

## **SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 2)**

### **MENTAL HEALTH BILL**

1. This Legislative Consent Memorandum 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.
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>](https://bills.parliament.uk/publications/56783/documents/5312).

#### **Policy Objectives**

3. The UK Government’s stated policy objectives remain as set out in the first LCM, which was laid on 20 November 2024.

#### **Summary of the Bill**

4. The Bill is sponsored by the Department of Health and Social Care.
5. A summary of the Bill was provided in the first LCM, which remains accurate.
6. Welsh Government officials and UK Government officials have continued their regular contact in relation to the development of the Bill, including Government amendments that affect Wales.

#### **Update on the position since the publication of the first LCM**

7. Following the Bill's Second Reading on 25 November 2024, on 10 December 2024 and 8 January 2025 respectively, the UK Government tabled amendments to the following clauses of the Bill for consideration at Committee Stage in the House of Lords:
  - First set of Government amendments:  
Clause 31 and new clauses 32 and 52
  - Second set of Government amendments:  
Clause 43

These amendments can be viewed through the following link: [Mental Health Bill \[HL\] publications - Parliamentary Bills - UK Parliament](#).

8. Clause 52 has been drafted at the request of Welsh Government. I indicated in my first LCM that we were working to achieve this when I described the issues arising from clause 51.
9. Committee stage is scheduled to begin on 14 January, with further sittings currently scheduled to take place during January 2025. These amendments will be considered during those proceedings.

### **Provisions in the Bill for which consent is required**

10. Within the first LCM, I recommended that consent 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. As noted above, two tranches of proposed Government amendments have been laid, a number of which are additional provisions in the Bill for which consent is required. In my view, a supplementary LCM ("SLCM") is required in relation to the following amendments:

#### Clauses 31 and 32- References to tribunal for patients concerned in criminal proceedings etc and References: restricted patients not subject to deprivation of liberty conditions

12. Clause 31 and new clause 32 amend the automatic referral periods for mentally disordered offenders subject to special restrictions (Part 3 of the Mental Health Act 1983 ("the 1983 Act") - restricted patients) and new clause 32 makes further provision in relation to automatic referrals for those who are not subject to deprivation of liberty conditions. Both these amendments support the policy objective of increased safeguards and independent judicial scrutiny of detention by the tribunal and the principle of least restriction.
13. The amendments remove provisions about tribunal reviews in relation to patients that are not subject to conditions amounting to a deprivation of liberty from clause 31 and insert those provisions in new clause 32 instead. Since the provision in new clause 32 was previously included in clause 31, these proposed amendments are structural and technical in nature and not a new provision as such.
14. The amendments also move from clause 31 into new clause 32 the provision requiring 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.
15. The purpose of the amendment which separates the provisions in new clause 32 from those in clause 31 is to provide for commencement two months after Royal Assent of provisions about tribunal reviews concerning patients subject to conditions amounting to a deprivation of

liberty (eg those in clause 31); while provisions about tribunal reviews for patients not subject to deprivation of liberty conditions, and the Secretary of State's duty to refer all Part 3 restricted patients after 12 months where no reference has already been made, will be subject to commencement by regulations (ie those provisions now contained in clause 32).

16. An LCM was laid under SO 29 in relation to clause 31. While the amendment to clause 31 and the provision in new clause 32 are not making relevant provision for the first time given that the amendments are of a structural and technical nature and, in the case of new Clause 32, were previously included in clause 31, these amendments are captured by the alternative part of the SO 29.2(iii) test of making relevant provision beyond the limits of any consent previously given by the Senedd, as the Senedd has not yet given consent in relation to the content of that clause. An SLCM is therefore required to set out the changes being made.

#### Clause 43 – Tribunal power to recommend after-care

17. Clause 43 amends section 72 of the 1983 Act by making provision to extend the MHT's power (which covers the Mental Health Review Tribunal for Wales) to make recommendations and inserts a new subsection (8) into that section. A further amendment is made to the definition of "after-care services" in new section 72(8), so that it includes "services provided or arranged under section 117 [of the same Act]".
18. This amendment is required to ensure a consistent approach to amendments to the 1983 Act made by clause 4 and associated amendments to that clause, which are not the subject of this SLCM as clause 4 applies to England only.

#### Clause 52 - Power of Welsh Ministers to make consequential provision

19. In the previous LCM, I noted that the Bill included a consequential amendment provision in clause 51 providing the Secretary of State with powers to make consequential amendments to Senedd legislation, without conferring equivalent powers to do so on Welsh Ministers or requiring that the Welsh Ministers' consent or consultation be sought. Following discussion with the UK Government, a new clause 52 has now been tabled. New Clause 52 provides the Welsh Ministers with equivalent powers to make consequential provision to amend primary legislation in relation to Welsh devolved areas. This power is equivalent to that which is provided to the Secretary of State in clause 51.
20. The Senedd procedure for making regulations under this clause is currently the negative procedure.

## **UK Government view on the need for consent**

21. I noted in the previous LCM that the UK Government considers that 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.
22. As referred to in paragraph 10 above, my view remains that 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.
23. 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. The UK Government has not yet given an assessment of the devolution implications of new clause 32 (although it would seem likely that it would view this clause in the same way as clause 31) or of clause 52.
24. However, in my view, the clauses listed in the previous paragraph, including new clauses 32 and 52, make provision in relation to Wales that has 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**

25. In my original LCM, I set out my reasons for concluding that these provisions for Wales should be made through the Mental Health Bill. These reasons still stand, in my view, and apply also to the new provisions being proposed. I restate them below, for ease of reference.
26. 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.
27. There is a significant amount of cross-border provision of mental health services between Wales and England. Not making provisions in this Bill risks increasing divergence between services available in the two countries.
28. 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.
29. 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**

30. The financial implications of this Bill remain as they were set out in my original LCM. The impact assessment laid with the Bill (at [Mental Health Bill \[HL\] publications - Parliamentary Bills - UK Parliament](#)) 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.
31. 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.
32. If the Senedd consents to the LCM, with this SLCM, 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**

33. In my view, it remains 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.
34. Therefore, I recommend that the Senedd gives its consent.

**Sarah Murphy MS**  
**Minister for Mental Health and Wellbeing**  
**10 January 2025**