

Report on the Supplementary Legislative Consent Memorandum (Memorandum No.3) for the Mental Health Bill

June 2025

1. Background

1. The Mental Health Bill (“the Bill”) was introduced into the House of Lords on 6 November 2024. Briefly, it aims to modernise the Mental Health Act 1983 to provide patients with greater autonomy, enhanced rights, and improved support.

2. The Welsh Government laid a Legislative Consent Memorandum (“Memorandum No. 1”)¹ in respect of the Bill before the Senedd on 21 November 2024. It then laid a Supplementary Legislative Consent Memorandum (“Memorandum No. 2”)² on 10 January 2025. The Committee considered both memoranda at its meeting on 6 February and laid its report³ on 3 April 2025.

2. Memorandum No. 3

3. A further Supplementary Legislative Consent Memorandum (“Memorandum No. 3”)⁴ was laid on 8 April 2025. This was referred to the Committee with a reporting deadline of 27 June 2025.

¹ Legislative Consent Memorandum: Mental Health Bill

² Supplementary Legislative Consent Memorandum (Memorandum No. 2): Mental Health Bill

³ Report on the Legislative Consent Memorandum for the Mental Health Bill

⁴ Supplementary Legislative Consent Memorandum (Memorandum No.3): Mental Health Bill



4. The Committee considered Memorandum No. 3 at its meeting on 5 June 2025.

Provisions for which consent is required

5. Memorandum No. 3 seeks consent for several amendments tabled by the UK Government for consideration during Report Stage in the House of Lords. Those amendments were subsequently agreed, and relate to the following provisions of the Bill as amended at Committee stage in the House of Lords:

- **Clause 18:** which makes provision in relation to electro-convulsive therapy;
- **New clause after clause 18:** which enables interviews or examinations under section 119 of the 1983 Act to be undertaken remotely for certain treatments;
- **Schedule 2:** which relates to the 'Nominated Persons' provisions in the Bill; and
- **Clause 53:** which relates to the procedure to be applied to the making of regulations.

6. Further details about the amendments listed above are provided in paragraph 9 of Memorandum No. 3.

The Welsh and UK Governments' view on consent

7. The Welsh Government believes that consent is required for the amendments to clauses 18, the new clause after clause 18, clause 53 and Schedule 2 of the Bill as amended at Committee stage in the House of Lords. The UK Government agrees with this position.

8. These clauses were previously identified as engaging the LCM process in Memorandum Nos 1 and 2. As amended, they continue to make relevant provision in relation to Wales that has regard to the devolved matter of 'public health', as does the new clause after clause 18.

The Welsh Government's position on Memorandum No. 3

9. In Memorandum No. 3, the Minister for Mental Health and Wellbeing states that the reasons given previously by her in support of the Mental Health Bill still stand, and apply also to the new provisions being proposed.

10. Again, she draws attention to the “significant amount of cross-border provision of mental health services between Wales and England”, saying:

“Not making provisions in this Bill risks increasing divergence between services available in the two countries.”⁵

11. She also states:

“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 Mental Health Act 1983 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.”⁶

12. The Minister’s view continues to be:

“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.”⁷

Financial implications

13. The Minister confirms that the financial implications of the Bill remain as set out in Memorandum No. 1, with total costs (England and Wales) for the 20-year appraisal period estimated at £5.7 billion. Total costs for Wales over the 20-year period continue to be estimated at £425 million across health, housing and social care.⁸

14. The Minister repeats her previous position that, if the Senedd gives consent to this memorandum, “it is on the basis of consequential funding from the UK Government to support implementation”.⁹

Our view

15. In coming to a view on Memorandum No. 3, we wish to re-iterate the points we made in our report on the previous consent memoranda for this Bill about the

⁵ Memorandum No. 3, paragraph 14

⁶ Memorandum No. 3, paragraph 15

⁷ Memorandum No. 3, paragraph 16

⁸ Memorandum No. 3, paragraphs 17-18

⁹ Memorandum No. 3, paragraph 19

choice of legislative route for this policy. The use of a UK rather than Welsh Bill to make these significant changes to the law in Wales as it relates to mental health inevitably means that opportunities for consideration and challenge by Senedd Members are very restricted, as are the opportunities for engagement with stakeholders in Wales. We consider this to be deeply unsatisfactory.

16. However, we recognise the need to modernise existing legislation in this area, and we continue to be generally supportive of the policy intentions behind the Bill. Notwithstanding our concerns about the choice of legislative vehicle to deliver this policy change, we see no reason that the Senedd should not support this Supplementary Legislative Consent Memorandum.

Conclusion 1. We see no reason that the Senedd should not support Memorandum No. 3 for the Mental Health Bill.