

# **The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 4) on the Mental Health Bill**

July 2025



# 1. Background

## The Mental Health Bill

1. The Mental Health Bill<sup>1</sup> (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.”<sup>2</sup>*

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.”<sup>3</sup>*

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.<sup>4</sup> At the time this report was agreed, the Bill had completed its Committee Stage but a date for Report Stage had not been announced.

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<sup>1</sup> Mental Health Bill, as introduced (HL Bill 47)

<sup>2</sup> Mental Health Bill, as introduced

<sup>3</sup> Mental Health Bill, Explanatory Notes, 6 November 2024, paragraph 2

<sup>4</sup> Mental Health Bill, as brought from the Lords (Bill 225)

## **The Welsh Government's previous Memoranda**

- 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.<sup>5</sup>
- 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.<sup>6</sup>
- 9.** We reported on these memoranda on 4 April 2025 (our first report).<sup>7</sup> The Welsh Government provided its response to our first report on 13 June 2025.<sup>8</sup>
- 10.** On 8 April 2025, the Minister laid a further Supplementary Legislative Consent Memorandum (Memorandum No. 3).<sup>9</sup> We reported on Memorandum No. 3 on 27 June 2025 (our second report).<sup>10</sup>

## **The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 4)**

- 11.** On 30 June 2025 the Minister laid before the Senedd a Supplementary Legislative Consent Memorandum (Memorandum No. 4) in respect of the Bill.<sup>11</sup>

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

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

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

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

<sup>9</sup> Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 3\)](#), 10 January 2025

<sup>10</sup> Legislation, Justice and Constitution Committee, [The Welsh Government's Supplementary Legislative Consent Memorandum \(Memorandum No. 3\) on the Mental Health Bill](#), June 2025

<sup>11</sup> Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 4\)](#), 30 June 2025

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**12.** The Business Committee initially set a deadline of 14 July 2025<sup>12</sup> for reporting.<sup>13</sup>

### **Provisions for which the Senedd's consent is required**

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**13.** Memorandum No. 4 seeks consent for amendments tabled by the UK Government, namely:

- amendments to overturn non-Government amendments accepted during the House of Lords Report Stage of the Bill;<sup>14</sup>
- an amendment to clause 30 (Periods for tribunal applications);<sup>15</sup>
- two amendments to clause 45 (Advance choice documents);<sup>16</sup>
- an amendment to Schedule 3 (Independent Mental Health Advocates).<sup>17</sup>

**14.** The amendment to clause 30 of the Bill (as amended on Report<sup>18</sup>) was tabled on 14 April 2025 and agreed in Third Reading in the House of Lords on 23 April.<sup>19</sup> All other amendments referred to in Memorandum No. 4 were tabled on 4 June 2025<sup>20</sup> to the Bill (as brought from the House of Lords<sup>21</sup>).

### **The Welsh Government's position**

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**15.** In Memorandum No. 4, the Minister says:

*"In my original LCM and subsequent SLCMs, I set out my reasons for concluding that these provisions for Wales should be made through the Mental Health Bill. These reasons still stand, in my view, and apply also to the new provisions being proposed. I restate them below, for ease of reference."<sup>22</sup>*

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<sup>12</sup> Business Committee, [Timetable for consideration: Supplementary Legislative Consent Memorandum \(Memorandum No. 4\) on the Mental Health Bill](#), July 2025

<sup>13</sup> After the Committee agreed its report but prior to laying and publication, the Business Committee [extended the reporting deadline](#) to 16 September 2025

<sup>14</sup> Memorandum No. 4, paragraphs 8 and 13

<sup>15</sup> Memorandum No. 4, paragraph 14

<sup>16</sup> Memorandum No. 4, paragraph 14; [Amendments 34 and 35](#)

<sup>17</sup> Memorandum No. 4, paragraph 14; [Amendment 43](#)

<sup>18</sup> [HL Bill 93](#), as amended on Report

<sup>19</sup> Memorandum No. 4, paragraph 11; [Third Reading, Lords Hansard and Minutes of Proceedings, 23 April 2025](#)

<sup>20</sup> Memorandum No. 4, paragraphs 9 and 10

<sup>21</sup> [Bill 225](#), as brought from the Lords

<sup>22</sup> Memorandum No. 4, paragraph 17. See also paragraphs 18 to 21

**16.** The Minister also states that the UK Government agrees that consent is required for all the amendments referred to in Memorandum No. 4.<sup>23</sup>

## 2. Committee consideration

**17.** We considered Memorandum No. 4 at our meeting on 14 July 2025, and agreed our report at the same meeting.<sup>24</sup>

### Our view

**18.** We note the Welsh Government's assessment of the provisions within the Bill that require the consent of the Senedd and that the UK Government agrees with that assessment.

**Conclusion 1.** We agree with the Welsh Government's assessment of the provisions within the Bill as set out in Memorandum No. 4 that require the consent of the Senedd in accordance with Standing Order 29.

**19.** It is unclear to the Committee whether all amendments referred to in Memorandum No. 4 were agreed by the UK Parliament, in particular, those whose purpose was to overturn non-Government amendments accepted during the House of Lords Report Stage.

**Recommendation 1.** The Minister should provide a commentary on whether the amendments referred to in Memorandum No. 4 were agreed to or not, and accordingly whether there were any unexpected outcomes.

**20.** In her response to our first report, the Minister told us:

*"My officials continue to meet on a weekly basis with UK Government officials and have developed effective and collaborative working relationships."<sup>25</sup>*

**21.** This being the case, given that we are now approaching the final stages of the legislative process in the UK Parliament, we would have expected Memorandum No. 4 to have been laid sooner and at the very least within the two week period anticipated by Standing Order 29.2(iii), particularly given the original reporting deadline of 14 July 2025. We also note the substantial delay in laying a

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<sup>23</sup> Memorandum No. 4, paragraph 15

<sup>24</sup> ~~Legislation, Justice and Constitution Committee~~, 14 July 2025

<sup>25</sup> 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 8

legislative consent memorandum relating to the amendment to clause 30 tabled in April 2025.

**22.** Delays to the laying of memoranda reduce the time available for scrutiny, and mean that matters cannot be considered in detail. In turn this reduces the already limited means to influence the content of a UK Government Bill, either through representations to the Welsh Ministers (for subsequent negotiation with UK Ministers) or proceedings in the UK Parliament.

**23.** This highlights once again the unsatisfactory nature of using a UK Government Bill to legislate in a devolved area.

**24.** There is one further matter we wish to highlight, which we omitted from our previous reports.

**25.** Clause 54 (Power of the Secretary of State to make consequential provision) and clause 55 (Power of Welsh Ministers to make consequential provision) of the Bill (as amended in Public Committee of the House of Commons<sup>26</sup>; previously clauses 52 and 53 as referred to our second report<sup>27</sup>) create concurrent powers by enabling both UK Government Ministers and the Welsh Ministers to make regulations in an area that is within the legislative competence of the Senedd.

**26.** In Memorandum No 2, the Minister stated:

*"In the previous LCM, I noted that the Bill included a consequential amendment provision in clause 51 providing the Secretary of State with powers to make consequential amendments to Senedd legislation, without conferring equivalent powers to do so on Welsh Ministers or requiring that the Welsh Ministers' consent or consultation be sought. Following discussion with the UK Government, a new clause 52 has now been tabled. New Clause 52 provides the Welsh Ministers with equivalent powers to make consequential provision to amend primary legislation in relation to Welsh devolved areas. This power is equivalent to that which is provided to the Secretary of State in clause 51."<sup>28</sup>*

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<sup>26</sup> Bill 272, as amended in Public Bill Committee

<sup>27</sup> Legislation, Justice and Constitution Committee, The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 3) on the Mental Health Bill, June 2025. Clauses 52 and 53 in HL Bill 73, as amended in Committee

<sup>28</sup> Welsh Government, Supplementary Legislative Consent Memorandum (Memorandum No. 2), Mental Health Bill, 10 January 2025, paragraph 19; See also: Welsh Government, Legislative Consent

**27.** We note that the Welsh Government's principles on UK legislation in devolved areas state that the following factors form part of its consideration on whether to recommend consent to UK Bills:

- delegated powers in UK Bills in devolved areas should be conferred on the Welsh Ministers alone;
- UK Bills should not create concurrent powers; and
- if, in "exceptional cases", the Welsh Ministers agree to the creation of concurrent powers, such powers should be subject to relevant consent mechanisms and associated 'carve outs' from the *Government of Wales Act 2006* (the 2006 Act), such that no consent is required for the Senedd to remove the powers in future.<sup>29</sup>

**28.** It would appear that despite discussing this matter with the UK Government, the Bill does not include a relevant consent mechanism for circumstances in which UK Ministers exercise the power provided in clause 54 in a devolved area and an associated 'carve out' to the 2006 Act.

**Recommendation 2.** The Minister should explain why the Bill creates concurrent powers that are not subject to relevant consent mechanisms and associated 'carve outs' from the *Government of Wales Act 2006*.

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Memorandum, Mental Health Bill, 20 November 2024, paragraph 8; and [Letter from the Minister for Mental Health and Wellbeing](#), 28 February 2025, responses to question 6, 11 and 12

<sup>29</sup> Welsh Government, [Principles on UK Legislation in devolved areas](#), December 2024