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Y Gweinidog Iechyd Meddwl a Llesiant
Minister for Mental Health and Wellbeing



Llywodraeth Cymru
Welsh Government

Our ref: MA/SM/1676/25

Mike Hedges MS,
Chair,
Legislation, Justice & Constitution Committee
Senedd

SeneddLJC@senedd.wales

15 August 2025

Dear Mike,

Thank you for your report on the Legislative Consent Memorandum for the Mental Health Bill received in June.

Please find attached the Welsh Government's response to these recommendations.

Yours sincerely,

A handwritten signature in black ink that reads "S. Murphy". The signature is written in a cursive, flowing style.

Sarah Murphy AS/MS
Minister for Mental Health and Wellbeing

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Mental Health Bill

Welsh Government response to the Legislation, Justice and Constitution Committee's report

August 2025

In June 2025, the Legislation, Justice and Constitution Committee submitted its report on the Welsh Government's Legislative Consent Memoranda for the Mental Health Bill. The report includes three conclusions and five recommendations. This is the Welsh Government's response to those recommendations.

The Mental Health Bill ("the Bill") was introduced in the House of Lords on 6 November 2024.

The UK Government's stated policy objectives are to modernise mental health legislation to give patients greater choice, autonomy, enhanced rights and support; and ensure everyone is treated with dignity and respect throughout treatment. The Bill also includes measures to improve the care and support of people with a learning disability and autistic people, reducing reliance on hospital-based care.

It contains a number of amendments to the Mental Health Act 1983 ("the Act"). The measures in this Bill are generally intended to strengthen the voice of patients subject to the Act. They add statutory weight to patients' rights to be involved in planning for their care, and to inform choices regarding the treatment they receive. The reforms will increase the scrutiny of detention to ensure it is only used when, and as long, as necessary. The Bill also seeks to limit the use of the Act to detain people with a learning disability and autistic people.

The Act provides the legal framework for the detention and compulsory treatment of individuals with mental disorders who may pose a risk to themselves or others. The primary focus of recent reforms to the Act has been Parts 2 and 3, which address civil patients (patients who are liable to be detained in hospital and who are not subject to the Act as a consequence of any involvement with the criminal justice system) and offenders with mental disorders, respectively. Over two thirds of those detained under the Act are civil patients (under Part 2).

The last major amendment to the Act took place in 2007, introducing Community Treatment Orders (CTOs), Independent Mental Health Advocates (IMHAs), and modified detention criteria. Part 3 governs the treatment of offenders with relevant mental disorders, divided into restricted and unrestricted patients. Restricted patients, who pose a public safety risk, are under stricter controls by the Secretary of State for Justice, whereas unrestricted patients are treated similarly to civil patients, with fewer restrictions.

The latest reforms, which are being put forward in the Bill introduced into Parliament in 2024, are based on the findings of the 2018 Independent Review of the Act, led by Professor Sir Simon Wessely. The review highlighted significant problems with the Act's application and culture, and it made 154 recommendations. The Westminster government accepted most of these recommendations and, following consultations and pre-legislative scrutiny, a draft Bill was introduced in 2022 and revised and introduced in 2024 to incorporate changes on the basis of the feedback received.

Given that the Act covers both **reserved and devolved areas**, there are well established partnership arrangements in Wales which support the safe operation of the Act, particularly where there is an interface between the justice system and the health system in Wales. The reformed Act, once the amendments come into force, will build on those established arrangements to ensure that its implementation is carried out smoothly and effectively.

In Wales, the Mental Health (Wales) Measure 2010 ("the Measure") is a unique piece of legislation designed to provide a legal framework to improve mental health services. Implementation of the services required by the Measure began, on a phased basis, in January 2012 and includes improved access to mental health services within primary care; care and treatment plans and care coordinators for everyone receiving secondary mental health services; self-referral back into mental health services for adults discharged from secondary mental health services; and extending the availability of independent mental health advocacy. The Measure aimed to improve access to support in primary care but also to strengthen the rights of people accessing mental health services, but who are not subject to the Act.

The Measure is primarily aimed at supporting earlier intervention and preventing escalation to more specialised services or detention under the Act.

The Act is primary legislation in England and Wales that governs the assessment, treatment and rights of individuals for people with a mental health disorder. The Act includes both reserved and devolved areas, and the interface between both –

for instance between the criminal justice system and health services – means that a UK Bill is the appropriate mechanism to deliver these policy changes.

Given the mix of reserved and devolved areas in the Act and in this Bill, legislating on a Wales-only basis in a Senedd Bill would not be able to deliver the same policy intent, with coverage across the justice and health systems in one piece of legislation, as this UK Bill does. Where the Bill makes provisions that have regard to devolved matters, the consent of the Senedd has been sought.

The Measure is Wales-only legislation and aims to set out how services need to work together to provide mental health support in the community. The Act is largely about compulsory powers and admission to, or discharge from, hospital.

Recommendation 1

The committee recommends

The Minister should clarify why the Welsh Government is not seeking consent for the amendment tabled by the UK Government to clause 52 of the Bill as amended in Committee.

Response: Accept

Consent is not being sought in relation to the amendment to clause 52 of the Bill as amended in Committee as it is amending the UK Parliamentary procedure applicable to regulations made by the Secretary of State under that provision and does not have regard to devolved matters. However, consent is being sought in relation to the substantive power in that provision for the Secretary of State to make consequential provision to primary legislation, which includes Acts of the Senedd, as set out in the LCM (in respect of clause 51 as it was at introduction) laid on 21 November 2024.

Financial Implications - None

Recommendation 2

The committee recommends

The Minister should seek the Senedd's consent to the amendment tabled by the UK Government to clause 52 of the Bill as amended in Committee.

Response: Reject

Please see the response to recommendation 1 above – I am of the view that the amendment to clause 52 of the Bill as amended in Committee does not have regard to devolved matters.

Financial Implications - None

Recommendation 3

The committee recommends

The Minister should clarify why the Welsh Government is not seeking consent for the amendments tabled by the UK Government to clauses 30, 36 and 50 of the Bill as amended in Committee.

Response: Accept

Consent is not being sought in relation to the amendment to clause 30 of the Bill as amended in Committee as it is a technical amendment updating a cross-reference to provisions relating to the Secretary of State's powers which does not have regard to devolved matters.

Consent is not being sought in relation to the amendment to clause 36 of the Bill as amended in Committee as it is moving provision relating to the prescribed procedures applicable to certain Secretary of State's powers from previous clause 50 into clause 36, the substantive provision of which (in so far as it has regard to devolved matters) is subject to an LCM (in respect of clause 35 as it was at introduction), laid on 21 November 2024 .

Upon further consideration and analysis, a further SLCM will be laid in due course in relation to the amendment to clause 50 of the Bill as amended in Committee in so far as that amendment has regard to devolved matters (i.e. removal of the prescribed Senedd procedure in respect of the now removed Welsh Ministers' regulation-making power under clause 18).

Furthermore, the amendments to clauses 30, 36 and 50 as amended in Committee are consequential on the substantive amendments to clause 18 for which consent is being sought.

Financial Implications - None

Recommendation 4

The committee recommends

The Minister should seek the Senedd's consent for the amendments tabled by the UK Government to clauses 30, 36 and 50 of the Bill as amended in Committee.

Response: Reject in part (clauses 30 and 36), accept in part (clause 50)

Please see the response to recommendation 3 above – I am of the view that the amendments to clauses 30 and 36 of the Bill as amended in Committee do not have regard to devolved matters. A further SLCM will be laid in due course in relation to the amendment to clause 50.

Financial Implications - None

Recommendation 5

The committee recommends

The Welsh Government should provide more detailed information outlining why it believes the consent of the Senedd is not required for each of clauses 33, 47 and 48 of the Bill as introduced.

Response: Accept

I refer the committee to my response to Recommendations 1 and 2 of their report on the Legislative Consent Memorandum and Supplementary Legislative Consent Memorandum (No.2). As outlined in that response, I am of the view that the above clauses do not have regard to devolved matters and as such the consent of the Senedd is not sought in relation to these clauses.

Consent is not sought in relation to clause 33 of the Bill as introduced as it enables the placing of conditions amounting to a deprivation of liberty on a patient as part of a conditional discharge where the patient no longer requires detention in hospital but there are continuing high risks of harm to the public that cannot otherwise be safely managed in the community. The clause is considered to have more than a loose or consequential connection to reserved matters.

Consent is not sought in relation to clause 47 of the Bill as introduced as it amends the Bail Act 1976 to prevent the remand of an adult defendant for their own protection where the sole concern is their mental health. The clause is considered to have more than a loose or consequential connection to reserved matters.

Consent is not sought in relation to clause 48 of the Bill as introduced as it makes provision in relation to the powers of courts in the Crown Dependencies to deal with offenders suffering from complex mental health needs and about transfers of offenders between the Crown Dependencies and England and Wales. The clause is considered to have more than a loose or consequential connection to reserved matters, extends otherwise than only to England and Wales, and parts of the clause apply otherwise than in relation to Wales.

Financial Implications - None

Conclusion 1

The committee concluded that

Subject to recommendations 2 and 4, we agree with the Welsh Government's assessment, as set out in Memorandum No. 3, of the provisions within the Bill which require the consent of the Senedd in accordance with Standing Order 29.

Response: I note the Committee's agreement with our assessment.

Financial Implications - None

Conclusion 2

The committee concluded that

We consider that the way to achieve outcomes that are in the best interest of Wales is to legislate by means of a Welsh Government Bill in the Senedd.

Response: I refer the committee to my response to Recommendations 4 and 6 of their report on Supplementary Legislative Consent Memorandum (No.2) and I will reiterate some of the key points here. Given the mix of reserved and devolved areas in the Act and in this Bill, legislating on a Wales-only basis in a Senedd Bill would not be able to deliver the same policy intent, with coverage across the justice and health systems in one piece of legislation, as this UK Bill does. Where the Bill makes provisions that have regard to devolved matters, the consent of the Senedd has been sought.

As set out previously, the interrelationship between reserved matters and devolved matters is closely intertwined in many of the Bill's clauses.

The Act is primary legislation in England and Wales that governs the assessment, treatment and rights of individuals for people with a mental health disorder. The Act safeguards some of our most vulnerable people, and with frequent cross-

border activity, it is vital that individuals have the same rights and safeguards in England and Wales.

Financial Implications - None

Conclusion 3

The committee concluded that

We consider that the Welsh Government has piggybacked on legislation designed for England and it is unclear to us how this approach respects devolution.

Response: The provisions in this Bill are the result of close working between the administrations in England and Wales over a number of years. Stakeholders in both countries have been involved in developing and testing the policy direction of the Bill's content. Likewise, where Government amendments have been made to the Bill, the Welsh Government has been consulted every time to ensure that they work for Wales equally as effectively as they will do in England.

I consider taking provisions in this UK Bill to be in the best interest of Wales, in line with our Principles on UK Legislation in devolved areas. Legislating on a Wales-only basis in a Senedd Bill, given the mix of reserved and devolved areas in the Act and in this Bill, would not be able to deliver the same policy intent, with coverage across the justice and health systems in one piece of legislation, as this UK Bill does. Where the Bill makes provisions that have regard to devolved matters, the consent of the Senedd has been sought.

Financial Implications - None
