



Llywodraeth Cymru
Welsh Government

MENTAL HEALTH REVIEW TRIBUNAL FOR WALES (MEMBERSHIP) BILL

Explanatory Memorandum
incorporating the
Regulatory Impact Assessment and
Explanatory Notes

January 2026

Mental Health Review Tribunal for Wales (Membership) Bill

Explanatory Memorandum to the Mental Health Review Tribunal for Wales (Membership) Bill

This Explanatory Memorandum has been prepared by the Justice Policy Division of the Welsh Government and is laid before Senedd Cymru.

Member's Declaration

In my view the provisions of the Mental Health Review Tribunal for Wales (Membership) Bill, introduced by me on the 13 January 2026, would be within the legislative competence of Senedd Cymru.

Julie James MS

Counsel General and Minister for Delivery
Member of the Senedd in charge of the Bill

13 January 2026

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PART 1 – EXPLANATORY MEMORANDUM

1. Description

- 1.1. The Mental Health Review Tribunal for Wales (Membership) Bill makes amendments to the qualifying criterion for medical membership of the Mental Health Review Tribunal for Wales; and makes connected retrospective provision about the validity of previous appointments to and membership of the tribunal.
- 1.2. It provides that medical members of that tribunal must be registered medical practitioners defined as being a fully registered person within the meaning of the Medical Act 1983, but do not need to hold a licence to practise under that Act.

2. Legislative Competence

Senedd Cymru ("the Senedd") has the legislative competence to make the provisions in the Mental Health Review Tribunal for Wales (Membership) Bill ("the Bill") pursuant to Part 4 of the Government of Wales Act 2006 ("GoWA 2006") as amended by the Wales Act 2017.

3. Purpose and intended effect of the legislation

3.1. A technical issue has been identified regarding one aspect of the criteria for appointment as medical members of the Mental Health Review Tribunal for Wales.

3.2. The purpose of the Bill is:

- (a) to give effect to the policy intention that the qualifying criterion for medical members is they must be registered within the meaning of the Medical Act 1983 but are not required to hold a licence to practise under that Act, and
- (b) to retrospectively validate any appointments of medical members who at the time of appointment did not meet the requirement to hold a licence to practise and to maintain the validity of those whose licence has lapsed during the term of their appointment as a medical member.

3.3. The Mental Health Act 1983 (as amended by the Mental Health Act 2007) established a Mental Health Review Tribunal for Wales. That tribunal's remit is to deal with applications and references by and in respect of patients under the Act. Schedule 2 of the Mental Health Act 1983 (as amended) makes provision about the constitution of the tribunal including the type of members and the appointment requirements for those members. Amongst the types of members that must be appointed are medical members. The requirements for medical members are that they are "registered medical practitioners" appointed by the Lord Chancellor.

3.4. The expression "registered medical practitioner" is not defined in the Mental Health Act 1983. It is defined in Schedule 1 to the Interpretation Act 1978 as meaning "a fully registered person within the meaning of the Medical Act 1983 who holds a licence to practise under that Act". Section 5 of the Interpretation Act 1978 requires that definition to be applied in the Mental Health Act 1983 unless a contrary intention appears.

3.5. The position for the equivalent chamber of the First Tier tribunal in England is defined as a person "registered within the meaning of the Medical Act 1983 whether or not they hold a licence to practice under that Act".

3.6. It is the policy intention that the criteria for appointment of medical members for the Mental Health Review Tribunal for Wales should be defined as not requiring a licence to practise. It is therefore necessary to amend Schedule 2 to the Mental Health Act 1983 to reflect this policy.

3.7. The Bill also contains provision which retrospectively validates the appointment of those medical members who did not hold a licence to practise either at the time of their appointment or who subsequently allowed their licence to lapse during the term of their appointment as a medical member. This means that those appointments will be treated as though they were valid from the date of their appointment, without interruption.

4. Consultation

- 4.1. There has been no formal consultation on the policy objectives or on a draft Bill. The Mental Health Review Tribunal for Wales (Membership) Bill is being introduced to the Senedd through emergency procedures to address the technical issue that has been identified as quickly as possible. The Welsh Government's primary concern is to introduce legislation at pace to ensure that the Mental Health Review Tribunal for Wales can continue to function and meet its statutory duties.
- 4.2. In producing the Bill, the Welsh Government has worked closely with key stakeholders including the President of Welsh Tribunals and the President of the Mental Health Review Tribunal for Wales.
- 4.3. The absence of plausible alternative approaches to securing the continued effective operation of the tribunal, the limited effect of the Bill and the urgency of addressing the issue all contributed to the decision not to undertake fuller consultation before bringing forward legislation.

5. Power to make subordinate legislation

The Bill contains no powers to make subordinate legislation or to issue determinations.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Regulatory Impact Assessment (RIA) summary

6.1. The Mental Health Review Tribunal for Wales (Membership) Bill has no financial implications. It makes amendments to the qualifying criterion for medical membership of the Mental Health Review Tribunal for Wales. The objective of the Bill is to set qualification requirements for medical members enabling individuals who are registered medical practitioners within the meaning of the Medical Act 1983 but who do not hold a licence to practise under that Act to sit as medical members of the Mental Health Review Tribunal for Wales. It is being introduced to the Senedd through emergency procedures to help ensure that the tribunal continues to function optimally and meet its statutory duties.

6.2. A Regulatory Impact Assessment has not been completed for the Bill but, in order to meet Senedd Standing orders 26.6(viii) and 26.6(ix), the summary tables of costs which are usually included within an explanatory memorandum have been completed and are set out below.

6.3. There are no specific provisions in the Bill which charge expenditure on the Welsh Consolidated Fund.

Table A

The following table presents a summary of the costs and benefits for the Bill as a whole. The table has been designed to present the information required under Standing Order 26.6 (viii) and (ix).

<i>Mental Health Review Tribunal for Wales (Membership) Bill</i>		
Preferred option: Alternatives have been considered, but the Welsh Government's preferred course of action is to introduce legislation to the Senedd through emergency procedures which will amend the qualifying criteria for medical membership of the Mental Health Review Tribunal for Wales; and make connected retrospective provision about the validity of previous appointments to and membership of the tribunal.		
Stage: Introduction	Appraisal period: 2025/26 onward	Price base year: 2025/26 onward
Total Cost Total: £ Nil Present value: £ Nil	Total Benefits Total: £ Nil Present value: £ Nil	Net Present Value (NPV): £ Nil

Administrative cost

Costs: There are no administrative costs associated with the Mental Health Review Tribunal for Wales (Membership) Bill. The effect of the Bill will be to set qualification requirements for medical members that enable individuals who are registered medical practitioners within the meaning of the Medical Act 1983 but who do not hold a licence to practise under that Act to sit as medical members of the Mental Health Review Tribunal for Wales. It is essentially cost neutral.

Transitional: £ Nil	Recurrent: £Nil	Total: £Nil	PV: £Nil
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Cost-savings: There is potentially an administrative saving associated with this Bill. If the amendments the Bill makes are not made, of the 41 current medical members of the Mental Health Review Tribunal for Wales, many of the most active will be unable to sit at hearings, potentially resulting in the tribunal not being able to meet its statutory requirements. Additional recruitment exercises for medical members who have a licence to practice would need to be held in order to seek to replace those who are no longer able to sit. It is not possible to estimate these costs at this stage.

Transitional: £Nil	Recurrent: £Nil	Total: £Nil	PV: £Nil
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Net administrative cost: £Nil

Compliance costs

There are no costs associated with compliance with this Bill. The effect of the Bill will be to set qualification requirements for medical members enabling individuals who are registered medical practitioners within the meaning of the Medical Act 1983 but who do not hold a licence to practise under that Act to sit as medical members of the Mental Health Review Tribunal for Wales.

Transitional: £ Nil	Recurrent: £ Nil	Total: £ Nil	PV: £ Nil
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Other costs

There are no costs associated with the Bill.

Transitional: £ Nil

Recurrent: £ Nil

Total: £ Nil

PV: £ Nil

Unquantified costs and disbenefits

As already set out above, there is potentially an unquantifiable cost associated with not introducing the Bill. This would potentially mean that, of the 41 current medical members of the Mental Health Review Tribunal for Wales, many of the most active will be unable to sit at hearings, potentially resulting in the tribunal not being able to meet its statutory requirements.

Benefits

The benefit of the proposed course of action is all existing medical members of the tribunal will be able to sit in tribunal hearings, helping to ensure that the tribunal meets its statutory duties.

Total: £ Nil

PV: £ Nil

Key evidence, assumptions and uncertainties

As set out above, the effect of the Bill will be to set qualification requirements for medical members that enable individuals who are registered medical practitioners within the meaning of the Medical Act 1983 but who do not hold a licence to practise under that Act to sit as medical members of the Mental Health Review Tribunal for Wales. It is essentially cost neutral.

7. Options

7.1. The Welsh Government has worked with the President of Welsh Tribunals and the President of the Mental Health Review Tribunal to explore all possible mitigations or alternatives to emergency legislation. This has included considering:

- whether any of the individual members without licences are able to secure one quickly through their own action;
- whether the General Medical Council could take some action to quickly (potentially only temporarily) restore licences as a block to all those who previously had one;
- what can be done to cross deploy members of the English equivalent tribunal; and
- the recruitment of new medical members.

7.2. For medical members to obtain licences to practice, either through their own action or via action taken by the General Medical Council is not a practical solution as there is an ongoing CPD requirement which most medical members will not currently meet (many are retired from regular practice).

7.3. Medical members sitting in the English equivalent Chamber of the First Tier Tribunal do not have to have a licence to practise. The Welsh Government understands that the tribunal does not hold information on how many of its medical members hold a licence and, as it currently also has issues with medical member availability to cover the cases it has listed, there is a risk that cross deployment could disrupt its operation.

7.4. While there is an ongoing recruitment process for new medical members of the MHRTW, this has no prospect of delivering the numbers of new members needed quickly enough to meet the current shortfall of medical members.

7.5. Finally, the Welsh Government has also considered whether UK legislation could be used to address the current situation. In principle action could be taken through UK primary legislation should a suitable Bill be available, or through UK secondary legislation. However, either route would necessarily take many months.

7.6. We are therefore seeking to introduce an emergency Bill into the Senedd to ensure that medical members of the Mental Health Review Tribunal for Wales who do not hold a licence to practise can return to sit on the tribunal as quickly as possible.

8. Costs and benefits

- 8.1. The Bill has no financial implications. Its objective is to set qualification requirements for medical members which enables individuals who are registered medical practitioners within the meaning of the Medical Act 1983 but who do not hold a licence to practise under that Act to sit as medical members of the Mental Health Review Tribunal for Wales.
- 8.2. The Bill, which is being introduced to the Senedd through emergency processes, represents a swift solution to address a technical issue which, if not addressed, as set out in previous chapters of this explanatory memorandum, could impact on the ability of the Mental Health Review Tribunal for Wales to meet its statutory obligations.

9. Impact Assessments

- 9.1. The objective of the Bill is to set qualification requirements for medical members, enabling individuals who are registered medical practitioners within the meaning of the Medical Act 1983 but who do not hold a licence to practise under that Act to sit as medical members of the Mental Health Review Tribunal for Wales. We have considered the potential impact of the Bill and set out our findings below.
- 9.2. It is important to recognise that the Bill is designed to prevent a situation whereby the Mental Health Review Tribunal for Wales ceases to be able to meet its obligations. Significantly, we have not been able to identify any negative impact which might result from the Bill.

Health

- 9.3. The aim of the Bill is to avoid the adverse impact of the Mental Health Review Tribunal for Wales not being able to meet its statutory duties, helping to ensure the tribunal continues to function. It should therefore be considered to have a beneficial impact on users of the tribunal and their families. This is also in line with the “Healthier Wales” Well Being Goal as set out in the Well-Being of Future generations (Wales) Act 2015 which aspires to a society in which people's physical and mental well-being is maximised and in which choices and behaviours that benefit future health are understood.

Impact on equalities

- 9.4. The Bill will help ensure that the Mental Health Review Tribunal for Wales continues to meet its statutory duties. This will clearly have a beneficial impact on users of the tribunal and their families who are frequently amongst the most vulnerable members of society.

Impact on children's rights

- 9.5. Similarly, where children and young people or their families are users of the Mental Health Review Tribunal for Wales, helping to ensure that the Mental Health Review Tribunal for Wales continues to be able to meet its statutory duties is potentially of significant benefit to them.

Impact on the Welsh language

- 9.6. We have considered the potential impact of the Bill on the Welsh Language and have concluded that it will be negligible.

Rural Proofing

- 9.7. The Bill includes no provisions which might impact differently or disproportionately on individuals who live, work, socialise and do business in rural areas.

Impact on the environment, climate change and biodiversity

9.8. We have considered the potential impact of the Bill on the environment, climate change and biodiversity and have concluded that it will be negligible.

Impact on the socio-economic duty

9.9. The overall aim of the socio-economic duty is to deliver better outcomes for those who experience socio-economic disadvantage. As is the case with other groups, the Bill will potentially impact positively and help deliver better outcomes for those who experience socio-economic disadvantage where they or a member of their family are additionally users of the Mental Health Review Tribunal for Wales.

Impact on the justice system

9.10. Standing order 26.6(xii) requires that Welsh Government set out the potential impact (if any) on the justice system in England and Wales of the provisions of a Bill in a justice impact assessment. The Mental Health Review Tribunal for Wales is part of the devolved justice system and therefore, a justice impact assessment is not required.

Data Protection/Privacy impact

9.11. The Bill makes no provision for the collection, storage, protection, sharing or management of personal data and has no implications for the use or changes to the use of personal data.

10. Post implementation review

The Welsh Tribunals Unit will monitor the impact of the Bill on the availability of individuals to serve as Medical Members of the Mental Health Review Tribunal for Wales. This will commence as soon as the provisions come into force.

11. Affordability Statement

The Bill will not result in additional financial cost to public bodies in Wales and therefore there are no affordability concerns.

Annex 1

Explanatory Notes

Mental Health Review Tribunal for Wales (Membership) Bill

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes are for the Mental Health Review Tribunal for Wales (Membership) Bill (“the Bill”), which was introduced into Senedd Cymru on 13 January 2026. They have been prepared by the First Minister’s Group of the Welsh Government to assist the reader of the Bill. The Explanatory Notes should be read in conjunction with the Bill but are not part of it.

SUMMARY AND POLICY BACKGROUND

2. The Bill addresses a technical issue which has been identified with regard to the appointment criterion for medical members of the Mental Health Review Tribunal for Wales.
3. The medical members of this tribunal are required by paragraph 1 of Schedule 2 to the Mental Health Act 1983 to be “registered medical practitioners”. This expression is not defined in the Mental Health Act 1983. However, it is defined in Schedule 1 to the Interpretation Act 1978 as meaning “a fully registered person within the meaning of the Medical Act 1983 who holds a licence to practise under that Act”. Section 5 of the Interpretation Act 1978 requires that definition to be applied in the Mental Health Act 1983 unless a contrary intention appears.
4. The policy intention is that medical members should be required to be registered within the meaning of the Medical Act 1983 but with no requirement to hold a licence to practise under that Act. The Bill amends the Mental Health Act 1983 to give effect to that policy.
5. The Welsh Government has therefore introduced the Mental Health Review Tribunal for Wales (Membership) Bill to the Senedd to enable persons who are fully registered within the meaning of the Medical Act 1983 to be appointed as medical members of the Mental Health Review Tribunal for Wales, whether or not those persons hold licences to practise.
6. The Bill also provides that where persons were appointed in the past as medical members but did not hold a licence to practice or allowed their licence to lapse, those appointments and those persons’ membership of the tribunal are valid.

7. The effect of the Bill will be to change the qualification requirements for medical members to enable individuals who are fully registered persons within the meaning of the Medical Act 1983 but who do not hold a current licence to practise under that Act to sit as medical members of the Mental Health Review Tribunal for Wales.

GENERAL OVERVIEW OF THE BILL

8. The Bill comprises three short sections.

COMMENTARY ON SECTIONS

Section 1 - Membership of the Mental Health Review Tribunal for Wales

9. Section 1 amends Schedule 2 to the Mental Health Act 1983, which makes provision about the Mental Health Review Tribunal for Wales.
10. Paragraph 1(b) of Schedule 2 to the Mental Health Act 1983 provides that the Mental Health Review Tribunal for Wales must include members, referred to as “medical members”, who are registered medical practitioners.
11. Section 1(3) of the Bill inserts a definition of the term “registered medical practitioner” into paragraph 1 of Schedule 2 to the Mental Health Act 1983. The term is defined as meaning a fully registered person within the meaning of the Medical Act 1983 (regardless of whether that person holds a licence to practise under that Act).
12. Section 1(3) of the Bill further amends paragraph 1 of Schedule 2 to the Mental Health Act 1983 to provide that if, before the coming into force of this new definition of “registered medical practitioner”, a person who was appointed as a medical member did not hold a licence to practise under the Medical Act 1983 (whether at the time of appointment or at any other time since), the validity of the person’s appointment to the Mental Health Review Tribunal for Wales and their membership of that tribunal during that period is not affected.

Section 2 - Coming into force

13. Section 2 provides that the provisions set out in the Bill come into force on the day after the day on which it receives Royal Assent.

Section 3 - Short title

14. Section 3 makes provision for the title of the new Act in both English and Welsh.

Annex 2

Index of Standing Order requirements

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Standing order	Section	pages/ paragraphs
26.6(i) Statement the provisions of the Bill would be within the legislative competence of the Senedd	Member's declaration	1
26.6(ii) Set out the policy objectives of the Bill	Chapter 3 - Purpose and intended effect of the legislation	5
26.6(iii) Set out whether alternative ways of achieving the policy objectives were considered and, if so, why the approach taken in the Bill was adopted	Part 2 – Regulatory Impact Assessment and Options	9 and 13
26.6(iv) Set out the consultation, if any, which was undertaken on: (a) the policy objectives of the Bill and the ways of meeting them; (b) the detail of the Bill, and (c) a draft Bill, either in full or in part (and if in part, which parts)	Chapter 4 – Consultation	7

Standing order	Section	pages/ paragraphs	
26.6(v)	Set out a summary of the outcome of that consultation, including how and why any draft Bill has been amended	Chapter 4 – Consultation	7
26.6(vi)	If the bill, or part of the Bill, was not previously published as a draft, state the reasons for that decision	Chapter 4 – Consultation	7
26.6(vii)	Summarise objectively what each of the provisions of the Bill is intended to do (to the extent that it requires explanation or comment) and give other information necessary to explain the effect of the Bill	Annex 1 – Explanatory Notes	17
26.6(viii)	<p>Set out the best estimates of:</p> <ul style="list-style-type: none"> (a) the gross administrative, compliance and other costs to which the provisions of the Bill would give rise; (b) the administrative savings arising from the Bill; (c) net administrative costs of the Bill's provisions; (d) the timescales over which such costs and savings would be expected to arise; and (e) on whom the costs would fall 	Part 2 – Regulatory Impact Assessment	9

Standing order	Section	pages/ paragraphs
26.6(ix) Any environmental and social benefits and dis-benefits arising from the Bill that cannot be quantified financially	Part 2 – Regulatory Impact Assessment	9
26.6(x) Where the Bill contains any provision conferring power to make subordinate legislation, set out, in relation to each such provision: <ul style="list-style-type: none"> (a) the person upon whom, or the body upon which, the power is conferred and the form in which the power is to be exercised; (b) why it is considered appropriate to delegate the power; and (c) the Senedd procedure (if any) to which the subordinate legislation made or to be made in the exercise of the power is to be subject, and why it was considered appropriate to make it subject to that procedure (and not to make it subject to any other procedure); 	Chapter 5 - Power to make subordinate legislation	8
26.6(xi) Where the Bill contains any provision charging expenditure on the Welsh Consolidated Fund, incorporate a report of the Auditor General setting out his or her views on whether the charge is appropriate	The requirement of Standing Order 26.6(xi) does not apply to this Bill	

Standing order	Section	pages/ paragraphs	
26.6(xii)	Set out the potential impact (if any) on the justice system in England and Wales of the provisions of the Bill (a “justice impact assessment”), in accordance with section 110A of the Act.	Part 2 – Impact Assessments	15 and 16
26.6B	Where provisions of the Bill are derived from existing primary legislation, whether for the purposes of amendment or consolidation, the Explanatory Memorandum must be accompanied by a table of derivations that explain clearly how the Bill relates to the existing legal framework.	The requirement in Standing Order 26.6B for a Table of Derivations is not applicable to this Bill as the Bill is a standalone piece of legislation and does not derive from existing primary legislation for the purposes of amendment or consolidation.	
26.6C	Where the Bill proposes to significantly amend existing primary legislation, the Explanatory Memorandum must be accompanied by a schedule setting out the wording of existing legislation amended by the Bill, and setting out clearly how that wording is amended by the Bill.	Annex 3 – Schedule of Amendments	24

Annex 3

Schedule of amendments

The Mental Health Review Tribunal for Wales (Membership) Bill

AMENDMENTS TO BE MADE BY THE MENTAL HEALTH REVIEW TRIBUNAL FOR WALES (MEMBERSHIP) BILL

This document is intended to show how paragraph 1 of Schedule 2 to the Mental Health Act 1983 as it applied in relation to Wales on 5 January 2026 would look as amended by the Mental Health Review Tribunal for Wales (Membership) Bill if enacted as introduced on 13 January 2026.

Material to be added by the Mental Health Review Tribunal for Wales (Membership) Bill is underlined, e.g. added material looks like this. A reference to the relevant amending provision of the Bill is provided in the right-hand column on each page.

The full text of paragraph 1 of Schedule 2 to the Mental Health Act 1983 is included to aid understanding of the proposed amendments.

Warning

This text has been prepared by officials of the First Minister's Group of the Welsh Government. Although efforts have been taken to ensure that it is accurate, it should not be relied on as a definitive text of the Act or the Bill.

It has been produced solely to help people understand the effect of the Mental Health Review Tribunal for Wales (Membership) Bill. It is not intended for use in any other context.

Schedule 2 to the Mental Health Act 1983

*Amending
section of the
Mental Health
Review
Tribunal for
Wales
(Membership)
Bill*

Paragraph 1

(1) The Mental Health Review Tribunal for Wales shall consist of—

- (a) a number of persons (referred to in this Schedule as “the legal members”) appointed by the Lord Chancellor and having such legal experience as the Lord Chancellor considers suitable;
- (b) a number of persons (referred to in this Schedule as “the medical members”) being registered medical practitioners appointed by the Lord Chancellor; and
- (c) a number of persons appointed by the Lord Chancellor and having such experience in administration, such knowledge of social services or such other qualifications or experience as the Lord Chancellor considers suitable.

(2) In sub-paragraph (1)(b), “registered medical practitioner” means a fully registered person within the meaning of the Medical Act 1983 (whether or not that person holds a licence to practise under that Act).

(3) If, before the coming into force of sub-paragraph (2), a person appointed as a medical member under this paragraph did not hold a licence to practise under the Medical Act 1983 (whether at the time of appointment or at any other time), that fact does not affect the validity of—

- (a) the person’s appointment to the Mental Health Review Tribunal for Wales, or
- (b) the person’s membership of that tribunal during that period.