

# Mental Health Bill [HL]

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## RUNNING LIST OF ALL AMENDMENTS ON REPORT

*Tabled up to and including  
17 March 2025*

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*The amendments are listed in accordance with the following Instruction –*

Clauses 1 to 3	Clauses 24 to 39
Schedule 1	Schedule 3
Clauses 4 to 23	Clauses 40 to 56
Schedule 2	Title

*[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*

**142D 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 142E.

**142E 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.

**142F 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.

**142G 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.

**142H Regulations**

- (1) Regulations under sections 142F and 142G 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.*

BARONESS TYLER OF ENFIELD

After Clause 51, insert the following new Clause –

**“Review and reporting on inequalities in Mental Health Act Measures**

- (1) As soon as reasonably practicable after the end of each calendar year, the Secretary of State or appropriate national authority must conduct a review, in consultation with relevant bodies with commissioning functions, on the use of treatment and detention provisions contained in the Mental Health Act 1983, broken down by race and other demographic information.
- (2) Having conducted a review under subsection (1), the Secretary of State or appropriate national authority must publish a report on the progress made in reducing inequalities in treatment outcomes and the use of detention under the Mental Health Act 1983 on people who have protected characteristics under the Equality Act 2010.
- (3) In this section “the appropriate national authority” means –

- (a) in relation to services or unit whose area is in England, the Secretary of State;
- (b) in relation to units or services whose area is in Wales, the Welsh Ministers.”

***Member's explanatory statement***

*This amendment requires the Secretary of State or Welsh Ministers to review and report annually on the use of treatment and detention measures under the Mental Health Act 1983, analysing data by race and other demographics to assess progress in reducing inequalities for those with protected characteristics under the Equality Act 2010.*

BARONESS TYLER OF ENFIELD

After Clause 51, insert the following new Clause—

**“Addressing and reporting on racial disparities and other inequalities**

After section 120D of the Mental Health Act 1983, insert—

**“120E Mental health units and services to have a responsible person**

- (1) A relevant health organisation that operates a mental health unit or community mental health service for qualifying patients must appoint a responsible person for that unit or service for the purposes of addressing racial disparities related to functions discharged under this Act and the Mental Health Act 2025.
- (2) The responsible person must—
  - (a) be employed by the relevant health organisation, and
  - (b) be of an appropriate level of seniority.
- (3) Where a relevant health organisation operates more than one mental health unit or service, that organisation must appoint a single responsible person in relation to all of the mental health units or services operated by that organisation.

**120F Policy on racial disparities**

- (1) The responsible person must publish a policy on how the unit plans to reduce racial disparities in that unit or service.
- (2) The policy published under subsection (1) must cover but is not limited to the following topics—
  - (a) steps being taken to reduce racial disparities and other disparities in that unit or service;
  - (b) staff knowledge and competence in connection with anti-discriminatory practice in relation to this Act;
  - (c) disparities in workforce demographics, recruitment, retention and progression;
  - (d) implementation of the patient and carer race equality framework (England only) and any other requirements of relevant national policies;

- (e) care planning and decision-making in the use of this Act including section 56A (making treatment decisions);
  - (f) the availability of alternatives to detention and involuntary treatment;
  - (g) take-up of independent mental health advocacy;
  - (h) the cultural appropriateness of independent mental health advocacy;
  - (i) access to and use of advance choice documents;
  - (j) what steps will be taken to reduce racial disparities and other disparities in that unit or service.
- (3) Where a responsible person is appointed in relation to all of the mental health units operated by a relevant health organisation, the responsible person must publish a single policy under subsection (1) in relation to those units or services.
- (4) Before publishing a policy under subsection (1), the responsible person must—
- (a) consult any persons that the responsible person considers appropriate;
  - (b) have regard to the following matters—
    - (i) the views, wishes and feelings of people from racialised communities who have been detained;
    - (ii) the views, wishes and feelings of people with other protected characteristics who have been detained.
- (5) The responsible person must keep under review any policy published under this section and may revise it periodically, publishing the revised version if changes are made.

### **120G Training on racial disparity policy**

The responsible person for each mental health unit or service must provide training for staff that relates to addressing racial disparities in that unit or service and the topics covered in section 120F(2).

### **120H Recording of discharge of functions under this Act broken down by race and other demographic information**

- (1) The responsible person for each mental health unit or service must keep a record of the use of functions discharged under this Act, broken down by race and other demographic information.
- (2) The responsible person must keep the record for three years from the date on which it was made.”

#### ***Member's explanatory statement***

*This amendment requires mental health units and community services to appoint a senior responsible person to address racial disparities in the use of the Mental Health Act 1983, publish a policy on reducing inequalities, and provide staff training on anti-discriminatory practices.*

## BARONESS TYLER OF ENFIELD

After Clause 51, insert the following new Clause—

**“Workforce sufficiency assessment by Integrated Care Boards**

After section 142C of the Mental Health Act 1983 (inserted by section 51 of this Act), insert—

**“142D Workforce sufficiency assessment by Integrated Care Boards**

- (1) Each Integrated Care Board must conduct a workforce sufficiency assessment every two years to evaluate whether it has sufficient workforce resources to deliver services under this Act effectively.
- (2) The assessment may include—
  - (a) an analysis of current workforce levels across all relevant service areas;
  - (b) identification of workforce shortfalls;
  - (c) an evaluation of the impact of staff shortages on patient care and service delivery;
  - (d) proposals to address workforce challenges.
- (3) Integrated Care Boards may consult any relevant personnel or organisations they deem appropriate when conducting the assessment.
- (4) Each Integrated Care Board must publish a report outlining its findings upon completing the assessment.
- (5) The first reports must be published 12 months after the day on which the Mental Health Act 2025 is passed.”

***Member's explanatory statement***

*The amendment requires Integrated Care Boards to produce a biennial report assessing workforce sufficiency, identifying shortages, and proposing measures to address workforce challenges in delivering services.*

## LORD MESTON

★ After Clause 51, insert the following new Clause—

**“Determination of ability to decide for persons under 16**

- (1) For the purposes of this Act and the Mental Health Act 1983, a person aged under 16 (referred to in this section as a child) is able to make the relevant decision if they can—
  - (a) understand the information relevant to the decision;
  - (b) retain the information;
  - (c) use or weigh that information as part of the process of making the decision;
  - (d) communicate their decisions (whether by talking, using sign language or any other means).

- (2) Where a child is able to decide in accordance with subsection (1) above, that child will be competent for the purpose of this Act.
- (3) A child is not to be regarded as unable to understand the information relevant to a decision if he is able to understand an explanation of it given to him in a way that is appropriate to his circumstances (using simple language, visual aids or any other means).
- (4) A person determining a child's ability to decide under this section must –
  - (a) have due regard to Article 12 of the United Nations Convention on the Rights of the Child adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 (“the Convention”), and
  - (b) must be able to show reasonable grounds for their belief that the child is or is not able to make the relevant decision.
- (5) When considered by any appropriate court or tribunal, any question whether a child is able to make the relevant decision within the meaning of this Act must be decided on the balance of probabilities.”

***Member's explanatory statement***

*This amendment inserts a test for determining a child's ability to make decisions (competence) under the Mental Health Act.*





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