

# KNOW YOUR RIGHTS, OWN YOUR LIFE

Rights exist to protect and guide people. When we know how and when to use them, we gain the clarity to make decisions with confidence and the strength to act when it matters.

Knowing our rights can change our lives. It gives us the tools to make decisions that define our future.

## MENTAL HEALTH ACT 2025

What You Need to Know and How It Can Help You

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## OVERVIEW

The Mental Health Act 2025 amends the Mental Health Act 1983.

It introduces statutory principles to guide decisions under the Act, makes changes relating to autism and learning disability, establishes provisions concerning a nominated person, updates treatment and capacity safeguards, and amends tribunal and restricted patient procedures.

The Act applies primarily in England and Wales.

Highlight: These provisions form part of the binding mental health law. They are legal safeguards and duties.

## GUIDANCE FOR FAMILIES / PEOPLE

This section sets out what the amended law gives to people detained or treated under the Mental Health Act 2025.

This includes specific protections for autistic people and people with learning disabilities.

### 1. Autism or Learning Disability Alone Is NOT Enough for Section 3 Treatment Detention

The 2025 Act changes how section 3 (detention for treatment) applies. For autistic people and people with learning disabilities:

- **Autism alone is not sufficient grounds for detention under section 3.**
- **Learning disability alone is not sufficient unless associated with abnormally aggressive or seriously irresponsible conduct (this position remains narrow).**
- **There must be a co-occurring psychiatric disorder.**
- **That psychiatric disorder must meet the detention criteria.**
- **Treatment must be directed at that psychiatric disorder.**

This is one of the biggest changes in the Act.

**If a parent is told:**

**“We are detaining under section 3 because of autism”**

**That is no longer legally sufficient.**

Parents can ask:

- **What psychiatric disorder are you relying on?**
- **Is it separate from autism/learning disability?**
- **Where is it diagnosed?**
- **What is the treatment for that disorder?**
- **How does it meet the serious harm threshold?**

If the answer is unclear, the detention may not meet the amended legal test.

## **2. The “Serious Harm” Threshold**

The Act tightens the detention test.

Detention must now meet a threshold based on the risk of serious harm.

This applies to:

- **Initial detention**
- **Renewal of detention**
- **Continued restriction**

For parents this means:

Risk must be clearly evidenced.

It cannot be speculative.

It cannot be vague behavioural concern.

Ask:

- **What serious harm is being relied on?**
- **What evidence supports it?**
- **Why cannot this be managed in the community?**

## **3. Therapeutic Benefit – Not Containment**

The Act strengthens the “appropriate medical treatment” requirement.

Treatment must:

- **Be capable of alleviating the disorder, OR**
- **Prevent deterioration.**

For autistic people and people with learning disabilities:

Detention cannot lawfully be justified for:

- **“Behaviour management”**
- **“Lack of placement”**
- **“Safeguarding risk” alone**
- **Service breakdown**

If no therapeutic benefit exists, continued detention becomes legally vulnerable.

Parents can ask:

- **What therapeutic benefit is being delivered?**
- **Is it written in the care plan?**
- **What measurable change is expected?**

#### **4. Capacity – Detention ≠ Incapacity**

Being detained does not remove capacity.

Professionals must assess whether the person can:

- **Understand the treatment**
- **Retain the information**
- **Weigh the information**
- **Communicate a decision**

If the person has capacity:

Their refusal of certain treatments must be respected within statutory limits.

If they lack capacity:

Treatment must still meet statutory safeguards.

Parents can ask:

- **Has capacity been formally assessed?**
- **When?**
- **By whom?**
- **Where is it recorded?**

Capacity cannot be assumed because someone is distressed or disagreeing.

## **5. Compulsory Treatment – Strict Legal Safeguards**

Treatment without consent is only lawful if:

- **Statutory criteria are met**
- **Capacity provisions are applied**
- **Required certifications are completed**
- **SOAD involvement occurs where required**
- **Treatment aligns with therapeutic benefit requirement**

If procedures are not followed, treatment may be unlawful.

Parents can ask:

- **Has certification been completed?**
- **Was a SOAD involved?**
- **Was advocacy available?**

## **6. Second Opinion Appointed Doctor (SOAD)**

For certain treatments (for example medication beyond defined periods or ECT):

- **An independent doctor must review and certify.**
- **Treatment cannot continue without certification.**

Even if someone lacks capacity, this safeguard applies.

Ask:

- **When did the SOAD review occur?**
- **What was approved?**
- **Was anything refused?**

## **7. Care and Treatment Plans – Now a Legal Requirement**

The Act places care and treatment planning on a statutory footing.

This means:

- **A structured care and treatment plan must exist.**
- **The patient must be consulted.**
- **Others involved may be consulted where appropriate.**
- **Plans must be reviewed.**

For autistic people and people with learning disability:

The plan must:

- **Reflect specific needs**
- **Identify the psychiatric disorder being treated (if section 3 is used)**
- **Explain therapeutic benefit**
- **Set out discharge planning**

Parents can ask:

- **Where is the written plan?**
- **When is the review?**
- **What is the discharge pathway?**

## **8. Nominated Person – Representation Rights**

The Act replaces “nearest relative” with a nominated person model.

This means:

- **A person can appoint someone they trust.**
- **That person has defined legal involvement rights.**
- **Courts can intervene in disputes.**

This is especially important for autistic adults who may want someone specific involved.

Parents should ask:

- **Has a nomination been made?**
- **Was support given to make that decision?**
- **Were we informed properly?**

## **9. Advocacy – Stronger Access**

The Act strengthens duties to ensure access to Independent Mental Health Advocates.

This means:

- **Qualifying patients must be informed.**
- **Responsible persons must take active steps to notify providers.**
- **Access must be facilitated.**

For autistic people and people with learning disabilities:

- **Communication needs must be considered.**
- **Advocacy must be accessible.**

## **10. Tribunal Rights**

Detained individuals have the right to apply to a tribunal.

In restricted patient cases:

- **Deprivation of liberty conditions trigger stronger oversight.**
- **The tribunal must apply legal tests of necessity and serious harm.**

Parents can ask:

- **When is tribunal eligibility?**
- **Has a referral been made automatically where required?**
- **What legal test is being applied?**

### **This is how knowing our rights can change lives.**

When families and young people understand what support they're entitled to, they can make informed choices, access the right services, and create new possibilities for their future. An inspiring example is Ben, who is autistic and has Pathological Demand Avoidance. He once avoided the outside world, but through personalised clinical support, he gained confidence, began exploring new activities, and rediscovered joy - bringing a sense of relief and renewed connection with his mother.

**MORE**



## **GUIDANCE FOR COMMISSIONERS / PUBLIC BODIES**

### **1. Commissioners Must Ensure Section 3 Is Not Used Solely for Autism / LD**

Systems must ensure:

- **Clinicians distinguish autism/learning disability from psychiatric disorder.**
- **Section 3 detention is not used purely for autism.**

- **Records identify qualifying psychiatric disorder.**

Failure here exposes the authority to legal challenge.

### **1. Governance Duty – Proper Application of Serious Harm Threshold**

Providers must:

- **Record clear evidence of serious harm risk.**
- **Document why community alternatives are insufficient.**
- **Apply proportionality and least restriction principles.**

### **3. Capacity Assessment Duty**

Responsible clinicians must:

- **Assess and record capacity.**
- **Avoid assumptions linked to diagnosis.**

### **4. Therapeutic Benefit Duty**

Commissioners must ensure:

- **Treatment is genuinely therapeutic.**
- **Detention is not used as social containment.**
- **Care plans show active therapeutic intervention.**

### **5. Second Opinion Appointed Doctor (SOAD) and Certification Compliance**

Providers must:

- **Involve SOAD where required.**
- **Complete certification properly.**
- **Maintain documentation.**

### **6. Care and Treatment Plan Compliance**

Authorities must:

- **Prepare plans.**
- **Consult appropriately.**
- **Review regularly.**
- **Evidence discharge planning.**

## 7. Advocacy Notification Duty

Responsible persons must:

- **Notify advocacy providers.**
- **Ensure access is facilitated.**

## 8. Tribunal Referral Duty

Where automatic referral applies:

- **It must occur within required timeframes.**
- **Legal tests must be properly applied.**

Original Source:

**The information in this summary is based on the legislation published at:  
Mental Health Act 2025**

Full text available at:

**<https://www.legislation.gov.uk/ukpga/2025/33>**