

MHB005 – Bwrdd Iechyd Prifysgol Hywel Dda

Senedd Cymru | Welsh Parliament

Bil arfaethedig – Datblygu'r Bil Safonau Gofal Iechyd Meddwl (Cymru) |
Proposed Development of the Mental Health Standards of Care (Wales) Bill

Ymateb gan: Eleanor Marks, Is-gadeirydd, Bwrdd Iechyd Prifysgol Hywel Dda |
Evidence from: Eleanor Marks, Vice Chair, Hywel Dda University Health Board

Enshrining overarching principles in legislation

Question 1: Do you think there is a need for this legislation?

Can you provide reasons for your answer.

Some changes are required but unless the Mental Health Act (MHA) is changed in both England and in Wales we cannot see how this would work. There could be more legal challenges if there are different pieces of legislation within each Country.

We agree to the proposed amendments to the MH Measure.

Specific changes to existing legislation

A. Nearest Relative and Nominated Person

Question 2: Do you agree or disagree with the overarching principles that the Bill seeks to enshrine?

We agree with the principles and assume that they would sit within the Code of Practice for Wales and not within the MHA as they would need to apply to both Countries.

Question 3: Do you agree or disagree with the proposal to replace the Nearest Relative (NR) provisions in the Mental Health Act 1983 with a new role of Nominated Person?

This is long overdue, we agree that the Nominated Person would provide greater choice and open up the role to carers and other people who could be best placed to undertake this function as opposed to the current hierarchy.

Under current legislation (MHA,1983) the Nearest relative has the right of appeal to the MHRTfW, for those Welsh patients who are detained in England, how would that apply if there are plans to transfer them across border under Section 19. Unsure how this would work in practice.

This would need to apply in both England and Wales for it to work.

B. Changing the criteria for detention, ensuring the prospect for therapeutic benefit

Question 4: Do you agree or disagree with the proposal to change in the criteria for detention to ensure that people can only be detained if they pose a risk of serious harm either to themselves or to others?

Can you provide reasons for your answer.

Agree but only if changed in England and Wales

The change in criteria would potentially mean a higher threshold for detention - risk would need to be clarified. The MHA reform suggested 'substantial likelihood and significant harm.' If this threshold is raised, then more support would be required in the community for those patients who have not met the criteria and been detained.

As the MHA applies to both England and Wales this would need to be changed in both Countries and the MHRT criteria is currently the same for both.

Question 5: Do you agree or disagree with the proposal to change in the criteria that there must be reasonable prospect of therapeutic benefit to the patient?

Can you provide reasons for your answer.

Agree but only if changed in England and Wales

Support a change to detention criteria to require that individuals receive therapeutic benefit, but the definition would need to be defined otherwise people could be detained unnecessarily. Justifying longer term detentions would be more difficult when patients are no longer considered to pose a significant risk and where treatment or detention no longer has a therapeutic benefit.

As the MHA applies to both England and Wales this would need to be changed in both Countries as the MHRT criteria is the same for both.

C. Remote (Virtual) assessment

Question 6: Do you agree or disagree with the proposal to introduce remote (virtual) assessment under 'specific provisions' relating to Second Opinion Appointed Doctors (SOADs), and Independent Mental Health Advocates (IMHA)?

Can you provide reasons for your answer.

Agree.

Since COVID over 90% of Second Opinion Appointed Doctor assessments are carried out virtually and this has continued. Healthcare Inspectorate Wales already provide SOADs with the capability to complete forms electronically.

Accessibility to Independent Mental Health Advocates (IMHAs) is important both in face to face contact with patients and for IMHAs to be able to provide remote virtual support to patients dependent on what the patient requests.

D. Amendments to the Mental Health (Wales) Measure 2010

Question 7: Do you agree or disagree with the proposal to amend the Measure to ensure that there is no age limit upon those who can request a re-assessment of their mental health?

Can you provide reasons for your answer.

Agree.

There should be no age limit on those who request re-assessment under the MH Measure.

Question 8: Do you agree or disagree with the proposal to amend the Measure to extend the ability to request a re-assessment to people specified by the patient?

Can you provide reasons for your answer.

Agree.

There should be an extension to the ability to request a re-assessment to people specified by the patient.

General Views

Question 9: Do you have any views about how the impact the proposals would have across different population groups?

No

Question 10: Do you have any views about the impact the proposals would have on children's rights?

No

Question 11: Do you have any general views on the proposal, not covered by any of the previous questions contained in the consultation?

Proposals to changes to the MH Measure are achievable but anything that relates to the MHA, 1983 are not. The Codes of Practice for both pieces of legislation would have to be updated.

The MHA is already an outdated and complex piece of legislation and there are difficulties with its interaction with the Mental Capacity Act (MCA) and Deprivation of Liberty Safeguards (DoLs).

Workforce - there would be a requirement to increase capacity of approved clinicians, nurses, section 12 doctors to ensure there is increased community care.

There is a need for digital signatures within the MHA in Wales, England introduced this some years ago with the move to a more digital platform.
