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Mental Health Act reform - impacts on autistic people and people with a learning disability

Overview

- Under the Mental Health Act 1983 (England and Wales) people can be detained if they are at risk of harming themselves or others due to a "mental disorder". This term is currently defined to include learning disability and autism, although these are not mental health conditions.
- Some people with these conditions detained under the Act have experienced inappropriate care, a lack of specialised services tailored to their needs, overuse of restraints, over-medication, and extended periods of detention.
- After an independent review of the Act in 2018, the Government introduced a draft Mental Health Bill in 2022 to modernise the Act and reduce detentions. The Bill proposed to remove autism and learning disability as criteria for Section 3 detention in the absence of a co-occurring mental health condition.
- Pre-legislative scrutiny of the draft Bill identified potential unintended consequences of this change without extra investment in community support, including the risk of increased rates of detention under different legal powers.
- Stakeholders have raised concerns over the current shortage of community-based services that would help autistic people and people with a learning disability to avoid detention under the Act.
- International comparisons demonstrate substantial variation in legal provisions for autism and learning disability.
- In March 2024 the Government stated that it would introduce a revised bill "when parliamentary time allows".

Introduction to autism and learning disability

Autism

Autism is a lifelong condition characterised by difficulties in social interaction and communication, and restrictive or repetitive behaviours.[1]

As a spectrum condition, autism varies widely in its presentation.[2] Autistic people[a] can have above-average technical or creative skills and strong attention to detail. They can also experience differences in sensory processing (with over- or under-sensitivity to certain sights, sounds, or smells).[3]

Changes to routine, communication difficulties or social anxiety can be overwhelming for autistic people, and can lead to meltdown - a state of intense distress in which a person temporarily loses control of their behaviour.[4]

Autistic traits appear in early childhood, although some autistic people may receive a diagnosis later in life, or go undiagnosed.[5] The population prevalence of autism is widely cited as 1.1% (~700,000 people in the UK) based on a 2011 survey.[b] [6] While it can hold legal status as a disability,[7] autism is not an illness.[8]

About 80% of autistic people are diagnosed with at least one mental illness in their lifetime,[9] compared to 26% of the general population.[10] Mental health disorders can present differently in autistic people, and combined with communication difficulties this can make disorders harder to diagnose.[11] An estimated 29-52% of autistic people also have a learning disability.[12,13]

Learning disability

Three criteria define learning disability: significantly below average intellectual ability, significant impairment of adaptive skills required to function in daily life, and onset of both features during childhood.[c] [14] Learning disability is classified as mild, moderate, severe, or profound, but presentation varies widely between individuals.[15] In all cases it is a lifelong condition.

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[a] There is no universally accepted way of describing autism. This briefing uses the term autistic people given evidence that this term is preferred by many members of the UK autism community.[3] The terminology used in diagnostic manuals for medical professionals is autism spectrum disorder (ASD).[4]

[b] There is evidence that autism is under-identified in the general population.[8] Between 1998 and 2018, there was a 787% increase in the incidence of autism diagnoses in the UK.[9] This has been attributed to increased public awareness of autism in women and girls (and of autistic traits generally), increased reporting, and more inclusive diagnostic criteria.[9]

[c] Learning disability is distinct from learning difficulties such as dyslexia (trouble with reading and writing) or dyscalculia (difficulty understanding numbers), as the latter are not related to intellectual ability.

People with a mild learning disability often live independently and require support only for more complex tasks such as managing finances, whereas people with a severe learning disability require full-time care.[15]

Under some circumstances, for example when their needs are not being met or if they are in pain, people with a learning disability can display behaviour that challenges[a] as a way of communicating their needs. These behaviours can include self-injury or aggression, which threaten their own or others' safety. Environments with excessive noise, lack of choice, overcrowding, unpredictability, or abuse increase the likelihood of behaviour that challenges.[14]

Government data from 2015 estimated that approximately 301,000 children and 956,000 adults in England and 16,000 children and 54,000 adults in Wales had a learning disability.[16–18] Among adults with a learning disability in England, an estimated 21% are known to learning disability health services.[19]

People with a learning disability experience poorer physical health, on average, than people without a learning disability. An NHS report showed that 42% of deaths among people with a learning disability in 2022 were deemed "avoidable" (preventable or treatable), compared to 22% of deaths among the general population.[b] [20]

Learning disability is not a mental illness, although people with a learning disability are more likely to experience mental health problems than the general population.[c] [21–24] It is estimated that 20-30% of people with a learning disability are also autistic.[25]

This briefing focuses on impacts of proposed changes to the Mental Health Act on people with a learning disability and autistic people. It complements related briefings on race and ethnic inequalities (PN 671), children and young people (PN 685), and improving patient choice (PN 695).

The Mental Health Act

The Mental Health Act 1983 (the MHA) legislates for the compulsory detention and treatment[d] of people with a mental disorder of any age in England and Wales.[26] There are specific provisions for children and young people under certain circumstances.[27]

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[a] Behaviour that challenges is an alternative term for challenging behaviour, used to indicate that such behaviour is a challenge to services or family members, but may be functional for the person with a learning disability (for example for sensory stimulation or gaining assistance). It also describes behaviour that limits people's access to community facilities.

[b] This estimate is based on a subset of deaths reviewed by the LeDeR programme (Learning from Lives and Deaths – People with a Learning Disability and Autistic People). It is not known how representative these data are of the total population of people with a learning disability.[23]

[c] The estimated prevalence of mental health disorders among people with a learning disability is 15-52%, depending on the diagnostic criteria used.

[d] This is sometimes referred to as being sectioned.

The definition of mental disorder in the MHA is "any disorder or disability of the mind".[26] This currently includes both autism and learning disability, although the latter must be associated with "abnormally aggressive or seriously irresponsible conduct" to fall under the scope of the Act.[26] A person must also pose a risk to themselves or others to warrant detention, which can take place under different sections from Part II or Part III of the MHA:

- **Part II of the Act** outlines detention powers for clinical assessment and treatment of civil patients.[26] Under Section 2 a person may be detained for up to 28 days for clinical assessment. Section 3 provides the power to detain someone for up to 6 months for the purpose of treatment.[a] Section 3 is renewable, initially for two further periods of 6 months, and then for successive periods of 1 year.

- **Part III of the Act** concerns people involved in criminal proceedings.[26] Under Section 37 a person may be detained in a secure hospital on a court order as an alternative to imprisonment if there is a possibility of an underlying mental disorder. If the court deems the person a risk to the public, it can add a "restriction" to the hospital order using Section 41. This prevents the person from leaving hospital or transferring to a different hospital without the consent of the Secretary of State.

The MHA has an accompanying Code of Practice (separate for England[28] and Wales[29]). Its purpose is to provide guidance for the bodies and professionals who carry out functions under the Act.

Interaction with other legislation

Mental health law is complex. The MHA overlaps with the Mental Capacity Act 2005,[30] the Children Act 1989[31] and relevant case law. The Mental Capacity Act (the MCA) provides a framework for decision-making based on a person's mental capacity (Box 1).

The MCA is used to ascertain a person's capacity to make decisions (for example, about their physical or mental health care options), and to support decision-making. For any decision there is a presumption of mental capacity; people are considered able to make decisions for themselves unless there is evidence that they lack the capacity to do so. Capacity may be present in people with a learning disability and autistic people, may never be present, or may be impaired temporarily.

[a] Section 3 detention does not necessarily require a previous Section 2 detention if it is clear treatment is required.

Box 1: Mental capacity and decision-making

Mental capacity is the ability people have to make decisions. It involves understanding and retaining information relevant to the decision, using it and weighing it up, and communicating a decision. Capacity is decision-specific. For example, a person may have capacity to decide about their daily activities, but not to decide about complex medical treatment options.

While many psychiatric inpatients have the capacity to make treatment decisions, incapacity is common when unwell and detained in hospital, although estimates vary widely with context.[32–36] People with a learning disability and autistic people have higher rates of assessed incapacity on average compared to the general population, but decision-making abilities can be optimised if they have the right support.[37]

Where an adult (aged over 18 years old) is deprived of their liberty, the MCA Deprivation of Liberty Safeguards procedure (DoLS)[a] protects their rights in a hospital or care home. Where an adult lacks the capacity to consent to their confinement for purposes of providing them with care and treatment, consideration may need to be given as to whether they should be detained under the MHA or made subject to DoLS.

Research has found a lack of clarity and consistency amongst decision makers in determining which Act to use.[38]

Detentions in hospital under the Mental Health Act in England

Reducing detentions is a key goal of MHA reform.

The NHS Long Term Plan aimed to reduce the number of people with a learning disability and autistic people in hospital by 50% by March 2024, relative to March 2015 figures.[39] This target was not met – by March 2024, there was a 30% decrease.[b] This change included a:

- 60% decrease of patients with a learning disability

[a] The DoLS mechanism is due to be replaced with the Liberty Protection Safeguards, but implementation has been delayed.

[b] The data for March 2024 are currently provisional, and are known to under-report the true number of people in hospital for that month. The calculated change in hospital numbers is therefore comparing numbers in the "complete" data for March 2015 with numbers in the provisional data for March 2024 (which are expected to increase as further hospital numbers for that month are reported). The actual decrease in the number of autistic people and people with a learning disability in hospital from March 2015 - March 2024 is therefore likely to be less than 30%. Complete data for March 2024 will not be available until October - December 2024.

- 38% decrease of autistic patients with a learning disability
- 116% increase of autistic patients without a learning disability.[40]

Reporting data for mental health admissions is widely recognised as requiring improvement.[41–43] NHS funded care providers are expected to submit comprehensive data that is viewed as essential to commission services, to monitor trends and performance by those providers and to inform policy development.[a] [46]

The following figure presents data on the number of people with a learning disability and autistic people detained under the MHA, the route of detention, a breakdown by sex and age, and the duration of hospital stays.[b]

[a] NHS England reports data on people with a learning disability and autistic people via two primary routes. The first is the Mental Health Services Data Set (MHSDS), which includes monthly data from service providers.[44] The second is the Assuring Transformation (AT) dataset, collected retrospectively by health service commissioners in England.[45] The MHSDS reports higher numbers of people with a learning disability and autistic people in inpatient services at the end of each month than the AT dataset which is used to populate the figure.

[b] Data on detentions under section 136 by police forces, and reported by the Home Office, are not included here.

Detentions under the Mental Health Act

As of March 2024, **2,045** people with a learning disability or autistic people were in hospital in England. 32% were diagnosed with a learning disability, 48% were diagnosed with autism, and 20% were diagnosed with both.

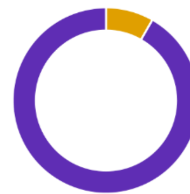
91% were detained under the Mental Health Act, and **9%** were informal (being treated voluntarily). More specifically:

53% were detained under Part II of the Act, **10% were detained under Part III with no restrictions**, **27% were detained under Part III with restrictions**, **9% were informal**, and **2% had a different legal basis**.

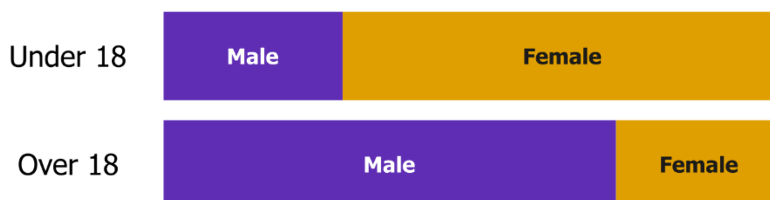
Of those detained under the Mental Health Act:

66% were male, and **33% were female**

89% were aged 18 or over, and **11% were aged under 18**



People aged under 18 in hospital were **more likely to be female (73%)**, while those aged over 18 in hospital were **more likely to be male (71%)**



Of all inpatients: **48% had been in hospital for under 2 years**, **21% for between 2 years and 5 years**, **14% for between 5 and 10 years**, and **16% for more than 10 years**

Source: NHS Digital, Learning Disability Services Monthly Statistics, Assuring Transformation Data Tables

Infographic prepared by Carl Baker, House of Commons Library. Percentages are rounded and may not sum to 100.

Risks of hospital admission for people with a learning disability and autistic people

The MHA Code of Practice states that hospital detention is "rarely likely to be helpful" for an autistic person, and that for people with a learning disability, "evidence-based good practice is that most of their needs can best be met at home or in community settings".[28] However, hospital detention under the MHA is sometimes used as a last resort when community-based services have not supported a person effectively.

Mental health hospital settings can often be unsuitable for people with a learning disability and autistic people, and risk worsening health outcomes for the reasons discussed below.[a]

Inappropriate care and lack of therapeutic value

A Care Quality Commission (CQC) review of 43 specialist autism and learning disability hospital wards in 2020 concluded that most were not therapeutic environments.[47] In 2023, 31% of NHS trusts and 47% of private providers of learning disability and autism services received a "requires improvement" or "inadequate" safety rating.[48]

Examples of inappropriate care include abuse of people with a learning disability and autistic people uncovered at the specialist hospitals Whorlton Hall in 2019[49,50] and Cygnet Yew Trees in 2020,[51] and avoidable deaths of people with a learning disability at Cawston Park Hospital.[52]

A 2023 NHS review found that 41% of people with a learning disability and autistic people in hospital had care requirements that did not require hospital treatment.[53]

Some inpatient care takes place in hospitals a long distance from home, making contact with families more difficult.[b]

Sensory overload, communication problems and staff training

Research interviews with autistic people who have experienced mental health inpatient settings illustrate that the range and intensity of stimuli in hospitals, including irregular routines and interaction with unfamiliar staff, can be overwhelming.[54]

People with a learning disability and autistic people can also experience communication barriers and misunderstandings with staff who lack the training to recognise their needs.[47,11,55] This can cause severe anxiety and distress that if managed inappropriately can lead to deterioration and use of restrictive interventions (discussed below).

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[a] Unless stated otherwise, research presented in this section reflects general inpatient experiences, and is not always related directly to experiences of detention.

[b] In March 2024 there were 260 people with a learning disability and autistic people in a hospital 100km or more from their homes.[40]

The Health and Care Act 2022 requires all health and social care service providers to ensure staff receive the relevant training on learning disability and autism.[56] However, research and inspections highlight a lack of such training for professionals working in inpatient settings.[47,57,58] There is also evidence that practitioner knowledge and implementation of the MHA Code of Practice varies widely, and is generally poor.[59]

People detained under the MHA have a statutory right to independent advocates to support them in exercising their rights, overcoming communication barriers, and challenging inappropriate detention.[60] Stakeholders have called for improving the quality, independence, and availability of advocacy provision for people with a learning disability and autistic people in inpatient settings.[47,61,62]

NHS England is implementing a reasonable adjustment digital flag system in patient records to enable health and social care staff to record that a disabled person needs reasonable adjustments to their care.[63]

In 2023 the Government launched a national investigation into mental health inpatient settings in England to improve staff training and levels of care.[64]

Restrictive interventions: restraints

Statutory guidance[a] highlights an “over-reliance on the use of force” and "disproportionate use” against people with a learning disability and autistic people in mental health units.[65] Restraints are sometimes used on inpatients who display behaviours that challenge, including:

- physical restraints (being physically held down)
- mechanical restraints (using devices such as harnesses)
- chemical restraints (using drugs with immediate or prolonged effects).

Some people with a learning disability and autistic people who have experienced restraints have reported physical injury, inappropriate staff aggression and psychological trauma,[47,66] which can cause further behaviours that challenge and subsequently prolong detention.[67,68] The use of restraints can also have negative effects on staff.[69]

Restrictive interventions: seclusion and long-term segregation

During a hospital detention, a patient can be prevented from mixing freely with others on a ward. Under the practice of seclusion, patients are fully isolated and placed under supervised confinement. Alternatively, patients placed under long-term segregation continue to have contact with staff, but not with other patients.[28]

In 2023 the Department of Health and Social Care commissioned a report examining the use of seclusion and long-term segregation for people with a learning disability and autistic people.[62] It concluded that it has no therapeutic benefit and that it

[a] This guidance is for the Mental Health Units (Use of Force) Act 2018, which makes provision about the oversight and management of the appropriate use of force in relation to people in mental health units.

should never be used for children and should be strictly limited for adults.[a] Research shows seclusion and long-term segregation can:

- be traumatic, with subsequent negative effects on health[70]
- be inconsistent with recovery-based approaches to care[71]
- infringe a person's human rights[62]
- exacerbate social exclusion[72]
- result in the application of less specialised forms of treatment[73]

During December 2023, there were 5,905 reported uses of restrictive interventions (including restraints, seclusion, and long-term segregation) for people with a learning disability and autistic people in England.[74] Of these, 1,585 were used on under-18s.

Over-medication

Some people with a learning disability and autistic people may be inappropriately prescribed psychotropic drugs,[b] with worse outcomes.[75,76] There is evidence that they are administered for behaviour that challenges, rather than for underlying mental illness, against clinical guidelines.[77,78]

Two national NHS programmes seek to address this,[c] but evidence shows little change in prescribing rates.[77,81]

Delays to hospital discharge

The National Institute for Health and Care Excellence recommends that for people with a learning disability and autistic people in crisis, mental health hospital admission should be a temporary solution that helps people to get well enough to leave quickly.[82]

According to NHS England data, in March 2024 60% of people with a learning disability and autistic people had no discharge plan in place. Among those with a plan, 31% faced delays in leaving hospital. The most frequent reasons for delay were:

- lack of suitable housing provision (56% of delays - 29% in March 2015)
- awaiting a residential home (33% of delays - 35% in March 2015)
- lack of social care support (24% of delays - 10% in March 2015)[d] [40]

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[a] The report also argued for using the term "solitary confinement" instead of long-term segregation.

[b] These are drugs which affect behaviour, mood, thoughts, or perception. There are five main types of psychotropic medications: antidepressants, anti-anxiety medications, stimulants, antipsychotics and mood stabilisers.

[c] Stopping Over-Medication of People with Learning Disabilities (STOMP)[79] and Supporting Treatment and Appropriate Medication in Paediatrics (STAMP)[80]

[d] In the NHS Assuring Transformation dataset it is possible to provide more than one reason for a delay to discharge.

Stakeholders argue that this shows that the primary cause of extended detentions is inadequate community support provision.[83] The CQC notes evidence that delays to discharge can also lead to a deterioration in behaviour, resulting in transfers to higher security hospital units and people with a learning disability and autistic people getting "stuck in the system".[47]

The draft Mental Health Bill

Following the Independent Review of the Mental Health Act in 2018,[68] in 2022 the UK Government published a draft Mental Health Bill to reform the Act.[84] Proposed reforms aim to reduce the rate of detentions under the Act, and give patients more autonomy and choice in care and treatment decisions.

A parliamentary Joint Committee scrutinised the draft legislation and published a report in January 2023,[85] to which the Government responded in March 2024.[86] The draft Bill includes the following changes directly affecting people with a learning disability and autistic people.

Changing criteria for detention

In the draft Bill, autism and learning disability remain classified as mental disorders for the purposes of the Act.[a] However, they are removed as criteria for which someone can be detained for treatment under Section 3, unless they have a co-occurring mental disorder.[84] The draft Bill also reduces the initial detention period for Section 3 detentions from six months to three months.[b] This change to detention criteria does not apply to detention under Section 2 (assessment for up to 28 days). The Government decided to retain this option for people with a learning disability and autistic people to enable determination of whether a person has a co-occurring mental illness that would meet the new criteria for detention under Section 3, or else discharge them.

The Government also intends to retain the current detention criteria for Part III of the Act, arguing that people with a learning disability and autistic people would receive more therapeutic and specialist support with diversion to hospital detention compared to imprisonment.[87]

Stakeholder views on removing autism and learning disability as criteria for Section 3 detention vary. Some have campaigned for this change for years, arguing that:

- Autism and learning disability are not mental health conditions, and they cannot be "cured" or "treated". People with a learning disability and autistic people

[a] The draft Bill states: ""autism" means a lifelong developmental disorder of the mind that affects how people perceive, communicate and interact with others"; ""learning disability" means a state of arrested or incomplete development of the mind which includes significant impairment of intelligence"; ""psychiatric disorder" means mental disorder other than autism or learning disability".

[b] In the draft Bill, Section 3 detention can be renewed for an additional period of three months (reduced from six months), followed by a further period of six months (reduced from one year), and then for successive periods of one year.

should therefore never be detained for "treatment" unless they have a co-occurring mental health condition.[83]

- The human rights of many people with a learning disability and autistic people detained in mental health hospitals are breached.[88]
- Hospital settings can lead to greater distress for people with a learning disability and autistic people in crisis.[54,62]
- This change will prevent hospital detention serving as a backstop, and will incentivise investment in community services.[85]

Some health professionals have raised concerns that Section 2 detention is often insufficient for people with a learning disability and autistic people undergoing crisis. A survey of 82 psychiatrists working in learning disability services across England and Wales in 2023 found that 64% were not confident that the 28 day period offers sufficient time to diagnose an underlying mental health condition for someone with a learning disability.[a] [89] 78% expected unintended consequences from proposals in the draft Bill.

For example, if Section 3 detention were no longer an option for people with a learning disability and autistic people, and community support were not sufficient to prevent a crisis, there is a risk that they could be detained under alternative routes, including:

- misdiagnosis of an eligible mental disorder to enable detention under Section 3, directing people away from the most appropriate care pathway
- an increased chance of detention under Part III of the Act for those in conflict with the law
- inappropriate detention under the Mental Capacity Act for those over 18[b]

The final concern arises because the MCA has different safeguards that some view as less stringent than those under the MHA, with potentially negative impacts on choice and autonomy, and fewer opportunities to challenge decisions about detention and treatment.[c] [92,93]

The Joint Committee noted the risks of unintended consequences, and that the inconsistency in detention criteria between Part II and Part III of the Act could result in discrimination and unjust criminalisation of people with a learning disability and autistic people.[85] However, it welcomed the "direction of travel" of the legislation, and

[a] Participants rated their confidence on a scale from 1 (not confident) to 5 (fully confident) – 64% responded with a 1 or 2 rating.

[b] The new National Deprivation of Liberty Court can also authorise detention in hospital of children under 18.[90]

[c] Unlike the MHA, the MCA does not provide patients with access to mental health tribunals, statutory advocacy, a Second Opinion Appointed Doctor (who can decide whether a treatment is clinically defensible and whether due consideration has been given to the views and rights of the patient), or Section 117 aftercare (free support from care services after leaving hospital).[91]

concluded the changes to the detention criteria are “likely to improve outcomes” for this population.

The Joint Committee also encouraged the Government to ensure an adequate supply of community services and review the operation of the MCA.[85] In its response, the Government agreed to monitor the impact of changes to detention criteria to ensure detention under the MCA is only used where there is direct therapeutic benefit.[87]

Duties for local commissioners

The draft Bill would introduce a statutory requirement for Integrated Care Boards (ICBs)[a] to establish and maintain a risk register of consenting people with a learning disability and autistic people in their area who are at risk of hospital admission. ICBs and local authorities would also be required to monitor the care requirements of people on the register, and to seek to ensure that their care needs can be provided without resorting to detention under the Mental Health Act.[84]

The Joint Committee and other stakeholders recommended strengthening these duties, but the Government argued these provisions are sufficient to ensure adequate supply of community services.[87] Stakeholders have called for clarity on how the creation and monitoring of risk registers would be resourced.[85,95]

Statutory care (education) and treatment reviews

Under the MHA, Care (Education) and Treatment Reviews (C(E)TRs) are undertaken with the intention that people with a learning disability and autistic people are admitted to hospital only when absolutely necessary, and for the minimum period possible.[96] The meeting should include the person under review, their family, their care team, a clinical expert, an expert by experience, and the service commissioner.

The draft Bill introduces a statutory requirement for C(E)TRs to be held at least every 12 months. There would be a duty on responsible commissioners to conduct these reviews, and on healthcare providers to have regard to their recommendations.

Stakeholders have broadly welcomed this proposal, although some have raised concerns that a 12-month interval risks prolonging hospital stays, and that recommendations of C(E)TRs need to be enforced. The Government has outlined its intention to consider ways to ensure people with a learning disability and autistic people can receive C(E)TRs more frequently.[87]

Resourcing and availability of community-based social care

Stakeholders have emphasised that many changes can be made to improve care for people with a learning disability and autistic people before legal reforms are

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[a] An Integrated Care Board is a statutory NHS organisation that is responsible for planning and funding NHS services in their assigned area.[94]

introduced.[85] These include standardising service models among providers to improve care and eliminate poor practice, and increasing investment in social care.[a] [99–101]

Stakeholders also agree that ideal care for people with a learning disability and autistic people is community-based, with an emphasis on quality of life and social inclusion to reduce the risk of crisis.[85,102] Community-based care for people with a learning disability and autistic people includes appropriate housing and care and support services, alongside specialist community teams.[103]

Referrals to local learning disability and autism mental health services are 33.9% higher compared to pre-pandemic levels.[104]

The Government seeks to meet demand for services for people with a learning disability and autistic people via the Building the Right Support Action Plan.[b] [106]

The Joint Committee also concluded that reforms are unlikely to succeed in keeping people with a learning disability and autistic people out of hospital without extra investment in community support.[85] The Government agreed with this conclusion, noting that there will need to be sufficient provision of community support before removing learning disability and autism from Section 3 of the MHA.[87]

Costs of reforms

Proposed reforms introduce additional costs. The Government conducted an impact assessment outlining the medium-term costs of implementing the draft Bill in England, with an estimated net cost of £1.067 billion.[107] When fully implemented, it is estimated that reforms would cost an additional £100m per year.[95]

The Joint Committee viewed these estimates as unrealistically low, given that 39% of local authority adult social care spend is on adults with a learning disability – the second largest spend after older peoples' services.[108] The Joint Committee recommended the Government undertake a revised impact assessment that considers changes to the health and social care workforce and broader economic trends.

The Government accepted this recommendation and agreed to provide an updated impact assessment to accompany the final Bill, along with plans for implementation, workforce development, and to address disparities.[87]

In March 2024, the Government stated it would introduce a revised bill "when parliamentary time allows".[87]

Legislative approaches in other jurisdictions

Other countries have faced similar challenges when legislating on involuntary treatment for mental health. There is substantial variation in provisions for autism and learning disability under different legal frameworks.

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[a] A 2023 survey of 185 NHS trust leaders showed that 89% of them were worried about levels of investment.[97] The Health Foundation estimates that an additional £8.4 billion would be required by 2024/25 to meet demand.[98]

[b] An independent report commissioned by Department of Health and Social Care found weaknesses in the effective management and oversight of this programme.[105]

Varying legal definitions of mental disorder

Learning disability is excluded from the legal definition of mental disorder in the Australian state of Victoria, the Canadian province of British Columbia, and in India, while it is included in legislation in Nigeria, Ireland and Scotland.[89] India, Nigeria and Scotland do not specifically mention autism within their legislation, leaving open its interpretation as a mental disorder.

- **Scotland** is in the process of reviewing its Mental Health (Care and Treatment) Act 2003. Two reviews of the law reported opposing views regarding whether to include learning disability within the definition of mental disorder.[109,110] The Scottish Government is consulting on a separate Learning Disabilities, Autism and Neurodivergence Bill to uphold rights for and better protect people with a learning disability and autistic people.[111]

- **New Zealand's** Mental Health (Compulsory Assessment and Treatment) Act 1992 removed learning disability and autism without co-occurring mental illness as criteria for detention in an attempt to "encourage choice and independence".[112] This change limited treatment options for this group, and resulted in many people with a learning disability and autistic people who displayed harmful behaviour being either sent to prison, or left neglected in their communities. The New Zealand Government introduced new legislation in 2004 to re-enable provision of compulsory care to people with a learning disability and autistic people convicted of criminal action.[112]

In its evidence to the Joint Committee, the UK Government suggested an outcome like that seen in New Zealand is unlikely to be caused by the draft Bill, given the continued provision for detention of people with a learning disability and autistic people in hospital under Part III.[113]

Human rights alignment and combining legal frameworks

The 2016 Mental Capacity Act (Northern Ireland) fused mental capacity and mental health law under a single legal framework.[a] [114] This followed a review of mental health and learning disability services in 2007 that concluded that having separate frameworks for physical health (based on capacity) and mental health (based on condition) was "anomalous, confusing and unjust".[115]

The new fused law seeks to avoid discrimination against people with mental disorders by creating a unified legal framework centred on capacity, facilitating treatment for anyone aged over 16 regardless of their condition.[116] By giving people with a mental illness the same rights as others, proponents argue the Act is more closely aligned with the human rights principles of both the European Convention on Human Rights and the UN Convention on the Rights of Persons with Disabilities.[117] However, people with a learning disability and autistic people are more likely to be impacted by a fusion approach if they are more likely to lack capacity. Others argue that full alignment with human rights standards requires abolishing all forms of compulsory detention for mental health treatment.[118,119]

Academic and policy debates in England and Wales have taken consideration of the more radical step of fusing the MHA and MCA.[120] The Independent Review sought to

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[a] Partial implementation of the Act began in 2019, but it has not been fully implemented.

strike a balance between broader legislative reform and delivering change quickly, and did not recommend this approach.[68]

The UK Government accepted the recommendation of the Joint Committee to keep the matter of fusion and a rights-based approach under review. It stated it will work to "improve and clarify" the interface between the MCA and the MHA in the Code of Practice.[87]

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