

**PWYLLGOR SICRWYDD DEDDFWRIAETH IECHYD MEDDWL
MENTAL HEALTH LEGISLATION COMMITTEE**

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| DYDDIAD Y CYFARFOD: DATE OF MEETING: | 13 March 2023 |
| TEITL YR ADRODDIAD: TITLE OF REPORT: | Update on Review of the Mental Health Act 1983 |
| CYFARWYDDWR ARWEINIOL: LEAD DIRECTOR: | Andrew Carruthers, Executive Director of Operations |
| SWYDDOG ADRODD: REPORTING OFFICER: | Sarah Roberts, Mental Health Legislation Manager |

Pwrpas yr Adroddiad (dewiswch fel yn addas)

Purpose of the Report (select as appropriate)

The purpose of the paper is to present to the Mental Health Legislation Committee an update on the Mental Health Bill Committees report to Government

ADRODDIAD SCAA

SBAR REPORT

Sefyllfa / Situation

The Mental Health Act, 1983 (MHA) has been amended multiple times, making it a complex piece of legislation especially with its interaction with the Mental Capacity Act and Deprivation of Liberty Safeguards. A review of the legislation is currently underway in Parliament.

Cefndir / Background

In 2017 the government commissioned an Independent Review of the MHA, to look at how it was used and to suggest ways to improve it.

The purpose of the Independent Review was to understand:

- the rising rates of detention under the MHA;
- the disproportionate numbers of people from black, Asian and minority ethnic groups (BAME) in the detained population; and
- Investigate concerns that some processes in the Act are out of step with a modern mental health system.

It also considered how the MHA could better meet the needs of people with a learning disability, or autism or people with serious mental illness within the criminal justice system.

The review's final report which was published in 2018 stated that the MHA does not always work as well as it should for patients, their families, and their carers. They recommended greater safeguards and a greater respect for wishes, preferences and patient autonomy recommending changes to accountability,

challenges, and transparency.

In 2021 in response to the review, the government held a formal White Paper consultation on reforming the MHA. In June 2022 the government published the draft Mental Health Bill.

A Government Joint Committee Inquiry ran from October to December 2022. Their report was produced in January 2023 which outlines how the Joint Committee wants the government's draft Mental Health Bill to be strengthened to address rising numbers detained under the MHA and racial inequalities.

Asesiad / Assessment

The Committee has welcomed the Government's planned reforms but they recommended that the government publish a comprehensive implementation and workforce plan along with Bill with clear actions and milestones because this is not currently addressed in the Bill's impact assessment.

A recommendation has been made to abolish Community Treatment Orders for Part II patients, and a statutory process and timeline be put in place for the review and potential abolition for Part III patients. Evidence has shown that they are being used more than intended and in some cases as a more restrictive alternative to discharge.

The grounds on which someone can be detained for assessment and treatment are intended to increase accountability and require evidence that detention will benefit the patient. Clearer guidance and tighter drafting is required to ensure those that those who need help are not turned away.

The plan to remove autism and learning disability as grounds for detention under Section 3 may lead to more detentions under different legal powers, with fewer safeguards, or diversion to the criminal justice system instead. Proper implementation of community care improvements and stronger safeguards against inappropriate detention will be vital. A recommendation has been made for the 28 days of a Section 2 to be continued further for patients with a learning disability or autism in tightly defined exceptional circumstances which could only be authorised by a Tribunal.

The report recommends all health authorities appoint a responsible person who would be responsible for monitoring and reporting on ethnic inequalities in their organisations due to the lack of high-quality data on ethnicity and the use of the MHA.

The Government should commission research into the likely costs and benefits of extending Section 117 aftercare, proportionate to need, to patients who are detained under other provisions rather than Section 3, including those who are

detained under the liberty protection safeguards.

Statutory Care and Treatment plans will be introduced in England to align to the CTPs under the MH Measure.

A recommendation for patients detained under the MHA to have a statutory right to request an advance choice document to be drawn up.

The Government should consult further on a short-term emergency detention powers for people who arrive at A&E settings in crisis.

Argymhelliad / Recommendation

This update is provided to the Committee for information

| Amcanion: (rhaid cwblhau) Objectives: (must be completed) | |
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| Committee ToR Reference: Cyfeirnod Cylch Gorchwyl y Pwyllgor: | |
| Cyfeirnod Cofrestr Risg Datix a Sgôr Cyfredol: Datix Risk Register Reference and Score: | |
| Safon(au) Gofal ac Iechyd: Health and Care Standard(s): | Standards 1,6,7,8,10,12,14 and 15 |
| Amcanion Strategol y BIP: UHB Strategic Objectives: | The Mental Health Legislation Committee provides an assurance to the Board of the organisation's compliance with primary legislation in Wales including the Mental Health Act (1983), with the 2007 amendments, and the Mental Health (Wales) Measure 2010 |
| Amcanion Llesiant BIP: UHB Well-being Objectives: Hyperlink to HDdUHB Well-being Statement | |

| Gwybodaeth Ychwanegol: Further Information: | |
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| Ar sail tystiolaeth: Evidence Base: | N/A |
| Rhestr Termau: Glossary of Terms: | Outlined in report |
| Partion / Pwyllgorau â ymgynhorwyd ymlaen llaw y Pwyllgor Ceisiadau Gofal Sylfaenol: Parties / Committees consulted prior to Mental Health Legislation | The Mental Health Legislation Scrutiny Group |

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| Committee: | |
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| Effaith: (rhaid cwblhau) Impact: (must be completed) | |
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| Ariannol / Gwerth am Arian: Financial / Service: | Non-compliance with the Mental Health Act could result in legal proceedings being brought against the Health Board who is the detaining authority. |
| Ansawdd / Gofal Claf: Quality / Patient Care: | There is a patient representative on the Mental Health Legislation Committee |
| Gweithlu: Workforce: | NA |
| Risg: Risk: | <p>Risk of non-compliance with the 1983 Act and with the Welsh Government's <i>Mental Health Act 1983 Code of Practice for Wales</i> and with the <i>Good Governance Practice Guide – Effective Board Committees (Supplementary Guidance) Guidance</i>.</p> <p>Safety of patients</p> <p>Assurance – use of statutory mechanisms</p> |
| Cyfreithiol: Legal: | As outlined above |
| Enw Da: Reputational: | Mental Health Act media focus |
| Gyfrinachedd: Privacy: | As above |
| Cydraddoldeb: Equality: | N.A |