Mental Health Act Reform in England and Wales

Implementation of long-awaited reforms. What do we know and what how can Psychiatrists prepare

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History of the Bill

- In December 2025, the Mental Health Bill finally received royal assent.
- Reform process started in October 2017
- There has been an Independent Review, a White Paper, Draft Bills and Pre-Legislative Scrutiny to get to this stage

Bill Intentions

- “To make improvements following rising detention rates, racial disparities in detention and concerns that the Act is out of step with a modern mental health system”
- The Wessely Review focussed on increasing autonomy and increasing safeguards.
- The Government have also introduced more radical changes on learning disability and autism

Implementation timeline

- DHSC estimate full implementation will take around 10 years
- The next two years will focus on Code of Practice and training workforce
- Phase one of implementation will begin in 2028/29 but will only include changes that will not place additional burden on the workforce
- The only change that will be implemented straight away is the provision to authorise deprivations of liberty to restricted patients conditionally discharged to the community.

Principles and Definitions

- Four new principles:
  - choice and autonomy
  - least restriction
  - therapeutic benefit
  - the person as an individual.
- Four new definitions for :
  - “autism”
  - “learning disability”
  - “psychiatric disorder”
  - “appropriate medical treatment”.

Detention Criteria

- Section 2 (admission for assessment) and Section 3 (admission for treatment) criteria now include tests for whether ‘serious harm’ ‘may be caused’ to the health or safety of the patient or another person, unless the patient is detained (or receives medical treatment) and the ‘likelihood’ of the harm.
- Potential implications of these changes:
  - ‘may be caused’ clause and its liability for retrospective bias - could drive defensive (rather than clinically reasoned) practice.
  - ‘likelihood’ clause – could drive arguments about probabilities.
- Government looking to implement this in 2028/29

Advance Choice Documents

- Health bodies will be required to inform patients about advance choice documents (ACDs), which record the patient's care and treatment preferences for the future.
- Created when the patient is well with the relevant capacity and apply when the capacity is lost
- This is not a statutory right but a duty for bodies to make arrangements so that people at risk of detention are informed of their ability to make an ACD
- Training requirements
- This is likely to be implemented after phase one – meaning after 2028/29 as there are workforce implications

Community Treatment Orders

- Only minor changes to CTOs
- CTO criteria amended to be in line with the new detention criteria
- Earlier automatic referrals to the tribunal are introduced
- Though the Government believes that these changes should reduce the number of CTOs, they are still unlikely to be implemented in the first phase

Conditional discharge for restricted patients in the criminal justice system

- Only change that will be implemented immediately (18 February)
- Power to apply conditions following discharge to the community that may involve a deprivation of liberty.
- This change effectively reverses the Supreme Court's decision in that neither the tribunal nor the SSJ could impose conditions amounting to deprivation of liberty

Learning Disability & Autism

- Radical change introduced by Government after the Wessely Review
- It removes, for the purposes of Part 2 of the Act, people with a learning disability and autistic people from the scope of the conditions for which a person can be detained for compulsory treatment under section 3.
- The College has pointed out the great number of potential unintended consequences from this
- There are times when community services cannot manage the level of risk that some patients with LD present with
- Excluding people with Autism/Learning Disability from admission for treatment (section 3) would result in use of the Liberty Protection Safeguards (MCA)
- Danger that people with LD presenting with such high-risk behaviours will be dealt with by the police and in the Criminal Justice System (CJS) if they cannot be admitted to hospital under the MHA.
- Because of all of these risks, this will not be implemented for many years and will take substantial investment in community service beforehand

Additional Safeguards

- New safeguards are introduced regarding consent to treatment, including a clinical checklist for clinicians
- If a patient refuses medication, and has capacity to do so, treatment cannot proceed unless there is a compelling reason, certified by a second-opinion doctor (SOAD).
- The Bill also reduces the requirement for a SOAD certification of medication from three months to two months and introduces additional safeguards for those refusing electroconvulsive therapy (ECT).
- Given the workforce implications, this is unlikely to be implemented before two years

Nominated Person

- The Bill introduces a nominated person (NP) who can be chosen by the patient (if they have the capacity).
- This replaces nearest relative
- Similar rights and powers, but with some additional responsibilities,
- Will be introduced in the first stage of implementation (2028/29)

Independent Mental Health Advocacy (IMHA)

- Extends the right to an IMHA to informal patients and introduces an opt-out system in England
- Likely to be implemented in later stage of implementation

Care and Treatment Plans:

- The Bill introduces a new statutory care and treatment plan which will be required for detained patients
- The plan should be developed by the person in charge of the patient's care in direct collaboration with the patient
- Not likely to be implemented before 2029

Tribunals

- The Bill expands access to Mental Health Tribunals and shortens detention periods
- For patients subject to S3, referral will now be 3 months after detention starts instead of 6 months as it is presently and thereafter will be 12 months instead of 3 years if the tribunal has not since considered the case.
- Independent Research commissioned by the College following the White Paper in 2021 found that an additional 494 Full-Time Equivalent psychiatrists will be needed in England by 2033/34
- However, it is likely there will be expanded workload for clinicians and hence a need for an expanded workforce

Type of patient	Current provisions	Proposed provisions
Patients subject to section 3	Referral 6 months after the detention started, if the patient had not made an appeal. Thereafter referral takes place if more than 3 years have elapsed since the case was last considered by the tribunal. For patients under the age of 18, cases are referred to the tribunal annually.	Referral 3 months after detention starts, if the patient had not already made an appeal. Thereafter, referral would take place 12 months after the detention started, if the tribunal has not considered the case in the intervening months. After the first 12 months of detention, referral would take place annually.
Patients on a CTO	During the CTO, referral takes place 6 months after detention begins, if the tribunal has not considered the case in the first 6 months. Thereafter, referral takes place if more than 3 years (or 1 year in the case of a patient under 18) have elapsed since the case was last considered by the tribunal. If the CTO is revoked, referral to the tribunal takes place as soon as possible.	Referral would take place 6 months after the patient was put on the CTO, if the tribunal has not considered the case in the first 6 months. Thereafter, referral would take place 12 months after the patient was put on the CTO, if the tribunal has not considered the case in the intervening month and continue to take place annually.
Patients subject to Part III	Referral takes place if the tribunal has not considered the patient's case in the last 3 years.	Every 12 months.
Patients on a conditional discharge (restricted, part III patients)	These patients have no right to an automatic referral.	Referral would take place 12 months following receipt of the conditional discharge by the patient. Thereafter, referral would take place every 2 years.

S117 Aftercare

- The Bill introduces new rules on Section 117 aftercare services, ensuring that the placing authority is responsible for providing aftercare, even when a patient is placed out of area.
- The mental health tribunal is also given the power to recommend that the responsible after-care bodies make plans and can reconvene to reconsider a case.
- This is likely to be implemented in phase one, though it is yet to be confirmed

Places of Safety

- The Bill Removes police cells and prisons from the definition of places of safety.
- These are welcome changes but will have substantial implications
- In the absence of psychiatric health-based places of safety, there could be an increase in the use of ED/A&E as a place of safety
- Additionally, there are potential implications for prison changes as people are currently held in prison when a hospital order is made, and this may mean delays to sentencing.
- The implementation timelines are likely to be within the next 2 years

Prison Transfers

- A new time limit of 28 days will be set to transfer prisoners who need mental health treatment to a mental health hospital.
- However, where patients remain in prison beyond such a time frame this almost always results from lack of hospital beds and not from failure of clinicians to respond to assessment requests.
- We expect this to be implemented in the next two years

Thank You.