

About Mind:

1. We're Mind, the mental health charity for England and Wales. We believe no one should have to face a mental health problem alone. We provide advice and support to empower anyone experiencing a mental health problem. We campaign to improve services, raise awareness and promote understanding.

Summary:

2. We recognise that many of the measures included in the Coronavirus Act 2020 were necessary to enable the UK Government to respond to the unprecedented emergency created by Covid-19. However, we have consistently highlighted concerns about how some of these measures could affect the rights, protections and safety of people with mental health problems.
3. As we begin to move past the peak of the pandemic and focus on recovery and longer-term impact, **we urge the UK Government to remove from the Coronavirus Act any powers that are no longer necessary.** Many of these powers have significant implications for the rights of people with mental health problems and even if these powers are not being used, the potential for them to be used erodes hard won protections and creates significant fear and anxiety.
4. In particular, we welcome the fact that the powers to introduce temporary changes to the Mental Health Act have so far not been switched on by the UK Government. We also welcome the steps the UK Government has taken to enable Mental Health Act assessments to continue at this time through remote assessments. Given the option to use remote assessments and existing emergency provisions within the Mental Health Act, **we urge the UK Government to remove the temporary powers to change the Mental Health Act from the Coronavirus Act.**
5. We are also very concerned about the temporary suspension of local authority duties to provide adult social care, which could significantly affect access to vital social care support for people with mental health problems. As only a very small number of local authorities in England are operating under social care easement, and given existing flexibility within the Care Act, **we also urge the UK Government to 'switch off' the social care easement measures as a first step before removing the temporary powers to suspend Care Act duties from the Coronavirus Act.**
6. This response is primarily aimed at informing Question 1 and 1 a) of the Committee's inquiry.

Parliamentary Scrutiny of the Coronavirus Act:

7. The Coronavirus Act includes a 6-month review clause which will allow Parliament to vote on a motion to either approve or reject collectively all the measures in the

Coronavirus Act. This review mechanism will mean Parliament cannot call for individual measures which are no longer necessary to be removed from the legislation.

8. **We urge the UK Government to review this approach and allow Parliament to meaningfully scrutinise the legislation and vote to remove any powers which are no longer necessary.** Given the reach of the powers and the impact they have on people's rights, it is vital that Parliament has the power to scrutinise their ongoing necessity.
9. Our submission to this inquiry primarily focuses on the Coronavirus Act, but we also note with concern that the UK Government has used other legislative routes to make changes since the passing of the Coronavirus Act. For example, the UK Government made changes to 10 sets of children's social care regulation via statutory instrument in April, which had an impact on 65 safeguards for children in care in England. Changes have also been made via regulation to the school exclusion process. It is of vital importance that such changes to rights and protections made since or outside of the Coronavirus Act also receive adequate attention and scrutiny.

The Mental Health Act and the Coronavirus Act 2020:

10. The Coronavirus Act includes measures that could significantly affect the rights of people with mental health problems detained in hospital for treatment under the Mental Health Act. Being sectioned is one of the most traumatic things that can happen to anyone experiencing a mental health problem and it is vital that we protect the rights and safety of those who are being detained.
11. Under the Coronavirus Act, if staffing levels reach a critical point, the UK Government can switch on additional powers which would mean that:
 - An Approved Mental Health Professional (AMHP) could secure advice from one doctor, rather than two doctors, in order to section someone, if it is impractical to get advice from two doctors or would cause undue delay.
 - The clinician in charge of the patient's treatment could be allowed to continue medication without their consent beyond three months without getting an independent/second opinion, if they think that would cause undesirable delay or be impractical.
 - Some time limits set in the Mental Health Act could be extended, including extending emergency holding powers for those already in hospital from 72 hours to 120 hours and allowing more time for a person to be kept on remand in hospital, and more time to transfer a prisoner from prison to hospital.
12. These changes to the Mental Health Act represent a significant reduction in people's rights and protections. The changes also come at a time when we have waited over 18 months for the UK Government to respond to an Independent Review, which expressed significant concerns about people's rights under the Mental Health Act.¹ As a matter of urgency, **the UK Government must come forward with a full response to the**

¹ <https://www.gov.uk/government/publications/modernising-the-mental-health-act-final-report-from-the-independent-review>

Independent Review and set proposals for how they will take forward reform of the Mental Health Act, with timescales for implementation.

13. We have consistently called on the UK Government to only switch on the Mental Health Act powers if absolutely necessary and welcome the fact that so far the UK Government has not switched on these powers.
14. The introduction of new guidance to allow Mental Health Act assessments to take place remotely also raises questions about the necessity of the retaining these provisions within the Coronavirus Act.² Although we have concerns about significant changes to the assessment process being introduced through guidance with no defined end date, the option to use remote assessments should facilitate doctors being able to carry out Mental Health Act assessments more easily. Therefore, even in the case of staff shortages due to Covid-19, an AMHP should be able to get the opinion of two doctors without undue delay. In a case of urgent necessity, where it is not possible to obtain two medical recommendations, the Mental Health Act already contains provision for an application for short-term detention based on one medical recommendation. This may be converted to a Section 2 admission if a second doctor supports the application.³
Therefore we urge the UK Government to remove the provision which would allow an AMHP to secure advice from only one doctor.
15. The introduction of remote assessments also removes any justification for extending emergency holding powers. Under Section 5(2), a voluntary patient can be prevented from leaving hospital for up to 72 hours so that they can be assessed for detention under the Mental Health Act. The emergency powers in the Coronavirus Act allow this time period to be extended to 120 hours. During this time, a patient is held without senior medical review, without a Responsible Clinical in charge of their case, without access to the Mental Health Tribunal and without the right to independent advocacy. Five days is a long time to be deprived of liberty without such vital safeguards and we have consistently questioned whether this may breach human rights. Senior medical review from within the hospital could already provide the medical opinion for the section or to discharge the patient. The introduction of remote assessments also eases pressure and so it should be possible for the necessary assessments to take place within 72 hours.
Therefore we urge the UK Government to remove the provision for extending emergency holding powers.
16. We also question whether other changes introduced by the Coronavirus Act would be human rights compliant, particularly the changes to second opinions for medication. Under the Mental Health Act detained patients can be treated with medication for three months without a second opinion, but treatment beyond three months must be approved by a second opinion appointed doctor (SOAD) if the patient refuses or does not have capacity to consent. If enacted, the amendment to the Mental Health Act in the Coronavirus Act would allow the approved clinician to continue treating the patient

² [Legal guidance for mental health, learning disability and autism, and specialised commissioning for all ages during the Coronavirus pandemic](#) (19 May 2020). This guidance introduces remote assessments and modifies elements of the Mental Health Act Code of Practice (England) including the responsibility to hold hospital managers hearing.

³ Section 4 of the Mental Health Act permits an emergency application for detention of a person for assessment for up to 72 hours on the basis of the medical recommendation of one doctor. The detention must be of urgent necessity and compliance with the provisions of the Act relating to applications would involve undesirable delay.

without a second opinion review if they think it would be impractical or result in 'undesirable delay'.

17. Prior to Covid-19, we were already deeply concerned that the three-month review was too weak to be an adequate safeguard. These concerns were underscored by the independent review of the Mental Health Act, which made extensive recommendations for reform.⁴ Removing the requirement for a second opinion in some circumstances would mean that patients could be forced to have treatment over which they have no say, and which may have serious adverse effects, with no external scrutiny. In addition to the impact on human rights, this could compromise patient safety, especially in high-risk prescribing. **We question whether it would ever be human rights compliant to turn on the provision on second opinions and urge the UK Government to remove this provision from the legislation.**
18. There have also been significant changes to the practice and procedure within the Mental Health Tribunal in both England and Wales in response to Covid-19. The majority of these changes have not been made in primary legislation or been subject to Parliamentary scrutiny and have instead been brought into force by a range of regulations and practice directions. Examples of the changes include:
 - the suspension of pre hearing examinations with the medical member of the Tribunal panel.⁵
 - In some situations, the determination of someone's case without an oral tribunal hearing.⁶
19. Pre hearing examinations and oral hearings are two crucial procedural safeguards for people detained under the Act. We are particularly concerned that these changes will encourage the Tribunal to determine automatic referrals to the Tribunal (where the person does not appear to be challenging their detention) without the greater scrutiny of an oral hearing.⁷ **We question whether these changes to tribunal procedures are human rights compliant, given the impact they could have on independent scrutiny of an individual's detention under the Act.**

⁴ <https://www.gov.uk/government/publications/modernising-the-mental-health-act-final-report-from-the-independent-review>

⁵ All patients challenging their detention under section 3 will automatically meet with the medical member before a hearing and all patients challenging their detention under section 2 can ask to meet with the medical member before their hearing. In England this change was brought into force by the [PILOT PRACTICE DIRECTION: HEALTH, EDUCATION AND SOCIAL CARE CHAMBER OF THE FIRST-TIER TRIBUNAL \(MENTAL HEALTH\)](#) in England and [MENTAL HEALTH REVIEW TRIBUNAL FOR WALES PRACTICE DIRECTION CORONAVIRUS COVID-19](#) in Wales

⁶ In England, this change was brought into force by [The Tribunal Procedure \(Coronavirus\) \(Amendment\) Rules 2020](#). In Wales, the change was brought into force by the paragraph 12(2), Schedule 8 of the Coronavirus Act 2020

⁷ There are a range of situations in which someone will be automatically referred to the Tribunal for consideration of whether they continue to meet the criteria detention. Regular automatic reviews to the Mental Health Tribunal are a key minimum safeguard which ensure the UK complies with it Article 5(4) ECHR obligations. Without automatic reviews, a person who lacks the capacity to take practical steps to challenge their detention could remain there indefinitely.

The Care Act and the Coronavirus Act 2020:

20. The Coronavirus Act included provisions, which when triggered effectively suspended adult social care.⁸ The Secretary of State switched on these temporary powers, known as social care 'easement', almost immediately after the Coronavirus Act became law and the powers remain active. There is no indication from the UK Government as to when they will be switched off, but under the Coronavirus Act they could remain in force for up to the two years.
21. Social care is the vital care and support that helps many people with mental health problems to live with independence, dignity and opportunity. When people are not able to get the support they need from social care, their mental health can get worse. This has a huge cost – both in terms of damage caused to the lives of individuals and the significant financial costs to society.
22. Our social care system is already overstretched and underfunded. Lower standards and less care cannot become the new normal for people with mental health problems, who already find it difficult to get the support they need.
23. Under social care easement, local authorities in England are only required to meet social care needs to prevent a breach of rights under the European Convention of Human Rights, which is an extremely high threshold. The suspension of adult social care is unprecedented, and we are concerned there are likely to be issues in implementation and practice. In particular, we are concerned about how local authorities are expected to assess needs and determine a potential breach of a Convention right, and how people will be able to make a complaint or seek accountability.
24. On 16 June 2020, there was only one local authority in England using the easements, down from a maximum of eight at any time. Considering the small number of local authorities who have felt it necessary to make use of the emergency powers officially, **we urge the UK Government to plan to 'switch off' social care easement, and identify how they will support local authorities to deliver the Care Act duties in full.** We welcome the additional funding for local authorities announced during the emergency period and the workforce recruitment drive, but more will be needed to ensure that those eligible for care under the Care Act have their needs met.
25. **We also urge the UK Government to consider whether it is necessary to retain the provision for social care easement within the Coronavirus Act.** The Care Act already allows for a certain degree of flexibility in how local authorities meet people's needs. This means a local authority does not need to be operating under easements in order to lawfully change the way they meet someone's needs. Therefore rather than retaining the option to allow local authorities to suspend meeting their full duties in the Coronavirus Act, we encourage the UK Government to prioritise working with local authorities to ensure they have the support necessary to enable them to deliver their full duties.

⁸ Although social care is devolved, adult social care duties have been suspended across both England and Wales. Local authorities are only required to meet social care needs to prevent a breach of someone's human rights in England. In Wales local authorities only have a duty to meet someone's needs to the extent necessary to protect someone from abuse and neglect or if they are at risk of abuse and neglect.

26. We have also been deeply concerned about the lack of accountability and transparency in the way that social care easement has been implemented. For example, while the Department for Health and Social Care issued guidance to local authorities on social care easement, they are not legally obliged to follow the guidance.⁹ If the powers are to remain in force, **we strongly recommend the Secretary of State for Health and Social Care issues a direction requiring local authorities to follow the social care easement guidance.**
27. The UK Government has also provided little assurance about how the use of the powers will be overseen and monitored. The Care Quality Commission has been charged with increasing transparency by publishing a public list of local authorities operating under easement. This is a welcome first step but the UK Government must go further to ensure that adequate monitoring is in place.
28. In particular, we note with concern that some local authorities are thought to be operating under easement unofficially and without adequate safeguards and monitoring, it is hard to know what is happening in practice. **While we recognise that Covid-19 was an unprecedented crisis, the UK Government has a duty to protect the rights, wellbeing and safety of people in need of social care and they must monitor the impact of any changes as a result of the Coronavirus legislation.**
29. More broadly, the fact that the powers needed to be switched on so quickly has also underlined the fragility of the social care sector. **Therefore, as a matter of urgency, we call on the UK Government to publish their long-awaited plan for social care promised by the end of the year, and set out a long-term sustainable solution for the funding and provision of care, including for those of us with mental health problems.**

Duties to disabled children and young people:

30. In response to Covid-19, the UK Government introduced powers to 'relax' local authority duties to secure Special Educational Needs provision in Education, Health and Care plans via the Coronavirus Act. These emergency measures were 'switched on' until 31 May, and then extended throughout June. The 'relaxation' of these local authority duties will have a significant impact on the support available for children and young people with special educational needs, including those with social, emotional and mental health needs.
31. A recent survey by the Disabled Children's Partnership found that three quarters of disabled children have had all their support withdrawn during lockdown, which has left families to fill the gaps.¹⁰ It is also important to recognise the wider context for these changes to the SEN duties. The SEND system is stretched and under funded, with the Education Select Committee expressing grave concern that the ambition of the 2014 reforms had not been realised for disabled children.¹¹
32. While the emergency powers were originally only activated during May, these were extended into June with only days' notice. This puts families in a difficult and uncertain

⁹ Local authorities must only have regard to the guidance

¹⁰ Disabled Children's Partnership (2020) [Left in Lockdown](#)

¹¹ Education Select Committee (2019) [Inquiry: Special educational needs and disabilities](#)

situation. At the same time as the UK Government is planning for schools to reopen to more children and young people, it is concerning that they have removed the absolute duty on local authorities to provide the support that a disabled child has been identified as needing for their education.

33. **We urge the UK Government to ensure that local authorities are equipped to meet the needs of disabled children during this pandemic, including children and young people with mental health problems.** We also call on the UK Government to monitor the impact of these emergency measures on disabled children, including those with mental health problems.

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