

Reforming the Mental Health Act

Purpose of report

For direction.

Summary

The Government have published the [White Paper on Reforming the Mental Health Act](#). This consultation is in response to the recommendations made in Sir Simon Wessely's Independent review that reported in December 2018. The review was asked to look at how the act is used and how practice can be improved. The review looked at why:

- rising numbers of people are being detained under the act
- disproportionate numbers of people from black, Asian and minority ethnic (BAME) groups are being detained

The White Paper proposes changes to rebalance the Mental Health Act ('the Act'), to put patients at the centre of decisions about their own care and ensure everyone is treated equally. The reforms aim also to tackle the racial disparities in mental health services, better meet the needs of people with learning disabilities and autism and ensure appropriate care for people with serious mental illness within the criminal justice system.

This report updates Members on the proposed changes, suggests key lines in response to those changes, and outlines the steps officers will follow to develop our more detailed consultation response in line with Members' steer and feedback from councils.

The Consultation ends on 21st April 2021. As well as the Board discussion we would welcome views from Board members **up till 31st March 2021**.

Recommendation

Members of the Community Wellbeing Board are asked to:

1. reviews and agrees our lines of submission.
2. highlight further key issues to include in our submission.

Action

Officers will ask Lead Members to sign off our final submission.

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Introduction

1. In 2017 the government commissioned an independent review of the Mental Health Act 1983 (MHA), to look at how it was used and to suggest ways to improve it.
2. The review's [final report](#) said that the MHA does not always work as well as it should for patients, their families and their carers. The proposed changes will have a significant impact on local government in terms of mental health policy and practice.
3. The government have now launched a [white paper consultation](#) on the proposed changes. to rebalance the MHA, to put patients at the centre of decisions about their own care and ensure everyone is treated equally.
4. The changes are based on 4 principles that have been developed with people with lived experience of the MHA. They are:
 - 4.1. choice and autonomy – ensuring service users' views and choices are respected
 - 4.2. least restriction – ensuring the MHA's powers are used in the least restrictive way
 - 4.3. therapeutic benefit – ensuring patients are supported to get better, so they can be discharged from the MHA
 - 4.4. the person as an individual – ensuring patients are viewed and treated as individuals
5. The Review team attended a Board meeting in 2018 to capture Board members' views. We also made a submission in 2018. In 2019 the Board Chair wrote to the Minister to say that we support the review's objective to modernise the MHA and give people a stronger say in their treatment. However, we noted that the challenges with the Act are also indicative of a system that is under strain because of increased demand and reduced funding.
6. The LGA and ADASS have had detailed discussions with MHCLG about any new burdens arising from the new Act and have contributed to financial modelling.
7. The consultation runs until 21st April 2021. Officers will keep the Children and Young People's Board and ADASS informed about our response. The government plan is for the legislation to be brought before parliament in January 2022 and the new Mental Health Act to be introduced in May 2022. Dates are still to be confirmed.

Draft LGA Key Messages in response to the White Paper

8. Based upon our previous input to the Mental Health Act Review, we have updated our existing policy lines, which subject to Members' steer, could form the basis of our consultation response. These will be supplemented with further points as we work through the detail of the proposals with the Children and Young People's Board, ADASS and others.

9. The LGA supports the reform of the Mental Health Act and the four principles that will underpin the new Act. It is important that the new Act identifies clearly the roles and responsibilities of local government in respect of both statutory and non-statutory mental health duties.
10. The Act needs to reflect the operational needs and pressures on local government. Including Approved Mental Health Professional (AMHP) workforce training and recruitment requirements. AMHPs are largely employed by councils and it is recommended that local areas have a minimum number of AMHPs. The Department of Health and Social Care's 2019 National Workforce Plan for AMHPs estimated this will cost approximately £100 million over 10 years.
11. Any reforms to the Act need to be fully funded on a long-term basis. For many years' mental health services at all levels have been reduced despite rising demand. We fully support the aim of parity of esteem between mental and physical health.
12. The new Act should support councils to grow the capacity and capability of voluntary sector providers, such as Independent Mental Health Advocacy (IMHA) services, who are operating in an increasingly fragile market. Some local areas may need additional resourcing to develop new or specific community advocacy services.
13. We support the proposals to revise the detention criteria to be clearer that autism and learning disabilities are not considered to be mental disorders for this purpose and the requirement that there must be a probable mental health cause to their behaviour that warrants assessment in hospital. However, it is important that there is funding for local authorities and clinical commissioning groups to support development of alternative resources for people with autism and learning disabilities in the community.
14. We are also calling for the Government to fully fund the new burdens across children and adults social care of implementation of the Liberty Protection Safeguards. We have welcomed working with Government on the impact assessment that explores new and revised roles and responsibilities for councils and in scoping a separately funded cross system sector led improvement programme that allows councils and local partners to prepare themselves for implementation by April 2022 effectively.
15. New mental health legislation should also outline on how it is intended to interact with the Care Act, the Human Rights Act, the Equality Act and the Children Act.
16. It is important to recognise that to achieve a reduction in detentions is not solely about legislative change. There needs to be a system-wide shift towards prevention, away from medicalisation and treating mental ill health, to early intervention and support for

recovery through integrated community-based services. This would build upon the direction of travel set out in The Five Year Forward View for Mental Health

Additional Information

Local Government's current role in statutory mental health

17. Councils have key statutory duties that are an integral part of mental health services. In most cases, when people are treated in hospital or another mental health facility, they have agreed or volunteered to be there. However, there are cases when a person can be detained (also known as sectioned) under the Mental Health Act (1983) and treated without their agreement. The MHA is the main piece of legislation that covers the assessment, treatment and rights of people with a mental health disorder.
18. People detained under the MHA need urgent treatment for a mental health disorder and are at risk of harm to themselves or others.
19. AMHPs are mental health professionals who have been approved by a local authority to carry out certain duties under the MHA. They are responsible for coordinating an assessment and admission to hospital if the person is sectioned. It is the role of the AMHP to bring a social perspective to the MHA assessment, to counter a purely medical approach to people experiencing mental distress.
20. Councils have duties to provide social care to support people experiencing mental health problems. Section 117 of the MHA requires councils to provide after-care services and support to people moving out of hospitals.
21. Councils have powers under the Mental Capacity Act (MCA) to authorise guardianship for people discharged from hospital under the MHA, and duties to authorise deprivation of liberty safeguards (DOLS) or Liberty Protection Standards.
22. Councils are responsible for commissioning advocates to help people express their views and to represent their interests.

Implications for wales

23. The current MHA applies in both England and Wales. Although health policy is devolved to Wales, justice matters remain reserved to the UK government. The Welsh government will continue to engage with the UK government on the proposals set out in the White Paper as it considers appropriate next steps for Wales and develops its own response to the review.

Financial Implications

24. The increase in duties for AMHP's and expansion of IMHA services will have financial implications for councils. The LGA is currently engaged in a new burdens process with MHCLG.
25. Future implementation of the Mental Health Act will require funding in terms of workforce training, communications and improvement support.

Next steps

26. Board recommendations to be written up as a formal submission to the White Paper consultation.

Annexe.

Summary of white paper recommendations.

Statutory principles

27. The government proposes to seek to include four principles “up front” in the new Act:

- 27.1 choice and autonomy
- 27.2 least restriction
- 27.3 therapeutic benefit
- 27.4 treating the person as an individual

Detention criteria

28 The government proposes to tighten the criteria for detention under the MHA to address the rising rates of detention and its disproportionate use among certain ethnic groups.

Mental Health Tribunals

29 The government wants to introduce more tribunal hearings to check on whether a patient’s detention continues to be appropriate.

Advance choice documents (ACDs)

30 The government proposes to introduce ACDs. These can be made when the individual has the relevant capacity and set out the person’s preferences about their future treatment.

Statutory care and treatment plans

31 To amend the MHA to require that all detained patients must have a care and treatment plan, with clear expectations about how this should be developed with the patient.

Consent to treatment

32 The government proposes to introduce additional safeguards when certain forms of treatment are being provided without consent.

Nominated person

33 The government will replace the nearest relative with a new statutory role, the nominated person (NP), who the patient can personally select to represent them.

Independent mental health advocates (IMHAs)

34 It is proposed to expand the role of IMHAs to include:

- 34.1 supporting patients to take part in care planning;
- 34.2 supporting individuals in preparing ACDs;
- 34.3 challenging particular treatments; and
- 34.4 applying to the tribunal on behalf of the patient.

- 35 The review recommended that IMHAs should be available to support informal patients. But this will be subject to future spending decisions.

Community treatment orders (CTOs)

- 36 Proposal to reform CTOs so that they can only be used where there is a strong justification, they are reviewed more frequently and by more professionals.

The Mental Capacity Act (MCA) interface

- 37 A clear dividing line to be introduced between the MHA and MCA, based on whether or not a patient is clearly objecting to detention or treatment. All patients without the relevant capacity who do not object will receive care and treatment under the Deprivation of Liberty Safeguards (DoLS) or the Liberty Protection Safeguards (LPS) and not under the MHA. The government says that it will wait to assess the impact of the implementation of the LPS before introducing these reforms.

Accident and Emergency

- 38 To improve powers available to health professionals in A&E departments so that individuals in need of urgent mental health care, stay on site, pending a clinical assessment.

Patients in the criminal justice system

- 39 The government proposes to speed up the transfer from prison to mental health inpatient settings and establishing a new role for managing the transfer process (which could be given to AMHPs).
- 40 To introduce of a new power of 'supervised discharge' in order to adequately and appropriately manage the risk they pose.

People with a learning disability and autistic people

- 41 The White Paper raises concerns about the inappropriate admission of people with learning disabilities and autism to mental health hospitals. It is therefore proposing to revise the detention criteria to be clearer that autism and learning disabilities are not considered to be mental disorders for this purpose. There will be a requirement that there must be a probable mental health cause to their behaviour that warrants assessment in hospital.
- 42 The government also recommends the creation of new commissioning duties on local authorities and clinical commissioning groups to ensure an adequate supply of community services for these groups and monitor the risk of crisis at an individual level.