

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Sixth Delegated Legislation Committee

DRAFT CORONAVIRUS ACT 2020 (EXPIRY OF
MENTAL HEALTH PROVISIONS) (ENGLAND
AND WALES) REGULATIONS 2020

Wednesday 18 November 2020

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

not later than

Sunday 22 November 2020

© Parliamentary Copyright House of Commons 2020

This publication may be reproduced under the terms of the Open Parliament licence, which is published at www.parliament.uk/site-information/copyright/.

The Committee consisted of the following Members:

Chair: PHILIP DAVIES

- | | |
|---|---|
| † Aiken, Nickie (<i>Cities of London and Westminster</i>) (Con) | † Marson, Julie (<i>Hertford and Stortford</i>) (Con) |
| † Allin-Khan, Dr Rosena (<i>Tooting</i>) (Lab) | Mishra, Navendu (<i>Stockport</i>) (Lab) |
| † Bacon, Gareth (<i>Orpington</i>) (Con) | † Sambrook, Gary (<i>Birmingham, Northfield</i>) (Con) |
| Byrne, Ian (<i>Liverpool, West Derby</i>) (Lab) | † Sunderland, James (<i>Bracknell</i>) (Con) |
| † Colburn, Elliot (<i>Carshalton and Wallington</i>) (Con) | † Throup, Maggie (<i>Lord Commissioner of Her Majesty's Treasury</i>) |
| † Crosbie, Virginia (<i>Ŷnys Môn</i>) (Con) | † Western, Matt (<i>Warwick and Leamington</i>) (Lab) |
| Cruddas, Jon (<i>Dagenham and Rainham</i>) (Lab) | Whittome, Nadia (<i>Nottingham East</i>) (Lab) |
| † Dorries, Ms Nadine (<i>Minister for Patient Safety, Mental Health and Suicide Prevention</i>) | Nicholas Taylor, <i>Committee Clerk</i> |
| † Drummond, Mrs Flick (<i>Meon Valley</i>) (Con) | |
| Elliott, Julie (<i>Sunderland Central</i>) (Lab) | † attended the Committee |

Sixth Delegated Legislation Committee

Wednesday 18 November 2020

[PHILIP DAVIES *in the Chair*]

Draft Coronavirus Act 2020 (Expiry of Mental Health Provisions) (England and Wales) Regulations 2020

9.25 am

The Chair: Before we begin our debate, I thank Members for observing the social distancing regulations. *Hansard* colleagues would be grateful if any speaking notes could be sent to hansardnotes@parliament.uk.

The Minister for Patient Safety, Mental Health and Suicide Prevention (Ms Nadine Dorries): I beg to move,

That the Committee has considered the draft Coronavirus Act 2020 (Expiry of Mental Health Provisions) (England and Wales) Regulations 2020.

It is a pleasure to serve under your chairmanship, Mr Davies. I am pleased to speak in support of the draft statutory instrument, which was laid before the House on 21 October. The Government have committed to keeping all elements of the Coronavirus Act 2020 under close review and to sunsetting any provisions that are no longer necessary. The Act expires two years from when it was passed, but it contains a power to bring forward the expiry date of any of its provisions.

My right hon. Friend the Secretary of State for Health and Social Care told the House in September, during the debate on the six-month review of the Coronavirus Act, that the emergency provisions of schedule 8 in England are to be sunsetted as they are no longer necessary. The regulations enact that decision. The regulations expire the provisions in schedule 8 to the Coronavirus Act 2020, which allowed for a temporary change to the operation of certain sections of the Mental Health Act 1983.

The emergency provisions that the regulations remove were included in the Act to protect the safety of patients and to maintain access to essential care. They were designed to enable mental health services to continue to provide vital care and treatment to patients in the event of the pandemic having a drastic impact on staffing levels. These were always powers of last resort; they have not been commenced and have never been used, because they have not been required. They were designed so that the emergency changes would be switched on by the Secretary of State only if staffing shortages in the mental health sector due to the pandemic were so severe that patient safety was significantly compromised.

I will briefly remind the Committee of the provisions we are seeking to expire in the draft regulations. The provisions would have enabled an approved mental health professional to apply to detain someone on the advice of one registered medical practitioner rather than two, if securing two recommendations was considered impractical or would lead to undesirable delay. They would also have allowed extensions to the time that individuals who were already hospital in-patients could be temporarily detained, pending an application for longer term detention under the Mental Health Act.

For individuals accused of crimes, defendants and prisoners with a mental health condition, the provisions would have extended the amount of time they could be remanded to hospital. The provisions would have allowed an accused person, convicted person or prisoner to be sent to hospital on the recommendation of just one registered medical practitioner rather than two. They would also have extended the procedural time limits for transferring a prisoner to hospital.

We are highly conscious of the gravity of the effects of these provisions, should they be commenced, and the need for them has been kept under continual review. We are pleased that, due to the resilience and ingenuity of NHS England, the provisions have not been needed and have never been used. We are removing them because we have listened to stakeholders and to Parliament. Three separate Select Committee reports have recommended that we take this step.

The Joint Committee on Human Rights reported on the Government's response to covid and argued that, if enacted, the provisions would weaken the protections available for people subject to the Mental Health Act. The report also highlighted the concerns of stakeholders, including Mind, the Royal College of Nursing and the National Survivor User Network. The Public Administration and Constitutional Affairs Committee report on the Government's response to covid and the Coronavirus Act 2020 also noted the concerns of the mental health charity Mind and its call for the removal of these temporary powers. Further to this, the Women and Equalities Committee highlighted that evidence suggests that the measures are unlikely to be needed. The Committee noted concern that the provisions

"went against the direction of travel in Mental Health Act reform" and most notably the need for

"a more balanced system with more safeguards, more choice and less restriction",

as set out in the independent review of the Mental Health Act 1983 chaired by Sir Simon Wessely. The Committee stressed that the measures should not be kept available on a "just in case" basis. The same report noted that the Royal College of Psychiatrists had emphasised to the Committee that any use of the emergency mental health provisions would have an unequal effect on black people, whose contacts with mental health services are disproportionately based on detention orders requiring them to stay in hospital.

The announcement of the decision to expire these provisions has been positively received across the House and by a wide range of stakeholders. Rethink Mental Illness said that the decision came as a relief to many people living with mental illness and their loved ones. I am pleased to reiterate the Government's commitment to publish a White Paper setting out our priorities for reform to address inequalities in the existing system, strengthen patients' rights and enhance protections within the Act. We will do this as soon as possible. The Secretary of State was not persuaded even during the initial covid peak that these powers were necessary, because our mental health services had shown incredible resilience and ingenuity. These powers are no longer required, so the regulations seek to expire them. It should be noted that the regulations do not expire the transitional provisions in schedule 8 to the Act; however, these will have no legal or practical effect.

In relation to Wales, the regulations expire only matters that are not devolved to the Welsh Government—those which relate to patients under the Mental Health Act involved in criminal proceedings or under sentence. Provisions under schedule 8 to the Act devolved to the Welsh Government relating to health services remain in the Coronavirus Act, with an exception for provisions relating to the Welsh mental health review tribunal. None of these provisions has been commenced. Should it ever be deemed necessary to return these provisions, we will introduce new legislation.

Mental health services were able to continue to support people detained under the Mental Health Act despite the pressures resulting from the pandemic. The Government and NHS England and NHS Improvement have taken measures to support mental health services to continue to offer vital care and treatment to individuals despite ongoing workforce pressures resulting from the covid-19 pandemic.

The Department and NHS England and NHS Improvement issued legal guidance for mental health, disability and autism, and specialised commissioning services supporting people of all ages during the coronavirus pandemic. The guidance set out how the Act's code of practice may be interpreted during this period, including, for example, allowing the delivery of statutory forms electronically to allow mental health staff to work more flexibly and reduce risk of covid-19 infection. The guidance also set out how video technology can be used for medical assessments to be carried out remotely under the Act; this is to make it easier to have two doctors examining a patient during the pandemic. The Department has also supported the Care Quality Commission in bringing in a modified second-opinion appointed doctor or SOAD service, which allowed the service to work remotely. This enabled procedures around assessing and improving the medical treatment of patients detained under the Act to continue as normal, rather than enacting powers that would lessen this safeguard.

Those measures, coupled with mental health staff's resilience and innovation, have been effective in mitigating pressure on mental health services, avoiding the need to commence the emergency powers. NHS mental health services have coped without needing to turn on these emergency powers through their hard work and innovative approaches, supported by the Department, NHS England and NHS Improvement.

9.24 am

Dr Rosena Allin-Khan (Tooting) (Lab): It is a pleasure to serve under your chairmanship, Mr Davies.

The removal of these provisions from the Coronavirus Act is, of course, extremely welcome, and Labour Members will not seek to oppose it. When the Coronavirus Act was hastily drafted and enacted in light of the threat our country was facing in March, we accepted the inclusion of these regulations, to be used only as a last resort. It is a relief that the provisions have never had to be used, and we are pleased to see them dropped.

The legislation represented a significant reduction in the safeguarding of individuals subject to the Mental Health Act, and I am sure that the expiration of the provisions will be gladly received by those who are living with mental ill health and by their families. I thank all health and care staff for their hard work, and

I am grateful for the work of the CQC and NHS England, whose response to the virus was robust enough that the provisions were never turned on.

Although the mental health provisions in the Coronavirus Act were never activated, that does not mean that the coronavirus has not had a significant impact on the mental health system in England. In March, at the very beginning of the pandemic, an additional 2,441 people were discharged from mental health hospitals. Compared with February, that is an increase of 26%. At that time, increasing bed capacity was a priority. Although it was necessary to take that step where it was safe to do so, it was vital that discharged patients continued to receive the care they needed.

Inevitably, the redeployment of staff to concentrate efforts on tackling the virus led to disruption to existing mental health services, with surveys from charities such as Rethink Mental Illness and Mind showing that many struggled to access support during the pandemic. That was especially true for those with existing mental health conditions, including many who were abruptly discharged. The needs of people who are living with severe mental illnesses are complex, and it is vital that they receive appropriate care in all settings.

As the number of cases and hospital admissions related to covid-19 continue to rise, so too does the prospect of having to empty beds again. In August, the Government announced a £588 million fund to support the safe discharge of patients in the event that it becomes necessary to free up space for coronavirus patients. That money is essential to prevent a repeat of the mistakes that were made in March, but I had it confirmed to me last week that mental health trusts are unable to access that funding. Similarly, alongside the announcement of that money guidance was published outlining the correct procedure for safely discharging patients from hospital settings. Again, mental health trusts were excluded from that, and there is currently no equivalent guidance for them. Will the Minister please outline why mental health trusts are excluded from this vital funding, and will she confirm what resources are being made available to trusts to support the safe discharge of patients and ensure that they receive ongoing care in the community?

Concerns have also been raised about patients who were not discharged. Many mental health estates were not built with social distancing in mind, and that has affected treatment and access to visits on and off site. Reduced contact with family and friends has undoubtedly had an effect on in-patients. Staying in a mental health ward can already be an extremely lonely experience, but the extra restrictions on social contact mean that it can feel truly, devastatingly isolating. Although many people accept that digital solutions are necessary, their success in such settings has been mixed. In-patients have stated that when social contact was facilitated virtually, it made a positive difference to their experience; however, when treatment was provided through digital means, many felt that the standard of care dropped.

It is important to remember that a large number of those who have lived in mental health wards throughout the pandemic are children who are living with severe mental health disorders, such as eating disorders or severe depression. They need a more intense level of care than would be possible in the community, but that does not make the experience any less traumatic for a child. The Children's Commissioner found that there

[Dr Rosena Allin-Khan]

was a great deal of resilience on those wards throughout the pandemic, with staff working exceptionally hard to ensure that the standard of care and support provided to the children did not drop, but significant challenges remained. Although staffing rates stood firm in many children's wards, visits from external professionals dropped alarmingly throughout the pandemic. The disruption to mainstream education filtered its way into hospitals, with many teachers stopping all face-to-face teaching on the wards, which left untrained hospital staff to deliver teaching in addition to caring for patients.

During this second spike of the virus, it is crucial that all mental health in-patients receive appropriate, high-quality care. Will the Minister outline the measures that are in place to ensure that people in mental health hospitals will receive the best care available to them, despite ongoing pressures from the coronavirus?

Entrenched inequalities in mental health treatment and access to services have existed for many years, but they are undoubtedly being deepened during the pandemic. The disproportionate impact of the virus on black, Asian and ethnic minority communities has put them at greater risk of developing mental health problems. That is especially concerning, because historical racism and experiences of inappropriate support have left many individuals from BAME communities distrustful of mainstream health services, highlighting the need for support in the community. Distrust should not come as a surprise to the Government, considering that in 2019-20 the rate of detentions in England under the Mental Health Act was more than four times higher for black or black British people than it was for white people. The racial disparity in detentions under the Mental Health Act underlines the need to address health inequalities and to ensure that provision is widely accessible and that support is suitable for all. I would be grateful if the Minister outlined what work is being done to address the inequality.

We need to be clear that for many people, community support is the most effective way to improve their wellbeing, and that has to be a priority as we look to the recovery period. What work is being done to strengthen mental health support in the community at this time?

The impact that covid-19 has had on the wellbeing of the nation has been profound. The Centre for Mental Health found that approximately 10 million additional people will require some form of mental health support as a result of the pandemic. It is important that the Government recognise the additional need and have a strategy to address it during winter and beyond. We know that the best mental health strategies are proactive and preventive. Early intervention is key to addressing mental health concerns before they develop into something more insidious. The Government must ensure that services are prepared and have the resources to cope with any rise in demand.

The expiration of the provisions today is a small but welcome step in ensuring that patients who rely on safeguards in the Mental Health Act are adequately protected. I urge the Government to not stop there. The next step must be to publish the long-awaited White Paper on the Mental Health Act and to stand by their commitment to reform the legislation to better support people who are subject to it. Only then can we be

confident that those living with severe mental ill health will be properly supported by the system that is designed to protect them.

9.41 am

Ms Dorries: We recognise the immense strain that the pandemic and the measures to contain it have placed on everybody's lives, particularly in-patients in mental health services and people who work for the NHS in such services. Mental health is critical in these unprecedented times, and we recognise how important it is that people get the support they need for their mental health.

We know that some people will experience exacerbated mental health problems as a result of the pandemic, and there are also issues with people's wellbeing. I am probably accurate in distinguishing between wellbeing and mental illness—I think the hon. Member for Tooting used the term "mental illness" in her response. She was quite right to highlight that, during this pandemic, there has been pressure on people with pre-existing mental health problems and on the new cohort—frontline workers—who have been particularly susceptible during the pandemic.

Mental health continues to be our priority. We are doing our utmost to ensure that mental health services are there for everybody who needs them during the pandemic. As I said in my opening speech, that is thanks to the hard work and innovative approach of NHS workers, NHS England and NHS Improvement. We have recently announced our winter plan for mental health, in which we will outline the support that is available for people over the coming winter. I hope very shortly—within days—to be able to bring that plan forward. It is one element of our work to deliver a modern mental health service and to meet the demands created by the pandemic. The winter plan, which will be published imminently, is a demonstration of the Government's firm commitment to supporting the mental health of everyone throughout this winter period and beyond.

We are absolutely committed to continuing our investment and to expanding the transformation plan for mental health services in England. As I have said many times, that amounts to an additional £2.3 billion of extra funding a year in mental health services by 2023-24. The Government are setting out clear commitments to support mental health services to manage pressures over the winter, and we will also do so during our winter plan. All health and social care staff, including those providing mental health services in hospitals, get priority access to testing when they show symptoms. Hospitals can test patients, including those admitted with mental health conditions, in areas with a higher prevalence of covid.

The NHS worked hard to keep mental health services going during the first peak, using technology where needed but also providing face-to-face appointments where appropriate. All mental health trusts have established a 24/7 urgent mental health helpline, where people experiencing a mental health crisis can access support and advice. We took up this idea in late March, when we realised that we were facing the full blast of the pandemic. We had a meeting on, I think, 4 April with NHS England and all the mental health trusts; the 24/7 crisis helpline rolled out across all mental health trusts at a rapid pace, and it has been there for anyone facing a mental health crisis to use.

The Government have committed more than £400 million over the next four years to refurbish mental health facilities, to get rid of dormitories in those facilities and to benefit the patients of 40 trusts across the country. We are committed to supporting NHS staff. The NHS is setting up staff mental health hubs to provide proactive outreach, in addition to the services we are already providing for NHS frontline workers. We are investing £50 million to ensure that all staff get rapid access to those expanded mental health services.

To bring us back to the core purpose of the Committee, the Government committed to keeping all elements of coronavirus under close review and to sunset any provisions that are no longer necessary. The emergency modifications to the Mental Health Act were designed as a backstop to support services if unprecedented constraints in the mental health sector put patient safety at risk during

the pandemic, and the Government have remained conscious of the need to balance that with the rights of individuals who are detained under the Mental Health Act. Due to the resilience and the ingenuity of the NHS, we have not needed to switch on the provisions; now is therefore the right time to expire them.

This is an important milestone in our work to make much-needed reforms to the Mental Health Act, which will ensure that patients have greater autonomy and control over their care and treatment. The reforms will be set out in the Government's White Paper on the subject, which will be published shortly. I commend the draft regulations to the Committee.

Question put and agreed to.

9.47 am

Committee rose.

