This briefing has been prepared for the Report Stage of the Mental Health (Discrimination) (No 2) Bill on 30 November 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 Coddenham in the previous Session and has cross-party support. It is also supported by the mental health charities Mind and Rethink Mental Illness, the Law Society, and the Royal College of Psychiatrists.

The Bill passed Second Reading in the Commons on 14 September 2012 and was considered in Public Bill Committee in a single sitting on 31 October 2012. No amendments were tabled and the Bill passed Second Reading and Committee stages without a vote.
1 Second Reading debate

Introducing the legislation at the Second Reading debate on 14 September 2012, Gavin Barwell said that the simple purpose of the Bill is "to tackle the last legal form of discrimination in our society". He went on to discuss the Bill in detail but a summary of its provisions is provided below.

- 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.1

Mr Barwell talked about the reasons he had chosen to sponsor a Bill on mental health, including his experience of seeing the problems faced by friends, former teachers and constituents with mental illness. He made three contentions in support of his Bill, that:

- “...the law as it stands sends an appalling message to people with mental health conditions”;

- “...if the Bill is passed, companies, our courts and Parliament will benefit directly from the involvement of more people with experience of mental health conditions”; and

- “...most importantly, passing the Bill will send a clear message that discrimination is wrong and that people have a right to be judged as individuals, not stigmatised or discriminated against.”2

Other Members referred to the symbolic importance of the legislation while recognising the need for wider changes in public attitudes, and the shortcomings of existing services for people with mental illness. Charles Walker emphasised the importance of the Bill in providing

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1 The Mental Health (Discrimination) (No 2) Bill [Bill 11] 2012-13; further detail can be found in Mr Barwell’s opening speeches during Second Reading and Committee stage debates, and in Library Research Paper RP12/52.

2 HC Deb 14 September 2012 c545-6
hope and reassurance to people with mental health problems, and changing peoples’ views about mental illness. He acknowledged that there would continue to be lack of mental health advocacy for people in crisis and that the treatment and rights of people detained under the Mental Health Act 1983 also needed to be considered.

Diane Abbott, speaking on behalf of the Opposition, said she was pleased to support the Bill that was important “because of the symbolism of what it says about public attitudes towards mental health.” She also commented that there was a lack of resources for mental health services, and shortages in provision for particular groups including young people who self harm, and the lesbian, gay, bisexual and transgender community. She highlighted the disproportionate numbers of black and minority ethnic people in mental health hospitals. A number of Members referred to the mental health needs of the armed services and service veterans.

Kevan Jones gave a historical overview of the mental health legislation relating to Members of Parliament, and said that the basic principles had not changed since the Lunacy (Vacating of Seats) Act 1886. Charles Walker and Kevan Jones both said they had been overwhelmed by the support they had received as a result of speaking of their own experiences of having a mental illness, during a debate on mental health in June 2012.

Anne Begg quoted from the report of the Speaker’s Conference on Parliamentary Representation, of which she was a vice-chair. The report had recommended the repeal of 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. She also spoke of the challenges that she and other MPs with physical disabilities had been able to overcome in carrying out their roles and called for Members with mental illness to be treated equally to those with physical illness’ or disabilities.

Noting that section 141 referred to Members detained under the Mental Health Act 1983, John Pugh said that “We are torn between discrimination, which we reject, and the need to make sure people have proper and adequate representation. That question requires a solution of some subtlety.”

Chloe Smith, the Parliamentary Secretary to the Cabinet Office, confirmed the Government’s support for the Bill and said that tackling stigma and discrimination is at the heart of the Government’s mental health strategy, No health without mental health:

February last year saw the publication of the Government’s strategy on mental health entitled, “No health without mental health”. The strategy recognised that mental health is central to our quality of life and to our economic success, individually and collectively. It is interdependent with the success that any Government might hope for in improving training, education and employment, and in tackling the persistent problems that scar our society, from homelessness through to violence, substance abuse and other forms of crime.

The title of the strategy, “No health without mental health”, captures our ambition to mainstream mental health in this country. That concept has been referred to many times today. The Government expect parity of esteem between physical and mental

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3  Ibid. c566
4  HC Deb 14 June 2012 c516
5  HC Deb 14 September 2012 c548-9
6  Department of Health, No health without mental health: a cross-government mental health outcomes strategy for people of all ages, February 2011
health services. I know, from the comments of the hon. Member for Hackney North and Stoke Newington, that the Opposition also want that.  

Chloe Smith explained that she, as the political and constitutional reform Minister, was representing the Government in the Bill’s proceedings, rather than a Health Minister, because the legislation related to issues that cut across Government. She said the Bill had the full support of the Deputy Prime Minister, who is responsible for constitutional affairs, and the support of the Ministry of Justice and the Department of Health.

Statements from the chief executives of the mental health organisations supporting the Bill, welcoming its Second Reading, can be found on the website of the mental health charity Mind.

2 Committee Stage

There was a single sitting of the Commons Public Bill Committee on 31 October 2012; no amendments were tabled. There was a short general debate on all four clauses of the Bill, lasting less than an hour, and the Committee passed the Bill without a division.

A number of the Members who took part in the Second Reading debate also served on the Committee and referred to some of the same themes and concerns in both debates (a list of Members of the Committee can be found in the Appendix to this note).

Kerry McCarthy asked about the conditions under which people being treated for mental illness could ask to be excused from jury service, if the Bill was passed and they were no longer excluded under the Juries Act 1974. Responding for the Government the Parliamentary Secretary to the Cabinet Office Chloe Smith said that anyone summoned for jury service could request an excusal or deferral. She said that “each application is considered carefully and, in such cases, sympathetically, with due regard to individual circumstances”; although “no one eligible has the right to be excused it is extremely unlikely that anyone with a genuine mental health problem would be forced to serve”.

During his summing up of the Committee stage Gavin Barwell addressed questions raised by Julian Lewis and John Pugh about what recourse constituents have if their Member of Parliament is incapacitated or unable to perform their duties:

From my point of view, there are two answers to that question. First, if one is talking about a very short period, the political parties are good at putting arrangements in place. My predecessor as MP for Croydon Central was absent for a period, and my hon. Friend the Member for Croydon South (Richard Ottaway) covered his constituency. He made sure that constituents with problems had some recourse to Parliament, and the House gave him permission to run his neighbour’s constituency office. Secondly, however, a longer-term solution is needed. ... I think I am right in saying that the Speaker’s Conference recommended that a Select Committee should

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7 HC Deb 14 September 2012 c570
8 Mind website, “Leading mental health organisations welcome MP vote to scrap outdated, discriminatory laws”, 14 September 2012
9 Clause 4 makes provision for commencement, which would happen two months after the Act is passed for clause 1 and 3; provisions under clause 2 will proceed by order to give the Ministry of Justice time to redesign jury summoning forms. A schedule to the Bill lists consequential amendments and repeals.
10 PBC Deb 31 October 2012 c11-12
consider the issue and suggest the right course of action to take when a Member is incapacitated for a long period, to ensure that their constituents do not lose out.11

Mr Barwell concluded by referring to previous legislation that had helped address discrimination in other areas:

During my adult lifetime, I have seen our society make real progress in tackling racism, sexism and homophobia. Such things do not happen quickly or overnight. As a Conservative, I very much agree with her that we cannot simply pass a law and change people's behaviour at the stroke of a pen. It is true, however, that when Parliament sends out a clear signal, that has an effect on people's behaviour over time and, as she said, can be an important catalyst for changing attitudes. In my adult lifetime, important legislation has been passed by Governments of both parties to address discrimination on the basis of race, gender, sexuality and disability. I hope that the Bill—I am very glad that it has received cross-party support—will be a further step in ensuring that we learn to treat people in our society as individuals and not to judge them as a group.12

11 Ibid. c13-14
12 Ibid. c14
Appendix – Members of the Public Bill Committee

Chair:
Mr Peter Bone

Members:
Ms Diane Abbott (Hackney North and Stoke Newington) (Labour: Shadow Health Minister)
Gavin Barwell (Croydon Central) (Conservative)
Sir Paul Beresford (Mole Valley) (Conservative)
Oliver Colvile (Plymouth, Sutton and Devonport) (Conservative)
Gloria De Piero (Ashfield) (Labour)
Jim Dobbin (Heywood and Middleton) (Labour)
Jane Ellison (Battersea) (Conservative)
Damian Hinds (East Hampshire) (Conservative)
Mr Kevan Jones (North Durham) (Labour)
Dr Julian Lewis (New Forest East) (Conservative)
Kerry McCarthy (Bristol East) (Labour)
John Pugh (Southport) (Liberal Democrat)
Alison Seabeck (Plymouth, Moor View) (Labour)
Miss Chloe Smith (Parliamentary Secretary, Cabinet Office)
Mr Charles Walker (Broxbourne) (Conservative)
Hywel Williams (Arfon) (Plaid Cymru)