



Repeal of section 141 of the *Mental Health Act 1983*

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In January 2010, the Speaker's Conference on Parliamentary Representation recommended that section 141 of the *Mental Health Act 1983* should be repealed. Under section 141, Members of Parliament detained on grounds of mental illness may have had to vacate their seat, although in practice no seats were vacated under this provision.

The provision was repealed by the *Mental Health Discrimination Act 2013*. It was introduced as a private Members' bill and piloted through the House of Commons by Gavin Barwell, following a commitment from the Government, first to repeal the provision, and then an undertaking to support a private Members' bill to do so.

Section 1 of the *Mental Health Discrimination Act 2013*, which repealed section 141 of the 1983 Act, came into force at the end of April 2013

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1 Section 141 of the *Mental Health Act 1983*

Before its repeal, under section 141 of the *Mental Health Act 1983* as amended, Members of Parliament detained on grounds of mental illness may have had to vacate their seat. Erskine May, the authoritative guide to parliamentary procedure, provides a short commentary on the disqualifying effects of mental illness:

Section 141 of the Mental Health Act 1983 provides a procedure whereby the seat of a Member detained under the Act may be vacated. The Mental Health Act 2007 replaced all references to “mental illness” in the 1983 Act with ‘mental disorder’.

Under the amended 1983 Act, if a Member is authorized to be detained on grounds of mental disorder, the authority or person on whose order or application, and the medical practitioner upon whose recommendation or certificate, the Member is detained, and the person in charge of the place where the Member is detained, are to notify the Speaker; or any two Members may certify to the Speaker that they are credibly informed of the detention. The Speaker, on receipt of the notification causes the Member so detained to be visited by two specialists in mental disorders, who are to be appointed for the purpose by the President of the Royal College of Psychiatrists. The specialists report to the Speaker whether the Member is suffering from mental disorder and is authorized to be detained as such; and, if they report that that is the case, six months after the date of the report (or as soon after that period as the House sits), the Speaker again causes the Member to be visited by two specialists. Then, if the specialists again report that the Member is suffering from mental disorder and is authorized to be detained, his seat becomes vacant. The Government has announced its intention to repeal s141 of the 1983 Act.¹

In the *Mental Health Act Manual*, Richard Jones reported that during the passage of the *Mental Health Act 2007*, the Minister of State in the House of Lords, Lord Hunt of Kings Heath, told the House of Lords that “Section 141 has not, to our knowledge, been used since the Act became law”.² Richard Jones also added that:

It has been reported that the only occasion when an MP has been removed from the House of Commons on the ground of unsoundness of mind was in August 1916 when the Speaker invoked the Lunacy (Vacating Seats) Act 1886 in respect of a liberal MP Dr Charles Leach (David McKie, “Bedlam on the benches”, *The Guardian* July 12, 2007).³

2 Speaker’s Conference on Parliamentary Representation recommended repeal of section 141

2.1 Background

The Prime Minister announced on 3 September 2007 that he had proposed to the Speaker that a Speaker’s Conference should be convened to debate and make recommendations about a number of electoral matters.⁴

On 22 July 2008 the Speaker announced the terms of reference of the new Speaker’s Conference.⁵

¹ Erskine May, *Parliamentary Practice*, 24th edition, 2011, pp33-34

² HL Deb 17 January 2007 c760

³ Richard Jones, *Mental Health Act Manual*, Eleventh Edition, p524

⁴ Speech to the NCVO, 3 September 2007

On 12 November 2008 the House agreed to appoint a committee, to be known as the Speaker's Conference, which would consist of the Speaker as chairman and 17 other members, one of whom would be the vice-chairman. The Speaker's Conference was given the following terms of reference:

The Conference shall consider and make recommendations for rectifying the disparity between the representation of women, ethnic minorities and disabled people in the House of Commons and their representation in the UK population at large; and may agree to consider other associated matters.⁶

2.2 Recommendations

In its final report, the Speaker's Conference considered attitudes to mental illness and the disqualification of Members of Parliament.⁷ The Conference commented that:

316. A number of witnesses suggested that society's attitudes to those who experience mental illness discouraged such people from putting themselves forward for selection as candidates. In the opinion of several witnesses, including the Royal College of Psychiatrists, section 141 of the Mental Health Act 1983 illustrated this problem vividly.

It highlighted evidence from the Royal College of Psychiatrists, which contrasted the situation of Members detained on mental health grounds with those suffering from physical illness:

By contrast there are no provisions to remove an MP if he or she suffers from a physical illness, even if the illness (e.g. a serious stroke or cancer) is very debilitating and substantially affects the person's ability to perform their parliamentary functions. Furthermore, a person who lacks mental capacity may also be detained under the Mental Capacity Act 2005 but does not thereby automatically lose his or her seat as a result.⁸

The Conference then reported that the Royal College urged repeal of section 141 "on the basis that 'there is no relevant distinction between these two latter situations and that covered by section 141 of a person who has been sectioned under the Mental Health Act'".⁹ The Conference also drew attention to the Royal College's argument that the law gave the false impression that an MP could not recover from a mental disorder:

319. The Royal College then argued that :

By removing the seat of an MP who is detained under the Mental Health Act, the law also gives the false impression that an MP cannot recover from a mental disorder. This is a wholly out of date viewpoint and runs counter to the modern approach to recovery in mental health.¹⁰

The Conference reported that "Several witnesses pointed out that s141 has never been used, but believed that its very existence meant that mental illness carried an unjust

⁵ HC Deb 22 July 2008 c659

⁶ HC Deb 12 November 2008 cc896-912

⁷ Speaker's Conference (on Parliamentary Representation), *Final Report*, 11 January 2011, HC 239-I 2009-10, paras 316-329

⁸ Evidence from the Royal College of Psychiatrists, quoted by Speaker's Conference (on Parliamentary Representation), *Final Report*, 11 January 2011, HC 239-I 2009-10, para 317

⁹ Speaker's Conference (on Parliamentary Representation), *Final Report*, 11 January 2011, HC 239-I 2009-10, para 318

¹⁰ Speaker's Conference (on Parliamentary Representation), *Final Report*, 11 January 2011, HC 239-I 2009-10, para 319

stigma”;¹¹ and that “Those who advocate repeal of Section 141 do so partly on the basis that its very existence is symbolic of prejudiced attitudes to people experiencing all kinds of mental health problems”.¹²

The Conference drew the following conclusions, its recommendations were emboldened:

324. There are arguments both for and against Section 141. In its favour, it may be said that the crux of the issue is not the illness itself but the detention of the Member by law, and the effects of that situation upon his or her ability to fulfil their parliamentary and constituency duties. A Member unable to attend Parliament is incapable of working for constituents or attending the House. A similar principle lies behind other categories of disqualification, such as disqualification because a Member is in prison for more than a year. Neither is s141 directly relevant to people with a wide range of milder conditions which impair their mental health; it could only ever apply to a small number of people with serious conditions that really need to be detained.

325. On the other hand, **the law on disqualification from Membership is not consistent or logical in its treatment of various types of illness or disorder. If a Member suffers from serious physical illness—say a stroke—that can leave constituents effectively un-represented in much the same way as if a Member has a serious mental disorder. Yet there is no parallel provision to s141 of the Mental Health Act 1983 for cases of physical illness. We have received substantial evidence from a number of sources, both expert and lay, to suggest that s141 wrongly implies that mental illness is in some way fundamentally different in its effects from physical illness. Yet the House, through its medical services, can provide care and assistance for those with mental illness, just as it can for those with physical illness.** [Recommendation 63]

326. 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.

327. **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]

328. **We recognise, however, that some provision may be needed to protect the legitimate interests of constituents and the House in circumstances where a Member is physically or mentally incapacitated to the extent that he or she is entirely unable to fulfil their duties for an extended period. We recommend that the House should invite an appropriate select committee to undertake an inquiry into this issue, consider whether new legislation or other measures may be needed, and make recommendations to the House and to Government as appropriate.** [Recommendation 65]

329. The House medical services can provide care and support for those with mental illness when necessary, but information about what is available should be more

¹¹ Speaker's Conference (on Parliamentary Representation), *Final Report*, 11 January 2011, HC 239-I 2009-10, para 320

¹² Speaker's Conference (on Parliamentary Representation), *Final Report*, 11 January 2011, HC 239-I 2009-10, para 322

effectively circulated. **We recommend that an information pack and supporting guidance on the House's occupational health services should be sent to all Members of Parliament immediately after each General Election.** [Recommendation 66]¹³

2.3 Backbench attempt to repeal section 141

At committee stage of the *Constitutional Reform and Governance Bill 2009-10*, Mark Harper tabled a new clause to amend section 141 of the *Mental Health Act 1983*:

- (1) The Mental Health Act 1983 is amended as follows.
- (2) Subsections (2) to (7) of section 141 are deleted.

He provided the following explanatory note:

Paragraphs 316-329 of the Final Report of the Speaker's Conference (on Parliamentary Representation), Session 2009-10, HC 239-I, are relevant to the new Clause.

On 9 February 2010, the final day in Committee, the new clause was not called as time provided for debate had run out before the new clause was reached.¹⁴

At Business Questions on 28 January 2010, Mark Harper had asked that an opportunity be provided to debate his amendment.

Harriet Harman, the leader of the House of Commons told him that:

The matter is still under consideration, but I will make sure that we get back to him as soon as possible to let him know how we intend to respond to the situation when the CRAG Bill returns to the House.¹⁵

2.4 Government Response – Labour March 2010

In its response to the Conference's recommendations, in March 2010, the then Labour Government shared the view of the Conference that the question should be considered by a select committee:

The Government fully appreciates the understandable strength of feeling that exists on this issue, and agrees that the distinction drawn by the current legislative framework between mental and physical incapacity of MPs is not sustainable. However, the Government considers that we need to be sure that the right measures are in place for protecting the interests of constituents in the event of their MP, for whatever reason, becoming incapacitated.

The Speaker's Conference has taken the view that this issue should be discussed by a Select Committee [Recommendation 65]. The Government shares the view that consideration of this matter is better led by the House itself, and we hope that this will

¹³ Speaker's Conference (on Parliamentary Representation), *Final Report*, 11 January 2011, HC 239-I 2009-10, paras 324-329

¹⁴ *Constitutional Reform and Governance Bill 2009-10*, Committee of the whole House Proceedings, 9 February 2010, pp203-204. See also HC Deb 9 February 2010 c880

¹⁵ HC Deb 28 January 2010 cc959-960

happen without delay. The Government is committed to reacting promptly to any recommendations that might emerge from a Select Committee.¹⁶

2.5 Government Response – Coalition Government, since May 2010

In response to questions in July 2010 and in January 2011 the Government told the House that it was “seriously considering the recommendations on attitudes to mental health illness and the disqualification of MPs”,¹⁷ and that it was “considering the operation of section 141 of the Mental Health Act 1983”.¹⁸

Then on 3 February 2011, the Government announced that it would repeal section 141 of the *Mental Health Act 1983*.¹⁹

The Government subsequently indicated that it would support a private Members’ bill that would repeal section 141:

Mr Harper: The Government have already committed to repealing section 141 of the Mental Health Act 1983 in a statement to the House on 3 February 2011 and, at its second reading, the Government indicated their support for this Bill as an appropriate opportunity to make this change. However, given the timing of the second reading, it will be extremely difficult for this Bill to gain Royal Assent in this Session. Should Lord Stevenson wish to reintroduce his Bill in the next session, the Government would be pleased to support it.²⁰

3 Mental Health (Discrimination) Bill 2010-12 [Lords]

Lord Stevenson of Coddenham’s *Mental Health (Discrimination) Bill*²¹ received an unopposed second reading in the House of Lords on 25 November 2011.²² In his opening speech, Lord Stevenson described the effect of his Bill – it extended wider than repealing section 141 of the *Mental Health Act 1983*. Lord Stevenson explained that:

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.²³

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*.²⁴

Lord Wallace also confirmed the Government’s intention to repeal section 141 of the *Mental Health Act 1983*; indicated that the Bill was a suitable legislative vehicle to do so; supported

¹⁶ Government Equalities Office, *Government Response to the Speaker’s Conference Report*, Cm 7824, March 2010, p30

¹⁷ HC Deb 5 July 2010 c45W

¹⁸ HC Deb 17 January 2011 c526W

¹⁹ HC Deb 3 February 2011 c49WS

²⁰ HC Deb 28 November 2011 c661W

²¹ *Mental Health (Discrimination) Bill [HL Bill 65] 2010-12*

²² HL Deb 25 November 2011 cc1283-1290

²³ HL Deb 25 November 2011 c1284

²⁴ 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

the other changes proposed by the Bill, subject to certain Government amendments; and said that 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.²⁵

4 Mental Health (Discrimination) Bill 2012-13 [Lords]

On 15 May 2012, Lord Stevenson of Coddenham introduced the *Mental Health (Discrimination) Bill 2012-13 [Lords]*.²⁶ It made no further progress.

5 Mental Health (Discrimination) (No 2) Bill 2012-13

On 20 June 2012, Gavin Barwell, who was drawn fourth in the House of Commons ballot for private Members' bills, introduced the *Mental Health (Discrimination) (No 2) Bill 2012-13*.²⁷

5.1 Debate on Mental Health

Mental health was the subject of the first backbench business debate in the 2012-13 Session, on 14 June 2012.²⁸ During the course of the debate, a number of Members spoke of their experiences of mental illness.

In the debate, Paul Burstow, the 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.²⁹

Andy Burnham pledged Opposition support for the Bill.³⁰

In the backbench business debate, Gavin Barwell confirmed that he would be "presenting the Mental Health (Discrimination) Bill, which was introduced by Lord Stevenson of Coddenham in the last parliamentary Session".³¹ He outlined the four aims of Lord Stevenson's Bill:

- "first, to repeal section 141 of the Mental Health Act 1983";
- "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";

²⁵ HL Deb 25 November 2011 c1290

²⁶ HL Deb 15 May 2012 c256

²⁷ HC Deb 20 June 2012 c880

²⁸ HC Deb 14 June 2012 cc504-576

²⁹ HC Deb 14 June 2012 c528. The *Daily Mail* reported that "Care Minister Paul Burstow ... vowed to scrap a law which bars individuals from standing for Parliament if they have been sectioned for six months", in its coverage of the debate [Daniel Martin, "[Series of MPs admit to suffering mental illness for the first time including OCD and postnatal depression](#)", *Daily Mail*, 15 June 2012]

³⁰ HC Deb 14 June 2012 c534

³¹ HC Deb 14 June 2012 c541

- “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”.³²

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.³³

5.2 Passage of the Bill

The *Mental Health (Discrimination) (No 2) Bill* had its presentation and first reading on 20 June 2012.³⁴

The second reading debate in the Commons took place on 14 September 2012.³⁵ In his opening speech Gavin Barwell stated:

My Bill's purpose is simple: to tackle the last legal form of discrimination in our society. Over the course of my adult life we have made significant progress in tackling racism, sexism and homophobia. Parliament changed the law and sent a clear signal, and, although things are still far from perfect, attitudes have changed. To our shame, however, the law still discriminates against those with a mental health condition. A Member of Parliament or company director can be removed from their job because of mental ill health, even if they go on to make a full recovery, and many people who are perfectly capable of performing jury service are ineligible to do so. As it stands, the law sends out a clear message that if someone has a mental health condition, their contribution to public life is not welcome, and that is an affront to a decent, civilised society.³⁶

The Bill received cross party support and many speeches in the debate drew on personal or constituency experiences of mental health issues. In supporting the Bill Parliamentary Secretary to the Cabinet Office, Chloe Smith, stated:

Turning back to today's debate, tackling stigma and discrimination is at the heart of the Government's mental health strategy. I join all Members here today, who have said many times that it cannot be right in the 21st century for somebody to be automatically expelled from this place because they have had a mental health illness. That sends out entirely the wrong message: that if one has mental health problems, one's contribution is not welcome in public life. That has applied not only to the House of Commons, but to juries and directorships. In February last year, the Government announced that section 141 of the Mental Health Act 1983 would be repealed when a suitable

³² HC Deb 14 June 2012 c542

³³ HC Deb 14 June 2012 c542

³⁴ HC Deb 20 June 2012 c880

³⁵ [HC Deb 14 June 2012 c542-577](#)

³⁶ HC Deb 14 September 2012 c543

legislative vehicle became available. This Bill is that vehicle, and we are glad to see that issue linked to similar amendments on company directors and jurors.³⁷

The Bill had its committee stage in the Commons on 31 October 2102. It was approved by the Committee, without amendment.³⁸ Report stage and third reading took place on 30 November 2012. One amendment was approved to remove the term “mentally disordered persons”, as part of changes made by the bill the *Juries Act 1974*. The minister answered some queries raised in the debate:

Miss Chloe Smith: If my hon. Friend the Member for Croydon Central (Gavin Barwell) is happy for me to attempt to answer a few of the points on the detail, which were raised mainly by my hon. Friend the Member for Shipley (Philip Davies), I shall do so, and further indicate the Government’s support for the Bill.

On clause 1, my hon. Friend the Member for Shipley queried whether the House should seek to amend measures that have never been used when we could simply let them wither on the vine. It is my firm view and that of other hon. Members that we ought to tackle discriminatory and stigmatic anachronisms when we come across them. We are proud that the Bill does that.

My hon. Friend asked how constituents can be represented by an MP who comes under the provisions of the Bill. When Members suffer from a physical health problem, informal arrangements are made and support is given to them by the House and their party. The Government believe that similar arrangements should apply in cases of mental illness. He asked about eligibility to vote, and I will be happy to come back to him on that another time.

My hon. Friend asked whether there should be a post-detention time limit with regard to jury service. I can confirm that when somebody is no longer detained under the Mental Health Act 1983, they should no longer be subject to constraints. After all, they will have been assessed and deemed not to be suffering to an extent that prevents them from leading a normal life. It is possible to see the Bill in that light.

Finally, my hon. Friend asked about the provision on directorships. I can confirm that the provision applies only to companies—whether existing or new—that use model articles.³⁹

Gavin Barwell further referred to the informal arrangements to cover for a Member, suffering for physical or mental health issues, and to the recommendation of The Speaker’s Conference that this should be examined by a Select Committee:

Those arrangements can certainly work, but from the point at which I introduced the Bill people have contacted me and made the point that the hon. Member for Shipley makes. It is well worth a Select Committee looking at those issues and deciding whether the informal arrangements are sufficient, or whether there should be other rules.⁴⁰

³⁷ HC Deb 14 September 2012 c570.

³⁸ Public Bill Deb 31 October 2012 c3-14

³⁹ [HC Deb 30 November 2012 c492-502](#)

⁴⁰ HC Deb 30 November 2012 c501

The Bill was taken up in the Lords by Lord Stevenson of Coddenham. First reading was on 3 December 2012⁴¹ with second reading debate on 18 January 2013.⁴² The Bill received all party support.

The Bill was referred to Committee in the Lords, but as no amendments were laid and no peer indicated a wish to speak on the Bill, the order of commitment was discharged (as a formal stage) on 4 February 2013.⁴³ The Bill received its third reading in the Lords on 11 February 2013, without debate.⁴⁴

The *Mental Health Discrimination Act 2013* received Royal Assent on 28 February 2013.⁴⁵ The provisions on Members of Parliament, which also extend to the devolved administrations, came into force at the end of April 2013.

The Royal College of Psychiatrists, together with the charities Rethink Mental Illness and Mind all welcomed the passage of the Bill. Professor Sue Bailey, President of the Royal College said:

The College has worked closely with Gavin Barwell MP, Lord Stevenson and others on this legislation. We are immensely proud that so many MPs and Peers have supported this Bill and agreed with us that there should be an end to the stigma around mental health.

"The successful passage of this Bill through Parliament clearly shows that such discrimination has no place in today's society as it goes some way to eradicating one of the last bastions of legalised discrimination."⁴⁶

⁴¹ HL Deb 3 December 2012 c441

⁴² [HL Deb 18 January 2013 c921-932](#)

⁴³ HL Deb 4 February 2013 c12

⁴⁴ HL Deb 11 February 2013 c456. Further information on the *Mental Health (Discrimination) (No 2) Bill* can be found in House of Commons Library Research Paper, [Mental Health Discrimination \(No 2\) Bill](#), RP 12/52, 10 September 2012; House of Commons Library Standard Note, [Mental Health Discrimination \(No 2\) Bill: Committee Stage Report](#), SN/SP/6483, 23 November 2012

⁴⁵ HL Deb 28 February 2013 c1155

⁴⁶ [News Release](#), Royal College of Psychiatrists, 11 February 2013.