

UK government announces new Mental Health Bill to modernise the Mental Health Act 1983

19 July 2024  Katie Viggers

On 17 July 2024, the King's Speech included the announcement of a new Mental Health Bill aimed at modernising the Mental Health Act 1983 (MHA) and making it fit for the 21st century. The new Labour government has pledged that the Bill will provide patients with greater choice, autonomy, rights, and support and will ensure that they are treated with dignity and respect throughout their treatment.

The announcement of the new Bill was expected, given Labour's criticism of the current MHA, which they deem to be "woefully out of date". Labour has previously condemned the MHA for being discriminatory against Black people and has highlighted the disproportionate number of patients with learning disability and autism detained under the Act.

What will the Mental Health Bill do?

In the briefing notes to the King's Speech, the government says that the Mental Health Bill will take forward the vast majority of Professor Sir Simon Wessley's 2017 recommendations for legislative reform and will "include a wide range of changes to shift the balance of power from the system to the patient, putting service users at the centre of decisions about their own care". In particular, the government says the Bill will:

- Revise the detention criteria to ensure that people can only be detained if they pose a risk of serious harm either to themselves or to others, and where there is a reasonable prospect that treatment would have a therapeutic benefit.
- Revise and shorten the period that a patient may be kept in detention for treatment and provide faster, more frequent reviews and appeals of both detentions and treatment.
- Limit the extent to which people with a learning disability and/or autistic people can be detained and treated under the MHA and support such individuals to live fulfilling lives in their community. It will do this in part by ensuring an adequate supply of community services to prevent inappropriate detentions.
- Strengthen the voice of patients by adding statutory weight to the patients' rights to be involved with planning for their care, and to make choices and refusals regarding their treatment.
- Replace the "nearest relative" role with a new statutory role of "nominated person", who is chosen by the patient.
- Extend access to Independent Mental Health Advocates to informal patients, and introduce an opt-out system for detained patients.
- Remove police stations and prisons as places of safety under the MHA.
- Support offenders with severe mental health problems to access the care they need as quickly and early as possible, and improve the management of those patients subject to a restriction order.

Comment

Whilst the new Mental Health Bill is a positive step forward, particularly in terms of strengthening patients' rights and choice, there are some concerns regarding the practicality and likely cost of some of the proposed changes. The briefing notes indicate that the reforms will take several years to implement, as the government needs to recruit and train more clinical and judicial staff. They will therefore be introduced in phases as resources allow. This raises questions about the timeline for implementation and the government's ability to fund all the changes.

The proposed shortening of detention periods and more frequent reviews and appeals will be costly, particularly with regard to the increased number of Mental Health Tribunal hearings. Anecdotally, there is already a shortage of Tribunal judges and medical members, so more will need to be recruited, which is not a quick or easy process. Further, if patients with autism and/or learning disability are to be removed from detention under the MHA and live in the community instead, it is likely that cohort of patients may need to be detained in the community under either the Deprivation of Liberty Safeguards (DoLS) or a Deprivation of Liberty order from the Court of Protection (COP). Obtaining a COP order is a time-consuming and costly process, and both the DoLS system and COP are already struggling to meet demand, resulting in backlogs with many vulnerable people being left currently unprotected.

The Liberty Protection Safeguards (LPS) were intended to replace the DoLS system and deal with some of these issues, but were postponed indefinitely by the previous Conservative government in 2023. The new government has not mentioned LPS, but it would seem important to ensure that the relevant community systems and safeguards are in place before implementing the MHA reforms relating to patients with autism or learning disability.

The government will also need to address issues arising from the CQC's registration of learning disability and autism services as well as funding, which have proven to be barriers to the development of new community services. If they do, it is likely they will find no shortage of investment appetite in this area.

We look forward to hearing more about how the new government intends to tackle some of these issues and will keep you updated.

Key contacts

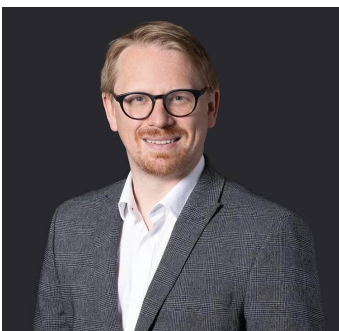


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