

Mental Health Act Reforms

Mental Health Legislation in the UK

The **Mental Health Act 1983** is the main legislation governing who can be detained for mental health treatment in England and Wales and what this looks like in practice. It has been amended by several Acts of Parliament, including the Mental Health Act 2007.

Under current legislation, people with a learning disability can be detained under the Mental Health Act because they have a learning disability if their learning disability is associated with “abnormally aggressive or seriously irresponsible conduct”; this generally includes behaviours that challenge. Autistic people can also be detained under the Mental Health Act on the grounds that they are autistic.

People can be detained under either Part II or Part III of the Mental Health Act.

Part II refers to ‘civil’ sections – temporary admissions to treat a mental health problem. Section 2 of the Mental Health Act, which means that someone can be detained for up to 28 days for assessment and treatment, is a Part II section. Section 3, which means that someone can be detained for up to 6 months (which can be renewed) for treatment, is also a Part II section.

Part III is for ‘forensic’ sections – admissions for people who are within, or have been diverted from, the criminal justice system.

People with a learning disability and autistic people can currently be detained under either Part II or Part III.

Background to the Mental Health Bill

In 2018, Professor Sir Simon Wessely conducted an independent review of the Mental Health Act which concluded that significant reforms were needed. The review highlighted that mental health hospitals were being used to “warehouse” people with learning disabilities and autistic people.

In 2022, the then-Conservative government introduced a Draft Mental Health Bill as a response to the independent review. This included provisions to stop people with a learning disability and autistic people being detained under section 3 of the Mental Health Act unless they have a co-occurring mental health condition which needs treatment. However, they would still be able to be detained for up to 28 days under section 2 to assess whether they have a mental health condition that needs treatment. People with a learning disability and autistic people would also still be able to be detained under Part III of the Mental Health Act if detention in hospital was an alternative to prison. The Draft Mental Health Bill was scrutinised, including by a Joint Committee, which took evidence and published a report.

Following the general election in July 2024, Labour introduced the Mental Health Bill into the House of Lords in November. This Bill was largely similar to the Draft Mental Health Bill that had been published by the previous government.

Reforms included in the Mental Health Bill

People with a learning disability and autistic people can only be detained under section 3 if they also have a mental health condition, and this mental health condition requires treatment in hospital. The Act specifically states that learning disabilities and autism are not mental health conditions for which a person can be detained.

This means that children, young people and adults with a learning disability and/or who are autistic should be supported in their local communities, rather than in mental health hospitals. When this change is enacted, it will mean that the Mental Health Act cannot be used to detain people with a learning disability and autistic people in hospital unless they have a mental health condition that needs inpatient treatment.

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Care (Education) and Treatment Reviews, or C(E)TRs, are put on a statutory footing. Responsible clinicians, commissioners, integrated care boards (ICBs) and local authorities must 'have regard' to recommendations that are made by C(E)TRs. 'Have regard' means that they must consider the recommendations and, if they do not follow these, there must be a clear reason for this.

Currently there is no requirement for C(E)TR recommendations to be followed. This change will give the recommendations made in C(E)TRs legal force. While it does not mean that all recommendations need to be followed in all cases, it does mean that there must be a clear and rational reason for why a recommendation is not followed.

Dynamic Support Registers (DSRs) are put on a statutory footing. ICBs need to 'have regard' to the information in the DSR when they are commissioning services, and local authorities need to have regard to this information when they are exercising their "market function". Both ICBs and local authorities need to "seek to ensure that the needs of people with autism or a learning disability can be met without detaining them under Part 2 of this Act."

The information in the DSR will include the number of people with a learning disability and autistic people who are at risk of being admitted to inpatient hospitals in a local area. The duty on ICBs to have regard to the information in the DSR when commissioning services means that they will have to take particular account of the people with a learning disability/who are autistic in their area that are at risk of admission, and work to commission services that will prevent this. The duty on local authorities means that when they are engaging in market shaping, they need to be aware of the people within their local area with a learning disability and/or who are autistic that are at risk of admission, and seek to ensure that there are the necessary social care services available to meet their needs.

When will these reforms be enacted?

The Mental Health Bill does not contain any timescales for when these reforms will come into effect.

The government have said that they do not intend to 'turn on' the changes in legislation until there is 'sufficient community support' available. They have not currently published timescales for when they expect this sufficient community support to be in place, nor a plan for how they intend to ensure that it is there.

The Department of Health and Social Care have committed that, within a year of the Mental Health Bill becoming a law, they will publish a written statement in Parliament which will set out the progress that has been made on implementation over the previous 12 months, and plans for how they will implement future reforms – including the progress on the learning disability and autism reforms and plans for community provision. They will publish updated versions each year. While this commitment is not as strong as publishing a costed implementation plan, it is one mechanism for monitoring and ensuring that these changes are enacted.

Future Publications

Within the Bill, the Secretary of State for Health and Social Care has a duty to publish:

- A list of 'risk factors' for detention
- Guidance for responsible clinicians, commissioners, integrated care boards, and local authorities about their functions relating to C(E)TRs, the DSR and 'seek[ing] to ensure that the needs of people with autism or a learning disability can be met without detaining them under Part 2'

The Mental Health Act Code of Practice, which was last updated in 2015, will be updated again.

The Joint Committee on Human Rights has been conducting scrutiny of the Mental Health Bill to check whether it is compliant with the UK's human rights responsibilities. We are awaiting the outcome of this inquiry.