



## **Mental Health Bill: Delegated Power Policy Paper**

### **Clause 20, Care and Treatment Plans**

The Mental Health Bill introduces statutory care and treatment plans for all patients detained under the Act (both civil patients under Part 2 and patients in the criminal justice system under Part 3). This includes patients subject to a community treatment order or guardianship, but excludes those under certain short-term sections (see clause 20). This applies to England only as there are already similar provisions in Wales (see the Mental Health (Wales) Measure 2010).

The Bill sets out that the care and treatment plan is to be prepared by an appropriate practitioner and include a plan for meeting the needs of eligible patients arising from or related to their mental disorder. It also makes provision for how the plan is to be prepared and reviewed. This is with the aim of ensuring that the plan is made in consultation with the patient, as well as family members, carers and any others who are interested in the patient's welfare, where appropriate. It is also to ensure that, when applicable, the plan is updated following important milestones in the patient's journey. This might be ahead of moving a patient to a different section of the Act, or prior to a tribunal hearing, or following a change in the patient's condition or circumstances that the appropriate practitioner considers significant, such as following transfer of the patient to a different ward or from child to adult services. The aim of this clause is to ensure that, where relevant, patients have a clear and personalised strategy in place describing what is needed to progress them towards recovery and their timely and safe discharge from the Act. The Independent Review of the Mental Health Act identified statutory care and treatment plans as the cornerstone of the proposed reforms.

The regulation making power included in this clause will enable the Secretary of State to make provision for:

- 1) the specific content of a care and treatment plan;
- 2) when a care and treatment plan must be prepared, reviewed and revised by, and that the care and treatment plan must be revised in certain circumstances;
- 3) the disclosure of the information to be contained in the care and treatment plan or of other information for purposes related to the development of the care and treatment plan;
- 4) transitional, consequential, supplemental or incidental provision.

These are described in more detail below.



## Content of a care and treatment plan

In terms of the specific content of the care and treatment plan, we publicly consulted on the list originally proposed by the independent review and, based on stakeholders' feedback, we currently anticipate that the contents of the plan isto include the following:

- (a) information about the reasons for a patient's detention,
- (b) outcomes which the assessment and/or provision of medical treatment for mental disorder during detention are designed to achieve and a care and treatment plan for achieving those outcomes. Note, this is not limited to medication and may include a range of treatments including nursing, psychological intervention, specialist mental health habilitation, rehabilitation and care. Where it is relevant to meeting the patient's needs arising from or related to their mental disorder, it may also include the provision of non-medical interventions such as financial support (e.g. referral to the debt respite scheme, Breathing Space).
- (c) information about a patient's wishes and feelings which may impact on their care and treatment. For example, what medication has and has not worked well for them in the past.
- (d) the reasons behind any decision to give the patient compulsory treatment (if applicable) under the Act.
- (e) the reasons for any use of force for example under the Mental Health Units (Use of Force) Act 2018. This may include seclusion or segregation or use of physical restraint.
- (f) A plan for discharging the patient, including any details of any services the patient may need on discharge in order to meet their needs arising from or related to their mental disorder, such as mental health community service, specialist housing and the support of social services
- (g) the outcome of an assessment of the patient's safety, including potential risks to self and (if applicable) others, and the plan for managing those.
- (h) details of other persons with a relationship to, or other connection with, the patient or to whom the care and treatment plan is relevant. For example, the patient's parents or carer or any other person who may be providing care or treatment on discharge (this may include young carers). These are likely to include the same people who, under the Bill, the clinician must consult with on the patient's plan (where practicable and appropriate). other information that is important to be aware of during the patient's detention. For example, whether they have sensory needs, whether they wish to fast during certain periods or whether they have communication needs e.g. they use sign language or would like an interpreter.



There may be some small differences that apply to Part 2 and Part 3 patients, which will also be set out in regulations. For example, in relation to Part 3 patients, the plan might additionally include information relating to details of the clinical supervisor and the social supervisor.

As it stands, we think that our proposed contents list aligns with best practice and current priorities, while avoiding being overly prescriptive or placing unrealistic expectations on the clinician. For example, the proposed contents of the plan encourages the clinician to consider the patient's wishes and feelings. Provisions in the Bill will also require clinicians to identify individuals, such as family members, carers and the Nominated Person, who should be consulted when preparing and reviewing the plan. This is in-keeping with the principle of co-production with the patient and others who are involved in the patient's care, which is established best practice. Furthermore, in line with government's commitment to public protection, the proposed contents list includes the requirement for a safety management plan tailored to meeting the patient's needs arising from or related to their mental disorder and based on a risk assessment of the individual.

The primary reason the government decided to set out the contents of the care and treatment plans in regulations, rather than the face of the Act, was so that it could more easily be revised to account for changes in wider policy and practice around care planning. Furthermore, this approach follows the precedent set by the Mental Health (Wales) Measure 2010. We also feel that the level of detail we plan to include is better suited to secondary legislation.

### **When specific aspects of a care and treatment plan must be prepared, reviewed and revised**

In terms of the regulation making power that allows for provision of when aspects of the care and treatment plan must be prepared by, this is to account for the fact that some parts of the plan should be completed earlier than others. While it is our aim to ensure that a patient's care and treatment plan is prepared as soon as possible after their detention, this may not be realistic for all aspects of the plan. For example, in respect of Part 3 patients, the reasons for detention under the MHA will be known from day 1, whereas the conditions the patient is subject to on discharge will not be known until much later.

Where, under the clause, a plan is to be reviewed, regulations may also set out when that it is to be done. For example, it may be necessary to review the reasons for the patient's detention just before a tribunal hearing.

### **Disclosure of information**

Regulations regarding the disclosure of information to be contained in the care and treatment plan, or other information for purposes related to the development of a care and treatment plan, are anticipated to include the sharing of information with people who are to be consulted



on the patient's care and treatment plan. For example, under the Bill, it is required that a range of people are consulted during the preparation and review of the patient's plan, such as family members or their carer or Nominated Person. Information may also need to be disclosed to other people such as the health and social care professionals associated with delivering the patient's care and treatment, for example those responsible for overseeing the patient and their care in the community after discharge. The intention of these regulations is to make sure that relevant information may be appropriately shared with individuals such that this may facilitate the patient's recovery and the safety of them and (where applicable) others.

### **Transitional, consequential, supplemental or incidental provision**

Lastly, regulations under this clause may also provide for transitional, consequential, supplemental or incidental provision. This is because it may be necessary to make transitional provision for example, for patients who are already detained, and who may have been detained for differing periods, under different provisions, when these provisions come into force

### **Procedure for making regulations**

Regulations made under the power will be subject to the negative parliamentary procedure. The Government considers that this procedure is appropriate and proportionate for regulations of this nature.