

## Reforming the Mental Health Act White Paper

The government has published the [Reforming the Mental Health Act White Paper](#), which sets out proposed changes to the Mental Health Act 1983. The paper also sets out proposals and ongoing work to reform policy and practice to support the implementation of a new Mental Health Act. The proposals take forward the majority of the recommendations made by the [Independent Review of the Mental Health Act 1983](#).

This briefing summarises key points from the white paper, but we encourage providers to read the document in full for a comprehensive overview. The government is now seeking views, until 21 April 2021, on the implementation and impact of the reforms. Feedback will inform the drafting of the Bill to amend the Act, which will be brought forward when parliamentary time allows. We will submit a consultation response based on member feedback – please contact [ella.fuller@nhsproviders.org](mailto:ella.fuller@nhsproviders.org) to share your views. To guide professional practice, the code of practice will later also be revised to align with the reformed legislation.

### Key points

- The [Reforming the Mental Health Act White Paper](#) proposes a wide range of changes to improve mental health services and people's experiences under the Mental Health Act (MHA). The changes aim to make sure that:
  - people are detained for shorter periods of time, and only detained when absolutely necessary
  - the care and treatment of someone detained is focused on making them well
  - people have more choice and autonomy about their treatment
  - everyone is treated equally and fairly, and disparities in people's experiences are tackled
  - people with a learning disability and autistic people are treated better in law and there is reduced reliance on specialist inpatient services for this group of people
- The white paper is split into three main parts: legislative reforms proposed to the MHA itself; proposals and ongoing work to reform policy and practice to improve patient experience; and the government's response to the [Independent Review of the Mental Health Act 1983](#).
- The paper confirms reforms will require additional funding and expansion of the workforce over and above commitments made in the NHS long term plan (LTP) and the delivery of the proposals will therefore be subject to future funding decisions.

## Context

An [Independent Review of the Mental Health Act 1983](#) was published in December 2018, which set out what needed to change in both law and practice in order to improve mental health services and people's experiences under the MHA. The government has accepted, and will take forward, the majority of the review's recommendations for change. Some actions, based on the review's recommendations, have been taken already. For example, £400 million has been committed to eradicate mental health dormitory provision and people detained under the MHA can nominate a person of their choice to be involved in decisions about their care. The development of a Patient and Carers Race Equality Framework is also underway.

## Proposals for reform

### New guiding principles

There are four new guiding principles that people working to provide care will need to consider while carrying out their duties. They are:

- **choice and autonomy** – making sure people's views and choices are respected
- **least restriction** – making sure the Act's powers are used in the least restrictive way
- **therapeutic benefit** – making sure patients are supported to get better, so they can be discharged from the Act as quickly as possible
- **the person as an individual** – making sure patients are viewed and treated as rounded individuals.

### Summary of proposals

#### Detention criteria and challenging detention

Those taking the decision to detain someone will need to document the specific risk that justifies detention and how detention will deliver therapeutic benefit. Decisions about when and whether to discharge a patient should include an assessment about whether the hospital or an alternative community setting provides the most therapeutic package of care.

The government will seek to introduce more checks on whether a patient's detention continues to be appropriate. The government will also increase access to the mental health tribunal by extending time limits and opportunities to apply for discharge. Independent Mental Health Advocates (IMHAs) will be given a new statutory power to apply to the tribunal to challenge the patient's detention. When considering applications for discharge, tribunals will be given the power to grant leave, transfer

patients and to direct services in the community. The government is also considering increasing the number of automatic referrals to the tribunal and removing the hospital manager hearing.

## **Choosing and refusing treatment**

The government proposes introducing advance choice documents, making care and treatment plans statutory, as well as introducing a new framework for patient consent and refusal of medical treatment. Further changes proposed include: bringing forward the point at which the second opinion appointed doctor reviews a patient's treatment; and the ability for patients to appeal treatment decisions at the tribunal if evidence suggests wishes and preferences were inappropriately overruled.

## **Improving support for people detained**

The government plans to replace the current 'nearest relative' role with a new statutory role, known as the 'nominated person'. This person will have additional powers and rights, such as the right to be consulted on transfers between hospitals and the power to apply for discharge on the patient's behalf. The government proposes expanded powers for IMHAs and invites views on how to improve the role and whether this can be achieved by professionalising advocacy services.

## **Community treatment orders**

The government wants to reform community treatment orders (CTOs), for example by strengthening criteria and increasing evidence requirements, so that they are only used where there is strong justification for doing so and where the CTO is considered to deliver a genuine therapeutic benefit to the patient. The effects of these reforms would be monitored over an initial five-year period.

## **Interface with the Mental Capacity Act**

The government is exploring the introduction of a simpler 'dividing line' between the MHA and the Mental Capacity Act to make it clear which framework a clinician should use to detain a patient in these circumstances. This proposal would mean decision makers would not use the MHA if a patient: lacks the relevant mental capacity to consent to detention and treatment; and is not objecting to detention or treatment. The paper also discusses provision for prior consent to be admitted as an informal patient and improving the powers available to health professionals in A&Es so that individuals in need of urgent mental health care stay on site pending a clinical assessment.

## **Caring for patients in the Criminal Justice System**

Some of the proposed reforms will not apply to patients in the criminal justice system, for example the new criteria for detention and changes to the detention criteria for individuals with learning disability and/or autism. The 'nominated person' will also have limited powers in this context, and tribunal powers and automatic referrals to the tribunal will differ also for these patients compared to civil patients.

## **People with a learning disability and autistic people**

The government proposes to change the Act to be clearer that autism or a learning disability are not considered to be 'mental disorders' for the purposes of most powers under the Act. The government is also developing a duty on health and social care commissioners to collaborate to ensure provision of community-based support and treatment for these individuals. This will be set out in the new MHA.

## **Children and young people**

In addition to legislative changes, all of which will be available to children and young people, the government proposes care and treatment plans are provided to all children and young people receiving inpatient mental health care. The government wishes to fully consider any reforms concerning consent and decision making as part of its review of the code of practice.

## **People from Black, Asian and minority ethnic backgrounds**

The paper highlights a series of reforms underway to tackle the inequalities that exist across mental health services and under the Act for people from Black, Asian and minority ethnic (BAME) communities. These include the introduction of the Patient and Carers Race Equality Framework and the development of culturally appropriate advocacy services. The government will legislate for culturally competent advocacy services to be available to detained patients, subject to funding and learnings from current pilot work.

## **Reforming policy and practice**

This section describes how the government and the NHS will work, along with other partners, to bring about an overall culture change within mental health services, so that people have a better experience of care under the Act. It summarises a significant amount of ongoing work to reform policy and practice that members will be aware of and engaged with. Below is a summary of further key proposals put forward to reform policy and practice to support implementation of the new Act.

## Quality improvement programme

An implementation support plan will be developed in partnership with NHSE/I and HEE to create the best ward cultures to improve patient experience. This will include a national quality improvement (QI) programme led by NHSE/I, which will look specifically at care under the Act to enable and support this system-wide drive for change.

## Inpatient safety and risk

The government will work with arm's length bodies and stakeholders to consider how best to ensure that the implementation of [new patient safety interventions and programmes](#) have positive contributions to the therapeutic environment of mental health settings.

## The physical ward environment

NHSE/I will review whether the guidance and data collection on mixed sex accommodation is adequate for mental health settings, or otherwise needs to be revised, better communicated or measured differently.

## The role of the Care Quality Commission

The government supports extending the CQC's monitoring role to consider the effectiveness of local joint working in principle, but would like to explore this further. Under this proposal the CQC would not be responsible for regulating or taking enforcement action against CCGs, local authorities or any other partner organisation in exercising its powers under the Act. The government intends to explore what, if any, changes in legislation might be needed to make sure the CQC can effectively discharge an extended monitoring power cooperatively with system partners. Proposals for consultation will be published at a later stage.

## Care planning in the community

The government intends to explore how a new statutory care plan could work in practice and what further information, guidance and support it can provide on care planning, as well as the practicalities and implications placing care planning on a statutory footing would have on the workforce.

## National guidance on section 117 aftercare

The government will update national guidance so that there is greater clarity on how budgets and responsibilities should be shared to pay for aftercare provided under section 117 of the MHA. The

government will also develop a clear statement in the new code of practice of the purpose and content of section 117 aftercare.

## Use of police custody

The government has committed to remove police stations as a designated place of safety by 2023/24. There is a recognition in the paper this may require new capital funding to be available to provide the estate needed, including health-based places of safety. The government will establish a national agreement between mental health services, social care and the police to ensure that people detained under section 136 are safely and effectively transferred into health services in a timely way.

## The mental health workforce

The government anticipates that the reforms will require further expansion of the workforce, over and above that to be delivered through the LTP, to meet additional demands. In addition to setting out ongoing work, the paper states the government will be working with NHSE/I, HEE, Skills for Care and the Chief Social Worker's office over the coming months to look at further national support requirements, including on training on the changes to the Act, and supporting meaningful co-production and the development of expert-by-experience leadership roles.

## Data and digital

The government is working to establish how the Act's pathway may be modernised in further ways, following the developments during the pandemic period in 2020. The government aims to eventually look to deliver a "digital first" approach to processes and procedures, governed by the Act.

## Impact assessment

The government has **estimated likely costs and benefits** of implementing the proposed changes to the Act. It would be grateful for any further data or evidence that might improve the methods used and the resulting estimates, and in particular the effect the proposals would have on the following:

- the current workloads for clinical and non-clinical staff, Independent Mental Health Advocates, Approved Mental Health Professionals, Mental Health Tribunals, second opinion appointed doctors, and other relevant positions
- specific interest groups that have not currently been considered
- health outcomes
- individuals' ability to return to work or any other daily activity
- the health and social care system and the justice system more broadly.

## Next steps

The government is now seeking views, over a 14-week period until 21 April 2021, on the implementation and impact of the reforms. We will submit a consultation response based on member feedback – please contact [ella.fuller@nhsproviders.org](mailto:ella.fuller@nhsproviders.org) to share your views.

Feedback will inform the drafting of the Bill to amend the Act, which will be brought forward when parliamentary time allows. The proposals set out in this white paper are also subject to future funding decisions, including at the Spending Review 2021. To guide professional practice, the code of practice will later also be revised to align with the reformed legislation.

## NHS Providers view

We welcome the publication of the white paper. Reform of the Mental Health Act is more important than ever as COVID-19 has accelerated mental health trends and intensified the challenges facing services. We look forward to exploring the implications of the proposals with members, responding to the consultation and supporting subsequent stages of the Act's reform on their behalf.

Putting patients at the heart of how they access treatment is vital to high quality care. The CQC's [latest assessment](#) of the care provided to people detained under the Act during the pandemic period highlighted how a wide range of services have empowered their patients and service users by applying the principles of least restriction and focusing on care planning and co-production. We welcome the government also highlighting in the paper that there are many examples of good practice across the country which need to be shared.

We previously recommended the simplification of the legislation, along with changes that maintain appropriate safeguards but enable greater individual rights and liberties, with service users having a more active role in care planning with a recovery focus. We have also stressed the need for the provision of appropriate post-discharge care and support.

However, reform of the Mental Health Act alone will not be enough to improve how and where good quality mental health services are accessed. We welcome the government making it clear that new legislation is only part of the story. The white paper helpfully highlights a significant amount of ongoing work, and puts forward further proposals, to reform policy and practice to support implementation of the new Mental Health Act. We need to address the underlying issues driving the pressures on services and the rising severity and complexity of people's needs. As we have said previously, system and financial pressures on providers, combined with inconsistent investment in

mental health services at local levels, are exacerbating bed capacity pressures and increasing the likelihood that a person may reach crisis point necessitating use of the Act to admit.

We note the government confirms that reforms will require additional funding and expansion of the workforce, over and above commitments made in the NHS long term plan, and the delivery of the proposals set out in the white paper will therefore be subject to future funding decisions. We will work with members to feed back any further data or evidence we think would assist the government's estimations in the current impact assessment. All the changes taken forward must be fully funded and take account of the current operational and financial pressures facing providers.

The rapid expansion of services required to meet extra demand for mental health care and support over the months and years ahead must be fully and promptly funded on a sustainable basis. The expansion of community-based specialist mental health care capacity, and ensuring these services are accessible to everyone, is key to reducing the need to detain under the Act and providing care in the least restrictive setting. Adequate investment to maintain and build on the steps being taken to grow the mental health workforce, and the sector receiving its fair share of capital funding, are both also crucial. Alongside this, there must be increased support for public health and social care given the crucial role these services play in providing people with the care and support they need before they reach a crisis.

We welcome the government emphasising its commitment to working closely with national and local health and care organisations to understand the impact of legislative reform on the system and to develop a robust and achievable plan for implementation. It is right to recognise that other demands placed on the system by wider transformation plans and the capacity of the health and care workforce to deliver what is required need to be carefully taken into account as this work progresses.

Our press statement responding to the white paper's publication can be accessed [here](#).

## Contact

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