

# Mental Health Bill [HL]

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## RUNNING LIST OF ALL AMENDMENTS ON REPORT

*Tabled up to and including  
10 March 2025*

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*[Amendments marked ★ are new or have been altered]*

### After Clause 3

BARONESS BROWNING

After Clause 3, insert the following new Clause—

**“Application of the Mental Capacity Act 2005: autism and learning disability**

- (1) In Schedule 1A to the Mental Capacity Act 2005, paragraph 2, after the last line of the table, insert—

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“Case F	P has autism or a learning disability and is not subject to any of the mental health regimes	See paragraph 5A”
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- (2) In Schedule 1A to the Mental Capacity Act 2005, paragraph 5, at end insert—

“5A (1) This paragraph applies in Case F in the table in paragraph 2.

(2) P is ineligible if the following conditions are met.

(3) The first condition is that P objects to being—

- (a) admitted for treatment as a mental health patient, or  
(b) given some or all of the mental health treatment.

(4) The second condition is that a donee or deputy has not made a valid decision to consent to each matter to which P objects.

(5) In determining whether or not P objects to something, regard must be had to all the circumstances (so far as they are reasonably ascertainable), including the following—

- (a) P’s behaviour,  
(b) P’s wishes and feelings, and

- (c) P’s views, beliefs and values.
- (6) But regard is to be had to circumstances from the past only so far as it is still appropriate to have regard to them.
- (7) For the avoidance of doubt, Case F and this paragraph do not apply to determine P’s ineligibility in respect of admission for assessment of mental disorder.””

***Member's explanatory statement***

*This amendment to the Mental Capacity Act 2005 would prevent the Deprivation of Liberty Safeguards scheme being used to replace detention under section 3 of the Mental Health Act for people with learning difficulties or autism who do not have a mental health condition.*

**After Clause 51**

BARONESS TYLER OF ENFIELD

★ After Clause 51, insert the following new Clause –

**“Mental Health Commissioner**

- (1) After section 142C of the Mental Health Act 1983, insert –

*“Mental Health Commissioner*

**142C Independent Mental Health Commissioner: establishment**

- (1) There is to be an office known as the Office of the Mental Health Commissioner.
- (2) The Office in subsection (1) must be established by the Secretary of State three months after the day on which the Mental Health Act 2025 is passed.
- (3) The Office of the Mental Health Commissioner will be led by an individual appointed by the Secretary of State titled the “Independent Mental Health Commissioner”.
- (4) The role in subsection (3) is referred to as the “Mental Health Commissioner”.
- (5) The Mental Health Commissioner may appoint staff to the Office of the Mental Health Commissioner they consider necessary for assisting in the exercise of their functions in section 142D.

**142D Functions of the Commissioner**

- (1) The Mental Health Commissioner is responsible for overseeing the implementation and operability of functions discharged by relevant bodies and persons under the provisions of this Act, the Mental Health Act 1983, and the Mental Capacity Act 2005 particularly regarding the provision of treatment, care, and detention of people with a mental disorder.

- (2) The Mental Health Commissioner must publish an annual report on the use of functions discharged under this Act, which must assess –
  - (a) the quality of mental health care treatment provided by relevant services;
  - (b) the accessibility of mental health care treatment services;
  - (c) the relationship between mental health and the criminal justice system;
  - (d) inequalities of mental health care provision regarding protected characteristics under the Equality Act 2010;
  - (e) the use and effectiveness of detention measures under this Act, including but not limited to Community Treatment Orders, for the purposes of therapeutic benefit outlined in section 1(2B);
  - (f) challenges surrounding stigma of mental health conditions;
  - (g) the accessibility of advice and support to mental health service users, their families and carers on their legal rights;
  - (h) other issues deemed appropriate by the Mental Health Commissioner.
- (3) In fulfilling their duties under subsection (1), the Mental Health Commissioner may review, and monitor the operation of, arrangements falling within subsection (1), (2) and (3) for the purpose of ascertaining whether, and to what extent, the arrangements are effective in promoting the principles in section 118(2B) of this Act.
- (4) Subject to any directions from the Secretary of State, the Commissioner may take action necessary or expedient in connection for the purposes of their functions.
- (5) This may include –
  - (a) collaborating with health services, public authorities, charitable organisations, and other relevant entities, including NHS bodies, the Care Quality Commission, and the Parliamentary and Health Service Ombudsman;
  - (b) ensuring enforcement authorities and public bodies under the Mental Health Act 1983 have the necessary capacity and resources to adequately discharge duties under the Mental Health Act 1983 and this Act.

#### **142E Appointment, Tenure, and Remuneration of the Mental Health Commissioner**

- (1) The Secretary of State may by regulation make provision for the appointment, tenure, removal, and general terms of appointment of the Mental Health Commissioner.
- (2) The Secretary of State may also by regulation determine the Commissioner's remuneration, allowances, and pension entitlements.

**142F Examination of cases**

- (1) The Secretary of State may, by regulations, make provision for the examination by the Mental Health Commissioner of the cases of those who are detained under this Act receiving treatment by authorised mental health care providers.
- (2) The Secretary of State may, by regulations, provide for the Office of the Mental Health Commissioner to access and examine relevant data on mental health treatment provision held by NHS England and any other authorities the Secretary of State considers appropriate.

**142G Regulations**

- (1) Regulations under sections 142E and 142F are to be made by statutory instrument.””

***Member's explanatory statement***

*This amendment establishes the office of the Mental Health Commissioner and makes provisions for relevant duties and responsibilities.*



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