Written Evidence Submitted by The Royal College of Psychiatrists on The Mental Health Bill 2025: Learning Disability & Autism

June 2025

1. The Royal College of Psychiatrists is the professional medical body responsible for supporting psychiatrists throughout their career from training through to retirement, and in setting and raising standards of psychiatry in the United Kingdom. We work to secure the best outcomes for people with mental illness, learning difficulties and developmental disorders by promoting excellent mental health services, training outstanding psychiatrists, promoting quality and research, setting standards and being the voice of psychiatry. For more information about the College click here.

Learning Disability & Autism

2. The Bill leads with clinical definitions of Autism and Learning Disability and introduces the term 'psychiatric disorder'. To our knowledge this is the first time mental health law has tried to define clinical conditions in primary mental health legislation and the first time the term 'psychiatric disorder' has ever been used in statute. We think these definitions conflate the legal concept of mental disorder with the clinical concepts and that it will be confusing. 31. We strongly recommend starting with the legal definition of mental disorder and keeping the tried and tested approach of using exclusion rules for the parts of the MHA where certain clinical conditions may be excluded. This is the approach taken in the 1983 Act. We recommend using secondary legislation to give definitions of specific clinical conditions and removing the term 'psychiatric disorder' in the Bill.

3. The College commends the emphasis on supporting people with Learning Disability (LD) in the community, but we have substantial concerns about potential negative impacts following the implementation of these reforms.

4. There are times when community services cannot manage the level of risk that some patients with LD present with. This is not just because of lack of services or staff, but because some risk levels require treatment in appropriate and safe hospital environments.

5. We are concerned that excluding people with Autism/Learning Disability from admission for treatment (section 3) would result in use of the Liberty Protection Safeguards (MCA) for the same detention but with fewer safeguards.

6. There is also a real danger that people with LD presenting with such high-risk behaviours will be dealt with by the police and in the Criminal Justice System (CJS) if they cannot be admitted to hospital under the MHA.

7. We are concerned that differentiating the definitions of mental disorder in Part 2 and Part 3 of the Mental Health Act would be discriminatory and may negatively affect the care people with LD would receive. More information on this is provided below.

8. There is also a potential that the reforms may lead to a situation where people do not receive appropriate social and health care because they will not be entitled to section 117 aftercare (because they haven't been detained under the MHA).

Part 2 and Part 3 Distinctions:

9. The changes to the way the Act applies to people with a learning disability and autistic people detained for assessment or treatment will not apply under Part 3 of the Act (i.e. individuals accused of, or serving a sentence for committing a crime). For this cohort of people, the only alternative to detention in hospital is detention in prison.

10. Changes to the grounds for detention do not affect patients who will be detained under Part 3 of the Act, as orders and directions under this Part already have distinct considerations in relation to risks posed by those in the criminal justice system.

11. The College retains a strong objection to the widening of the division between Part 2 and 3 although we appreciate that government may view Part 2 and Part 3 as serving different public policy purposes, there is currently no evidence that creating a distinction will improve public protection. Any division will

result in many of the principles that should apply to all people with mental disorder being watered down for those under Part 3, who may be denied their rights to equivalent care and safeguards. We hope that the Government will reconsider changes to the MHA that will create such gaps.

12. These distinctions potentially create a false dichotomy between those who have been caught up in the Criminal Justice System and those who have not - sometimes the decision to prosecute seems arbitrary. This is especially likely to be discriminatory to the disproportionate number of people from racialised communities who are detained under Part 3 of the MHA, potentially creating a two-tier system which will particularly negatively impact black men who are more likely to enter mental health services do so through the criminal justice system.

13. It is important to note that these issues do not refer just to patients in prisons – as of March 2024, nearly a third (29.2%) of patients detained in hospital were detained under Part 3 of the MHA.[1] Having different rights and different detention criteria for patients detained in the same hospital is likely to be discriminatory and confusing.

14. These reforms raise large questions for Psychiatric practice as there will be two different definitions of mental disorder for different groups of patients. One where learning disability and autism is a criteria for detention (Part 3) and one where it isn't (Part 2). This will be confusing and very hard for mental health professionals to implement.

[1] Mental Health Bill 2025: fact sheet - GOV.UK