

## **MHB011 - Children's Commissioner for Wales**

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### **Senedd Cymru | Welsh Parliament**

Bil arfaethedig – Datblygu'r Bil Safonau Gofal Iechyd Meddwl (Cymru) |  
Proposed Development of the Mental Health Standards of Care (Wales) Bill

Ymateb gan: Cyngorydd Polisi, Comisiynydd Plant Cymru | Evidence from:  
Policy Adviser, Children's Commissioner for Wales

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Children's Commissioner for Wales – I respond to these questions only as they relate to children and young people as my remit does not cover adults.

### **Enshrining overarching principles in legislation**

#### **Question 1: Do you think there is a need for this legislation?**

##### **Can you provide reasons for your answer.**

Yes – the Bill proposes to empower individuals, and specifically aims to remove the age limit on requesting a re-assessment of mental health. This means that children will be able to exercise their right to have their voice heard about matters that affect them. The Bill also proposes replacing the Nearest Relative provisions with Nominated Persons provisions, which I support.

However, the explanatory memorandum does not currently give enough detail on all elements within the Bill. As set out below I feel some elements could be clearer in explaining the practical change they will make to children's lives. I suggest that the explanatory memorandum is revised to make the intended purpose of some of these changes clearer.

#### **Question 2: Do you agree or disagree with the overarching principles that the Bill seeks to enshrine?**

Agree

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## **Specific changes to existing legislation**

### **A. Nearest Relative and Nominated Person**

**Question 3: Do you agree or disagree with the proposal to replace the Nearest Relative (NR) provisions in the Mental Health Act 1983 with a new role of Nominated Person?**

**Can you provide reasons for your answer.**

Agree.

This would give greater autonomy to the individual concerned to choose a nominated person should their nearest relative not be who they wish to represent them. This will, in particular, be of benefit to young people in the care of the local authority, whose family members may not be actively involved in their day to day healthcare decisions.

However, this proposal will need careful consideration, as is rehearsed in the [Mental Health Act Review Report \(2018\)](#).

The Nominated Person provisions will need to safeguard against any potential exploitation by a Nominated Person.

There will need to be consideration given here to the capacity of children and young people on this matter. The approach taken in the Part 10 Code of Practice for the Social Services and Well-being (Wales) Act 2014 may assist in considering how best to empower people to choose the person to best support and represent their needs.

### **B. Changing the criteria for detention, ensuring the prospect for therapeutic benefit**

**Question 4: Do you agree or disagree with the proposal to change in the criteria for detention to ensure that people can only be detained if they pose a risk of serious harm either to themselves or to others?**

**Can you provide reasons for your answer.**

Agree.

As the explanatory note for the Bill states, the Mental Health Act Code Of Practice already sets out this principle, but I agree this is an important statement to enshrine in law through this Bill.

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During the Covid pandemic, there were concerns about the potential to suspend safeguards in place around health and wellbeing detentions, for example changing the list of persons able to authorise the detention and removing the 'second person' safeguard around this.

Therefore, enshrining this principle in legislation will be important, as any such proposals in emergency legislation in future would need to actively address the reasons for overturning this important safeguard.

**Question 5: Do you agree or disagree with the proposal to change in the criteria that there must be reasonable prospect of therapeutic benefit to the patient?**

**Can you provide reasons for your answer.**

Agree – as above.

I again agree with this principle, and think it is fundamentally important to a child's human right to the best possible standard of healthcare (article 24, UNCRC).

My office are aware of occasions, though, where children and young people are detained as they pose a risk to themselves or others, but because they do not have a diagnosable mental health condition, and alternative provision may not be available, they may not have a realistic prospect of therapeutic benefit. This is a problem of the existing provision for children with complex needs, but for whom tier 4 or secure CAMHS provision is not appropriate, or they do not meet the threshold to access this level of intervention.

It would also be helpful when considering this proposal to understand how a 'reasonable prospect' would be defined. While we would all want children and young people to have that prospect, the reality on the ground is that this is not always the case.

There will need to be consideration given here to the competency of children and young people on this matter.

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### **C. Remote (Virtual) assessment**

**Question 6: Do you agree or disagree with the proposal to introduce remote (virtual) assessment under ‘specific provisions’ relating to Second Opinion Appointed Doctors (SOADs), and Independent Mental Health Advocates (IMHA)?**

**Can you provide reasons for your answer.**

Neither – it is difficult to give a view on this proposal when little detail is provided of the benefits or otherwise to children.

While remote assessments are an important part of the offer available to children and young people, I am of the view that all children should have the opportunity for a face to face assessment, where appropriate. It is important that children are able to engage in any assessment processes in a way that they feel comfortable, and ensuring that it is their own views and experiences that are being considered, without the influence of any additional adults who may be present. This will be easier to provide and ensure in a face to face setting.

I recognise that remote assessments have their place as specific provisions, I urge careful consideration of this proposal to ensure that face to face assessment is held in parity to remote assessments.

### **D. Amendments to the Mental Health (Wales) Measure 2010**

**Question 7: Do you agree or disagree with the proposal to amend the Measure to ensure that there is no age limit upon those who can request a re-assessment of their mental health?**

**Can you provide reasons for your answer.**

Agree.

Under the UN Convention on the Rights of the child, children have the right to the best possible standard of healthcare (article 24), and the right to express their views and have those views taken seriously (Article 12). I am pleased to see the proposed amendment to the Mental Health Measure, which would remove the age limit on requesting a reassessment, as this would further a child’s right to have their voice heard. This right includes a child’s views on all aspects of healthcare<sup>1</sup>.

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<sup>1</sup> [UNCRC General Comment no. 15, 2013](#)

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Under article 25 of the UN Convention, children also have a specific right to a regular review of their treatment, and wider care, if they have been placed away from home for the purposes or care or protection.

This proposal, therefore, would enhance access to these rights for children affected; empowering children in line with the Convention, to which Welsh Government Ministers must pay due regard.

**Question 8: Do you agree or disagree with the proposal to amend the Measure to extend the ability to request a re-assessment to people specified by the patient?**

**Can you provide reasons for your answer.**

Neither – again, there is not enough detail provided to be able to accurately respond to this.

I agree with the principle, but can't currently tell what "people specified by the patient" means in this context (requester or provider of service) so would welcome greater clarity in this regard.

**General Views**

**Question 9: Do you have any views about how the impact the proposals would have across different population groups?**

As stated above, the proposals would enhance children's rights to have their voice heard on matters affecting them (article 12, UNCRC)

**Question 10: Do you have any views about the impact the proposals would have on children's rights?**

As stated above, the proposals would enhance children's rights in relation to a number of the articles of the Convention.

I urge the member to undertake a full Children's Rights Impact Assessment (CRIA). The Member for North Wales, Sam Rowlands, has produced a strong and clear CRIA<sup>2</sup> which utilises our office's template<sup>3</sup> for completing a CRIA.

The CRIA for that Bill includes specific consideration of individual articles and rights, as well as overt consideration of the potential differential impact on

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<sup>2</sup> <https://senedd.wales/media/kdzlomeq/pri-ld16167-em-e.pdf>

<sup>3</sup> [https://www.childcomwales.org.uk/wp-content/uploads/2020/08/CRIA-template\\_ENG.docx](https://www.childcomwales.org.uk/wp-content/uploads/2020/08/CRIA-template_ENG.docx)

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certain groups of children and considers how any negative impacts could be mitigated.

I urge the member to take steps to produce a comprehensive CRIA before this bill progresses further. Our office would be happy to advise the Member and his staff on this.

**Question 11: Do you have any general views on the proposal, not covered by any of the previous questions contained in the consultation?**

No

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