



# **The Welsh Government's Legislative Consent Memorandum for the Mental Health Bill**

## Response to the Health and Social Care Committee Report (April 2025)

06/06/2025

In April 2025, the Health and Social Care Committee submitted its report on the Welsh Government's Legislative Consent Memorandum on the Mental Health Bill. The report includes one conclusion and 16 recommendations. This is the Welsh Government's response to those recommendations.

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# 1. Introduction

The Mental Health Bill ("the Bill") was introduced in the House of Lords on 6 November 2024.

The UK Government's stated policy objectives are to 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.

It contains a number of amendments to the Mental Health Act 1983 (the Act). 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 1983 Act to detain people with a learning disability and autistic people.

The Act provides the legal framework for the detention and compulsory treatment of individuals with mental disorders who may pose a risk to themselves or others. The primary focus of recent reforms to the Act has been Parts 2 and 3, which address civil patients (patients who are liable to be detained in hospital and who are not subject to the Act as a consequence of any involvement with the criminal justice system) and offenders with mental disorders, respectively. Over two thirds of those detained under the Act are civil patients (under Part 2).

The last major amendment to the Act took place in 2007, introducing Community Treatment Orders (CTOs), Independent Mental Health Advocates (IMHAs), and modified detention criteria. Part 3 governs the treatment of offenders with relevant mental disorders, divided into restricted and unrestricted patients. Restricted patients, who pose a public safety risk, are under stricter controls by the Secretary of State for Justice, whereas unrestricted patients are treated similarly to civil patients, with fewer restrictions.

The latest reforms, which are being put forward in the Mental Health Bill introduced into Parliament in 2024, are based on the findings of the 2018 Independent Review of the Mental Health Act, led by Professor Sir Simon Wessely. The review highlighted significant problems with the Act's application and culture, and it made 154 recommendations. The Westminster government accepted most of these recommendations and, following consultations and pre-legislative

scrutiny, a draft Bill was introduced in 2022 and revised and introduced in 2024 to incorporate changes on the basis of the feedback received.

Given that the Mental Health Act covers both **reserved and devolved areas**, there are well established partnership arrangements in Wales which support the safe operation of the Act, particularly where there is an interface between the justice system and the health system in Wales. The new Mental Health Act, once it comes into force, will build on those established arrangements to ensure that its implementation is carried out smoothly and effectively.

In Wales, the Mental Health (Wales) Measure 2010 ("the Measure") is a unique piece of legislation designed to provide a legal framework to improve mental health services. Implementation of the services required by the Measure began, on a phased basis, in January 2012 and includes improved access to mental health services within primary care; care and treatment plans and care coordinators for everyone receiving secondary mental health services; self-referral back into mental health services for adults discharged from secondary mental health services; and extending the availability of independent mental health advocacy. The Measure aimed to improve access to support in primary care but also to strengthen the rights of people accessing mental health services, but who are not subject to the Mental Health Act.

The Measure is primarily aimed at supporting earlier intervention and preventing escalation to more specialised services or detention under the Mental Health Act.

The Mental Health Act is primary legislation in England and Wales that governs the assessment, treatment and rights of individuals for people with a mental health disorder. The Act includes both reserved and devolved areas, and the interface between both – for instance between the criminal justice system and health services – means that a UK Bill is the appropriate mechanism to deliver these policy changes.

Given the mix of reserved and devolved areas in the Mental Health Act and in this proposed 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. Where the Bill makes provisions that have regard to devolved matters, the consent of the Senedd has been sought.

Our Mental Health (Wales) Measure is Wales-only legislation and aims to set out how services need to work together to provide mental health support in the community. The Mental Health Act is largely about compulsory powers and admission to, or discharge from, hospital.

## 2. Responses to the sixteen recommendations

### **Recommendation 1**

The Committee recommends that

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.

Response: **Accept**

The Welsh Government will provide updates on these matters to the Committee as part of general Ministerial scrutiny arrangements.

**Financial Implications – None**

### **Recommendation 2**

The Committee recommends that

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.

Response: **Accept**

The UK Mental Health Bill is directly aligned with the policy direction that is set out in the new Mental Health and Wellbeing Strategy for Wales. In particular, there is a focus across both programmes of work on person-centred and needs led mental health care. The strategy also sets out plans to transform services to intervene earlier, with more support in the community with the aim of preventing issues from escalating to more specialist services, including the need for in-patient care.

There is also clear alignment with the focus on reducing mental health inequalities, which is a key aim in the UK Bill and our Mental Health and Wellbeing Strategy.

The new Mental Health and Wellbeing Strategy is also underpinned by our Strategic Mental Health Workforce Plan and the Strategic Programme for Mental Health with the aim of supporting the sustainable transformation of mental health services in Wales. However, the Committee should note that the Mental Health and Wellbeing Strategy is a broad, cross-Government Strategy with a focus on tackling the wider determinants of mental health. This Bill is much narrower and aims to improve support for those individuals who need emergency admission and treatment under the mental health Act.

So, whilst the mental health service elements of the Strategy are aligned with the Bill, the Strategy is much broader in its approach to improve mental health and wellbeing in Wales.

### Financial Implications

The Strategy has been developed in the context of no additional funding and aims to redirect current spend as opposed to providing new funding.

## Recommendation 3

The Committee recommends that

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.

Response: **Reject**

There are very clear differences between the Mental Health Act and the Mental Health (Wales) Measure and services have been operating within both sets of legislation in Wales for over 10 years. The Mental Health Act applies where individuals need to be detained for assessment and/or treatment for mental health disorder without their agreement. The Mental Health Act sets out the rights and safeguards for individuals when they have been detained and is primarily about compulsory powers and admission to, or discharge from, hospital.

Our Mental Health (Wales) Measure sets out how services need to work together to provide mental health care for people in contact with primary and secondary mental health services, with a focus on individual needs.

If an individual is detained under the Mental Health Act in Wales, then they are subject to the rights and safeguards contained within the Act. The implementation of the Measure extended a number of rights to individuals not subject to the Act but who are receiving secondary mental health services in Wales. These rights include a care co-ordinator, a care and treatment plan and independent mental health advocacy. Because these rights already apply in Wales through the Mental Health (Wales) Measure, the provisions in the Mental Health Bill which relate to care and treatment planning and independent advocacy will not extend to Wales.

Given the differences between the Mental Health Act and the Mental Health (Wales) Measure, at this stage a legal framework is not required to support implementation. However, we will be developing an implementation plan which we will share with the Committee when it is available.

**Financial Implications –N/A**

## **Recommendation 4**

The Committee recommends that

The Minister 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;
- 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

Response: **Accept**

Our intention is to revise the current Code of Practice to reflect the changes in the Bill and we will write to the Committee when we have agreed timescales for this. This will of course be subject to consultation; and we will engage with people with lived experience, professional groups, the third sector and key stakeholders.

**Financial Implications – N/A**

## **Recommendation 5**

The Committee recommends that

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.

Response: **Accept**

Individuals can already provide advanced choice decisions if they wish, but the Mental Health Bill will place duties on the NHS to inform people who are at risk of being detained, or who have recently been detained, about the importance of setting out their views and choices should they be detained. So the provisions in this context relate directly to the Mental Health Act which covers England and Wales.

Care and Treatment Plans in Wales already include views on medical treatments but as part of a more holistic approach with a focus on recovery and outcomes. So Advanced Choice Documents and Care and Treatment Plans have different purposes but there are links between them. We will be working with service users and key stakeholders to support their implementation in Wales.

**Financial Implications – N/A**

## **Recommendation 6**

The Committee recommends that

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



Response: **Accept**

We will be working with key stakeholders to support the implementation of the Bill in Wales and I will write to the Committee when we have more detail on the plans for implementation and the monitoring arrangements.

**Financial Implications** we will update the Committee when detailed implementation plans have been developed. Cost impacts of the Bill in Wales are included in the published cost impact assessment. Officials are working with officials in UK Government on plans for implementation, but the timescales for implementation potentially include a number of budget cycles and Senedd terms.

The UK Government implementation plan includes that provisions will only be commenced when it is safe to do so following investment, recruitment and training. Officials will be working closely with UK Government to ensure the phased implementation reflects readiness in Wales.

Whilst planning is on the basis of consequential funding, there is related work already underway in Wales, for instance strengthening and extending support for people with Learning Disabilities and Autism. A detailed analysis of current planned work and investment which supports provisions in the Bill will be undertaken as part of the implementation planning

## **Recommendation 7**

The Committee recommends that

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.

Response: **Reject**

Part 1 of the Mental Health Measure has a key focus on improving access to mental health services in primary care and providing a legal framework for how the NHS and Local Authorities need to work together to provide mental health support. So, it is focused on those with more mild to moderate mental health issues, and on earlier intervention to prevent deterioration.

Parts 2 and 3 of the Measure strengthened the legal framework in Wales to provide additional support and safeguards for people in contact with secondary mental health services. Therefore, and as covered in the LCM, provision which relates to

Care and Treatment Planning and to extending Mental Health Advocacy will not apply in Wales because we already have provisions in these areas in the Mental Health Wales Measure.

Therefore, the main link between the UK Mental Health Bill and the Mental Health Wales Measure will be between Advance Choice Documents and Care and Treatment Plans. We will be working with service users, clinicians and stakeholders in Wales to support the implementation of ACDs alongside CTPs but as I have already set out, they have different purposes.

Advanced choice documents should be written by the service user to set out wishes, feelings and beliefs. These views can then be considered by mental health professionals should the individual need to be detained for treatment under the Mental Health Act and lacks capacity or is too unwell to express this at the time. ACDs relate directly to wishes and feelings in relation to treatment if an individual needs to be detained under the Mental Health Act, which is why we support their inclusion as part of the Mental Health Bill.

Care and treatment plans in Wales are broader, covering eight areas of life including finance, accommodation and social care needs. These are written with the individual's care co-ordinator and focus on the outcomes individuals want to achieve, to progress towards recovery. So, whilst we expect there to be some cross-over with the treatment elements of Care and Treatment Plans and Advanced Choice Documents, they are quite different; and we will be working with service users and key stakeholders to ensure the guidance to support their implementation is clear. We will also set this out clearly in the Code of Practice.

Overall, our aim is to increase the patient's voice and control in relation to their treatment and care arrangements. Advance Choice Documents will strengthen existing provisions in Wales by placing a duty on services to ensure that people at risk of detention set out their wishes and views in relation to any future treatment.

**Financial Implications** –please see response to question 6

## **Recommendation 8**

The Committee recommends that

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 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

Response: **Accept**

We will be working with key stakeholders to support the implementation of the Bill in Wales and I will write to the Committee when we have more detail on the plans for implementation and the monitoring arrangements, and when we are in a position to consult on the Code of Practice.

**Financial Implications** – please see response to question 6.

## **Recommendation 9**

The Committee recommends that

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.

Response: **Accept**

The Connecting Care ambition aims to create a shared care record for people in Wales, which will support NHS Wales and Local Authorities to deliver safer, more efficient and more cohesive care as part of an Integrated Community Care System by aligning with existing single platforms.

Both Betsi Cadwaladr University Health Board and Cwm Taf Morgannwg University Health Boards' business cases for developing Mental Health Electronic Health Records have been approved due to their escalation status. Funding has been provided to CTMUHB and BCUHB from 2024/25 to 28/29. Both Health Boards are currently in the procurement process.

DHCW have submitted a business case for a 10-year proposal for connecting care which includes mental health with some Health Boards in support. Others have either developed local business cases for Mental Health or renewed existing contracts. All Health Boards have indicated that they are working towards a digital solution for Mental Health Records.

Longer term, wider digitisation of records is aligned to plans on Connected Care and Electronic Healthcare Record (EHR) and enabling data to be shared across care settings. Welsh Government is currently developing proposals to engage a third-party to develop an Outline Business Case for an Electronic Health Record for NHS Wales. It is anticipated by autumn 2025 that an independent external third-party will be commissioned to develop the Outline business case, incorporating further engagement from the NHS Network, including but not limited to clinical and operational input, identifying additional capability requirements, detailing cost benefits, risk identification as well as mitigation strategies. It will also outline technology options for data sharing across care settings and borders and develop an investment appraisal. The business case will be presented to Ministers by Q2 2026.

**Financial Implications** - Some of the existing work is covered through Programme and NHS budgets, however the outline business case will set out longer term financial impacts.

## **Recommendation 10**

The Committee recommends that

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.

Response: **Accept**

The reforms are based on the findings of the 2018 Independent Review of the Mental Health Act, led by Professor Sir Simon Wessely, which looked specifically at reducing the inequalities in the application of the Act but also reducing detentions overall. This was an independent review and the proposed reforms which have been informed by the review have been welcomed by stakeholders in Wales. Advanced Choice Documents in particular will be an important mechanism for supporting people from minority ethnic backgrounds to express views and wishes in relation to their care.

My view is that we need to strengthen the data and information we have about the use of the Mental Health Act in Wales to monitor the impact of the changes, as opposed to further amendments to the Bill. For instance, we will soon be strengthening published data on mental health admission in Wales to include ethnicity. This focus on strengthening data also aligns with priorities in the Anti-racist Wales Action Plan (ArWAP) on improving the availability and granularity of ethnicity data and evidence. We already publish data by ethnicity for Section 135 and 136 detentions in Wales [Section 135 and 136 Detentions by local health board, ethnicity and quarter](#)

Of course, the Bill only impacts the relatively small number of people in Wales that need to be detained for mental health treatment. We are taking a much broader approach through our new Mental Health and Wellbeing Strategy which was published on 30 April 2025. Tackling mental health inequalities is at the heart of the new Strategy and is specifically highlighted in the ArWAP. The updated ArWAP (published in November 2024) highlights our commitment to implementing the Strategic Programme for Mental Health and Strategic Clinical Networks to improve the quality of mental health services in Wales.

**Financial Implications** –please see response to question 6

## **Recommendation 11**

The Committee recommends that

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

Response: **Accept**

We already have arrangements to monitor and provide oversight for the correct and appropriate use of the Mental Health Act in Wales. This includes Mental Health Act Administrators and Mental Health Legislation Committees in health boards, the monitoring role of Health Inspectorate Wales and the Mental Health Review Tribunal. We will be working with these key stakeholders and others to support the implementation of the Bill and to ensure we have appropriate monitoring arrangement in place.

**Financial Implications** –please see response to question 6.

## **Recommendation 12**

The Committee recommends that

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.

### **Response: Accept**

All health boards already provide health-based places of safety for people detained under Sections 135 and 136 of the Mental Health Act. Health boards work collaboratively with police forces in Wales to ensure officers are aware of the location of the place of safety.

The Code of Practice in Wales already states that a police station should not be used as a place of safety except in exceptional circumstances and must not be used as the automatic second choice if there is no local health-based place of safety immediately available. If a child is taken to a place of safety in a police station this constitutes an NHS “serious and untoward incident” and is reported by the local health boards as such.

Welsh Government publishes data on the use of Section 135 and 136 of the Mental Health Act on stats Wales. Latest data show that for the quarter ending December 2024, there were 581 detentions and only 4 of these detentions include a police station. (Section 135 and 136 Detentions by local health board, first place of safety, conveyance method to first place of safety and quarter)

The Strategic Programme for Mental Health in the NHS Executive is already working with partners including the police, local authorities and the third sector to improve the Acute and Crisis Mental Health Care pathway and all health boards are testing various models of providing alternatives to hospital admission for young people in crisis. The overall aim of this work is to prevent escalation and the need for detention/admission in the future.

In conclusion, our existing policy position is that police stations should only be used as a very last resort.

**Financial Implications** – Significant costs are not anticipated because the current policy position is that police stations should only be used as a last resort.

### **Recommendation 13**

The Committee recommends that

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.

#### **Response: Accept**

The changes will apply to adults and children and aim to strengthen the existing safeguards. In relation to Nominated Person, young people aged 16 and above will have the same right as adults. For someone 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 for them and this will be set out in the revised Code of Practice

**Financial Implications** – please see the response to question 6.

### **Recommendation 14**

The Committee recommends that

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.

Response: **Accept**

In Wales, all young people receiving secondary mental health services already have the right to a care and treatment plan (CTP). The LCM sets out that we did not want the provisions within the UK Bill which relate to Care and Treatment Plans to apply to Wales because this right already exists in law through our Mental Health Measure. Data on compliance with CTPs is published on StatsWales: Care and treatment plan (CTP) compliance, by LHB, service, age and month

Latest published data show that for under 18s, at an all-Wales level, 96.7 % of patients in receipt of secondary mental health services have a valid Care and Treatment Plan.

**Financial Implications** – N/A because people in contact with secondary mental health services in Wales already have the right to a Care and Treatment Plan.

## **Recommendation 15**

The Committee recommends that

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.

Response: **Accept**

The alternative to admission pilots have been extended to operate through 2025/26 to ensure there is enough data for the evaluation, which will take place this year. We will inform the Committee when timings for the final report are agreed.

**Financial Implications** – Already funded through existing Programme Budgets

## **Recommendation 16**

The Committee recommends that

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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

Response: **Accept**

We will be working closely with the UK Government to ensure that provisions in the Bill are only commenced as soon as it is safe to do so; and implementation will be phased over several years.

Officials are in early conversations with Health Education and Improvement Wales to baseline the current workforce and to develop trajectories for workforce development and training. The main impact in the earlier stages will be in the Mental Health Review Tribunal for Wales and I have already agreed additional funding for the Tribunal to begin the necessary training and recruitment.

The Committee should note that the timeline for implementation covers a number of Senedd Terms and budget cycles; so whilst we are committed to implementing these reforms, we are limited in the level of detail we can currently provide about future spend and timelines.

**Financial Implications** – I have committed to providing further information on implementation cost in my response to question 6. Costs for the implementation of the Strategic Mental Health Workforce Plan are covered from within existing budgets.