LEGISLATIVE CONSENT MEMORANDUM

MENTAL HEALTH BILL

1. This Legislative Consent Memorandum ("LCM") is laid under Standing Order ("SO") 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales with regards to devolved matters, or whether its provisions modify the functions of the Welsh Ministers.

2. The Mental Health Bill ("the Bill") was introduced in the House of Lords on 6 November 2024. The Bill can be found at: [HL]https://bills.parliament.uk/publications/56783/documents/5312

Policy Objective(s)

3. 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.

Summary of the Bill

4. The Bill is sponsored by the Department of Health and Social Care.

5. It contains a number of amendments to the Mental Health Act 1983 (the 1983 Act). The measures in this Bill are generally intended to strengthen the voice of patients subject to the 1983 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 1983 Act to detain people with a learning disability and autistic people.

6. Amongst its provisions, the Bill:

   a. makes revisions to the criteria which must be met for a person to be detained, treated or otherwise made subject to the 1983 Act and provide earlier, more frequent reviews and appeals of both detentions and treatment.

   b. aims to strengthen the voice of patients with reforms adding statutory weight to a patient's right to be involved in the planning of their care, and to increase choice regarding the treatment they receive.

   c. aims to improve and expand the roles and powers of people who represent patients detained under the 1983 Act by allowing patients to nominate the person who represents them.

d. limits the detention of people with a learning disability and/or autism under the 1983 Act to 28 days where there is no co-occurring mental health condition, while retaining hospital as a sentencing option under the 1983 Act for offenders with these conditions and the facility to transfer patients with these conditions from prison to hospital.

e. revises criteria for the use of Community Treatment Orders and enhances the professional oversight required for the use of such Orders.

f. removes police stations and prisons as places of safety under the 1983 Act to ensure that people experiencing a mental health crisis or with severe mental health needs are supported in an appropriate setting.

g. introduces a new 28-day time limit for transfers from prison to hospital for prisoners with severe mental health needs to speed up access to specialist inpatient care and treatment.

h. introduces a new form of supervised community detention for patients convicted of crimes who are ready for discharge from hospital but who require a continuing deprivation of their liberty in the community.

7. There has been regular contact between my officials and UK Government officials as the Bill has been drafted. I have met with the Parliamentary Under-Secretary of State for Patient Safety, Women's Health and Mental Health to discuss the Bill and to commit to continued joint working as the Bill progresses.

Provisions in the Bill for which consent is required

8. In my view, an LCM is required in relation to clauses 1 to 3, 5 to 8, 10 to 19, 21 to 32, 34 to 37, 39 to 46, and 49 to 51, Schedule 1 and Schedule 2:

Clauses 1 and 2 – principles to inform decisions

Clause 1 amends section 118 of the 1983 Act, to include a list of principles that *must* be included in a code of practice under section 118(1) and a list of matters to be addressed in any such code of practice prepared by the Welsh Ministers. Further technical amendments are made by clause 1 including provision requiring the Welsh Ministers to lay a copy of the code of practice before the Senedd. Where the Senedd passes a resolution requiring the code or any alteration in it to be withdrawn, the Welsh Ministers must withdraw the code or alteration and prepare a substitute code of practice or alteration.

The duty under section 118(2A) to include the principles and to address the matters in section 118(2B) in a code of practice are to be extended to the Welsh Ministers and this is given effect by the technical amendment in clause 2.

Clause 3 and Schedule 1 - Application of the Mental Health Act 1983: autism and learning disability

Clause 3 amends the 1983 Act so that people with a learning disability and/or autism cannot be detained for compulsory treatment under section 3 of the 1983 Act unless they have a "psychiatric disorder". These changes do not apply to Part 3 patients (ie those patients subject to Part 3 of the 1983 Act).

In relation to Part 3 patients, paragraphs 7 to 10 of Schedule 1 make changes to the definition of "relevant disorder" in Part 3 to the 1983 Act (which includes autism and learning disability which has serious behavioural consequences) and paragraphs 9 to 10 apply the new definition to remands to hospital and hospital and guardianship orders.

Clause 5 – Grounds for detention

Clause 5 amends the criteria for detention under sections 2, 3 and 5 of the 1983 Act and amends the criteria for renewal of detention under section 20. These changes relate to civil patients under the 1983 Act; however, subsection (6) has the effect of ensuring that the amended risk criteria will apply when a Part 3 patient, who is already subject to orders or directions, has their detention renewed.

Clause 6 – Grounds for community treatment orders

Clause 6 amends the criteria for making a community treatment order (CTO) under section 17A of the 1983 Act, and for renewal of CTOs under section 20A, to align with the new risk criteria for detention. These changes relate to the civil sections of the 1983 Act; however, subsection (4) has the effect of applying the amended criteria for CTOs to Part 3 patients who are already subject to orders or directions. In addition, subsection (5) has the effect of applying the amended criteria in subsection (3) to Part 3 patients who are already subject to a CTO when they are considered for renewal of that CTO.

Clause 7 – Grounds for discharge by tribunal

Clause 7 amends sections 72 and 73 of the 1983 Act which concern the powers of the First-tier Tribunal (Mental Health) and the Mental Health Review Tribunal of Wales (MHRTW) (together, the MHT) to discharge patients. The changes in clause 7(2) align the grounds for discharge of a patient by the MHT with the revised grounds for detention as provided by clause 5. A MHT must discharge a patient where the patient no longer satisfies the revised detention criteria relevant to their detention. The new discharge criteria will apply automatically to unrestricted Part 3 patients, who are discharged under section 72(1)(b), and to restricted patients, who are discharged under section 73, by virtue of clause 7(3) and (4). Subsection 7(4) has the effect of ensuring these provisions will apply for Part 3 patients who are already subject to orders or directions, the next time they come before the MHT.

Clause 8 – Appropriate medical treatment: therapeutic benefit

This clause makes amendments to the consideration of appropriate medical treatment under the 1983 Act, to ensure that it includes a requirement that such treatment has a

reasonable prospect of “alleviating, or preventing the worsening of, a patient’s symptoms”.

Clause 10 – Nomination of the responsible clinician

Clause 10 makes two amendments to section 34 subsection (1) (Interpretation of Part 2) of the 1983 Act which contains definitions of certain terms used within the 1983 Act. The amendments are to add a new term “relevant hospital” (to mean either the hospital that a patient is liable to be detained in or, for a patient on a community treatment order, the hospital which is responsible for them), and to extend the definition of “responsible clinician” (to specify that the responsible clinician has overall responsibility for a patient’s care as now, but with the added provision that this is because the managers of the “relevant hospital” have nominated the responsible clinician.)

Clause 11 – Making treatment decisions

Clause 11 makes provision to amend the 1983 Act by inserting section 56A. This introduces a duty on the clinician in charge of the patient’s treatment to consider certain matters and take a number of steps when deciding whether to give treatment under Part IV. This ‘clinical checklist’ includes, among other things, considering the patient’s wishes and feelings as far as reasonably ascertainable, taking reasonably practicable steps to assist and to encourage the patient to participate in treatment decisions, consult those people close to the patient, and identify and evaluate any available forms of medical treatment.

Clause 12 – Appointment of doctors to provide second opinions

Clause 12 makes provision to amend the 1983 Act by inserting new section 56B to clarify the role of the regulatory authority (the Care Quality Commission in England, and in relation to Wales, the Welsh Ministers), in appointing a second opinion appointed doctor (“SOAD”), referred to currently in the 1983 Act as a ‘registered medical practitioner appointed for the purposes of this Part of the 1983 Act by the regulatory authority’.

The SOAD acts independently, and under the draft Bill will be responsible for assessing if, for instance, the patient’s compulsory treatment has a therapeutic benefit and that the new duty on clinicians under section 56A to consider several matters, including the patient’s past and present wishes and preferences and available treatment alternatives, has been applied.

Clause 13 – Medicine etc: treatment conflicting with a decision by or on behalf of a patient

Clause 13 makes provision to amend the 1983 Act by inserting new section 57A. This introduces new safeguards for patients who are refusing treatment either with capacity or competence at the time, or in a valid and applicable advance decision, or where treatment is in conflict with a decision made by a donee or deputy or the Court of Protection. These safeguards only apply to medical treatment for mental disorder falling in the scope of section 58.

Clause 14 – Medicine etc: treatment in other circumstances

Clause 14 makes provision to amend section 58 of the 1983 Act by shortening the 'three-month time-period', after which certification must be provided, to two months. This new time period applies where the patient has capacity or competence in respect of the treatment and consents; or where the patient lacks capacity/competence in respect of the treatment (and there is no conflict with any valid and applicable advance decision, or a decision made by a donee or deputy or by the Court of Protection).

Clause 15 – Electro-convulsive therapy etc

Clause 15 makes provision to amend section 58A of the 1983 Act such that it is no longer the role of the SOAD to certify that the decision to administer ECT is not in conflict with any valid and applicable advance decision, or a decision of an attorney or deputy or the Court of Protection. Instead, this will need to be established prior to the referral to the SOAD, the SOAD must certify the following before treatment can be given: that the patient lacks capacity to consent; that the treatment is appropriate (in line with the new definition in clause 7); and that the decision to give treatment was made in line with section 56A.

The amendments shift the responsibility for determining whether an advance decision (or a decision made by an attorney or deputy or the Court of Protection) is applicable to the treating clinician rather than the SOAD.

Clause 16 – Review of treatment

Clause 16 makes provision to expand the scope of section 61 of the 1983 Act so that it also applies to patients who are found to be consenting to treatment falling under section 58A and section 58, as opposed to only patients who are not consenting to treatment. A report on the treatment and the patient's condition must be given by the AC in charge of the treatment if so required by the regulatory authority. Additionally, this clause broadens the scope of this provision to encompass specific reporting periods for patients detained in the hospital under section 3. For patients in receipt of section 58 treatments, an equivalent report must be given to the regulatory authority by the AC when the patient's detention is renewed. The regulatory authority has the power to revoke the certificate if provided by a SOAD.

Clause 17 – Urgent treatment to alleviate suffering

Clause 17 makes provision to remove the power to administer urgent treatment to patients with the relevant capacity or competence on the basis that it is considered immediately necessary to alleviate serious suffering by the patient, as is currently permissible under section 62 of the 1983 Act. In practice, this change allows patients who have capacity or competence at the time to decide on the degree of suffering they are willing to accept.

Clause 18 – Urgent electro-convulsive therapy etc

Clause 18 inserts a new section 62ZA into the 1983 Act, which introduces additional safeguards for patients with capacity/competence who have refused urgent section 58A treatments (either at the time or in a valid and applicable advance decision), or where the urgent treatment conflicts with the valid decision of a donee or deputy, or a decision of the Court of Protection. This clause mandates that, before administering treatment that conflicts with a patient's refusal, a SOAD must issue a certificate confirming (i) the patient's competence, (ii) the conflict with their refusal or a decision made by a donee, deputy, or the Court of Protection, and (iii) ensure that the clinician's decision aligns with established protocols and urgent criteria.

Clause 18 also inserts a new section 62ZB which creates regulation making powers that can be exercised by the appropriate national authority to allow an Approved Clinician ("AC") to certify urgent ECT under specific circumstances, bypassing the need for a SOAD's approval in exceptional cases. The Welsh Ministers are the appropriate national authority where the treatment is provided in Wales, and this clause therefore confers executive powers on the Welsh Ministers. Regulations under section 62ZB(1) are subject to the affirmative procedure.

Section 62ZB(2) gives the Welsh Ministers powers to impose duties by way of regulations on: (a) the managers of hospitals or registered establishments; (b) approved clinicians, or (c) the regulatory authority, for the purpose of ensuring that the SOAD's certificate of treatment is given within a specified time period.

Clause 18 also amends section 118 of the 1983 Act to insert a new subsection 118(1)(d) which updates the code of practice framework.

In addition, Clause 18 amends section 119 of the 1983 Act to provide that, where a SOAD is required to interview or examine the patient to establish if the administration of urgent electro-convulsive therapy should be certified, they may conduct this function by live video or audio link, if appropriate.

Clause 19 – Capacity to consent to treatment

Clause 19 makes provision to introduce amendments to how a patient's mental capacity or competence to consent to or refuse treatment is expressed under the 1983 Act. Whilst these amendments are not expected to create a practical change to the clinical approach to assessing capacity or competence, this change confirms the shared legal framework between the 1983 Act and the Mental Capacity Act 2005. It also brings Part 4 in line with Part 4A of the 1983 Act, which already adopts this terminology.

Clause 21 – Consultation of the community clinician

Clause 21 makes provision to amend section 17A of the 1983 Act to require the community clinician responsible for overseeing the patient's care as a community patient, to be involved in decisions regarding the use and operation of CTO. This covers the decision to make a person subject to a CTO, to vary or suspend conditions

made under a CTO, to recall to hospital a patient subject to a CTO, to revoke a CTO after a patient has been so recalled, and to discharge a patient from a CTO.

Clause 21 makes a new distinction between a patient's responsible clinician with overall responsibility for them including in hospital, and a community clinician, with the responsibility for the patient in the community, and the clause imposes specific duties on the latter, where the community clinician is not the responsible clinician.

Clause 22 – Conditions of community treatment orders

Clause 22 makes provisions which focus on the conditions and criteria for a CTO. Two amendments are proposed in relation to the conditions that a person subject to a CTO may be required to follow. Subsection (1) of this clause deletes the words "or appropriate" from the phrase "necessary or appropriate" in section 17B(2) of the 1983 Act, to provide that conditions are only made when they are actually necessary. Subsection (2) of this clause inserts section 72(3B) into the 1983 Act and provides a new power for the Mental Health Review Tribunal for Wales to recommend that the responsible clinician reconsiders whether a particular CTO condition is necessary, in cases where a MHT has decided not to discharge a patient from a CTO.

Clause 23 (and Schedule 2) – Nominated Person

Clause 23 introduces a new statutory role to the 1983 Act, the role of the nominated person ("NP") which will replace the existing role of the nearest relative. The intention is that in place of the nearest relative, a patient would be able to personally select the NP to represent them and exercise the relevant statutory functions which the Bill extends. This supports the policy objective and the principle of choice and autonomy in mental health care.

Clause 24 – Applications for admission or guardianship – role of nominated person

Clause 24 confers new functions on a nominated person (NP). Clause 24(2) inserts references to NPs into section 11 of the 1983 Act so that Approved Mental Health Professionals are required to consult with the NP before they make an application for treatment or guardianship (unless not reasonably practicable or would involve unreasonable delay).

A NP can object to the making of an application for admission for treatment or the making of a guardianship application by notifying the Approved Mental Health Professional or local social services authority. Section 66 of the 1983 Act is to be amended so that the nearest relative's right to apply to the Mental Health Review Tribunal for Wales for patient's discharge applies to NPs and applies when a NP objects to detention or guardianship is being overruled.

Clause 24(4) makes provision in respect of tribunals by permitting the making of application to the Mental Health Review Tribunal for Wales by a nominated person in certain circumstances.

Clause 25 – Discharge of patients: role of nominated person

Clause 25 provides for various amendments to give effect to the NP provisions (for example by substituting the words NP for nearest relative in section 25 of the 1983 Act). Further clause 25 amends the current time limit for a NP to make an order for the discharge of a patient from six months to three months to reflect the changes in detention periods in the Bill.

Clause 26 – Community treatment orders: role of nominated person

Clause 26 establishes a new right that NPs be consulted before a CTO is made, and provides that where a NP objects to the making of a CTO the order may not be made unless the responsible clinician certifies in writing that it is their opinion that the patient should be discharged, and if discharged without a CTO in force the patient would be likely to act in a manner that is dangerous to other persons or to themselves.

Clause 27 – Transfer of patients: role of nominated person

Clause 27 establishes a new right for NPs to be consulted about transfers between hospitals unless consultation is not reasonably practicable or would involve unreasonable delay. Clause 27 amends section 19 of the 1983 Act to give effect to this objective. Section 19 applies to both Part 2 patients and Part 3 patients (by virtue of Part 2, para 2 of Sch 1 to the 1983 Act (as modified by para 5 of that Schedule)).

Clause 28 – Detention periods

Clause 28 shortens the period that a patient may be kept in detention for treatment, meaning that a patient's initial detention period will expire sooner, and if the patient's detention is to continue it must be reviewed and renewed more frequently. This change is in accordance with the policy objective and principle of least restriction and therapeutic benefit.

Clause 29 – Periods for tribunal applications

Clause 29(1) amends the periods when civil patients may apply to the mental health tribunal, giving patients more time and opportunities to apply. Clause 29(2) also widens the group of patients in respect of whom automatic referrals are made by introducing application rights for restricted Part 3 patients who are discharged subject to deprivation of liberty conditions. The purpose of this provision is to amend the period within which those subject to detention for assessment and treatment to be provided with may make an application to a tribunal.

Clause 30 – References to tribunal

Clause 30 amends the 1983 Act in relation to automatic referrals by hospital managers for Part 2 patients. It inserts a definition of the "relevant period" during which a referral is to be made and provides that automatic referrals should immediately follow the expiry of the relevant period, unless the patient has applied themselves during that period meaning their case will have already been considered by the tribunal. It reduces the automatic referral period in section 68(6) of the 1983 Act from 3 years to 12 months, ensuring that patients cannot be detained for a period longer than 12 months without the benefit of a review by the tribunal.

Clause 31 – References to tribunal for patients concerned in criminal proceedings etc

Clause 31 amends the automatic referral periods for mentally disordered offenders subject to special restrictions (Part 3 restricted patients). It requires the Secretary of State to refer all Part 3 restricted patients detained in hospital to the tribunal where a period of 12 months has elapsed, and no reference has already been made to the tribunal. This supports the policy objective of increased safeguards and independent judicial scrutiny of detention by the tribunal and the principle of least restriction.

Clause 32 – Discharge process

Clause 32 introduces a new additional statutory 'check' when a patient is being considered for discharge from detention. Before making an order for discharge the responsible clinician must consult a person who has been professionally concerned with the patient's medical treatment, and who belongs to a profession other than that to which the responsible clinician belongs. This is intended to help avoid inappropriate discharge where the patient or public would be at risk as a result, and to formalise best practice. The proposed duty is one to consult, therefore it remains open to the responsible clinician to proceed to discharge even if the additional opinion is against it, provided that the responsible clinician has considered the additional opinion.

Clause 34 – Transfers from prison to hospital: conditions

Clause 34 amends the wording of the 1983 Act to clarify that a person serving a sentence of imprisonment should be transferred to hospital if appropriate medical treatment can be given for the relevant mental disorder from which the person is suffering.

Clause 35 – Transfers from prison to hospital: time limits

Clause 35 introduces a statutory 28-day time limit within which individuals with a severe mental health need must be transferred from prison to hospital for treatment under the 1983 Act. This provision supports the overarching principle of least restriction, reducing the maximum length of time that a patient in prison may have to wait to access inpatient treatment.

Clause 36 – Transfer directions for persons detained in youth detention accommodation

Under section 48 of the 1983 Act the Secretary of State has the power to make a transfer direction allowing for individuals on remand in a prison or remand centre or remanded in custody by a magistrate's court, and civil and immigration detainees to be transferred to hospital if they are suffering from a mental disorder requiring inpatient care. Since 2012, remand centres have not been utilised in the criminal justice system and children have instead been remanded to youth detention accommodation. Consequentially, where the Crown Court remands children to youth detention accommodation, there is currently no provision for the Secretary of State to make a transfer direction under section 48 of the 1983 Act. Clause 36 rectifies this.

Clause 37 – Minor amendment

Clause 37 makes a minor technical amendment to Part 1 of Schedule 1, paragraph 9(b) which modifies the application of section 66 for unrestricted Part 3 patients. The effect of the amendment is to clarify that the whole of section 66(2)(d) is omitted for unrestricted Part 3 patients.

Clause 39 - Information about complaints for detained patients

Clause 39 amends section 132 of the 1983 Act to place a statutory duty on managers of hospitals or registered establishments in respect of detained patients to ensure patients understand complaints procedures in relation to specified types of complaints and provides timeframes for when that duty is triggered in relation to different types of patients, including civil and restricted patients.

Clause 40 - Information about complaints for community patients

Clause 40 amends section 132A of the 1983 Act to place a statutory duty on the managers of the responsible hospital in respect of community patients to ensure patients understand complaints procedures in relation to specified types of complaints and provides timeframes for when that duty is triggered.

Clause 41 - Information for conditionally discharged patients

Clause 41 inserts section 132B into the 1983 Act to place a statutory duty on managers of hospitals or registered establishments in respect of providing information to conditionally discharged restricted patients.

This duty includes similar requirements to that currently provided in relation to detained patients under section 132 of the 1983 Act, and community patients under section 132A, with regard to taking steps to ensure the patient understands the terms of the discharge, how provisions of the 1983 Act apply to them and their rights to apply to a tribunal.

Additionally, as with the amendments to sections 132 and 132A of the 1983 Act set out in clauses 39 and 40, clause 41 also sets a duty on managers of hospitals or registered establishments to give complaints information to conditionally discharged restricted patients, to ensure patients understand complaints procedures in relation to specified types of complaints and provides that the information should be provided as soon as practicable. Information must also be provided to the patient's nominated person, unless otherwise requested.

Clause 42 - Advance choice documents

Clause 42 inserts sections 130M (advance choice documents: England) and 130N (advance choice documents: Wales) into the 1983 Act. These new sections will place a duty on NHS England and Integrated Care Boards in England, and Local Health Boards in Wales, to make such arrangements as they consider appropriate for making available information about advance choice documents ("ACD") and helping such of those people as they consider appropriate to create ACDs.

The clause is aimed at improving patient choice and autonomy. The introduction of statutory ACDs provides an opportunity for a person with severe mental illness to set out their wishes, feelings, beliefs and values in a document which can be used to inform decision making if in the future they lack capacity / are too unwell to express these things themselves.

Clause 43 – Tribunal power to recommend after-care

Clause 43 makes provision to extend the MHT's power (which covers the Mental Health Review Tribunal for Wales) to make recommendations. Where the MHT does not direct the discharge of a patient, it would be able to recommend that the responsible after-care bodies make plans for the provision of after-care services for the patient.

Clause 44 – After-care services

Clause 44 makes provision to amend section 117 of the 1983 Act. Section 117 places a duty on the NHS and local social services authorities to provide after-care to patients detained in hospital for treatment under sections 3, 37, 45A, 47 or 48 of the 1983 Act, who then cease to be detained and leave hospital.

Subsection (2) of this clause applies to decisions to end section 117 after-care taken by an integrated care board ("ICB") or Local Health Board (LHB) and local social services authorities. This subsection provides that the provision of section 117 after-care lasts until the ICB or LHB and the local social services authority jointly give notice to the person in writing that they are satisfied that the person is no longer in need of such services.

Subsection (3) applies the 'deeming rules' under social care legislation to the determination of ordinary residence to identify which local authority is responsible for arranging section 117 aftercare to an individual patient.

Clause 45 – Tribunal powers in guardianship cases: burden of proof

Clause 45 amends section 72(4) of the 1983 Act to reverse the burden of proof from the patient to the local authority responsible for guardianship. It provides that the tribunal may direct discharge if it is not satisfied that a patient subject to guardianship is suffering from mental disorder or that it is necessary in the interests of the welfare of the patient or for the protection of other persons that the patient should remain under guardianship.

Clause 46 – Removal of police stations and prisons as places of safety

Clause 46 removes police stations, and prisons for Part 3 patients, as a place of safety.

Clause 41(3) clarifies that these changes do not apply to those already detained in a police station or prison when the changes commence.

Clause 49– Procedure for certain regulations made by virtue of sections 18 and 35

Clause 49 amends section 143(2) of the 1983 Act to make provision for the procedure in relation to certain regulations, and adds new subsection (3ZA) after subsection (3),

and new subsection (3BA) after subsection (3B) to specify in relation to which regulations the affirmative procedure applies.

This clause provides that the affirmative procedure is to apply in relation to regulations made by the Welsh Ministers under new section 62ZB(1), as inserted by clause 18 of the Bill.

Clause 50 – Data protection

Clause 50 clarifies that a duty or power to process information that is imposed or conferred by the 1983 Act (as amended by the Bill) does not require or authorise the processing of information which would contravene data protection legislation.

Clause 51 – power to make consequential provision

Clause 51 provides for the Secretary of State to make consequential provision to primary legislation, including to Acts of the Senedd. There are no equivalent powers for the Welsh Ministers nor is there a consent provision for the Welsh Ministers in relation to the exercise of this power on devolved matters in Wales. This issue has been raised with UKG to request, as a minimum, equivalent powers for the Welsh Ministers.

UK Government view on the need for consent

9. The UK Government considers consent is required for clauses 1 to 3, 5 to 8, 10 to 19, 21 to 30, 32, 35, 39 to 40, 42 to 46, 49, Schedule 1 and Schedule 2.

10. As referred to in paragraph 6, above, in my view an LCM is required in relation to clauses 1 to 3, 5 to 8, 10 to 19, 21 to 32, 34 to 37, 39 to 46, and 49 to 51, Schedule 1 and Schedule 2.

11. There is a difference in position between the Welsh Government and UK Government in relation to the need for consent for clauses 31, 34, 36, 37, 41, 50, and 51. However, in my view, these clauses make provision in relation to Wales that have regard to the devolved matter of public health. Therefore, in accordance with Standing Order 29, Senedd consent is required.

Reasons for making these provisions for Wales in the Mental Health Bill

12. I support these reforms which will 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.

13. There is a significant amount of cross-border provision of mental health services between Wales and England. Not taking provisions in this Bill risks increasing divergence between services available in the two countries.

14. Furthermore, the periods of detention and the rights to apply to the tribunal are key safeguards in the protection of rights of individuals subject to the 1983 Act and I

want to take this opportunity to implement those changes here in line with the Welsh Government's approach to enhancing individual rights in Wales.

15. Whilst this Bill has regard to devolved matters, it also makes provision relating to reserved matters. For that reason, I consider legislating through a UK Bill to offer the most coherent approach to the provisions delivered in this legislation.

Financial implications

16. The impact assessment laid with the Bill includes a cost for Wales which has been estimated by applying uplift costs for England. Costs and cost savings that have been estimated for England have been scaled up, with impacts depending on the processes that the reforms are linked to.

17. Total costs (England and Wales) for the 20-year appraisal period are estimated at £5.7 billion. Implementation will be phased and therefore costs are not evenly split across the 20-year period. Total costs to Wales in the impact assessment over the 20-year period are estimated at £425 million across health, housing and social care.

18. If the Senedd consents to the LCM, this is on the basis of consequential funding from the UK Government to support implementation as set out in the impact assessment to Parliament.

Conclusion

19. In my view it is appropriate to deal with these provisions in a UK Bill as it ensures a coherent system of rights across Wales and England, in line with our commitment to enhancing individual rights in Wales, and supports our policy objectives on new mental health strategies.

20. Therefore, I recommend that the Senedd gives its consent.

Sarah Murphy MS
Minister for Mental Health and Wellbeing
20 November 2024