Department of Health & Social Care

From Stephen Kinnock MP
Minister of State for Care

39 Victoria Street
London
SW1H 0EU

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Dear interested parties,

MENTAL HEALTH BILL: COMMONS INTRODUCTION

I am pleased to announce that the Mental Health Bill transferred to the House of Commons on 24 April, having successfully completed its passage through the House of Lords.

Thank you all for your continued engagement with and support for the reform of the Mental Health Act 1983, which is undoubtedly long overdue. These reforms deliver the Government's commitment to modernise the Act, to give patients greater choice, autonomy, enhanced rights and support, and ensure everyone is treated with dignity and respect throughout their treatment, while ensuring patient and public safety remains paramount.

The Bill was introduced to the House of Lords on 6 November 2024, where it benefitted from the constructive scrutiny during its passage through the House of Lords, led by my colleague, Baroness Merron and supported by Lord Timpson on behalf of the Ministry of Justice.

The full Mental Health Bill and supporting documents can be found at Mental Health Bill [HL] - Parliamentary Bills - UK Parliament. **Annex A** recaps the key provisions on the Bill and at **Annex B** we have provided some background information about the current Mental Health Act and some facts and figures. **Annex C** provides a summary of the changes that the Bill underwent in the House of Lords.

The insight and input of stakeholders has been crucial to the development of the Bill's reforms, over the course of the Independent Review into the Mental Health Act, the Bill's pre-legislative scrutiny, and passage through the first House.

At this important moment, I also wanted to set out the changes the Bill underwent in the House of Lords, which are summarised at **Annex C**. If you wish to share any reflections on these amendments, please do not hesitate to get in touch.

Thank you for your continued engagement as the Bill progresses through the House of Commons, to support our vital work to make the Mental Health Act fit for the 21st Century.

Kind regards,

STEPHEN KINNOCK

Annex A: Recap of key provisions in the Mental Health Bill

The Bill will:

Improve patient experience by

- Including the wording of the guiding principles identified by the Independent Review within the Act's requirements for the statutory Code of Practice.
- Introducing statutory care and treatment plans for patients detained under the Act, (and on community treatment orders or subject to guardianship), excluding those under short term sections. This is to ensure that patients have a clear and up to date plan in place outlining what treatment and support they need to progress towards recovery and a safe and effective discharge.
- Strengthening and clarifying the detention criteria. The new criteria will make clear that people will only be detained if they pose a risk of serious harm to themselves and/or others. The detention criteria require that appropriate medical treatment is available. The Bill updates the definition of appropriate medical treatment to require there is a reasonable prospect that the patient will benefit from the proposed treatment.
- Reforming the use of Community Treatment Orders (CTOs) to reflect the revised detention criteria, to increase oversight and scrutiny of decision making, and to create new powers to empower the Nominated Person to object when appropriate (see below).
- Improving Mental Health Tribunal (MHT) oversight of a patient's detention by increasing the frequency that patients can appeal their detention and ensuring that those who do not appeal are referred automatically more frequently. It will also provide the MHT with a power to recommend that a plan for the provision of community aftercare services is made to facilitate patient discharge.

Ensure patient and public protection by

- Strengthening clinical decision making across the detention pathway and allowing for greater scrutiny of decisions. This includes the decision to discharge, where going forward the Responsible Clinician will be required to consult with another professional before they can discharge an individual from section. We will build on this further in secondary legislation and in statutory guidance – including that patients must receive a personalised plan for ensuring their safety before and after discharge and managing any risk that they may pose, as part of the new statutory care and treatment plan.
- Responding to a recommendation by the Joint Committee, by removing the draft Bill's proposed requirement for clinicians to consider 'how soon' harm may occur from the detention criteria to avoid the suggestion that harms must be imminent and to ensure we do not dissuade clinicians from making beneficial early interventions.

Improve patient choice and autonomy by

- Introducing a new clinical checklist requiring clinicians to, among other things, support the patient to take part in decision making about their care and to consider their wishes and feelings (including those stated in advance).

- Clinicians will still be able to give someone compulsory treatment, which is against their expressed wishes and preferences. However, strengthened safeguards will ensure this is only where there is good reason to do so and there will be additional scrutiny of this decision.
- In response to a recommendation of the Joint Committee, introducing duties on health commissioners that aim to facilitate people at risk of detention to make an Advance Choice Document (ACD), containing a record of their decisions, wishes and feelings, at a time when they are well. This can be used by mental health professionals if the individual later loses the relevant capacity or competence, allowing the individual to still inform decision making around their admission, care and treatment.
- Allowing patients to choose someone to be their 'Nominated Person' to look out for them and their interests, increasing their powers compared to those of the Nearest Relative, so for example they can be consulted about a patient's future care. In response to a Joint Committee recommendation, removing the requirement for the Approved Mental Health Professional (AMHP) to see the Nominated Person in person.
- Expanding access to Independent Mental Health Advocates to voluntary patients and making access opt out for detained patients.

Limit the detention of people with a learning disability and autistic people (without a qualifying co-occurring mental health condition) by

- Restricting the use of Part II the Act for people with a learning disability and autistic people. It will no longer be possible to detain a person with a learning disability or autistic person under Part II, section 3 unless they have a co-occurring mental disorder that warrants hospital treatment. Detention under Part II, section 2 will still be possible for a maximum of 28 days for assessment. This change will affect civil patients only. Hospital will remain an option for those patients in contact with the criminal justice system where the only alternative to detention in hospital is prison.
- Placing Care (Education) and Treatment Reviews on a statutory footing so that an NHS commissioning body must take steps to ensure reviews are held when a patient with a learning disability or an autistic patient is detained in hospital. And placing a duty on certain bodies to have regard to the review recommendations.
- Creating a duty on Integrated Care Boards to establish and maintain a register of people with a learning disability and autistic people who are at risk of detention. Placing a duty on that body and on local authorities to have regard to any information obtained for, or contained in, the register or shared under the provisions and seek to ensure the needs of these people can be met without detaining them.

Improve access to mental health care and treatment for people in the criminal justice system by

- Ending the use of prison and police cells as 'places of safety' under the Act. The use of police cells as a place of safety will also be ended for civil patients where the police exercise their powers under section 135 and 136 of the Act.
- Ending the use of remand for own protection under the Bail Act where the Court's sole concern is the defendant's mental health.
- Introducing a statutory 28-day time-limit for transfers from prison and other places of detention to hospital when a person requires treatment under the Act.

- Introducing a sub-set of Conditional Discharge, ‘Supervised Discharge’, to provide for a small number of restricted patients that are no longer benefitting from being in hospital.
- Introducing new powers to enable patients remanded by the Crown Dependencies’ courts to transfer to suitably secure hospitals in England and Wales for treatment and assessment.

Annex B: Mental Health Bill Fact Sheet

What is the Mental Health Act?

The Mental Health Act 1983 (MHA) is the main piece of legislation that covers the assessment, treatment and rights of people with a mental health disorder. It provides a legal framework to authorise the detention and compulsory treatment of people who have a mental health disorder and are considered at risk of harm to themselves or others. Powers for compulsory admission for assessment and treatment are set out in Part II and Part III of the Act.

Part II of the MHA deals with patients who are detained in hospital and have no criminal proceedings against them. These are generally referred to as civil patients.

Part III of the MHA is concerned with the care and treatment of offenders with severe mental health needs who are involved in criminal proceedings or under sentence.

What was the Independent Review of the Mental Health Act?

The previous Government commissioned Professor Sir Simon Wessely to undertake an independent review of the Mental Health Act, to consider rising rates of detention, the disproportionate number of people from ethnic minority groups detained under the Act and how processes could be brought in line with a modern mental health system.

The Independent Review was published in 2018 and made extensive recommendations for change. Following further public consultation, a draft bill was published in 2022, setting out planned changes to the Act. This underwent pre-legislative scrutiny (PLS) by a joint committee of both Houses. The Joint PLS Committee produced a report and recommendations, to which the previous Government responded in March 2024. Notably, the Committee stated, “We welcome the draft Mental Health Bill. It makes important changes to introduce more choice, accountability, and oversight into the use of the MHA”.

Facts and figures

Recent data has shown:

- In 2023/24 there were around 52,500 new recorded detentions under the Mental Health Act in England. This is an estimated 2.5 per cent increase in detentions from 2022/23[1], following a 7.7 per cent fall in detentions from 2021/22.[2]
- The majority of people are detained under Part II of the Act. Over two-thirds (70.8%) of all people detained in hospital on 31st March 2024 were detained under Part II of the Act, while nearly a third (29.2%) were detained under Part III of the Act.[3]

[1] As above.

[2] NHS Digital (25 January 2024). Mental Health Act Statistics, Annual Figures, 2022-23. Accessed at: Mental Health Act Statistics, Annual Figures, 2022-23 - NHS England Digital. Trend comparisons are affected by changes in data quality. NHS England estimate based on the providers that submitted good quality detentions data.

[3] NHS Digital (12 September 2024). Mental Health Act Statistics, Annual Figures, 2023-24, People subject to the Act at year-end. Accessed at: People subject to the Act at year-end - NHS England Digital

- A total of 1,746 restricted patients were admitted to hospital for treatment under the Mental Health Act in 2023 in England and Wales, a 5 per cent increase from 2022.[4] As of 31 December 2023, there were 7,833 restricted patients, of which 4,648 were detained in hospital and 3,185 conditionally discharged. Restricted patients are offenders subject to special controls by the Secretary of State for Justice, for example after a court sentence or transfer from prison.
- In 2023/24, 963 detentions were recorded for children and young people aged 17 and under - over two-thirds (689) of these were aged 16 or 17.
- In 2023/24, black people were three and a half times more likely than white people to be detained under the Mental Health Act, and seven times more likely to be placed on a Community Treatment Order (CTO).[5]
- The number of inpatients with a learning disability and/or autistic inpatients subject to the Mental Health Act has fallen from 2,500 in March 2015 to 1,875 in February 2025. However, a larger proportion of inpatients with a learning disability and/or autistic inpatients are now subject to the Mental Health Act than previously – 91 per cent in February 2025 compared to 86 per cent in March 2015.[6]

[4] Ministry of Justice. (25 April 2024). Restricted Patients Statistics, 2023, England and Wales. Accessed at: Restricted_Patients_Statistics_2023.pdf

[5] NHS Digital (12 September 2024). Mental Health Act Statistics, Annual Figures, 2023-24. Accessed at: Mental Health Act Statistics, Annual Figures, 2023-24 - NHS England Digital Table 1b, 1c, 3c.

[6] NHS Digital (17 October 2024). Learning Disability Services Monthly Statistics, AT: September 2024, MHSDS: August 2024 Accessed at: Learning Disability Services Monthly Statistics, AT: September 2024, MHSDS: August 2024 - NHS England Digital Table 2.3

Annex C: Changes Made During House of Lords Passage

During the Bill's passage through the House of Lords, the Government made the following amendments and commitments:

Amendments

- **Placement of children and young people:** Amendment to introduce a statutory commitment to review whether existing CQC regulations which require notification when a child under 18 is placed in an adult psychiatric unit, should be extended to require notification to CQC in relation to other incidents where a child in hospital is being treated or assessed in relation to mental disorder, and whether the 48 hour time period before notification is made remains appropriate.
- **Nominated Person -** amendments to clarify who the Approved Mental Health Professionals (AMHPs) should appoint as the Nominated Person where a child or young person is in the care of a local authority and lacks capacity or competence to appoint a Nominated Person themselves. These two amendments:
    - Clarify that for 16- and 17-year-olds, where they lack capacity and there is a Care Order in place, the Approved Mental Health Professional (AMHP) must appoint the local authority as their Nominated Person. Currently the Bill gives the AMHP discretion on this matter.
    - Remove the requirement that a local authority must be willing to act as the Nominated Person, so that they must be appointed where they have parental responsibility, and the child or young person lacks capacity or competence to chose their own Nominated Person.
- **Nominated Person witness signature:** Amendments to remove the requirement for the nominated person's signature to be witnessed in person. Amendments also mean that the various statements and signatures no longer have to be contained in the same instrument.
- **Remote assessment:**
    - **Second opinion providers**: Under the Act, the regulator is responsible for appointing individuals to provide independent second opinions on the administration of certain treatments (under Part 4 and Part 4A). These are known as second opinion appointed doctors (SOAD). As part of this process, the appointed person may visit, interview or examine the patient to make their determinations about the treatment in question. These amendments ensure that the Bill is clear that remote interview and examination (by live video or audio link) is permitted for this process, where it is considered appropriate to do so.

- **In response to the DPRRC's Report, the Government made the following amendments:**
    - **Urgent ECT:** Amendment to remove the Henry VIII power in Clause 18 that would allow the Secretary of State to amend the Act to set out the exceptional circumstances in which an approved clinician, rather than a second opinion appointed doctor (SOAD), can certify urgent and compulsory electroconvulsive therapy. Instead, the process for this is now set out on the face of the Bill in Clause 18.
    - **Consequential provision:** Amendment to ensure regulations made under the consequential amendment powers in the Bill, set out in clauses 55 and 56, that amend or repeal primary legislation are subject to the affirmative resolution procedure. Clause 56, was introduced during passage to provide

Welsh ministers with equivalent powers to make consequential provision as clause 55 provides in respect of the Secretary of State, where the Welsh Government is operating in areas of devolved legislative competence.

- **Several minor and technical amendments to:**
    - **Section 117 After-care:** Clarify that references to after-care services include services arranged (as well as directly provided) by a public authority under section 117 of the Mental Health Act 1983.
    - **Learning Disability and Autism – Care (Education) and Treatment Reviews:** Clarify that a responsible commissioner may make arrangements for a care, education and treatment review report to be provided to other persons than those listed in the clause.
    - **Urgent ECT:** Clarify that, as is currently the case under the Act, urgent ECT can be provided without a SOAD's certificate where the patient is consenting or the patient lacks capacity but the treatment does not conflict with an advance decision etc.
    - **Commencement for Supervised Discharge and Transfers:** Ensure that all safeguards are in place from the time of commencement of the new supervised discharge power and that the change in detention criteria for transfers from places of detention to hospital can be implemented alongside the statutory time-limit.
    - **Tribunal Application Periods:** Reduce the period within which an application to the tribunal may be made from six months to three months where a patient is transferred from guardianship to a hospital under section 19. We are making this change to ensure that the 'relevant period' within which transferred guardianship patients can make an application to the tribunal aligns with the 'relevant period' for section 3 patients. This is consequential to the changes the Bill makes in Clause 29 to reduce the initial detention period for patients admitted for treatment from 6months to 3months.

<u>Commitments</u>

Among a number of Government commitments made during Lords passage, the Government committed to the following work in the Second House:

- **Advance Choice Documents:** Commitment to continue work to strengthen Advance Choice Document duties into the Second House, with the intention of bringing a Government Amendment.

- **Human Rights Act**: Commitment to continue work on a Human Rights Amendment into the Second House, with the intention of bringing a Government Amendment. This issue follows from the Sammut case from 2024, which highlighted issues with equity of access to protections under the Human Rights Act based on whether a patient is cared for and treated by a private care provider, even where care and treatment is funded and/or arranged by the NHS or Local Authority.

<u>Amendments made following the Will of the House</u>

The following other amendments were made at Lords Report, and the Government is considering its position:

- **Extension of Police Powers of Detention to other specified healthcare professionals under section 135/136**: Seeking to introduce a new category of "authorised person" who can detain persons under section 135/136 of the Mental Health Act. The amendments also add police into sections 2,3 and 5.
- **Community Treatment Orders**: Seeking to introduce a 12-month maximum duration for CTOs, which could only be extended if a second registered psychiatrist gives their written agreement.
- **Nominated Person**: Seeking to create a hierarchy for the appointment of a Nominated Person by an Approved Mental Health Professional (AMHP) for those aged under 16, who lack competence to chose their own. The AMHP would be required to appoint (in order) a local authority if the child is subject to a care order, a special guardian, a person named in a child arrangements order or a person with parental responsibility. Where two people could be appointed preference would be given based on age.
- **Debriefing Patients**: Seeking to mandate the de-briefing of mental health patients by Independent Mental Health Advocates after they have left hospital and require a report to be published.