

## Senedd Cymru

### Mental Health Review Tribunal for Wales (Membership) Bill

#### Summary of Legislative Competence Considerations

1. The Mental Health Review Tribunal for Wales (Membership) Bill (“the Bill”) has been submitted to the Llywydd by the Member in charge of the Bill, Julie James MS, Counsel General and Minister for Delivery, to enable the Llywydd to state her view on whether the Bill is within the legislative competence of the Senedd. In accordance with section 110(3) of the Government of Wales Act 2006 (“GoWA”) and Standing Order 26.4, this statement must be made on or before the Bill is introduced.
2. The Llywydd has decided that, in her view, the provisions of the Bill are within the legislative competence of the Senedd, and the statement under Standing Order 26.4 was laid before the Senedd today.
3. However, the Llywydd’s decision was not straightforward, as determining the competence test in relation to compatibility of the retrospective elements of the Bill with the Human Rights Act 1998 (“1998 Act”) raised a number of issues for consideration.
4. The rights set out in the 1998 Act are taken from the European Convention on Human Rights (“ECHR”). For the purposes of section 108A(2)(e) of GoWA, a provision of an Act of the Senedd is outside competence so far as it is incompatible with the ECHR rights set out in the 1998 Act.
5. Section 1 of the Bill states that if, before the provisions of the Bill come into force, a person 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), that fact will not affect the validity of the person’s appointment to, or membership of, the Tribunal during that period.
6. There are arguments that the retrospective confirmation of a medical member’s appointment and membership may engage Article 5 (right to liberty and security of person), Article 6 (right to a fair trial), and Article 8 (right to respect for private and family life) of the ECHR, and/or Article 1 of the First Protocol to the ECHR (protection of property).
7. In each case, after balancing the arguments, the Llywydd has concluded that, where these rights were found to be engaged, such rights are either not infringed, or if infringed, any infringement would be likely to be justified within the terms of the 1998 Act.