Mental Health Law England and Wales: a bumpy road.

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Legal background

• Mental disorder: long history of statutory regulation.
• “Modern” framework set in 1959 Mental Health Act:
  – civil detention,
  – criminal justice provision,
  – mental health review tribunals.
• Updated by 1983 Mental Health Act.
• Mental capacity (guardianship): originally left to the common law ie no statutory regulation.
Reform 1999-2007

• Mental health and mental capacity evolved separately.
• Mental health: Expert Committee established 1998. political drivers for reform:
  – ECHR compliance
  – Community treatment
  – Public protection
• Politics of risk. Expert Committee recommendations designed to reduce discrimination largely ignored.
• 2007 MHA introduced CTOs and replaced treatability requirement with appropriate treatment, but 1983 statutory structure remained largely unchanged.
• 2005 Mental Capacity Act provides statutory framework for adults who lack mental capacity.
MHA Civil Structure

- Involuntary Admission to hospital for Assessment, Treatment and in Emergency.
- Ability to enter hospital informally retained.
- Dr’s and Nurses holding power and place of safety orders
- Compulsory treatment powers: regulation of specific treatments
- Discharge from hospital by – nearest relative, RC, managers, tribunal
- Right to aftercare?
MHA Criminal Structure

• Entry to hospital via the CJS: pre-trial, post trial at conviction or on transfer from prison.
• Novel to separate hospital disposal from questions of criminal culpability – diversion.
• Discharge: RC, managers, tribunal and secretary of state. Significant influence of ECrtHR.
• Conditional discharge powers.
• Essential structure unchanged by 2007 Act.
Community provisions

• Source of much controversy
• Pre 2007 Act powers were hospital centred.
• Exceptions: conditional discharge and s17 leave and guardianship.
• Community treatment orders introduced by 2007 Act to apply after inpatient care.
• Powers do not allow forced treatment in the community.
Statistics

• End of March 2014: 23,531 people were subject to the Mental Health Act 1983 and of these 18,166 were detained in hospital and 5,365 were subject to a CTO.

• See http://www.hscic.gov.uk/home
Advantages of MHA structure

• Organisational clarity facilitates policy
• Professional confidence and training
• Monitoring, accountability and information gathering
• Provides safeguards to patients and professionals
• Includes criminal justice
• Framework for Code of Practice: eg Restrictive Intervention Reduction Programmes
• Human rights compliance: ECHR, art 3, 5, 8
Problems

• Discrimination against mental disorder. Possible justifications
  – Access services
  – Protect patient
  – Protect others.
• Encourages informal coercion?
• MHA/MCA interface. Parallel structures confuse patients and professionals. Departmental silos
• Human rights non-compliance: UN CRPD.
Current trends

• Growing HR awareness: patient involvement, care planning, consent
• Practical difficulties at MHA/MCA interface, particularly following ECrtHR and UK Supreme Crt rulings
• Concern over possible HR conflicts ECHR/CRPD
• Fusion > towards single framework for mental health and mental capacity.