

Parliamentary News

(January 1983–March 1983)

The Marriage Bill

The Marriage Bill received its Second Reading in the House of Lords on 28 January 1983. This proposes changes in the law to enable marriages of specified categories of persons to be solemnized at their place of residence. Some of the proposals arise from the Government's international obligation which is contained in the European Convention of Human Rights. Article 12 guarantees to men and women of marriageable age the right to marry. Imprisonment or detention in a psychiatric hospital prevents a detained person from exercising this right fully. The European Commission of Human Rights has recently considered two cases which raise the question of how far the rights guaranteed by Article 12 can apply to prisoners. The Commission's opinion was that the right to marry was, in essence, the right to form a legally binding association between a man and a woman and that this right should not be denied on the grounds that, as one partner was detained, the couple would not be able to live together. The Commission concluded that the imposition of a substantial delay before a prisoner could exercise his right to marry (as would often happen if a prisoner had to wait until the end of his sentence) was a violation of Article 12 of the Convention. In the Government's view the arguments in support of giving additional facilities for the marriage of prisoners apply equally to persons detained for substantial periods under Mental Health legislation. Neither category has ready access to authorized places of marriage under the present law and both are entitled under the European Convention to exercise the right to marry. Lord Elton, the Junior Home Office Minister, explained that the medical profession, including the Royal College of Psychiatrists, had been consulted and the view that clearly emerged was that in principle facilities should be made available to allow detained patients in hospital to marry. It was however recognized that the practical operation of any such arrangements would need to be handled carefully, having regard to the circumstances of long-term patients in mental hospitals. At the present time hospital chapels cannot be used for marriages but they would be in the future. Lord Elton made it clear that the hospital managers would not be able to object to any individual marrying. The only grounds for objecting will be as at present, in cases where the patient does not have the necessary mental capacity to understand the nature and purpose of the marriage ceremony. Most detained mental patients do have this capacity, but where they do not it will be open to the doctor in charge of the patient's treatment, or anyone else concerned, to enter at the appropriate time a *caveat* with the Superintendent Registrar of Marriages of the district in which the hospital is situated. This will give the grounds for the objection to the marriage. The proposals apply to England and Wales and there is a corresponding

provision in Northern Ireland. The Bill does not apply to Scotland where the provisions in the Marriage (Scotland) Act, 1977, already allow religious and civil marriages to be performed anywhere in Scotland.

On 1 March 1983 the Committee Stage of the Bill was considered. There was concern expressed that inappropriate marriages might take place if it is possible to marry in a hospital, but reassurance was given that the Bill is only concerned with the place of marriage and not the question of suitability or consent.

Mental Health Bill

On 31 January 1983 the Mental Health Bill was read for the second time in the House of Lords. The Lord Chancellor pointed out that it is a 'pure consolidation Bill', bringing together the law relating to mentally disordered persons. Numerous minor amendments have been made to the 1959 Act over the years and now extensive changes have been made by the Mental Health (Amendment) Act, 1982. On the House agreeing to the Bill being read a second time, it was referred to the Joint Committee on Consolidation Bills.

Court of Protection

On 26 January 1983, in a written answer, the Solicitor General said that a number of studies into the work of the Court of Protection had been completed and others were in progress. As a result of the completed studies a number of changes had been made in the administration. The work of the Court had now been divided into three Divisions: the Judicial Division, which deals with all judicial matters; the Protection Division, which deals with non-judicial matters relating to the administration of patients' estates by External Receivers; and the Management Division which, from 1 January, has taken over most of the receivership work previously undertaken by the Official Solicitor.

The case of Mr Peter Sutcliffe

In a written answer on 3 February 1983, Mr Patrick Mayhew of the Home Office said that although the Home Secretary had given very careful consideration to medical reports recommending transfer of Mr Sutcliffe from prison to a Special Hospital, and had considered matters brought out at Sutcliffe's trial and appeal, the offences of which he was convicted and his present circumstances in prison and his likely future, he had concluded that it was not in the public interest to direct Mr Sutcliffe's removal at present. He had given instructions that his mental condition and progress in prison should be kept under careful review and he would look again at the question of removing him to a hospital if there was any significant change of circumstances.

Mental health legislation

On 10 February 1983 the Home Secretary was asked for his assessment of the implications of the judgment delivered by the European Court of Human Rights on 5 November 1981 in the case of *X v. the United Kingdom*, and the passage of the Mental Health (Amendment) Act 1982, and the application of mental health legislation. In reply Mr Whitelaw said that the power to make Section 65 Orders—cases requiring the protection of the public from serious harm—is not diminished by the European Court's judgment or by the new legislation. More than 130 Restriction Orders were made during 1982.

Mentally disordered prisoners

In reply to a question (10 February 1983), it was said that over the last few years there has been a steady decline in the number of people in prison considered to be mentally disordered, and an increase in the number transferred to prison hospitals. It was hoped that this would continue. The programme for regional secure units would extend the range of facilities available in the NHS, and the new legislation contained useful new powers which should enable courts to divert more mentally disordered offenders from Prison Department custody.

In a reply to Mr Kilroy-Silk on 15 February 1983, Mr Mellor (Home Office) gave details for the number of mentally disordered persons in each prison on 31 December 1982 and the categories of the Mental Health Act 1959 into which they fell. The details are printed in *Hansard* and the totals given were as follows: 286 mentally disordered individuals were held in Prison Department establishments (mental illness—210; severe subnormality—1; subnormality—24; and psychopathic disorder—51). During the year from 1 October 1981 to 30 September 1982, 1,437 persons whom prison medical officers considered to be mentally disordered within the meaning of the Mental Health Act 1959 left Prison Department custody. This figure included sentenced inmates who may have completed their sentence or been transferred to hospital and unsentenced inmates who may have been transferred to hospital, granted bail, acquitted, given a non-custodial sentence or made subject to a Hospital Order. On 14 February 1983 it was also said that 12 prisoners were currently awaiting transfer to hospital under Section 72.

Prison psychotherapists

In a written answer on 8 February 1983, the Home Office said that there were 88 medically qualified visiting psychotherapists in the Prison Service, providing 221 sessions per week. The current fee was £47.00 for a two and a half hour session.

Children (psychiatric and psychological treatment)

Mrs Renée Short asked the Secretary of State what guidelines are issued by the DHSS on the circumstances in which

psychiatric or psychological treatment may be imposed on children under the provisions of Care Orders, and how the terms of such guidelines differ from any relating to Orders under Section 26 (Mental Health Act, 1959) and the new legislation. In reply it was said that no guidelines have been issued and advice on obtaining consent for the treatment of children is available to medical practitioners from their medical defence societies. The new legislation clarifies the position on consent to treatment for one very limited category of patients. It prescribes the circumstances in which medical treatment for mental disorder can be given to detained patients, including those detained on an application made under Section 26 of the 1959 Act, without their informed consent. The new Mental Health Act Commission will be asked to prepare a Code of Practice for the Secretary of State to lay before Parliament, on the medical treatment of patients within the purview of the Act.

NHS management inquiry

In reply to a question in the House of Lords (18 March 1983), the Junior Minister, Lord Trefgarne, said that a management inquiry team is examining the National Health Service to see what further action needs to be taken within existing funding to secure the most effective use and management of NHS manpower and related resources. The inquiry will not cover doctors and dentists and it will not deal with clinical matters as such. In 1983–1984 it is anticipated that the NHS will cost £15½ billion, and the inquiry will address itself only to the problems in England.

Solvent abuse

On 17 March 1983, in a written answer, the Minister of Health said that the exact figures of deaths associated with solvent abuse were not available, but forty-five such deaths are known to have occurred in the United Kingdom in 1981 and forty-seven in 1982, with eight further reports still under investigation.

Drug addiction

In a written answer on 9 March 1983 Mr Mellor of the Home Office said that the number of narcotic drug addicts known to the Home Office nearly trebled between 31 December 1972 and 31 December 1982.

Regional secure psychiatric units

In reply to a question by Mr Kilroy-Silk, Mr Geoffrey Finsberg said in a written answer (15 March 1983) that by the end of 1985 over 500 places are expected to be available in twelve permanent regional secure units in eleven Regions and 140 additional places are expected to be under construction at that time in two other Regions. Secure facilities of one kind or another are available at the present time in all Regions, including more than 600 places in twelve Regions in facilities which have been registered as interim secure units.

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