



The Mental Health Bill 2024-2025

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ELECTION 2017

The Tories will scrap the current Mental Health Act and bring in a new bill



The Road to the New Act ...

- The Bill is based largely on the recommendations by the Independent Review of the MHA in 2018
- Previous government published White Paper in 2012 (with consultation) & draft Bill in 2022, subject to pre-leg scrutiny
- The Bill was introduced into Parliament on 6 Nov 2024
- Has passed through House of Lords & Commons stages
- Next step 'ping pong'
- Royal assent – next month?

Key areas

- 1) The new detention criteria
- 2) The nominated person
- 3) Part 4 – consent to treatment
- 4) Autism & learning disability
- 5) Independent Mental Health Advocates
- 6) Extension of the Human Rights Act

Tightened detention criteria

- Section 2 & 3 detention criteria tightened amended to require '**serious harm**' to the patient/others, & consideration of the '**nature, degree and likelihood of the harm**'
- A new reasonable prospect test of therapeutic benefit added to s.3 detentions
- Learning disability & autism excluded (without a co-existing mental disorder) from s.3 detentions
- The tightened criteria are also applied to Community Treatment Orders

The Nominated Person (1)

- NP can be selected by a person at any time when they have capacity or competence to do so
- NP must 16+ (unless person is under 16, then NP must be 18+)
- The nomination must be witnessed by a health/care professional
- Witness must confirm: (1) no reason to think the person lacks capacity (2) no reason to think NP is unsuitable, & (3) no undue influence or fraud used
- NP continues to represent the person even if they subsequently becomes unwell & no longer have capacity

The Nominated Person (2)

- If the person lacks capacity to nominate, & has not made a nomination, an AMHP may appoint a NP
- If the person is 18+, AMHP must appoint (1) donee/deputy, or (2) anyone else - taking into account wishes & feelings
- If the person is 16/17, AMHP must appoint (1) a local authority with PR, (2) deputy, & (3) anyone else – taking into account wishes & feelings
- If the person is under 16, AMHP must appoint (1) a local authority with PR, (2) someone with PR, or (3) anyone else - taking into account wishes & feelings
- Appointment lasts until, for example, the person gains capacity & nominates, or a new NP is appointed

The Nominated Person (3)

- NP retains all the current powers of the NR
- New powers to be consulted about CTPs, transfers and renewals & extensions to detention or CTO, & right to object to a CTO
- Can be 'over-ruled' (ie not displaced) if they object to s.3, CTO or guardianship, or discharge patient from detention, CTO, or guardianship
- The RC must, within 72 hours, provide a written report that the patient would act in a manner dangerous to others or themselves
- County court has power to terminate the appointment of a Nominated Person

Part 4 – Consent to treatment

- New clinical checklist for clinicians when deciding whether to give medical treatment
- A patient with capacity/competence can refuse medication (including via an ADRT) unless there are 'compelling reasons'
- A SOAD needed if a patient with capacity/competence is refusing urgent ECT (including via an ADRT)
- The 3-month time period after which the SOAD certificate must be provided is reduced to 2 months

Autism & learning disability

- Duty to arrange Care (Education) & Treatment Reviews (**CETRs**) for detained patients with LD/A under 18 or 18+ with EHC plan
- The responsible clinician, responsible commissioner, ICB & local authority must have regard to CETR's recommendations
- Duty on ICBs to establish & maintain a register of those with LD/A & who are at risk of MHA detention (**'risk register'**)
- ICBs & local authorities must have regard to the registers when exercising their commissioning functions

Independent Mental Health Advocates

- IMHA services will be available to informal patients (in Wales this already applies)
- Duties on hospital managers to notify advocacy providers about qualifying patients
- Duties on advocacy to visit & interview the patient to find out (1) if they have capacity & wish to receive help or (2) if they lack capacity, if this would be in their best interests
- Role includes supporting patients to be involved in care & treatment & making complaints

Advance choice documents

- A written statement specifying their decisions, wishes & feelings about any relevant matter if in the future they are assessed or detained under the MHA & lack capacity in relation to the matter
- Duty on NHSE, ICBs & LHBs to make appropriate arrangements for (1) providing info on ACDs, (2) help people create them & (3) bringing the info & help to attention of people
- Arrangements must include having a conversation with someone who is suitably qualified
- Must have particular regard to the benefits for people who have been discharged in last 12 months

Extension of Human Rights Act

- *Sammut v Next Steps Mental Healthcare Ltd* [2024] EWHC 2265 (KB) confirmed that private care providers being commissioned by local authority & LHB to deliver s117 services are not covered by the Human Rights Act
- Government amendment extends remit of the Human Rights Act to cover private care providers when providing care & treatment to informal hospital patients & under s117 (& its equivalent in Scotland)

Other key reforms

- Shorter detention period (from 6 months to 3 months)
- More frequent tribunal hearings (e.g. s.2 patients can apply within 21 days & automatic referrals after 3 months)
- Statutory care & treatment plans
- Removal of police stations & prisons as places of safety
- New power for tribunal or Secretary of State to impose conditions on conditional discharge which amount to deprivation of liberty
- Statutory 28-day time limit for transfers from prisons or IRCs to hospital for treatment under the MHA
- 'Deeming rules' applied to s.117 ordinary residence & decisions to end s117 must be in writing

Issues for ping-pong

The House of Lords amendments that were removed

1. Extension of police powers of detention under sections 135 & 136 to health & social care professionals
2. 12-month maximum duration for CTOs & only extended if a second registered psychiatrist gives written agreement
3. A hierarchy for the appointment of a Nominated Person by an AMHP for those aged under 16, who lack competence
4. A duty on an IMHA to hold a de-briefing meeting with mental health patients after they have left hospital, to review their experience of hospital treatment

Laskaris amendment

- High profile campaign led by Fiona Laskaris, the mother of Christopher Laskaris who was murdered in 2016
- Christopher had autism & killed by a drugs dealer who had taken over his flat to exploit him - not being provided with mental health services & his capacity was not assessed
- Sought an amendment to the Bill to give family members a right to request a mental capacity assessment by an ICB or local authority in cases where a person is at risk of detention under the MHA or MCA
- However, Government argued the Bill was not the appropriate vehicle & Public Bill Committee ruled it out of scope of the Bill
- The Care Minister did, however, commit to explore the issues further with Fiona Laskaris & how the Government might address them

Implementation

- The first priority will be the Code of Practice (which would take a year) & the secondary legislation
- There will be training of the existing workforce in 2026/27 & commencement of the “*first major phase of reforms in 2027*”
- Government estimates it will take up to 10 years to fully implement the Bill

ANY QUESTIONS

DO YOU HAVE?

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