

Mental Health Legislation

January 2025



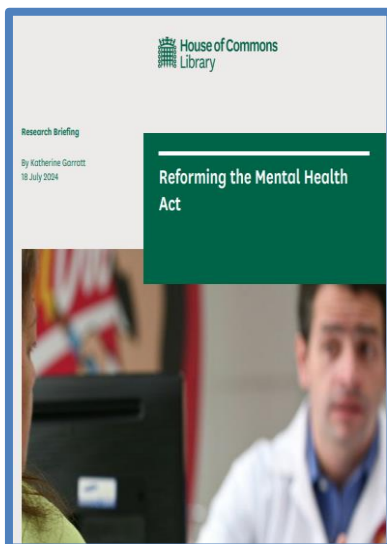
Mental Capacity Act 2005



This bulletin is published for all groups of staff working within our Trust. Please share with members of your team. The bulletin is best viewed online to enable users to click onto the links.

Mental Health Bill 2024: what you need to know

On 6th of November 2024, the Mental Health Bill was introduced in parliament for the purposes of amending the Mental Health Act 1983. This has been an already long process with the Independent Review of the Mental Health Act having been undertaken and then reported in 2018. Reducing detentions and racial inequalities are key drivers of reform.



The Bill is some 98 pages long.

The measures introduced in the 2024 mental health bill aim to give people greater control over their treatment and help ensure they receive the dignity and respect they deserve.

Once enacted, it is envisaged that it will be phased in over eight to ten years to enable services to prepare for the changes.

Read the NHS Confederation briefing [here](#).

A key message is that reform might be on its way, but in the meantime, it is business as usual with the existing Mental Health Act.

How to use legal powers to safeguard highly vulnerable dependent drinkers

Amongst the broader population of dependent drinkers is a smaller group of drinkers whose alcohol dependency is particularly entrenched and chronic. An even smaller sub-group is particularly vulnerable and faces significant safeguarding risks, to themselves and others.

Without action, these people and those around them can experience serious dangers, including neglect, abuse, and untimely deaths. This group of people often requires more robust support, by using legal powers.

Practitioners have consistently reported that they are aware that certain legal frameworks, such as the Care Act, Mental Capacity Act and Mental Health Act, could be used to help these people, but that they are unsure how to properly, proportionately and confidently use those powers.

Alcohol Change's guide provides an accessible introduction to legislation that can be applied to chronic, highly vulnerable, dependent drinkers to improve outcomes for them, their families and their communities.

The guide also outlines the limits of these legal frameworks and when they should not be used.



Download the guide [here](#)



From the web:

Mental Capacity to consume alcohol?

A recent Court of Protection judgment considered whether a 79-year-old woman with alcohol related amnesia causing severe short term memory impairment had mental capacity to consume alcohol. This decision is rarely reported in published judgments. His Honour Judge Burrows concluded: 'I am satisfied that she is unable to assess the risks associated with the consumption of alcohol and this needs to be regulated in her best interests by others.' The case also looked at issues around sexual relations and contact with others. Read the judgement [here](#).

Remote Assessments and the Court of Protection

In minutes from the last Court of Protection User Group, a question about the use of remote capacity assessments in the CoP was raised. In brief, the Court will want to know that P has been given the best opportunity for assessment. If an assessment is conducted remotely, the report should include a clear explanation as to why and set out the support provided to P. Read more [here](#).

Re ZX (Capacity to Engage in Sexual Relations) [2024] EWCA Civ 1462 Court of Appeal

This case concerns the thorny issue of capacity to engage in sexual relations. At first instance HHJ Burrows had been confronted, to his considerable (and understandable) disquiet, with the need to determine whether an 18-year-old man had capacity to make decisions about engaging in sexual relations with others. Read more [here](#).

Capacity, anorexia and autism

The patient lacked capacity in relation to treatment (because of an *"inability to weigh and balance the impact of her ASD into the decision surrounding her treatment"*) and a trial of esketamine was not currently in her best interests. Read the judgement [here](#).

Mental capacity for discharge from hospital

A recent Ombudsman ruling looked at the discharge of a woman from hospital to a care home rather than to her own home with her husband (in line with her previous wishes). The ruling upheld complaints about assessing Mrs X's ability to make her own decisions, consent and sharing information about community nursing needs. Read the ruling [here](#).

Executive functioning and the MCA

A recently published national report on Safeguarding Adults Reviews (534 people died) noted concerns over the failure of health and social care staff to understand the impact of executive functioning in assessments of mental capacity. It stated: *'An individual's articulate, verbal presentation may give no cause to question capacity, yet their inability to follow through on stated decisions demonstrates potential loss of executive function, potentially making it difficult for them to follow through on decisions about safety or follow advice given about handling risky situations.'* The report can be downloaded [here](#).

Mental health legislation policies

To support staff finding mental health legislation related policies in a timely manner a subfolder has been created, which holds all Mental Health Act and Mental Capacity Act related policies.

Please access the policies page [here](#)

Narrated presentations

We have placed narrated presentations and films on the learning and latest news section of our intranet page.

Access the presentations [here](#)

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If you need further information or have a comment or query, please contact the Mental Health Legislation Team on 024 7693 2520.