bill 13 of 2012-13]*. The Bill had its first reading on 16 May 2012 but has not to date made any further progress.

3 Members of Parliament and the repeal of section 141 of the *Mental Health Act 1983*

At present, under section 141 of the *Mental Health Act 1983* as amended, Members of Parliament and members of the devolved legislatures detained on grounds of mental illness may have to vacate their seat. Section 141 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 in such detention, the Speaker lays both reports before the House of Commons and the MP's seat automatically becomes vacant. Section 141 also applies in relation to the devolved legislature with the presiding officer of each legislature performing the functions of the Speaker.

3.1 Calls for reform

Although the provisions in section 141 of the *Mental Health Act 1983* have never been used, in January 2010, the Speaker's Conference on Parliamentary Representation recommended that it should be repealed as soon as practicable. The Speaker's Conference concluded that section 141 is unnecessary and damaging and "embodies attitudes which stigmatise and sap the confidence of people with mental illness".²⁰ The Government agreed that it was "symptomatic of an outdated attitude towards mental illness, which treats mental ill health differently from physical ill health".²¹ On 3 February 2011, the Government announced that it would introduce provisions to repeal section 141 "at the earliest opportunity".

On 25 November 2011, the Government announced that it supported Lord Stevenson of Coddenham's Private Member's Bill, the *Mental Health (Discrimination) Bill 2010-12 [Lords]*, which included the repeal of section 141 of the *Mental Health Act 1983*. The Government indicated that if the Bill did not reach the statute book in the 2010-12 Session, it would have the Government's support if it were re-introduced in the next Session. The Government have consequently supported Gavin Barwell's Private Members Bill, the *Mental Health (Discrimination) (No 2) Bill 2010-12*.

3.2 The Bill's provisions

Clause 1(1) repeals section 141 of the *Mental Health Act 1983*. Its effect will mean Members of the House of Commons, the Scottish Parliament, the Welsh Assembly or the Northern Ireland Assembly will no longer automatically lose their seat if they are detained under the 1983 Act for more than six months.

Clause 1(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

¹⁹ HL Deb 25 November 2011 c1290

²⁰ Speaker's Conference (on Parliamentary Representation), *Final Report*, 11 January 2011, HC 239-I 2009-10

²¹ HC Deb 3 February 2011 c49WS

from their position as, an MP or member of a devolved body on the ground of mental illness. The Explanatory Notes to the Bill state that:

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.

Clause 1(3) gives effect to a Schedule containing consequential amendments to legislation that has the equivalent effect 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); and Members of the Northern Ireland Assembly (Paragraph 4).²²

The Explanatory Notes for the *Mental Health (Discrimination) (No 2) Bill 2010-12* state that the 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.²³

Further information is provided in the Library Standard Note [Repeal of section 141 of the Mental Health Act 1983 \(SN06168\)](#).

4 The Juries Act 1974

The electoral register is used as the basis for jury selection. A jury summons may be sent to anyone on the register who is aged between 18 or 70. However, the *Juries Act 1974* lists various categories of person who are either ineligible for or disqualified from jury service. If anyone falling within one of these categories receives a jury summons, they must declare their ineligibility or disqualification when responding to the summons. It is a criminal offence to provide false information when making this declaration.²⁴

One of the categories of person ineligible for jury service is anyone who is a "mentally disordered person".²⁵ A "mentally disordered person" is defined as:

1 A person who suffers or has suffered from mental disorder within the meaning of the Mental Health Act 1983 and on account of that condition either—

- (a) is resident in a hospital or similar institution; or
- (b) regularly attends for treatment by a medical practitioner.

2 A person for the time being under guardianship under section 7 of the Mental Health Act 1983 or subject to a community treatment order under section 17A of that Act.

3 A person who lacks capacity, within the meaning of the Mental Capacity Act 2005, to serve as a juror.²⁶

²² [Explanatory Notes to the Mental Health \(Discrimination\) \(No 2\) Bill \[Bill 11\] 2012-13](#)

²³ *Ibid.*

²⁴ Section 20(5) of the 1974 Act

²⁵ Section 1 of the 1974 Act

For the purposes of paragraph 1 above, the meaning of “mental disorder” set out in section 1 of the *Mental Health Act 1983* is “any disorder or disability of the mind”.

The meaning of “capacity” for the purposes of paragraph 3 above is set out in section 2(1) of the *Mental Capacity Act 2005*:

For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.

Guidance from the Office of the Public Guardian provides an overview of how this definition of capacity operates in practice:

If you have mental capacity it means that you are able to make your own decisions. The legal definition says that someone who lacks capacity cannot do one or more of the following four things.

- Understand information given to them.
- Retain that information long enough to be able to make a decision.
- Weigh up the information available to make a decision.
- Communicate their decision.

We all have problems making decisions from time to time, but the Mental Capacity Act is about more than that. It is specifically designed to cover situations where someone is unable to make a decision because the way their mind or brain works or is affected, for instance by illness or disability or the effects of drugs or alcohol.

A lack of mental capacity could be due to:

- a stroke or brain injury;
- a mental health problem;
- dementia;
- a learning disability;
- confusion, drowsiness or unconsciousness because of an illness or the treatment for it; or
- substance misuse.

In all of these instances a person may lack capacity to make particular decisions at particular times. It does not necessarily mean that they lack all capacity to make any decisions at all. A person with a learning disability may lack the capacity to make major decisions but this does not necessarily mean that they cannot decide what to eat, wear and do each day. A person with mental health problems may be unable to make decisions when they are unwell, but able to make them when they are well.²⁷

Justice minister Jonathan Djanogly provided the following information on the proportion of people who declare themselves ineligible for jury service on mental health grounds:

²⁶ Schedule 1 to the 1974 Act

²⁷ Office of the Public Guardian, *Making decisions: A guide for family, friends and other unpaid carers*, OPG602, 2009, p10

Rushanara Ali: To ask the Secretary of State for Justice what assessment he has made of the effect of the incidence of mental illness on eligibility for jury service.

Mr Djanogly: Around 1% of the population is summoned for jury service each year. Of these, some 2% declare themselves ineligible as a result of treatment for mental disorder. Overall, approximately 23% of those summoned are disqualified from serving, on a variety of grounds. On the basis of these figures mental illness is not a significant factor in jury summoning.

Rushanara Ali: To ask the Secretary of State for Justice what recent estimate he has made of the proportion of people disqualified from jury service on mental health grounds; and what comparison he has made of this figure with the incidence of mental illness in the general population.

Mr Djanogly: Only about 1% of people in England and Wales aged 18 to 69 are summoned for jury service each year, and around 2% of those summoned for jury service declare themselves ineligible on grounds of mental health. This is slightly lower than the proportion of people accessing NHS funded adult specialist mental health services, which was 2,789 per 100,000 population in England in 2010-11.²⁸

4.1 Calls for reform

The definition of “mentally disordered person” in Part 1 of Schedule 1 to the 1974 Act has been criticised by some on the grounds that it is too wide and excludes too many perfectly competent people from jury service. The wording “regularly attends for treatment by a medical practitioner” has come in for particular criticism as it disqualifies those people who manage their mental health conditions by (for example) seeking prescriptions from GPs or counselling from psychiatrists. Writing in the *Guardian*, novelist Clare Allan expressed the following views:

I am not suggesting that patients be bussed direct from the wards to the Old Bailey. It seems reasonable that anyone in hospital for whatever reason be excused from jury service. But this is not the situation for me and thousands like me. I am, after all, deemed capable of working and of paying my taxes - taxes that pay for the judge and the lawyers and the sandwiches the jurors eat.

I see my psychiatrist maybe four times a year and visit my GP for prescriptions. I take medication daily and have come to accept that I probably always will. I don't consider myself to be ill, but I do have a condition that needs regular treatment, in much the same way as a diabetic needs insulin.²⁹

A BBC report gave a similar example:

Bournemouth University researcher Angela Warren, who sees a doctor three times a year for depression, is backing the campaign as her jury summons was withdrawn last year when she mentioned her mental health history.

Angela said: "In my early days of mental illness, I would not have been able to sit on a jury. Now I have recovered and gone back to work in research at a university.

"This blanket ban means that I can't do my civic duty.

²⁸ [HC Deb 19 March 2012 cc532-3W](#)

²⁹ "The jury's out: I'm guilty of having a mental illness", *The Guardian*, 7 March 2007

"It basically implies that I have nothing to offer society because I have a mental health condition, without any regard to how I am actually functioning now. This is totally outrageous."³⁰

The charity Rethink Mental Illness has campaigned on this topic for some time, calling for disqualification on mental health grounds to be based on capacity alone:

Participation in jury service should be based on capacity. The Mental Capacity Act 2005 established the first definition in British law of capacity. This could be used as a basis for a new exclusion. This would ensure that people with mental illness who can perform jury service are able to undertake this important civic duty. However, it would also ensure that people who would not be able to perform jury service adequately would be excluded.

The individual being summoned could declare him or herself if he or she would be able to perform jury service adequately or not. The individual's declaration could be supplemented with evidence from a paid or unpaid carer or health or social care professional. It would be best for the individual to choose the person or people who they feel knows their condition the best to provide this evidence. People who are applying for excusal should not be forced to pay charges from professionals providing evidence.³¹

4.2 The Bill's provisions

Clause 2 of the Bill would introduce a more restricted definition of "mentally disordered person" in Schedule 1 to the 1974 Act by deleting the current reference to those who "regularly attend for treatment by a medical practitioner". Schedule 1 as amended by the Bill would instead read:

- 1 A person for the time being liable to be detained under the Mental Health Act 1983.
- 1A A person for the time being resident in a hospital on account of mental disorder as defined by the Mental Health Act 1983.
- 2 A person for the time being under guardianship under section 7 of the Mental Health Act 1983 or subject to a community treatment order under section 17A of that Act.
- 3 A person who lacks capacity, within the meaning of the Mental Capacity Act 2005, to serve as a juror.

Those who manage their mental health conditions by regularly attending for treatment by a medical practitioner (and who do not fall within any of the above categories) would therefore be eligible for jury service. Gavin Barwell has described the potential impact of this change in the following terms:

...the Bill would amend the Juries Act 1974 significantly to reduce and better define who is ineligible for jury service. At the moment, the Act says that mentally disordered persons are ineligible. The definition of a mentally disordered person is extremely wide and includes people who manage their mental health condition through a prescription from their GP or counselling from a psychiatrist, thus eliminating all sorts of people who would make excellent jurors. Only 2% of people tick the box, but many more should probably do so. Not only is the law discriminatory but it is ineffective. If someone is on trial, they have a right to be confident that the jury is of sound mind. The Bill would

³⁰ "Mental illness and jury service", *BBC*, 22 January 2010

³¹ Rethink website, *Jury service – what Rethink wants* [accessed 29 August 2012]

better define who should be ineligible, thus making it much more likely that those people would identify themselves in the process.³²

Clause 4(2) provides that clause 2 would be brought into force by means of an order made by the Secretary of State.

5 Company directors and the *Companies (Model Articles) Regulations 2008*

Model Articles apply to private and public companies, who can choose to adopt them in their entirety or with amendments. They also apply by default to companies formed under the *Companies Act 2006* unless they register their own articles. The current model articles, set out in the *Companies (Model Articles) Regulations 2008*, and related regulations, provide for a company director's appointment to be terminated on mental health grounds in certain circumstances.

There are a number of different model articles set out in the 2008 Regulations and related regulations (relating to private companies limited by shares; those limited by guarantee; and for public companies, for example). They all share the same provisions regarding termination of a director's appointment, including that a person ceases to be a director as soon as "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."³³

5.1 Calls for reform

A briefing on the Bill from the Royal College of Psychiatrists, Mind and Rethink Mental Illness provides the rationale for revoking the parts of the regulations specifically relating to mental health:

"...it is stigmatising for mental health to be singled out, together with bankruptcy and indebtedness, and for a person to be automatically deprived of their directorship because of a period of mental ill health, however short."³⁴

Gavin Barwell commented that these sections were unnecessary, as other parts of the regulations on termination cover situations where a person becomes too ill to serve as a company director, and do not discriminate between physical and mental illness:³⁵

All companies are required by statute to have articles of association, and model articles operate where a company has failed to draw up its own. Many companies incorporate them into their own articles. They include a provision that someone ceases to be a director if a registered medical practitioner who is treating them gives a written opinion to the company stating that they have become physically or mentally incapable of acting as a director and they remain so for more than three months—in other words,

³² [HC Deb 14 June 2012 c542](#)

³³ *Companies (Model Articles) Regulations 2008*, para 18(e) of Schedules 1 and 2 and para 22(e) of Schedule 3; *Right to Manage [RTM] Companies (Model Articles) (England) Regulations 2009* para 23(e) of the Schedule; *RTM Companies (Model Articles) (Wales) Regulations 2011*, para 23(e) of Schedule 1 and para 23(d) of Schedule 2.

³⁴ Mind, Rethink and Royal College of Psychiatrists, [Mental Health \(Discrimination\) Bill 2012-13: House of Commons Second Reading Briefing](#), August 2012

³⁵ *Companies (Model Articles) Regulations 2008*, para 18(d) of Schedules 1 and 2 and para 22(d) of Schedule 3 provide that a person ceases to be a director if 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.

the correct test of capacity. However, they go on to include a totally unnecessary additional provision relating solely to mental health.³⁶

5.2 The Bill's provisions

Clause 3 of 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. The Explanatory Notes to the Bill explain its effect:

16. 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.

17. *Subsection s(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.³⁷

Since company law is a transferred matter under the *Northern Ireland Act 1998* Westminster will not normally legislate without the consent of the Northern Ireland Assembly and this consent is being sought.

Clause 4(1) provides that clause 3 would come into force two months after Royal Assent.

³⁶ HC Deb 14 June 2012 c542

³⁷ [Explanatory Notes to the Mental Health \(Discrimination\) \(No 2\) Bill \[Bill 11\] 2012-13](#)