Welsh Parliament
Health and Social Care Committee

Report on the Legislative Consent Memorandum for the Mental Health Bill

Date: April 2025

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- how it is being developed; 21
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- a timetable of when the Code of Practice will be available for scrutiny 21

She should also share a draft of the Code with us at the appropriate time.

1. Background

1. On 21 November 2024, the Minister for Mental Health and Wellbeing ("the Minister") laid a legislative consent memorandum[1] ("the LCM") for the UK Government's Mental Health Bill[2] ("the Bill"). A supplementary LCM ("Memorandum No. 2)[3] was subsequently laid on 10 January 2025.

2. The LCM was referred to us by the Business Committee with an initial reporting deadline of 7 February 2025, which was subsequently extended to 4 April 2025. Memorandum No. 2 was also referred to us, with a reporting deadline of 4 April 2025. Both LCMs were also referred to the Legislation, Justice and Constitution Committee.

3. We issued a short call for written evidence on the LCM, and we are grateful to those who responded in the time we were able to offer. Those responses informed our scrutiny session with the Minister on 6 February 2025. A copy of our letter and the responses we received are available on the Senedd's website.[4]

4. Throughout this report, references to clause numbers should be read as relating to the numbering in the Bill as introduced to the House of Lords, unless otherwise stated.

[1] Legislative Consent Memorandum for the Mental Health Bill
[2] Mental Health Bill, as introduced on 6 November 2024
[3] Supplementary Legislative Consent Memorandum for the Mental Health Bill
[4] Senedd Cymru – Legislative Consent: Mental Health Bill

2. The LCM

Overview

5. Paragraphs 3 to 7 of the LCM summarise the Bill and its policy objectives. Briefly, the Bill aims to modernise the Mental Health Act 1983 to provide patients with greater autonomy, enhanced rights, and improved support. It responds to the recommendations from the Wessely Review 2018 and subsequent 2021 white paper, "Reforming the Mental Health Act". The Bill was introduced into the House of Lords on 6 November 2024, and is sponsored by the Department of Health and Social Care.

6. Paragraph 8 of the LCM outlines the provisions of the Bill for which Welsh Government believes Senedd consent is required. We explore issues relating to these provisions throughout this report.

The Mental Health Bill

7. In the LCM, the Welsh Government summarises the key provisions of the Bill, which include:

- Tightened Detention Criteria: the Bill proposes stricter criteria for detaining individuals under the Mental Health Act 1983, ensuring that detentions are more carefully justified and subject to more frequent reviews.
- Limitations on Detention for Autism and Learning Disabilities: the Bill seeks to restrict the duration for which individuals with autism or learning disabilities can be detained, promoting alternative support mechanisms.
- Removal of Prisons and Police Stations as 'Places of Safety': the Bill aims to eliminate the use of prisons and police stations as holding areas for individuals experiencing mental health crises, advocating for more appropriate care settings.
- Enhanced Patient Autonomy: the Bill aims to give patients greater control over their treatment plans, ensuring that their preferences and rights are central to care decisions.

- Improved Community Support: the Bill emphasises the importance of community-based mental health services, aiming to reduce unnecessary hospital admissions and support individuals within their communities.

Provisions for which consent is required

8. The Welsh Government believes 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.

9. There is a difference of opinion between the Welsh and UK Governments about the need for consent for clauses 31, 34, 36, 37, 41, 50, and 51. These are not included in the list of clauses for which the UK Government considers that consent is required. However, in the view of the Welsh Government, "as these clauses make provision in relation to Wales that have regard to the devolved matter of public health", the consent of the Senedd is required.[5]

The Welsh Government's position

10. The Welsh Government is generally supportive of the UK Government's policy objectives in relation to the Mental Health Bill, and recommends that the Senedd gives its consent to the LCM.[6]

11. In the LCM, the Minister states:

> *"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."*[7]

12. The Minister highlights the "significant amount of cross-border provision of mental health services between Wales and England", saying that "not taking provisions in this Bill risks increasing divergence between services available in the two countries".[8]

[5] Legislative Consent Memorandum: Mental Health Bill, paragraph 11
[6] Legislative Consent Memorandum: Mental Health Bill, paragraph 20
[7] Legislative Consent Memorandum: Mental Health Bill, paragraph 12
[8] Legislative Consent Memorandum: Mental Health Bill, paragraph 13

13. She goes on to say:

> *"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."*[9]

14. The Minister notes that "there has been regular contact between my officials and UK Government officials as the Bill has been drafted", and that she has 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".[10]

15. During our evidence session with the Minister on 6 February 2025, we pushed her on her reasons for making these provisions in a UK Bill rather than bringing forward her own legislation. In particular, we asked whether her justification that the 'significant amount of cross-border provision risks increasing divergence between services' was reasonable, and whether Welsh legislation could have been brought forward much earlier.

16. The Minister stated that "this has always been an England-and-Wales piece of legislation" and as such, it would not have been possible to bring forward Welsh legislation earlier. Alex Slade, Director of Primary Care, Mental Health and Early Years, Welsh Government, explained there would be complex legal challenges involved in bringing forward a Welsh Bill in this area relating particularly to cross-border issues. He went on to say:

> *"There are specific provisions within the document [the Bill] that would constantly create cross-border issues where we had disparity in the legislative frameworks—detention being one of those, and aftercare being another one of the components. And thinking about the individuals who live with those border issues, who could find themselves in a different legislative territory for what are very serious areas, for which we'd want robust safeguards in place, the alignment is for both the competence of the Welsh Government to be able to pursue those areas, but also for the individuals in terms of the way they are treated by a number of different agencies."*[11]

[9] Legislative Consent Memorandum: Mental Health Bill, paragraph 15
[10] Legislative Consent Memorandum: Mental Health Bill, paragraph 7
[11] Record of Proceedings (RoP), 6 February 2025, paragraph 164

17. More broadly, we asked the Minister what steps the Welsh Government intended to take, for example in relation to the workforce, transport, and Welsh language, that would ensure that people are able to better access the rights and services provided for under the Bill. The Minister said that the forthcoming Mental Health Strategy will incorporate "many of those issues".

18. That Strategy, she said, was likely to be in place at the same time as the implementation of the Bill and would:

> *"look at a difference approach and at people getting the support that they need as quickly as possible, and really trying to achieve that parity that we have with other parts of the health service."*[12]

19. Finally, the Minister confirmed that in relation to the overall delivery of the Bill, the NHS Wales Executive will play an "absolutely crucial part" and that they were "very confident that they will be able to do this".[13]

Financial implications

20. In relation to the financial implications of the Bill, the LCM states:

> *"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."*[14]

21. The LCM notes that the impact assessment laid with the Bill includes a cost for Wales which has been "estimated by applying uplift costs for England". It states that "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".

22. It further states that, if the Senedd consents to the LCM:

[12] RoP, 6 February 2025, paragraph 199
[13] RoP, 6 February 2025, paragraph 254
[14] Legislative Consent Memorandum: Mental Health Bill, paragraph 17

> *"(...) this is on the basis of consequential funding from the UK Government to support implementation as set out in the impact assessment to Parliament."*[15]

23. During oral evidence, the Minister confirmed that the above paragraph meant that the Welsh Government was seeking consent on the understanding that funding will be provided from the UK Government in order to meet the costs of this policy.[16] We asked the Minister what consideration she had given to the impact on the Welsh Government of a future UK Government deciding not continue funding this policy to the same extent. She said:

> *"... it will be part of Barnett consequentials, and then it will be decided how that is used. It'll be very phased as well. As you know, the mental health budget on an annual basis in Wales is £820 million, and £425 million over 20 years will be added in, so I'm very confident that that will continue, because that is a requirement that we have in Wales for our funding."*[17]

Consultation

24. The Minister confirmed that, following publication of the draft Bill, the Welsh Government worked with the (previous) UK Government "to ensure that the voices from Wales were heard as part of the consultation on the Bill, with the consultation being publicised widely with stakeholders in Wales". She said that responses to that consultation, which were received directly by the UK Government, were shared with the Welsh Government for its consideration. She described this as "good engagement with stakeholders in Wales".[18]

25. In correspondence with the Legislation, Justice and Constitution Committee, the Minister stated that, alongside the development of the Bill, the Welsh Government had consulted on both the draft Mental Health and Well-being Strategy and the draft Suicide and Self-harm Strategy. Both strategies have been delayed and are intended for publication in April 2025.[19]

[15] Legislative Consent Memorandum: Mental Health Bill, paragraph 18
[16] RoP, 6 February 2025, paragraphs 167-168
[17] RoP, 6 February 2025, paragraph 170
[18] RoP, 6 February 2025, paragraph 145
[19] Correspondence from the Minister for Mental Health and Wellbeing, 28 February 2025

Memorandum No. 2

26. On 10 January 2025, the Minister laid Memorandum No. 2 in respect of the Bill. This seeks consent for two sets of amendments[20] tabled by the UK Government for consideration at Committee Stage in the House of Lords, as follows:

- First set of UK Government amendments tabled on 10 December 2024 introducing: amendments to clause 31 and new clauses 32 and 52[21].
- Second set of UK Government amendments tabled on 8 January 2025 introducing: amendments to clause 43.

27. Paragraphs 12 – 20 of Memorandum No. 2 provide an explanation of these provisions. As indicated in paragraph 8 of Memorandum No. 2, clause 52 has been drafted at the request of the Welsh Government.

Provisions for which consent is required

28. In Memorandum No. 2, the Minister states that the UK Government has not yet given an assessment of the devolution implications of new clauses 32 or 52, although, she notes that it would seem likely that the UK Government would view clause 32 in the same way as clause 31.

29. She confirms that the view of the Welsh Government remains as set out in the LCM, that the following clauses require Senedd consent: 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, as well as new clauses 32 and 52. This, she says, is because these clauses "make provision in relation to Wales that has regard to the devolved matter of public health".[22]

The Welsh Government's position, and financial implications

30. Paragraphs 25 to 29 of Memorandum No. 2 set out the Welsh Government's position, confirming that the Minister's reasons for concluding that these

[20] Amendments to the Bill can be viewed on the UK Parliament website: Mental Health Bill [HL] publications – Parliamentary Bills – UK Parliament
[21] It is noted that in her letter to the LJC Committee, the Minister refers to this as 'clause 51A' (to which we note further amendments are likely to be forthcoming).
[22] Supplementary Legislative Consent Memorandum (Memorandum No. 2), paragraph 24

provisions should be made for Wales through the Mental Health Bill remain as set out in the LCM.[23] She recommends that the Senedd gives its consent.

31. Paragraphs 30-34 confirm that the financial implications of the Bill remain as set out in the LCM.

Evidence from stakeholders

32. Overall, stakeholders recognised the potential of the Bill to improve mental health legislation, although they highlighted key areas where further attention and refinement were needed.

33. Mental Health Matters Wales said it supported the Bill's alignment with the Welsh Government's mental health strategy, especially its emphasis on patient rights and community-based care. However, it called for more focus on addressing disparities in rural and underserved areas, as well as enhancing support for children and young people, particularly those from diverse ethnic backgrounds and neurodiverse communities. It also wanted to see stronger provisions to ensure child advocacy services effectively uphold the voices and rights of young people.[24]

34. The Centre for Mental Health backed the Bill's goals, believing that it would significantly improve the Mental Health Act's effectiveness for both patients and communities. Similarly, Policing in Wales acknowledged the Bill's objectives as reasonable and necessary.[25]

35. The Welsh NHS Confederation agreed with the Bill's overarching policy goals, recognising its potential to modernise mental health legislation. However, it highlighted current barriers to accessing mental health services in Wales, and said there was a need for clearer criteria in the new detention framework to prevent inconsistencies across Health Boards. It also had concerns that the 28-day assessment period may be too short to properly diagnose co-occurring mental disorders.[26]

36. The Royal College of Psychiatrists (RCPsych) Wales also supported the Bill's rights-based approach and its alignment with the Welsh Government's mental health strategy. RCPsych Wales argued in favour of embedding the four principles

[23] Paragraphs 25 to 29 of Memorandum No.. 2 restate the Welsh Government's reasons for making the provisions for Wales in the Mental Health Bill
[24] LCM MH01
[25] LCM MH02, MH03
[26] LCM MH04

from the 2018 Independent Review of the Mental Health Act — Choice and Autonomy, Least Restriction, Therapeutic Benefit, and Individual-Centred Care — directly into the legislation.[27]

37. Adferiad also advocated for integrating these four principles from the Wessely Review into the Bill's legal framework.[28]

Devolved competence

38. Most stakeholders agreed with the Welsh Government's position that a UK Bill is the most coherent approach to ensuring consistency across England and Wales. However, while Mental Health Matters Wales supported a consistent legislative framework across England and Wales, it emphasised the need for the Welsh Government to retain flexibility to adapt provisions to Wales' specific needs, particularly in community mental health services.[29]

39. Mind Cymru described the Bill as a missed opportunity for Welsh-specific legislation, leaving Wales reliant on UK reforms. It also called for a review and update of the Mental Health (Wales) Measure 2010 to ensure it aligns with evolving needs, and for the Welsh Government to extend the Mental Health Units (Use of Force) Act to Wales.[30]

40. A number of organisations, including the Welsh NHS Confederation and RCPysch Wales, emphasised the need for cross-border alignment in mental health care to ensure smooth transitions, consistent services, and equal rights for patients moving between Wales and England. They said this would involve addressing funding, coordination issues, and legislative differences between the two countries. Mind Cymru said the validity of care and treatment plans across both nations needed clarification.

Our view

41. As a Committee, we are generally supportive of the policy intentions behind the Bill, modernising the Mental Health Act 1983 to give patients greater autonomy, enhanced rights, and improved support. There is a well-established need for a new Mental Health Act, and we believe this legislation will be of real benefit to those who need it.

[27] LCM MH06
[28] LCM MH09
[29] LCM MH01
[30] LCM MH07

42. Despite this, it is important to state that the Bill will make significant changes to the law as it relates to mental health in Wales. 'Health' is an extensively devolved area, and the choice of this legislative route, rather than a Welsh Bill, means that opportunities for scrutiny of the legislation (including delegated legislation) by Members of the Senedd are extremely curtailed. It also means that stakeholders in Wales, who may have a different or unique perspective to offer, have been given limited opportunity to participate, because the vast majority of the scrutiny of this Bill is taking place elsewhere, by other representatives.

43. We have a number of comments on specific parts of the Bill. These are set out in the remainder of this report.

44. In relation to the LCM and Memorandum No. 2, we note the Minister's assessment of the provisions in the Bill that require the consent of the Senedd. Further, we note the difference in position between the Welsh and UK Governments, and that the Welsh Government is seeking consent for 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, as well as new clauses 32 and 52.

45. The Bill has a number of amending stages yet to come, and it is important that we should be updated regularly about any developments. We ask that the Minister commits to this.

Recommendation 1. The Minister should write to us routinely to update us on developments with the Mental Health Bill, including but not limited to updates about any relevant amendments which may be the subject of future consent memoranda.

46. It goes without saying that the reforms to be brought about by the Bill must be adequately resourced. The total cost of implementation in Wales over a 20-year period is significant, and the Minister has been clear that the Welsh Government is seeking consent on the understanding that funding will be provided from the UK Government to meet the costs. Whilst she has put on record her confidence that this will be forthcoming via Barnett consequential funding, the 20-year implementation timetable means that no one Government will be in a position to guarantee this. Once enacted, the Mental Health Act will likely place additional pressure on existing services, including crisis care, treatment, and mental health tribunals. Without a clear, lasting commitment to secure and sustainable funding, there is a risk that these important reforms could be delayed or inadequately implemented, undermining their intended impact and effectiveness.

47. During our evidence session with the Minister, it became clear that much of the detail around implementation of the Bill will be a matter for the forthcoming Mental Health Strategy. It would have been preferrable to have been able to consider that Strategy either before or certainly alongside our consideration of these memoranda to see how the two documents will fit together.

Recommendation 2. The Minister should review the current draft of the Mental Health Strategy prior to its publication to ensure it adequately aligns with the provisions of the UK Mental Health Bill, thereby ensuring a more comprehensive and sustainable approach to mental health reform in Wales. This review should also address the concerns raised by stakeholders, including those related to workforce pressures and gaps in services.

48. Finally, there is a pressing need for updates to be made to the Mental Health Measure. These need to come at pace and, if not in the remaining life of this Senedd, they should be a priority for the next Welsh Government. It is essential the Welsh Government assess the implications of the regulatory amendments recommended in the 2021 Duty to Review Report of the Mental Health (Wales) Measure, alongside the proposed changes outlined in the new Mental Health Bill. A thorough evaluation is needed to understand how these adjustments will interact and impact the delivery of mental health services in Wales. This assessment will help to ensure that both sets of reforms complement each other, address current gaps, and lead to a more effective, integrated mental health system.

Recommendation 3. Given the complexity of mental health legislation and the potential overlap between the provisions of the Mental Health Bill and the Mental Health (Wales) Measure, there is a need to ensure alignment between the two. The Minister must provide a clear, practical legal framework for implementing the Bill in Wales, considering the distinct legislative context in Wales compared to England.

Conclusion 1. We see no reason that the Senedd should not support the LCM or Memorandum No. 2.

49. One member stated their objection, in principle, to legislation affecting devolved Welsh matters – namely public health - being enacted via a UK Government Bill.

3. Provisions in the Bill requiring consent

Revisions to Detention Criteria

50. The Bill will introduce stricter criteria for detaining individuals under the Mental Health Act 1983, along with more frequent reviews and appeals. The Bill aims to reduce restrictive practices, such as forced hospital detentions, and focus instead on community-based care, helping people get support at home or in their local area. Mind Cymru insisted that restrictive practices should only be a last resort under the Mental Health Act's Code of Practice.[31]

51. Mental Health Matters Wales supported the Bill's aim of fewer hospital detentions and more community care, but wanted clearer rules about who helps vulnerable people navigate the system so they don't lose important legal protections.[32]

52. Independent Mental Capacity Advocates (IMCAs)[33] and Rule 1.2 Representatives[34] are meant to help people who may struggle to make decisions about their care, for example due to mental illness, learning disabilities, or dementia. IMCAs and Rule 1.2 Representatives are not part of the Mental Health Act 1983; they come from the Mental Capacity Act 2005. However, Mental Health Matters Wales argued that, because mental health and capacity issues often overlap, the Bill needed to explain how these roles would work under the new system. Mental Health Matters Wales asked for clarity in order to ensure that the roles of IMCAs and Rule 1.2 Representatives were clearly defined when applying the new detention rules in the Bill.

53. The Welsh NHS Confederation also highlighted the need for clarification on the relationship between the Mental Health Act and Mental Capacity Act to ensure suitable care pathways.[35]

54. The Bill aims to change detention rules, to make detention criteria stricter and to reduce the use of the Mental Health Act for people with learning

[31] LCM MH07
[32] LCM MH01
[33] Independent Mental Capacity Advocates (IMCAs) support people when they are assessed to lack capacity to make a best interest decision and they do not have family or friends appropriate to consult about the decision. See Making decisions: The Independent Mental Capacity Advocate (IMCA) service
[34] A Rule 1.2 Representative speaks up for a person who lacks capacity to consent to restrictions on their freedom, when they are or may be deprived of their liberty in a community or domestic setting. See Advocacy Focus: Rule 1.2 Representative
[35] LCM MH04

disabilities and autism. However, stakeholders said they wanted clearer guidance on how the Bill will interact with the Mental Capacity Act, so that people are not detained under one law when the other is more appropriate. There was concern that the proposed Bill could push more people into the Mental Capacity Act framework, which has fewer safeguards.

55. Many stakeholders, including RCPsych Wales and Adferiad, called for clarity on how the Mental Health Act and Mental Capacity Act interact to ensure people don't fall through the cracks.

Evidence from the Minister

56. We put these points to the Minister in our oral evidence session and asked for her views on the calls for clarity, and what assurances she could give to concerned stakeholders. The Minister confirmed that a code of practice would be produced to go along with the Bill when implemented:

> *"... so any additional clarity that is sought will be done collaboratively, will be done to ensure that there isn't any ambiguity in what we're expecting to be rolled out. It's been really helpful to be able to go through this process, receive that evidence and be able to take that on board. So, absolutely, we don't want any ambiguity here, and that will be confirmed then in the code of practice."*[36]

57. Responding to questions about the potential overlap between the Mental Health and Mental Capacity Acts, the Minister said:

> *"... currently there is overlap in the interface between the MHA and the MCA, and it is covered in the existing code of practice that we have, and the narrowing of the detention criteria under the MHA should make the interface clearer. That is our hope, but this will need to be addressed within that code of practice that I mentioned.*
>
> *My understanding is that the interface between the two regimes only occurs in a very small number of cases at the moment, but professionals are already working closely to ensure the appropriate legal frameworks are used, and there are a number of safeguards in place to ensure the legislation is*

[36] RoP, 6 February 2025, paragraph 175

applied appropriately, and this includes the tribunal services that we have in Wales, and all health boards have legislation committees to ensure appropriate use as well."[37]

Our view

58. We support the principle of introducing stricter criteria for detaining individuals, reducing restrictive practices, including forced hospital detentions, and focusing on community-based care.

59. Given the overlap between mental health and capacity issues, there were strong calls from stakeholders for greater clarity both in terms of the overall relationship between the Bill and the Mental Capacity Act, and the roles of IMCAs and Rule 1.2 Representatives under the Bill. We support these calls, and believe there should be clear guidance on the interaction between the Bill and the Mental Capacity Act in order to ensure that the most appropriate pathway is used in each circumstance.

60. We note the Minister's evidence that these matters will be addressed within the new Code of Practice and that, in her view, the narrowing of the detention criteria under the Mental Health Act should make clearer the interface between that Act and the Mental Capacity Act. Whilst the Minister says that this interface is only happening in a small number of cases, it must be addressed and the Minister must ensure this is done adequately and appropriately within the Code, if that is her chosen method.

61. It is clear from the Minister's evidence that much of the detail crucial to the implementation of the Bill will be a matter for the new Code of Practice. This is still in the process of being drawn up, and we have not had the opportunity to consider it. Given the significant implications of the proposed amendments in the Mental Health Bill, particularly regarding the treatment of people with learning disabilities and autism, it is crucial that the Welsh Government provides further clarity on how the Code of Practice will address these issues. We also ask that the Minister shares a draft of the Code with us at the appropriate time.

Recommendation 4. The Minster should write to us with details of the Code of Practice being prepared to accompany the implementation of the Bill, including:

- the matters to be included within it;

[37] RoP, 6 February 2025, paragraphs 179-180

- how it is being developed;
- how stakeholders are being involved in this process;
- whether a draft will be subject to consultation;
- a timetable of when the Code of Practice will be available for scrutiny.

She should also share a draft of the Code with us at the appropriate time.

Patient Involvement

62. The Bill aims to strengthen patients' rights to be involved in care planning and treatment decisions, including the introduction of Advance Choice Documents (ACDs). These allow individuals to set out their treatment preferences while they have capacity, ensuring their wishes are considered if they later lose capacity.

63. Mind Cymru called for the relationship between ACDs and Care and Treatment Plans (as set out in the Mental Health (Wales) Measure) to be clarified.[38]

64. BMA Cymru Wales supported informing individuals at risk of detention about ACDs and providing support for their completion, as outlined in Clause 42. However, they highlighted concerns about the additional demand on the workforce and the need for greater awareness and resources.[39]

65. The RCPsych Wales welcomed the inclusion of ACDs but argued that a statutory right to an ACD, rather than just a duty on health boards to provide information, would be more effective in reducing detentions and improving patient autonomy. It also noted that placing ACDs on a statutory footing could help reduce racial disparities in detentions.[40]

66. Adferiad believed the duty should be for all patients to have an ACD unless they opt out, rather than relying on health boards to make arrangements they deem appropriate. Further, Adferiad argued that ACDs are closely linked to care and treatment planning, which is a devolved matter under the Mental Health (Wales) Measure 2010. Adferiad argued that, if the Welsh Government legislated

[38] LCM MH07
[39] LCM MH10
[40] LCM MH06

for ACDs independently, they could be introduced more efficiently and tailored to Wales' specific needs.[41]

67. Adferiad added that "Wales is already ahead of England" in requiring all relevant patients to have a prescribed Care and Treatment Plan, which includes documenting their views, wishes, and advance statements. Given this existing framework, Adferiad believed ACDs should fall under Welsh Government jurisdiction rather than being implemented through the UK Bill. Adferiad also explained that details on ACD format and content are expected in regulations or a revised Code of Practice, which will need to align with Welsh legislation.[42]

68. The Bill also proposes the use of remote assessments (virtual consultations), particularly for Second Opinion Appointed Doctors (SOADs) and Independent Mental Health Advocates (IMHAs).

Evidence from the Minister

69. We questioned the Minister on the evidence we had received about ACDs, in particular whether they should be a statutory entitlement for patients. Responding to this, the Minister told us that the Welsh Government was not looking to do this at the moment. She went on to say:

> *"... the Bill will place a duty on the health board to provide people at risk of detention with that opportunity to set out their wishes (...) choices and values, should they become too unwell to protect them. Clearly, as we move to implement the Bill, we will need to ensure that we have the strength and the data to monitor that implementation, and the Bill will enable us to ensure that all those individuals that are eligible for that ACD receive one. As you know, then, you've got the CTPs [Care and Treatment Plans], which are a statutory right in Wales, and compliance is good on that, and they all work together."*[43]

70. We asked the Minister to clarify the relationship between Advance Choice Documents and the Care and Treatment Plans (provided for in the Mental Health Measure), and how they would potentially work together. She confirmed:

> *"... we have got work at the moment going on to look through the detail, because there are links between the two, and that is*

[41] LCM MH09
[42] LCM MH09
[43] RoP, 6 February 2025, paragraph 182

already included in the information about the patient's views and wishes regarding their treatment, so they should all be carried through.

Again, I actually see this as a really important opportunity to strengthen what we already have in Wales, with more opportunities for patients to share their views, and that's what's absolutely crucial here. This was not part of people's real understanding or commitment years ago, but now we really understand that need for that patient-centred, holistic, having a say in how they're treated if they end up becoming too unwell, and also then, as people go back into the community, that they get that support that they really need to make that recovery."[44]

Our view

71. We support the principle of strengthening the rights of patients to be involved in their own care planning and treatment decisions. Advance Choice Documents and Care and Treatment Plans are important parts of this, and we note that there is already a requirement in Wales for all relevant patients to have a prescribed Care and Treatment Plan.

72. The Mental Health Bill introduces ACDs to allow individuals to express treatment preferences in advance, particularly in cases where they may lose capacity. ACDs focus on giving individuals control over treatment decisions, such as consenting to medication or physical restraint, should they become unable to communicate their wishes. In contrast, Care and Treatment Plans under the Mental Health (Wales) Measure are already a statutory right for anyone receiving mental health services. These plans, developed by healthcare professionals, focus on the individual's treatment and support needs and are reviewed regularly. While they ensure appropriate care, they do not provide individuals the same opportunity to specify treatment preferences in advance, as ACDs do.

73. We note therefore that Advance Choice Documents are not a statutory right under the Bill, but rather that the Bill places a duty on health boards to provide people at risk of detention with the opportunity to set out their wishes, choices and values, should they become too unwell to protect them.

[44] RoP, 6 February 2025, paragraph 186

74. We draw to the Minister's attention the evidence from stakeholders calling for Advance Choice Documents to fall under the jurisdiction of the Welsh Government rather than being implemented via the UK Bill.

75. Given that Care and Treatment Plans are already statutory under Welsh law, this raises the question of why the Welsh Government is content for the implementation of ACDs to be governed solely by a UK Bill rather than updating the Mental Health (Wales) Measure to incorporate ACDs into the existing legal framework. We ask the Minister to write to us setting out why the Welsh Government is content with the approach taken in the Bill.

Recommendation 5. In response to this report, the Minister should set out:

- why Advance Choice Documents (ACDs) are not included as part of the Welsh legal framework and why the implementation of ACDs is left to the UK Bill;
- whether the Minister has given consideration to strengthening Care and Treatment Plans under the Mental Health (Wales) Measure by incorporating ACDs into these plans, ensuring that individuals in Wales have the right to make advance decisions about their care, and the clarity and coherence that would be given within the Welsh context.

76. It will be important to monitor the implementation of the provisions relating to Advance Choice Documents to ensure that anyone eligible for such a document receives one. The Minister has acknowledged the importance of such monitoring arrangements, and we ask that she provides us with information about how she intends to do this. .

77. Further, we note the Minister's evidence that work is underway to consider the links between Advance Choice Documents and Care and Treatment Plans. We ask that she writes to us with the findings of this work.

Recommendation 6. The Minister should write to us, at the appropriate time, setting out:

- how she intends to monitor the implementation of the provisions relating to Advance Choice Documents, including how she will ensure that the relevant data is available for this purpose and how the Bill enables such monitoring, and

- the findings of the work currently in progress to assess the links between Advance Choice Documents and Care and Treatment Plans.

Recommendation 7. In response to this report, the Minister should outline explicitly how the Mental Health Bill provisions, particularly those related to ACDs and mental health detention, will be integrated with the existing Mental Health (Wales) Measure. This framework should clearly define the rights and duties under both pieces of legislation to ensure that reforms are cohesive and fit within the Welsh context.

Nominated Person

78. The Bill introduces a Nominated Person to enhance patient autonomy by allowing individuals to choose someone they trust to represent their interests in mental health decisions. The Nominated Person will assume the existing powers of the nearest relative, including requesting an assessment for hospital admission; applying for compulsory admission or guardianship; accessing relevant information provided to the patient; and applying to the Mental Health Tribunal, among other things.

79. Mental Health Matters Wales welcomed the change but stressed the need for safeguards to ensure accessibility and prevent undue influence, particularly for underrepresented groups. It emphasised the importance of having protective measures in place to ensure the process is fair and safe for everyone involved.[45]

80. The Centre for Mental Health supported the Nominated Person role, believing it would empower patients alongside ACDs and expanded opt-out advocacy. However, it said that further clarification was needed on how the nominated person role would interact with parental responsibility when an Approved Mental Health Professional (AMHP) appointed a nominated person for a child or young person lacking capacity.[46]

81. The RCPsych Wales supported the reform, stating that it will modernise family and carer involvement, ensuring patient perspectives are more seriously considered in care decisions.[47]

[45] LCM MH01
[46] LCM MH02
[47] LCM MH06

82. The Welsh NHS Confederation sought clarity on whether the Nominated Person role will receive additional funding and whether consultation with a nominated person before detention decisions could lead to treatment delays.[48]

Evidence from the Minister

83. During our evidence session with the Minister, we asked her what safeguards the Welsh Government would implement to ensure the Nominated Person role was accessible, and protected from undue influence. She said she was aware that some groups were concerned that the changes could lead to increased abuse of the deprivation of liberty orders, and that the Welsh Government would "work really closely to monitor this". She went on to say:

> *"... the Bill will provide further clarity for clinicians and individuals, which, in itself, will also act as that additional safeguard as well to ensure that that is absolutely the case, and also for children and young people."*[49]

84. The Minister told us that the Code of Practice would be "crucial" in terms of the Nominated Person role.[50]

Our view

85. We support the introduction of the Nominated Person role in the Bill, enabling individuals to choose a person they trust to represent their interests in mental health decisions. Such an important role must come with the necessary safeguards both to ensure accessibility and to ensure that vulnerable individuals are not coerced or pressured into selecting an unsuitable person to act on their behalf.

86. We note the Minister's evidence that the Welsh Government will monitor the implementation of the provisions relating to the Nominated Person and we ask that she provides us with more detail about this.

Recommendation 8. In her response to this report, the Minister should set out:

- how she intends to monitor the implementation of the provisions relating to the Nominated Person in order to ensure the role is

[48] LCM MH04
[49] RoP, 6 February 2025, paragraph 191
[50] RoP, 6 February 2025, paragraph 195

accessible whilst also protected from undue influence, including for underrepresented groups;

- what provisions she intends to include in the Code of Practice about the Nominated Person role.

Safeguards for individuals with learning disabilities and autism and other vulnerable groups

87. The Mental Health Bill introduces a significant change in how individuals with learning disabilities or autism are detained under the Mental Health Act 1983, limiting their detention to a maximum of 28 days without a co-occurring mental health condition. The Welsh Local Government Association (WLGA) believed the Bill could improve care and reduce stigma by clearly distinguishing between autism, learning disabilities, and psychiatric conditions.[51]

88. Mental Health Matters Wales supported this provision, but emphasised the need for adequately resourced, culturally tailored community-based alternatives to ensure positive outcomes for people with learning disabilities or autism. They stressed that a reduction in hospital reliance must be matched by appropriate, community-focused care options.[52]

89. Adferiad raised concerns that restricting detention under Section 3 of the Mental Health Act (for treatment) to individuals with co-occurring mental health conditions may result in an unintended shift toward the Mental Capacity Act's Deprivation of Liberty Safeguards (DOLS). Adferiad argued that these safeguards, while protecting individuals from unlawful detention, did not offer the same level of oversight as the Mental Health Act, potentially leading to less rigorous safeguards for individuals without a psychiatric disorder.[53]

90. The Welsh NHS Confederation highlighted the potential creation of a care gap for people with autism or learning disabilities who may require treatment but do not meet the new thresholds for detention. It said that while other legislative frameworks, like DOLS or Liberty Protection Safeguards (LPS) exist, there was concern that without clear guidance, these people may fall through the cracks, missing out on necessary care and treatment.[54]

[51] LCM MH05
[52] LCM MH01
[53] LCM MH09
[54] LCM MH04

91. The RCPsych Wales supported the Bill's focus on community-based support but expressed concern about the unintended consequences of restricting hospital admission for individuals with learning disabilities or autism who may present significant risks that community services cannot manage. It cautioned that such individuals might end up in the criminal justice system instead of receiving appropriate mental health care.[55]

92. Similarly, the British Psychological Society stated that, without adequate community-based services, individuals with autism and learning difficulties risked being detained under spurious diagnoses, given inappropriate treatment in unsuitable environments and being diverted into the criminal justice system. Further, they stated that the draft Mental Health Strategy contained very little about meeting the mental health needs of neurodivergent people. They argued that, without a clear strategy, it was unclear how the specific mental health needs of neurodivergent people would be met.[56]

Evidence from the Minister

93. We questioned the Minister on this evidence during our oral evidence session, asking her how the Welsh Government would ensure that new provisions for individuals with learning disabilities or autism under the Bill do not lead to unintended consequences, such as pushing individuals into the Mental Capacity Act framework, which could reduce protection. Responding to this, the Minister said:

> *"... it is my absolute commitment, as it is the commitment of all of Welsh Government, that that does not happen—that that unintended consequence does not happen. It is imperative."*[57]

94. She said the Welsh Government was aware of the "interface" between the Mental Health and Mental Capacity Acts and monitored this very closely. She went on to say:

> *"... in a very similar way that the UK Government did the work around reforming the Mental Health Act, that work has also taken place for the Mental Capacity Act as well, and I would be*

[55] LCM MH06
[56] LCM MH11
[57] RoP, 6 February 2025, paragraph 219

very, very keen for the UK Government to also bring that forward in the same way."[58]

95. More broadly, the Minister was keen to emphasise that "a learning disability or neurodivergence is not a mental health condition, and we do not view it like that". She continued:

> *"However, of course, those people will sometimes have mental health needs and issues, and it is appropriate then that they may be detained under the Mental Health Act. The reform, though, makes it very, very clear that that is only if they are experiencing mental health issues, and if they are going to be detained in a way that is going to give them the support to recover and be able to get better, just like anybody else."*[59]

96. Responding to the concerns of stakeholders about the possibility of a "care gap" for individuals with learning disabilities or autism, who may not meet the new threshold for detention so may be left without appropriate treatment or care, the Minister referred to the forthcoming Mental Health Strategy. She said this would look at updating the Mental Health Measure, and would include people with a learning disability.

97. We asked the Minister whether the Bill goes far enough to recognise the needs of and prejudices faced by ethnic minority groups with mental health conditions. The Minister said this was a priority and an underpinning principle in the Welsh Government's forthcoming Mental Health Strategy.

98. She said that, by way of reassurance:

> *"where we do have ethnicity data, we don't see significant disparity here in Wales. So, for example, under the section 135-136 data, in the last two quarters, the published data show around 4 per cent of people detained were from a black and minority ethnic group."*

99. She acknowledged that there was a need to strengthen the mental health data in Wales, and that work on this was being led by Betsi Cadwaladr University

[58] RoP, 6 February 2025, paragraph 218
[59] RoP, 6 February 2025, paragraph 222

Health Board in the form of an electronic mental health record, with Cwm Taf Morgannwg University Health Board participating.[60]

Our view

100. We support the Bill's emphasis on community-based care but have some concerns about how the reforms may impact the care pathways of individuals with learning disabilities and autism, particularly those presenting significant risks to themselves or others. We are concerned, in particular, that neurodivergent people seeking mental health support are at risk of being pushed into other, less appropriate services, and we believe there is a need for greater clarity, recognition and understanding of the needs of neurodivergent people. We welcome the strong commitment from the Minister to ensuring that such unintended consequences do not take place.

101. We note the work being undertaken in relation to the development of an electronic mental health record to strengthen mental health data in Wales. We ask that the Minister updates us on progress with this work.

Recommendation 9. In response to this report, the Minister should provide us with an update on the progress of the development of an electronic mental health record, including:

- Key milestones;
- An assessment of progress to date;
- A likely completion date for the project and the timelines for any subsequent wider roll-out.

102. In relation to the needs of ethnic minority groups with mental health conditions, we were pleased to hear the Minister's evidence that this is an 'underpinning principle' in the forthcoming Mental Health Strategy. We have already called for the Minister to make a draft version of the Strategy available to us, and we trust she will accept that recommendation. We would, however, like her to set out whether she has considered proposing amendments to the Bill to address the racial disparities in mental health detention.

[60] RoP, 6 February 2025, paragraph 239

Recommendation 10. In her response to this report, the Minister should set out what consideration she has given to proposing amendments to the Bill to address the racial disparities in mental health detention.

Revising Criteria and Enhancing Oversight for Community Treatment Orders

103. The Mental Health Bill proposes a key change in the use of Community Treatment Orders (CTOs) by introducing a new requirement for hospital clinicians to collaborate with community-based professionals when making decisions about the use and operation of CTOs. This aims to ensure that decisions regarding the initiation, variation, suspension, and recall of CTOs are not solely in the hands of hospital-based clinicians, helping to reduce subjective decision-making and disparities in their use.

104. The Centre for Mental Health welcomed this proposed change, noting that CTOs are currently often imposed based on the decision of a single clinician without sufficient input from a community professional. They argued that this increases the risk of inequities and subjectivity. In addition, it suggested that a similar safeguard should be considered for the renewal of CTOs, preventing their continuation indefinitely without review.[61]

105. Mental Health Matters Wales supported the idea of collaboration between hospital and community clinicians, emphasising that including Independent Mental Health Advocacy (IMHA) services in this process would ensure more holistic, patient-centred care, offering further safeguards for individuals under CTOs.[62]

106. The British Psychological Society saw significant benefits in this proposed change for continuity of care, but drew attention to the likely additional pressures that could be placed on the already strained mental health workforce, limiting the availability of community clinicians to participate in CTO decision-making.[63]

107. Policing in Wales recognised the importance of this change, highlighting past instances where patients were inappropriately placed on CTOs due to a lack of understanding of community services. It suggested that clinicians would benefit from further training on the limitations of CTOs, as well as the

[61] LCM MH02
[62] LCM MH01
[63] LCM MH11

establishment of a quality assurance process to regularly review the appropriateness of existing CTOs.[64]

108. Mind Cymru went further, calling on the Welsh Government to support the abolition of CTOs and/or to instigate a review into their effectiveness and application within Wales. Mind Cymru argue that CTOs are "ineffective", "coercive" and "unsupportive of recovery".[65]

109. BMA Cymru Wales supported the changes but raised concerns about the lack of evidence showing that CTOs improve patient outcomes. BMA Cymru Wales also questioned the potential introduction of a register of patients at risk, asking for more clarity about how this list would be populated and maintained.[66]

110. The RCPsych Wales pointed out that, while the Bill proposes some changes to the use of CTOs, it falls short of the Wessely Review's recommendations, which suggested more restricted use of CTOs, including time-limited durations. The RCPsych Wales also advocated for the use of Advance Choice Documents as an alternative to CTOs where appropriate, to help ensure that decisions are patient-centred and aligned with their preferences.[67]

111. Adferiad acknowledged the controversial history of CTOs since their introduction in 2007, citing concerns about their overuse and racial disparities in their application. They called for tighter controls and safeguards in CTO decision-making processes, particularly around the recall criteria and the duration of CTOs.[68]

Evidence from the Minister

112. We asked the Minister whether the Bill went far enough in relation to Community Treatment Orders, given the concerns of stakeholders and the calls from some for them to be abolished.

113. The Minister said that "some people really need that support", but that it had been a mistake not to have a more person-centred approach. She said she was "absolutely committed" to monitoring the changes closely as they are implemented, but that she was "content" with the current proposals."[69]

[64] LCM MH03
[65] LCM MH07
[66] LCM MH10
[67] LCM MH06
[68] LCM MH09
[69] RoP, 6 February 2025, paragraph 248

Our view

114. We note the Minister's position that she is content with the proposals in the Bill relating to Community Treatment Orders, despite the mixed views amongst stakeholders and the calls from some for their abolition.

115. Given her position, we believe it will be important for her to set out clearly how she intends to monitor the changes as they are implemented. It is important to ensure that the new requirements for collaboration between hospital and community-based professionals are effectively implemented and that there are safeguards to protect patients. We believe the Welsh Government should take proactive steps to ensure that the implementation of CTOs under the Mental Health Bill is fully aligned with the principles of person-centred care and supported by strong safeguards. This work should include a comprehensive quality assurance process to routinely review the appropriateness of existing CTOs.

Recommendation 11. In her response to this report, the Minister should set out details of the arrangements she intends to put in place to:

- monitor the implementation of Community Treatment Orders (CTOs) to ensure that decisions about CTOs are made collaboratively by both hospital-based clinicians and community professionals, including Independent Mental Health Advocacy services,
- ensure that the appropriateness of existing Orders is routinely reviewed,
- ensure that the new process for CTOs does not delay treatment; and
- ensure that community clinicians are adequately resourced to undertake this work.

Police Stations and Prisons as Places of Safety

116. Clause 46 of the Bill proposes the removal of police stations and prisons as "places of safety" for individuals detained under Sections 135 and 136 of the Mental Health Act. This reform aims to ensure that people in mental health crises are taken to health-based settings, rather than criminal justice environments, where they can receive appropriate care.

117. Mental Health Matters Wales strongly supported this change, emphasising the need for well-funded, culturally sensitive crisis centres and sanctuaries to

provide alternatives to police and prison cells.[70] The Centre for Mental Health also welcomed this change, noting the harm caused by detaining individuals in police cells who often feel criminalised in such settings. It noted that investment in health-based places of safety had already made this practice less common, adding it was essential that these services were expanded and properly staffed to meet demand.[71]

118. Policing in Wales viewed this as a significant step towards reducing police involvement and ensuring a least restrictive approach to those in mental health crises. However, it cautioned that rural areas may struggle to provide suitable places of safety for high-risk individuals, and stressed the need for "a feasible and ready solution". Policing in Wales also recommended the development of joint policies for sedation or seclusion to manage patients safely at designated places of safety.[72]

119. The RCPsych Wales supported the proposal to remove police stations and prisons from the list of places of safety. It argued that all individuals in a mental health crisis should be taken to clinical environments where they can receive urgent care. To implement this change effectively, it recommended that additional capital funding be made available to create more health-based places of safety in areas with high demand.[73]

120. Adferiad highlighted that the use of police stations as places of safety under Sections 135 and 136 was already rare in Wales, with emergency departments being used in many cases instead (noting emergency departments were not ideal for this purpose, but that they can sometimes be a necessary option when other places of safety are unavailable). Adferiad called for continued work to reduce inappropriate use of emergency departments and to establish clearer guidelines for when this can occur.[74]

121. Mind Cymru raised concerns over delays in accessing mental health services and the impact of the police's Right Care Right Person approach[75], which aims to

[70] LCM MH01
[71] LCM MH02
[72] LCM MH03
[73] LCM MH06
[74] LCM MH09
[75] The 'Right Care Right Person' approach aims to ensure that individuals experiencing mental health crises receive appropriate care from health professionals rather than being taken to police custody.

limit police involvement in managing mental health emergencies and instead prioritise healthcare responses.[76]

122. Related to this, the British Psychological Society highlighted the additional challenges facing people in prison and on probation in accessing mental health services, which they believed should be addressed in the Bill. They called for an 'assertive outreach' for prison leavers, given that mental health issues are over-represented in this population.[77]

Prison Transfers and Statutory Limits

123. The Bill introduces a 28-day time limit for transferring prisoners with severe mental health needs to hospitals; a measure welcomed by many mental health organisations. Mental Health Matters Wales viewed this as "a significant improvement", while the Centre for Mental Health stressed the importance of addressing NHS delays in hospital discharges and admissions to ensure the 28-day transfer period is feasible. Similarly, the British Psychological Society highlighted the need for this new duty to be backed up by practical availability of resources within the healthcare system.[78]

124. BMA Cymru Wales supported this proposal but called for ongoing review to prevent unintended consequences, such as the de-prioritisation of transfers due to pressure on NHS resources. It also raised concerns that a lack of sufficient staff could exacerbate delays in transfers from prison to hospital.[79]

125. The RCPsych Wales welcomed the concept of a target for transfers but expressed concern that setting a statutory limit could lead to avoidance of transfers in some cases, particularly when hospital beds are unavailable.[80]

126. The WLGA supported the 28-day transfer rule but cautioned that it may disproportionately affect certain Welsh health boards, particularly due to the high number of English prisoners in Welsh prisons. It also raised concerns about unintended consequences, such as community patients losing access to hospital beds due to prioritisation of prisoners.[81]

[76] LCM MH07
[77] LCM MH11
[78] LCM MH01, MH02, MH11
[79] LCM MH10
[80] LCM MH06
[81] LCM MH05

Our view

127. We support the principle of removing police stations and prisons as places of safety for individuals detained under the Mental Health Act. We heard evidence that rural areas, in particular, may struggle to provide suitable places of safety, and we believe the Minister should set out how she intends to make provision in this regard, and how this will be resourced.

Recommendation 12. In her response to this report, the Minister should set out:

- how she will support the full implementation of the expansion of health-based places of safety, particularly in rural areas, to ensure that individuals in mental health crises are not detained in police stations, prisons or other unsuitable settings, and
- how she will ensure adequate resources are available for these services.

Children and young people

128. The consultation responses highlighted specific concerns regarding the Bill and children and young people.

Safeguards for children and young people

129. The Centre for Mental Health, along with the Children and Young People's Mental Health Coalition, advocated for children and young people detained under the Mental Health Act 1983 to have the same safeguards as adults.[82]

130. Mind Cymru agreed, calling on the Welsh Government to seek an amendment to the Bill to safeguard young people aged under 18.[83] The Centre for Mental Health said the Bill, in its current form, risks excluding these safeguards, potentially disadvantaging children and young people.[84]

131. Both organisations proposed the introduction of a decision-making test for under-16s and improvements to the Nominated Person provisions to ensure equal treatment and autonomy.

[82] LCM MH02
[83] LCM MH07
[84] LCM MH02

132. The RCPysch Wales supported the introduction of a Nominated Person role to replace the nearest relative for decision-making, particularly for children in care.[85]

Concerns about Informal Patients

133. The Centre for Mental Health highlighted that a significant number of children and young people are admitted to mental health settings informally, but often under the same conditions as formally detained patients without access to the same safeguards. The Centre advocated that informal patients under 18 should have Care and Treatment Plans, and opt-out advocacy to ensure they are supported and their voices are heard.[86]

Inappropriate Placements

134. The Centre for Mental Health emphasised concerns about children and young people being placed in adult wards or out-of-area settings. The Centre believed the Bill must strengthen safeguards to prevent this, including clear requirements that such placements are in the child's best interests.

Evidence from the Minister

135. During our evidence session with the Minister, we asked her how the Bill will ensure that individuals admitted informally have clear Care and Treatment Plans and access to advocacy to support their autonomy and ensure their voices are heard.

136. The Minster told us that there had been a reduction in the number of admissions to mental health units for children and young people, which pointed to an overall, steady reduction in informal admissions. She said that, whilst informal patients are not subject to the Mental Health Act, they have a right, in Wales, to an informal mental health advocate, and that advocacy services for young people were in place in both CAMHS in-patient units in Wales.[87]

137. We pushed her on the safeguards for children and young people provided for in the Bill, particularly in terms of the Nominated Person provision and decision-making for those under 16. The Minister confirmed:

[85] LCM MH06
[86] LCM MH02
[87] RoP, 6 February 2025, paragraph 229

"The changes will apply to adults and children, and aim to strengthen those safeguards, and so more say in the care and treatment, more choice, more autonomy will absolutely apply to all. We do need to work through the detail as part of the implementation, but 16 to 17-year-olds will have the same rights as adults.

... for some under 16, they will have the right to choose a nominated person if they are Gillick competent. If they don't have the necessary competence, there will be a process for a nominated person to be appointed to them."[88]

138. In relation to concerns about inappropriate placements, the Minister said:

"All health boards do have a designated bed on an adult ward for use in emergencies to admit a young person if other beds are not available. However, that designated bed means that, whilst on the adult ward, the person will be cared for by CAMHS and appropriate staff. We can do better, of course, but that's where we are at the moment.

It is absolutely unacceptable for them to ever be taken to a police station or a police cell as a place of safety. (...) This very much comes back to that our aim is to reduce admissions through new services like the '111 press 2' for mental health and our alternative to admission pilots, which have now been introduced in all health boards. I've been to visit some of them, they're absolutely superb, and really have that person-centred wraparound support for the child and young person. That's where we need to get to. I'm really pleased that it has started to reduce. We want to continue on that path, and the pilots will be evaluated, but early operational data is showing that young people are being well supported and actually diverted away from accident and emergency.."[89]

Our view

139. There were real concerns amongst stakeholders about a lack of safeguards for children and young people in the Bill, and we wish to draw the Minister's

[88] RoP, 6 February 2025, paragraph 231
[89] RoP, 6 February 2025, paragraphs 234-235

attention particularly to this evidence. We note the Minister's evidence that 16 to 17-year-olds will have the same rights as adults under the Bill, but she acknowledged that the Welsh Government still needed to 'work through the details' as part of the implementation.

140. We believe the Minister should write to us, setting out her intentions in relation to the arrangements that will be put in place to ensure that the Mental Health Bill better protects the rights and interests of children and young people, specifically to strengthen the safeguards for children and young people and provide them with age-appropriate mental health care.

Recommendation 13. In response to this report, the Minister should write to us setting out in detail the arrangements the Welsh Government intends to put in place to strengthen the safeguards for children and young people to ensure they receive the same level of protection as adults, particularly in terms of the Nominated Person provisions and how they interact with parental responsibility and decision-making for those under 16.

141. In relation to children and young people admitted informally to mental health settings, we note the Minister's evidence that such informal patients have a right to an informal mental health advocate. However, we believe the Minister needs to set out how the Welsh Government intends to ensure that individuals admitted informally have clear Care and Treatment Plans.

Recommendation 14. In response to this report, the Minister should set out how she intends to ensure that children and young people admitted informally to mental health settings have clear Care and Treatment Plans to support their autonomy and ensure their voices are heard. This should include an explanation of any consideration given to requesting such provision be included on the face of the Bill.

142. Finally, we know the damage that can be caused by placing children and young people in inappropriate settings, such as adult wards or out-of-area settings. We are keen to ensure the strengthening of safeguards against this, and that provision is made to ensure that any placement decisions are made in the child's best interests.

143. The Minister referred to the 'alternative to admission pilots' introduced in all health boards, and that these will be evaluated in due course. We ask that she writes to us with an update as soon as she is able.

Recommendation 15. The Minister should write to us, as soon as she is able, with an update on the evaluation of the 'alternative to admission pilots' operating in all local health boards.

Workforce issues

144. Another key concern raised by stakeholders was workforce capacity, with many organisations highlighting the potential impact of the Bill on the workload of mental health professionals. Health Education and Improvement Wales (HEIW) stressed the importance of workforce planning to manage these pressures, suggesting the adoption of competency-based approaches to diversify the skill mix and enable more professionals to take on legal roles.[90]

145. BMA Cymru Wales further noted that the Bill's requirements for increased consultation and collaboration could place additional strain on Wales' already stretched workforce, which is projected to decline by 7.2% by 2026.[91]

146. Additionally, the Bill will necessitate significant training for healthcare professionals on new criteria for detention, treatment, and patient rights. HEIW has expressed a desire to be involved in shaping workforce solutions from the beginning to ensure smooth and timely implementation.[92]

147. The RCPsych Wales emphasised that the success of these reforms depends on substantial investment to ensure the workforce is properly trained. A recent survey found that 71% of respondents believe significant investment is essential, particularly to implement more regular Tribunal reviews and better address the handling of learning disabilities and autism under the Act. Finally, the RCPsych Wales called for a dedicated workforce plan to tackle the shortage of psychiatrists, arguing that the Strategic Mental Health Workforce Plan (2022) has not lived up to expectations. It believed a more ambitious approach was needed to meet the increasing demand for mental health services, especially in light of the proposed Mental Health Act reforms.[93]

148. Responding to the concerns of stakeholders about the additional pressures facing the workforce arising from the Bill, the Minister confirmed that the

[90] LCM MH08
[91] LCM MH10
[92] LCM MH08
[93] LCM MH06

workforce would be fully supported and trained to deal with the changes arising from the Bill.[94]

Our view

149. The implementation of this Bill is likely to have a notable impact on the workload of mental health professionals, with an expected increase in tasks such as more frequent reviews and appeals, and a potential for expanded roles. We are concerned that this will exacerbate existing pressures on a workforce projected to decline.

150. Workforce planning will be crucial to the success of the Bill and, as such, we are concerned about the lack of a dedicated workforce plan to deal with the shortage of psychiatrists. Further, the Bill will give rise to a significant training need for healthcare professionals on new criteria for detention, treatment, and patient rights. The Welsh Government needs to do more to prepare for the increasing demands on the workforce that are likely to result from the Bill.

Recommendation 16. In her response to this report, the Minister should set out the specific measures that will be taken to ensure adequate capacity within the mental health workforce to meet the increased demands arising from the Bill. This should include details of the necessary training that will be provided, as well as plans to build capacity.

[94] RoP, 6 February 2025, paragraphs 176-177