

## **SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 3)**

### **MENTAL HEALTH BILL**

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales with regards to devolved matters.
2. The Mental Health Bill (“the Bill”) was introduced in the House of Lords on 6 November 2024. A new print of the Bill was published on 24 February 2025 to incorporate the amendments made at Committee stage and this can be found at: Mental Health Bill [HL]. All references in this supplementary Legislative Consent Memorandum (“SLCM”) to provisions in the Bill are to those provisions in the new print of the Bill.

### **Policy Objectives**

3. The UK Government’s stated policy objectives remain as set out in the first LCM, which was laid on 20 November 2024.

### **Summary of the Bill**

4. The Bill is sponsored by the Department of Health and Social Care.
5. A summary of the Bill was provided in the first LCM, which remains accurate.
6. Welsh Government officials and UK Government officials have continued their regular contact in relation to the development of the Bill, including Government amendments that affect Wales.

### **Update on the position since the publication of the second LCM**

7. The UK Government tabled a number of amendments on 24 March 2025, including to the following clauses of the Bill for consideration at Report Stage in the House of Lords. The amendments listed below have been drafted to cover both Wales and England:
  - Clause 18
  - New clause after clause 18
  - Schedule 2 – amendments to the new Schedule A1 which is being inserted into the Mental Health Act 1983
  - Clause 53

8. Report stage took place on 31 March and 2 April 2025. These amendments were considered during those proceedings.

### **Provisions in the Bill for which consent is required**

9. In addition to the clauses for which I recommended that consent is required in the first LCM and in the previous supplementary LCM (“SLCM”), in my view a SLCM is required in relation to the following amendments:
- Urgent ECT SOAD certification: This amendment to clause 18 **removes the regulation-making power** that would allow the Secretary of State, or the Welsh Ministers in relation to treatment provided in Wales, to make provision to dispense with the need for a second opinion appointed doctor (SOAD) to certify urgent compulsory electroconvulsive therapy (ECT) in exceptional circumstances. The amendment places the policy on the face of the Bill instead of enabling regulations to be made. The amendment provides that where exceptional circumstances mean that a SOAD is not available to authorise lifesaving ECT, the approved clinician will be able to do so. This amendment was recommended by the DPRRC.
  - Clause 18 ECT Minor and Technical: this is a **clarificatory amendment** on circumstances where the requirement for a certificate by a SOAD does not apply to urgent ECT. The amendment clarifies that the requirement for a certificate by a SOAD does not apply to urgent ECT if: (1) the patient consents, or (2) the patient lacks capacity but the treatment does not conflict with an advance decision etc.
  - Remote Assessment – SOAD: This amendment is a new clause after clause 18. The amendment **enables interviews or examinations under section 119 of the Mental Health Act 1983 to be undertaken remotely**. It would enable remote assessments to be carried out by certain people for the purpose of non-urgent electro-convulsive therapy and certain other treatments. The amendment also replaces clause 18(7) which makes equivalent provision for urgent treatment.
  - Nominated Person – (relating to Care Orders for 16- and 17-year-olds) The amendments to Schedule 2 and to paragraph 10 of new Schedule A1 in particular **ensure that** where a nominated person is appointed for a patient who is aged 16 or 17 and for whom a local authority has parental responsibility, **the local authority is appointed as the nominated person**.
  - Remote Assessment – Nominated Person: This amendment to Schedule 2 **changes the process for appointing a nominated**

**person to allow parts of it to be carried out remotely.** It removes the requirement for the nominated person's signature of the appointment instrument to be witnessed in the physical presence of the witness, and the various statements and signatures no longer have to be contained in the same physical instrument.

- Clause 53 (Welsh Ministers' power to make consequential provision): This amendment would ensure that regulations made by the Welsh Ministers under the consequential amendment powers in the Bill that amend or repeal primary legislation (provided such amendments would be within the competence of the Senedd if contained in a Senedd Act) are **subject to the affirmative resolution procedure** in the Senedd.

### **UK Government view on the need for consent**

10. UK Government agree that consent is required for the amendments to clause 18, the new clause after clause 18, clause 53, and Schedule 2.
11. In my view, the amendments to the provisions listed in paragraph 10 make provision in relation to Wales that has regard to the devolved matter of public health. Therefore, in accordance with Standing Order 29, Senedd consent is required.

### **Reasons for making these provisions for Wales in the Mental Health Bill**

12. In my original LCM and subsequent SLCM, 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.
13. I support these reforms which will 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.
14. There is a significant amount of cross-border provision of mental health services between Wales and England. Not making provisions in this Bill risks increasing divergence between services available in the two countries.
15. Furthermore, the periods of detention and the rights to apply to the tribunal are key safeguards in the protection of rights of individuals subject to the Mental Health Act 1983 and I want to take this opportunity

to implement those changes here in line with the Welsh Government's approach to enhancing individual rights in Wales.

16. Whilst this Bill has regard to devolved matters, it also makes provision relating to reserved matters. For that reason, I consider legislating through a UK Bill to offer the most coherent approach to the provisions delivered in this legislation

### **Financial implications**

17. The financial implications of this Bill remain as they were set out in my original LCM. The impact assessment laid with the Bill (at Mental Health Bill [HL] publications - Parliamentary Bills - UK Parliament) includes a cost for Wales which has been estimated by applying uplift costs for England. Costs and cost savings that have been estimated for England have been scaled up, with impacts depending on the processes that the reforms are linked to.
18. Total costs (England and Wales) for the 20-year appraisal period are estimated at £5.7 billion. Implementation will be phased and therefore costs are not evenly split across the 20-year period. Total costs to Wales in the impact assessment over the 20-year period are estimated at £425 million across health, housing and social care.
19. If the Senedd consents to the LCM, with this SLCM, this is on the basis of consequential funding from the UK Government to support implementation as set out in the impact assessment to Parliament.

### **Conclusion**

20. 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.
21. Therefore, I recommend that the Senedd gives its consent.

**Sarah Murphy MS**  
**Minister for Mental Health and Wellbeing**  
**8 April 2025**