

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Mental Health Bill

June 2025



1. Background

The Mental Health Bill

1. The Mental Health Bill¹ (the Bill) was introduced into the House of Lords on 6 November 2024. It is sponsored by the Department of Health and Social Care.

2. The long title to the Bill states that it is a Bill to:

“Make provision to amend the Mental Health Act 1983 in relation to mentally disordered persons; and for connected purposes.”²

3. The *Mental Health Act 1983* (the 1983 Act) provides a legal framework to authorise the detention and compulsory treatment of people who have a mental disorder and are considered at risk of harm to themselves or others.

4. The Explanatory Notes to the Bill as introduced state that:

“The measures in this Bill are generally intended to strengthen the voice of patients subject to the 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 Act to detain people with a learning disability and autistic people.”³

5. The Bill completed its passage through the House of Lords on 23 April 2025. It subsequently received its First and Second Readings in the House of Commons.⁴ At the time this report was agreed, the Bill was at Committee Stage.

¹ Mental Health Bill, as introduced (HL Bill 47)

² Mental Health Bill, as introduced

³ Mental Health Bill, Explanatory Notes, 6 November 2024, paragraph 2

⁴ Mental Health Bill, as brought from the House of Lords (Bill 225)

The Welsh Government's Legislative Consent Memorandum and Supplementary Legislative Consent Memorandum (Memorandum No. 2)

6. Standing Orders 29.1 and 29.2 provide that a legislative consent memorandum is required when a relevant Bill before the UK Parliament makes provision in relation to Wales that has regard to devolved matters.
7. On 21 November 2024, Sarah Murphy MS, Minister for Mental Health and Wellbeing (the Minister), laid before the Senedd a Legislative Consent Memorandum (the Memorandum) in respect of the Bill.⁵
8. The Minister subsequently laid a Supplementary Legislative Consent Memorandum (Memorandum No. 2) on 10 January 2025 in respect of amendments tabled by the UK Government to the Bill at Lords Committee Stage.⁶
9. We reported on these memoranda on 4 April 2025.⁷
10. The Welsh Government provided its response to our report on 13 June 2025.⁸

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3)

11. On 8 April 2025, the Minister laid a further Supplementary Legislative Consent Memorandum (Memorandum No. 3) in respect of amendments tabled to the Bill (HL Bill 73⁹) for consideration at the House of Lords Report stage.¹⁰
12. The Business Committee agreed that the Legislation, Justice and Constitution Committee and the Health and Social Care Committee should report on Memorandum No. 3 by 27 June 2025.¹¹

⁵ Welsh Government, [Legislative Consent Memorandum, Mental Health Bill](#), 20 November 2024

⁶ Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 2\)](#), 10 January 2025

⁷ Legislation, Justice and Constitution Committee, [The Welsh Government's Legislative Consent Memoranda on the Mental Health Bill](#), April 2025

⁸ Welsh Government, [Response to the Committee's report on The Welsh Government's Legislative Consent Memoranda on the Mental Health Bill](#), 13 June 2025

⁹ [HL Bill 73 \(as amended in Committee\)](#)

¹⁰ Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 3\)](#), 8 April 2025

¹¹ Business Committee, [Timetable for consideration: Supplementary Legislative Consent Memorandum \(Memorandum No. 3\) on the Mental Health Bill](#), April 2025

Provisions for which the Senedd's consent is required

13. The Minister states in Memorandum No. 3 that the UK Government tabled amendments to the Bill (HL Bill 73) on 24 March 2025;¹² amendments which were subsequently agreed at Report stage.¹³

14. The Minister states that the following amendments have regard to the devolved matter of public health, and as such require the consent of the Senedd:

- amendments to clause 18;
- new clause after clause 18;
- amendments to Schedule 2;
- amendments to clause 53.¹⁴

UK Government view on the need for consent

15. The Minister states that the UK Government agrees on the need for legislative consent for the amendments to clauses 18, Schedule 2, clause 53 and a new clause after clause 18.¹⁵

The Welsh Government's position

16. The Minister reiterates the reasons provided in the Memorandum and Memorandum No. 2 for concluding that these provisions for Wales should be made through the UK Government's Mental Health Bill.¹⁶

17. The Minister concludes:

"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.

¹² Memorandum No. 3, paragraph 7

¹³ [Report Stage, Lords Hansard and Minutes of proceedings, 31 March 2025 and 2 April 2025](#)

¹⁴ Memorandum No. 3, paragraphs 7 and 11

¹⁵ Memorandum No. 3, paragraph 10

¹⁶ Welsh Government, Legislative Consent Memorandum, Mental Health Bill, 20 November 2024, paragraphs 12 to 15; Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 2), 10 January 2025, paragraphs 25 to 29

*Therefore, I recommend that the Senedd gives its consent.*¹⁷

2. Committee consideration

18. We considered Memorandum No. 3 at our meeting on 19 May 2025¹⁸, and agreed our report on 23 June 2025.¹⁹

Our view

Provisions requiring consent

19. We note the Welsh Government's assessment of the provisions within the Bill that require the consent of the Senedd, as set out in Memorandum No. 3.

20. We also note the position of the UK Government as regards consent.

Conclusion 1. Subject to recommendations 2 and 4, we agree with the Welsh Government's assessment, as set out in Memorandum No. 3, of the provisions within the Bill which require the consent of the Senedd in accordance with Standing Order 29.

21. Clause 53 of the Bill as amended in Committee (HL Bill 73) grants the Welsh Ministers powers to make consequential provision to primary legislation, including to Acts of the Senedd subject to the provision being within the legislative competence of the Senedd. We note that the amendments to clause 53 provide that such regulations are subject to the affirmative resolution procedure, and that any other regulations making consequential provision will be made by negative resolution.

22. We agree with the Welsh Government's view that consent is required in relation to the amendments to clause 53 as amended in Committee, as they have regard to the devolved matter of public health and concern the regulation-making powers of the Welsh Ministers.

23. However, we note that the same amendment is made to the Secretary of State's regulation-making power in clause 52 of the Bill as amended in Committee²⁰ (clause 51 of the Bill as introduced) but that the Senedd's consent is

¹⁷ Memorandum No. 3, paragraph 20

¹⁸ ~~Legislation, Justice and Constitution Committee~~, 19 May 2025

¹⁹ ~~Legislation, Justice and Constitution Committee~~, 23 June 2025

²⁰ ~~Amendments 64 and 65~~

not being sought for that amendment, despite the powers being exercisable by a UK Government Minister in Wales in a devolved area.

Recommendation 1. The Minister should clarify why the Welsh Government is not seeking consent for the amendment tabled by the UK Government to clause 52 of the Bill as amended in Committee.

Recommendation 2. The Minister should seek the Senedd's consent to the amendment tabled by the UK Government to clause 52 of the Bill as amended in Committee.

24. We also note that the UK Government tabled interrelated amendments to clauses 30, 36 and 50 of the Bill as amended in Committee.²¹ However, the Welsh Government has not sought consent in relation to those amendments, despite seeking consent to clauses 30, 36 (clause 35 of the Bill as introduced) and 50 (clause 49 of the Bill as introduced) in the Memorandum.

25. It is unclear why the Welsh Government is not seeking consent for the amendments to clauses 30, 36 and 50 of the Bill as amended in Committee.

Recommendation 3. The Minister should clarify why the Welsh Government is not seeking consent for the amendments tabled by the UK Government to clauses 30, 36 and 50 of the Bill as amended in Committee.

Recommendation 4. The Minister should seek the Senedd's consent for the amendments tabled by the UK Government to clauses 30, 36 and 50 of the Bill as amended in Committee.

The Welsh Government's response

26. We are disappointed by the overall quality of the Minister's response to the recommendations in our report on the Memorandum and Memorandum No. 2. In places, the response lacks the information we requested and consequently does not address recommendations directly. In our view, it is an unsatisfactory response to a Senedd Committee report.

27. We believe that this particular Welsh Government response to a committee report on a legislative consent memorandum highlights starkly the inherent deficiency in using Bills introduced to the UK Parliament to significantly legislate in devolved areas and, related to that, the lack of time available to fully understand decisions being made by the Welsh Ministers and accordingly hold

²¹ [Amendments 36, 39 and 45](#)

them to account for those decisions. Such circumstances are less likely to arise where the Welsh Government legislates by means of its own Bill in the Senedd.

28. We highlight some of our concerns below.

29. Through recommendation 1 in our first report, we asked the Minister to provide more detailed information outlining why the Welsh Government believes the consent of the Senedd is not required for clauses 9, 33, 47 and 48 of the Bill as introduced. This is the second time we have sought clarity on this matter²² but in response, the Minister has repeated a statement already made and explained why consent is not required for clause 9 as an example.²³ This is unsatisfactory.

30. Furthermore, as regards the Minister's explanation as to why clause 9 does not require consent, it remains unclear to us how the interaction between devolved and reserved matters in that clause can be "so closely intertwined" but the provision itself "not have regard to devolved matters."²⁴ We also note the Minister's comments that the close interaction between devolved and reserved matters "In this Instance ... does not have *sufficient* regard to devolved matters requiring the consent of the Senedd"²⁵ [*our emphasis*]. However, the inclusion of "sufficient" narrows the test that appears in Standing Order 29, which refers to making provision in relations to Wales "that has regard to devolved matters".²⁶ For these reasons, we remain of the view that, in accordance with Standing Orders 29.1 and 29.2, the Senedd's consent is required for clause 9 of the Bill.

31. The Welsh Government should be explaining why consent is not required for each clause in response to the Committee's request. The purpose of the Committee's recommendation is to enable information to be provided to the Senedd to enable it to make an informed decision on a legislative consent motion. Given that the Welsh Government would have had to analyse each clause to ascertain whether it meets the requirements of Standing Order 29, it is of

²² [Letter from the Minister for Mental Health and Wellbeing](#), 28 February 2025, question 10. Legislation, Justice and Constitution Committee, [The Welsh Government's Legislative Consent Memoranda on the Mental Health Bill](#), April 2025, paragraphs 40 to 43, recommendation 1

²³ Welsh Government, Response to the Committee's report on The Welsh Government's Legislative Consent Memoranda on the Mental Health Bill, 13 June 2025, response to recommendation 1; Letter from the Minister for Mental Health and Wellbeing, 28 February 2025, response to question 10

²⁴ Welsh Government, Response to the Committee's report on The Welsh Government's Legislative Consent Memoranda on the Mental Health Bill, 13 June 2025, response to recommendation 6

²⁵ Welsh Government, Response to the Committee's report on The Welsh Government's Legislative Consent Memoranda on the Mental Health Bill, 13 June 2025, response to recommendation 1

²⁶ [Standing Orders of the Welsh Parliament](#), January 2025

concern to us that there appears to be an unwillingness to provide the Senedd with the appropriate assessment for each clause.

Recommendation 5. The Welsh Government should provide more detailed information outlining why it believes the consent of the Senedd is not required for each of clauses 33, 47 and 48 of the Bill as introduced.

32. We also do not believe the responses to recommendations 3 and 4 adequately provided the information requested in those recommendations.

33. Recommendation 4 asked for information to explain why, having been working with the UK Government on the Bill for at least four years, the Minister has not been able to introduce a Bill into the Senedd for scrutiny. Part of the reason we have been given is because of the “mix of reserved and devolved areas in the [1983] Act and in this Bill, legislating on a Wales-only basis would not achieve the same policy intent across the justice and health systems as this UK Bill does.”²⁷ In order to better understand this mix of reserved and devolved areas, recommendation 6 asked the Minister to list all the clauses in the Bill where the interrelationship between reserved matters and devolved matters are closely intertwined and explain that relationship in each case. The Minister rejected this recommendation, choosing to repeat some information already provided.²⁸ As a consequence, the Minister has not provided the evidence to fully back-up and explain the statements made. Providing such evidence is an important part of the scrutiny process because these are not matters that can or should be taken on trust. Additionally, given that in order to refer to the mix of devolved and reserved matters an appropriate assessment of legislative competence would have been made, it is regrettable that the Minister appears reluctant to provide the information requested by recommendation 6.

34. It is of concern to us that in response to recommendation 5, which asked how her approach of using a UK Government Bill to legislate in relation to mental health respects devolution, the Minister said:

“I recognise the Senedd is afforded less scrutiny through this approach, but I need to balance the consideration with the need to deliver positive change for Wales. Being part of this Bill ensures the people in Wales are being protected in the same

²⁷ Welsh Government, Response to the Committee's report on The Welsh Government's Legislative Consent Memoranda on the Mental Health Bill, 13 June 2025, response to recommendation 4

²⁸ Welsh Government, Response to the Committee's report on The Welsh Government's Legislative Consent Memoranda on the Mental Health Bill, 13 June 2025, response to recommendation 6; Letter from the Minister for Mental Health and Wellbeing, 28 February 2025, response to question 1

way as those in England, thereby delivering key policy objectives in the area of mental health."²⁹

35. As we indicated in our first report, people in Wales could have been protected in the same way as those in England by legislating using a Welsh Government Bill (also potentially in parallel with the UK Government given the joint and collaborative working over four years). While our first report expressed concern at the approach taken, some of our recommendations were aimed at seeking information to better understand the Welsh Government's position. It is therefore disappointing that those opportunities have not been taken.

36. We reiterate the comments from our previous report.³⁰

Conclusion 2. We consider that the way to achieve outcomes that are in the best interest of Wales is to legislate by means of a Welsh Government Bill in the Senedd.

Conclusion 3. We consider that the Welsh Government has piggybacked on legislation designed for England and it is unclear to us how this approach respects devolution.

37. We note the rejection of recommendations 7 and 8. We consider that the response given to recommendation 8 is both unclear and disappointing:

*"The commencement provision ensures that policy objectives under the Bill can be implemented by the UK Government. This avoids potential complexity and impracticality that may arise if separate commencement provisions were included in the Bill in relation to Wales, which does not appear necessary within the context of this Bill."*³¹

38. The Minister has not provided sufficient clarity about why the commencement of provisions separately in Wales would be complex or impractical and, in the absence of such clarity, the Committee does not share her view.

²⁹ Welsh Government, Response to the Committee's report on The Welsh Government's Legislative Consent Memoranda on the Mental Health Bill, 13 June 2025, response to recommendation 5

³⁰ Legislation, Justice and Constitution Committee, The Welsh Government's Legislative Consent Memoranda on the Mental Health Bill, April 2025, paragraphs 57 and 58

³¹ Welsh Government, Response to the Committee's report on The Welsh Government's Legislative Consent Memoranda on the Mental Health Bill, 13 June 2025, recommendation 8

39. We do not regard the commencement of a provision as a “technical” matter, as stated by the Minister in the response to recommendation 7; it represents an important Ministerial function that requires a Ministerial decision. In a devolved policy area, we believe that that function and decision should rest with the Welsh Ministers.

40. We note also that this approach is not consistent with the approach of other Welsh Ministers. For example, in respect of the UK Government's Procurement Bill, after initially seeking equivalent commencement powers, the Bill was amended to make UK Ministers' commencement of devolved Welsh aspects of the Bill subject to the consent of the Welsh Ministers.³²

41. If the commencement powers are exercised by UK Ministers during the Seventh Senedd this is effectively denying a future Welsh Minister in a future government the ability to decide if and when the powers are exercised (unless it is decided to legislate using a Welsh Government Bill).

³² Legislation, Justice and Constitution Committee, [The Welsh Government's Supplementary Legislative Consent Memoranda \(Memoranda No. 3, No. 4 and No. 5\) on the Procurement Bill](#), March 2023, paragraphs 67 to 71, recommendation 1; [Letter from Rebecca Evans MS, Minister for Finance and Local Government](#), 18 April 2023, response to recommendation 1