

James Evans, MS

Member of the Senedd for Brecon and Radnorshire

Proposed Mental Health Standards of Care (Wales) Bill

A consultation on proposals for legislation to replace outdated mental health legislation; improve the delivery of mental health plans for Child and Adolescent Mental Health Services and adult services in Wales; improve the accountability of Welsh public sector organisations; help to establish parity between the treatment of physical and mental health; and help to reduce the stigma of mental health in Wales.

Date of issue: 02 February 2024

Action required: Responses by 22 March 2024

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.

This document is also available in Welsh.

Overview: This consultation seeks views on the policy objectives and proposals for the Mental Health Standards of Care (Wales) Bill.

How to respond: A response form for this consultation is included as part of this document. Responses should be emailed or posted using the details below, by 22 March 2024 at the latest.

How your information will be used: Information you provide may be used by Members of the Senedd (including the Member of the Senedd in charge of the Bill), support staff and Senedd Commission staff, during the development of a Member Bill, promotion of the intended effect of the Bill, and subsequent scrutiny of the Bill.

For full details about how your information will be used please see the Senedd's [Member Bill privacy policy](#).

Further information about the Member Bill process can be found on the [Guide to the Member Bill process](#).

For further information, please contact:

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Proposed Mental Health Standards of Care (Wales) Bill

Introduction

This draft legislation has been brought forward in accordance with the rules set out in the Standing Orders of the Senedd, that enable non-Government Senedd Members to propose new laws for Wales.

In October 2023, I was successful in a ballot held under the Senedd's Standing Order 26.87 for the right to bring forward a proposal for a new law. The proposal that I had put forward was for a Mental Health (Wales) Bill.¹ Under the Standing Orders I then developed my proposal further and published an Explanatory Memorandum setting out the policy objectives and the main aims of the proposal in further detail. The proposed Bill was at this point renamed the Mental Health Standards of Care (Wales) Bill.²

On 13 December 2023 a 'leave to proceed' debate was held, and the Senedd agreed that I could introduce a Bill, within 13 months of the date of that debate, to give effect to the proposal selected in the earlier ballot, and as set out in the published Explanatory Memorandum.³

This consultation now seeks views on the proposed Bill and on the policy objectives it seeks to achieve. Respondents do not have to answer all of the questions provided, but it would assist in our continued development of the Bill if as much detail as possible could be provided in any response.

James Evans, MS

Member of the Senedd for Brecon and Radnorshire

¹ Member Bill Ballot 18 October 2023: [Proposal 016 from James Evans, MS](#)

² Development of the Mental Health Standards of Care (Wales) Bill: [Explanatory Memorandum](#)

³ 'Leave to Proceed' Plenary debate: [13 December 2023](#)

Proposed Mental Health Standards of Care (Wales) Bill: Consultation

Part 1: Background and Purpose of the draft Bill

The proposed legislation seeks to replace outdated mental health legislation; improve the delivery of mental health plans for Child and Adolescent Mental Health Services and adult services in Wales; improve the accountability of Welsh public sector organisations; help to establish parity between the treatment of physical and mental health; and help to reduce mental health stigma in Wales.

The reforms proposed in the Bill will ensure that patients are more empowered, have more choice and influence over their treatment and receive the dignity and respect they deserve. The measures proposed within the Bill will also strengthen the patient voice.

In attaining these policy objectives, the Bill will bring forward appropriate changes to the Mental Health Act 1983 (“the 1983 Act”) in Wales, and amend elements of the existing Mental Health (Wales) Measure 2010 (“the Measure”).

Further information on the proposal is contained in the outline Explanatory Memorandum, published in October 2023.⁴

⁴ Development of the Mental Health Standards of Care (Wales) Bill: [Explanatory Memorandum](#)

Part 2: Content and detail of the proposed legislation

1. Enshrining overarching principles in legislation

The Bill will enshrine the following principles in Wales, which should be seen as overarching throughout mental health services. In exercising any powers under the 1983 Act, a person would need to have regard to these principles:

- A. Choice and Autonomy
- B. Least Restriction
- C. Therapeutic Benefit
- D. The Person as an Individual

A. Choice and Autonomy: all practicable steps must be taken to:

- i. support a person subject to the Act to express their will and preferences;
- ii. have particular regard to the person's will and preferences, even where an intervention in the absence of consent is expressly authorised by the Act;
- iii. promote the person's dignity, and accord them due respect, including respecting their social and caring relationships; and
- iv. take steps to ensure that the person understands their rights and entitlements whilst they are subject to the Act.

B. Least Restriction: The exercise of any power under the Act must be done in the least restrictive and least invasive manner consistent with the purpose and principles of the Act.

C. Therapeutic Benefit: care and treatment must be designed to meet the person's needs in a timely manner within a supportive, healing environment with a view to ending the need to be subject to coercive powers under the Act.

D. The person as an Individual: care and treatment must be provided and commissioned in a manner that:

- i. respects and acknowledges the person's qualities, strengths, abilities, knowledge and past experience; and
- ii. in particular, respects and acknowledges the person's individual diversity including any protected characteristics under the Equality Act (2010).

Consultation questions (please use response form at the end of the document to provide your answers):

1. Do you think there is a need for this legislation? Can you provide reasons for your answer.

2. Do you agree or disagree with the overarching principles that the Bill seeks to enshrine?

2. Specific changes to existing legislation

Under the principles set out above, the Bill will seek to put in place a number of specific changes. The Bill will:

A. Replace the Nearest Relative (NR) provisions in the 1983 Act with a new role of Nominated Person.

B. Change the criteria for detention in the 1983 Act to ensure that people can only be detained if they pose a risk of serious harm either to themselves or to others, and that there must be a reasonable prospect of therapeutic benefit to the patient.

C. Introduce remote (virtual) assessment under 'specific provisions' relating to Second Opinion Appointed Doctors (SOADs), and Independent Mental Health Advocates (IMHA).

D. Amend the Measure to ensure that there is no age limit upon those who can request a re-assessment of their mental health and to extend the ability to request a re-assessment to people specified by the patient.

These changes will complement the existing Measure, Codes of Practice, and further relevant national policy.

A. Nearest Relative and Nominated Person

The Bill will look to replace the Nearest Relative (NR) provisions in the Act with a new role of Nominated Person.

The Act provides for the role of the NR. It sets out a hierarchical list of 'relatives' and includes a number of rules for identifying the NR from this list. The Independent Review of the Mental Health Act 1983 (2018) highlighted that service users and stakeholders consistently found the current model of family and carer involvement outdated and insufficient.

The intention would be that in place of the NR, a patient would be able to personally select a Nominated Person (NP) to represent them and exercise the relevant statutory functions which the Bill extends. This supports the policy objective of improving support for detained patients and is linked to the wider policy intention to ensure that the views, experiences and expertise of patients are taken into account more fully and more seriously in their care and treatment, by allowing an individual to express their wishes through someone they know and trust. In doing so, these measures support the principle of choice and autonomy.

Currently, the NR can exercise powers under a range of sections in the Act, including:

a. the right to require an assessment to be made with a view to admitting the patient to hospital (section 13(4)).

- b. the right to apply for compulsory admission or guardianship (sections 2, 3, 4 and 7).
- c. the right to be consulted or informed before an AMHP makes an application for detention under section 3 or guardianship (section 11(3)–(4)).
- d. the right to object to section 3 admission or guardianship (section 11(4)).
- e. the right to order discharge of the patient (sections 23 and 25).
- f. the right to information given to the detained patient or patient subject to supervised community treatment (section 132(4)).
- g. the right to apply to the Mental Health Review Tribunal for Wales (MHRTW) (sections 66 and 68(1)).

Consultation questions:

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?

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

The Bill will enshrine a 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, and that there must be reasonable prospect of therapeutic benefit to the patient.

Since the Mental Health Act Code of Practice for Wales already sets out that services should be provided in line with the presumption of capacity, be the least restrictive option, serve a person's best interests and maximise

independence, this is likely to be symbolic rather than make a substantive difference in practice, but nonetheless an important one.

Paragraph 19. And 20. identify additional areas that would improve support for patients, and the principles of choice and autonomy. They do not stem from the Independent Review of the Mental Health Act 1983 (2018) or the Draft Mental Health Bill (2022), they would be uniquely Welsh developments, and would require primary legislation.

Consultation questions:

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?

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?

C. Remote (Virtual) assessment

The Bill will look to introduce remote (virtual) assessment under ‘specific provisions’ relating to Second Opinion Appointed Doctors (SOADs), and Independent Mental Health Advocates (IMHA).

Consultation questions:

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)?

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

The Bill will look to amend the Measure to ensure that there is no age limit upon those who can request a re-assessment of their mental health and to extend the ability to request a re-assessment to people specified by the patient. Currently the opportunity to request a re-assessment is only available to adults, and this change will also seek both a parity within services, and look to address the stigma that's often felt in receiving mental health support.

Consultation questions:

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?

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?

General views

We have asked a number of specific questions throughout this consultation document. The questions below are more generally about the proposal as a whole. If you have any views on issues which we have not specifically addressed in this consultation, please provide details of these in your response.

Consultation questions:

9. Do you have any views about the impact the proposals would have across different population groups?

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

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

Next steps

All responses to this consultation will be recorded as they are received and will be analysed following the end of the consultation period. A report on the responses will be produced and published alongside the draft Bill.

Full and proper consideration will be given to all responses. In analysing responses, appropriate weighting will be attached to responses from large organisations (such as large public bodies, employers and trade unions) and to responses from organisations directly impacted by the measures set out in the draft Bill.