

MENTAL HEALTH BILL [HL]

EXPLANATORY NOTES ON COMMONS AMENDMENTS

What these notes do

These Explanatory Notes relate to the Commons Amendments to the Mental Health Bill [HL] as brought from the House of Commons on 15 October 2025 (HL Bill 137).

- These Explanatory Notes have been prepared by the Department of Health and Social Care in order to assist the reader of the Bill. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes, like the Commons amendments themselves refer to Bill 225, the Bill as first printed for the Commons.
- These Explanatory Notes are best read in conjunction with the Commons amendments and text of the Bill. They are not, and are not intended to be, a comprehensive description of the Commons Amendments.
- Commons Amendment 1-21 were tabled in the name of the Minister.

Commentary on Commons amendments

Commons Amendments to Clause 5

Commons Amendment 1-4

- 1 Commons Amendments 1 to 4 removes the amendments to Clause 5 made at Lords Report, which required that, where a person needs to be detained under section 2 (admission for assessment), section 3 (admission for treatment) or section 5 (detention for six hours pending application for admission) of the Mental Health Act, that this detention must be made by a constable or “other authorised person”, as defined in Clause 5 (7).

Commons Amendments to Clause 6

Commons Amendment 5

- 2 Commons Amendment 5 removes Clause 6(3) which was added at Lords Report. This amendment related to the duration and review of community treatment orders and (i) required that the responsible clinician must ensure that community treatment orders align with the Code of Practice as set out in section 118(2B) and (ii) provided that community treatment orders shall have a maximum duration of 12 months and can only be extended beyond that if they meet certain review requirements.

Commons Amendments to Clause 35

Commons Amendment 6

- 3 Commons Amendment 6 removes Clause 35, inserted at Lords Report stage. The clause required discharged patients to be offered a consultation with an independent mental health advocate to review their experiences of hospital treatment within 30 days of their discharge. A report from any such consultation is then required to be produced by the independent mental health advocate, in partnership with the individual and that report must be provided to the hospital managers within 14 days of its completion. The hospital managers are required to publish a report annually, setting out what they have learned from the reports as to person's experience and what actions they have taken as a result.

Commons Amendments to Clause 45

Commons Amendment 7-10

- 4 Commons Amendment 7-10 aim to strengthen and add greater specificity to the duties of NHS bodies to make arrangements regarding Advance Choice Documents.
- 5 Currently under Clause 45, NHS bodies are required to make information available about Advance Choice Documents and help people to create them. Under this amendment, NHS bodies would also be required to make arrangements to bring information and help on making an Advance Choice Document to the attention of the appropriate people. This is to improve awareness among those who might be interested in making an Advance Choice Document.

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- 6 Under this amendment, NHS bodies would also be required to:
 - a. Make appropriate arrangements for people to be given information or help by having a conversation with someone who is suitably qualified, whether in-person or remotely, and
 - b. Have regard to the particular benefits to a person of making an Advance Choice Document within 12 months of being discharged from a mental health hospital.
- 7 These changes are to make clearer our expectations on commissioners in terms of how information and support should be imparted, and which groups should be prioritised. These changes are intended to help secure the benefits associated with Advance Choice Documents.

Commons Amendments to Clause 50

Commons Amendment 11

- 8 Commons Amendment 11 removes Clause 50, inserted at Lords Report Stage. This Clause introduced a power for “authorised persons” as defined by Clause 5 subsection 7, which the Government has also removed, to remove mentally disordered persons to a place of safety, under warrant under section 135 from private premises, or from a public place without a warrant under section 136 of the Act.
- 9 Section 135 provides police officers with the power to enter (if need be by force) a specified premises with a warrant issued by a justice of the peace and remove a mentally disordered person to (or keep them at) a place of safety with a view to making an application under the Act or for other arrangements for the person’s treatment or care. Section 136 provides police officers with the power to remove a mentally disordered person from a place that is not someone’s home or associated space to a place of safety without a warrant so that an assessment under the MHA can be carried out.

Commons Amendment After Clause 51: Human Rights Act

Commons Amendment 12

- 10 Commons Amendment 12 inserts a new clause into the Bill which would extend the remit of the Human Rights Act 1998 to private care providers when providing care and treatment to informal patients and under section 117 of the Mental Health Act (and its equivalent in Scotland).
- 11 A private care provider would be considered to be a public authority for the purposes of the Human Rights Act – and would be required to act compatibly with the Convention rights set out in the Human Rights Act – when providing services under section 117 of the Mental Health Act (and its equivalent in Scotland) or to informal psychiatric patients where this is being arranged or paid for by an NHS body.

Commons Amendment to Clause 53

Commons Amendment 13

- 12 Commons Amendment 13 removes Clause 53. This Clause provided a statutory override to ensure that where there are provisions in the Mental Health Act 1983 which provide for the

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processing of personal data, these are subject to data protection legislation, including the UK GDPR and the Data Protection Act 2018.

- 13 Section 106 of the Data (Use and Access) Act 2025 was commenced on 20th August 2025. This section introduced a general data protection override to the Data Protection Act 2018. The general data protection override ensures that the UK's data protection legislation is not overridden by other future provisions that impose a duty or confer a power to process personal data, while still ensuring Parliament can make express provision to the contrary if it wishes.
- 14 It is therefore no longer necessary for Bills to include specific data protection statutory override wording in order to ensure that any processing authorised or required is subject to data protection rules.

Commons Amendment to Clause 57

Commons Amendment 14 and 15

- 15 Commons Amendment 15 ensures that the new clause inserted by Commons Amendment 12 would extend to England and Wales, Scotland and Northern Ireland.
- 16 Commons Amendment 14 is consequential on Commons Amendment 15.

Commons Amendments to Clause 59

Commons Amendment 16

- 17 Commons Amendment 16 removes the privilege amendment inserted by the Lords.

Commons Amendments to Schedule 2

Commons Amendment 17

- 18 Commons Amendment 17 amends the definition of “patient” in new section 30B(7), in relation to the Nominated Person provisions, which was technically incorrect; for example it advertently also covered Approved Mental Health Professionals in some circumstances.

Commons Amendment 18 and 19

- 19 Commons Amendment 18 removes Schedule 2, paragraph 11 (3)-(5) which was inserted into Schedule 2 at Lords Report. This subparagraph created a hierarchy for the appointment of a nominated person by an approved mental health professional for those under 16 lacking competence. This required that where the child has a special guardian appointed, the approved mental health professional must appoint that person, and where the child has a child arrangements order, the approved mental health professional must appoint the person named in that order with whom the child resides. If there is more than one person, then the approved mental health professional must in deciding who to appoint take into account the patient's past and present wishes and feelings so far as reasonably ascertainable, and where this has not been possible to ascertain, preference must be given to the eldest person.
- 20 Commons Amendment 19 is consequential on Commons Amendment 18.

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Commons Amendments to Schedule 3

Commons Amendment 20 and 21

- 21 Commons Amendment 20 amends Schedule 3 to ensure that the definition of “informal patients” is accurate in the Bill and the Mental Health Act.
- 22 The definition of “English qualifying informal patient” in relation to the provision of the appointment of an Independent Mental Health Advocate will now exclude those patients detained under any legislation or by virtue of a court order (rather than just those detained under the Mental Health Act 1983).
- 23 Commons Amendment 21 amends the definition of “Welsh qualifying informal patients” to align with the changes made by Amendment 20.

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