

## **SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 4)**

### **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. Second Reading in the House of Commons took place on 19 May 2025 and Committee stage began on 10 June.
3. 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**

4. 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**

5. The Bill is sponsored by the Department of Health and Social Care.
6. A summary of the Bill was provided in the first LCM, which remains accurate.
7. 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 third LCM**

8. A number of non-Government amendments were accepted on 31 March 2025, during House of Lords Report stage. The effect of those amendments is set out in paragraph 13.
9. Consequently, the UK Government tabled amendments on 4 June 2025 during House of Commons Committee stage to overturn the non-

government amendments. They consisted of amendments to the following clauses:

- Clause 5 – Grounds for detention (amendments 26, 27, 28 and 29)
- Clause 6 - Grounds for community treatment orders (amendment 30)
- Clause 35 - Ascertaining and learning from patients' experiences of hospital treatment (amendment 31)
- Clause 50 - Removal of patients by authorised persons (amendment 36)
- Schedule 2 - Nominated person (amendments 40 and 41)

10. Other amendments tabled on 4 June 2025 consisted of amendments to clauses:

- clause 45 - Advance choice documents (amendments 34 and 35)
- Schedule 3 - Independent mental health advocates (amendment 43)

11. In addition to the amendments listed above, a minor and technical amendment to clause 30 (Periods for tribunal applications) was laid on 14 April 2025. It was agreed by the House of Lords at the Bill's Third Reading on 23 April, but has been grouped with the larger group of amendments being presented in this SLCM.

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

12. In addition to the clauses for which I recommended that consent is required in the first LCM and in the previous supplementary LCMs ("SLCMs"), in my view an SLCM is required in relation to the amendments described below.

13. The first group of these are the Government amendments that reverse the non-Government amendments:

#### **i. Clause 5 - Grounds for detention**

Clause 5 inserts provisions amending the test for whether a detention is to occur into sections 2, 3 and 5 of the Mental Health Act 1983 ("the 1983 Act").

The non-UK Government amendments to clause 5 had the following effects:

- a. amending the test for admission for assessment (section 2) so that one must assess the risk of harm occurring "unless the patient is so detained by a constable or authorised person" where serious harm

may be caused to the health or safety of the patient or of another person and the patient ought to be detained given the nature, degree and likelihood of the harm.

- b. amending the test for admission for treatment (section 3) so that one must assess the risk of harm occurring “unless the patient is so detained by a constable or authorised person” where:
  - serious harm may be caused to the health or safety of the patient or of another person unless the patient receives medical treatment,
  - it is necessary, given the nature, degree and likelihood of the harm, for the patient to receive medical treatment,
  - the necessary treatment cannot be provided unless the patient is detained under this Act, and
  - appropriate medical treatment is available for the patient.
- c. amending the test for a nurse to detain a patient who is already an in-patient receiving treatment for mental disorder for up to 6 hours in the absence of the requisite type of practitioner / clinician to make a report that the person ought to be admitted under Part 2 (section 5) and provides for the involvement of a constable or authorised person to immediately restrain a person from leaving hospital in circumstances where the person is suffering from mental disorder to such a degree that serious harm may be caused to the health or safety of the patient or of another person unless the patient is immediately restrained.
- d. inserting a new definition of “authorised person” into section 145(1) of the 1983 Act: “a medical practitioner, approved mental health professional, mental health nurse or doctor, or a person of description specified in regulations made by the Secretary of State, who has been trained and equipped to carry out detentions under this Act and who would not be put at unnecessary risk by carrying out those functions.”

The stated purpose of these amendments was to provide a better inter-agency response and remove the need for the presence of police at mental health incidents in the absence of any risk.

UK Government amendments 26-29 are designed to remove these non-Government amendments from the Bill. These amendments are connected to amendment 36, discussed below.

One of the tests for detaining a person under the mental health legislation is that harm may be caused, or that treatment is not possible, without detention. Amendments 26, 27, 28 and 29 (and 36 in relation to clause 50) remove

wording stipulating that the detention that is necessary must be detention by a constable or other authorised person (as defined).

ii. **Clause 6 - Grounds for community treatment orders**

The non-UK Government amendment to clause 6 would insert provisions into section 17B of the 1983 Act (which relates to the conditions specified by the community treatment order (CTO)). The amendment requires the responsible clinician to ensure that CTOs align with the code of practice, limits the default duration of a CTO to 12 months, requires a structured review process for extensions, mandates six-monthly reviews for extended orders, and reinforces patient consultation and oversight by mental health professionals. Provision is made for a tribunal to recommend that the responsible clinician consider whether to extend, vary, or terminate the duration and conditions of the CTO.

UK Government amendment 30 is now seeking to have this non-Government amendment removed from the Bill. This amendment removes various amendments relating to the duration and review of community treatment orders.

iii. **Clause 35 - Ascertaining and learning from patients' experiences of hospital treatment**

The non-UK Government amendment to clause 35 makes provision to insert a new section after section 23 (discharge of patients) of the 1983 Act. The effect of the amendment is that a patient who has been detained under Part 2 of the 1983 Act must be offered a consultation with an independent mental health advocate within 30 days of the discharge to review their experiences of hospital treatment. A report is prepared by the independent mental health advocate in partnership with the patient and provided to hospital managers within 14 days of its completion. Hospital managers then have to publish an annual report setting out what they have learned from patient experiences and the actions they have taken.

The stated purpose of this amendment is to mandate the de-briefing of mental health patients after they have left hospital.

UK Government amendment 31 seeks to overturn this provision so that clause 35 would be removed.

iv. **Clause 50 - Removal of patients by authorised persons**

A further non-UK Government amendment provided for the insertion of a new section after clause 47, which became clause 50 in the Third Reading version of the Bill.

Clause 50 amends section 135 (warrant to search for and remove patients) of the 1983 Act to include a provision that a Justice of the Peace can issue a warrant to an "authorised person" (in addition to being able to issue one to a constable), to remove a person to a place of safety, if need be by force, with a

view to the making of an application under Part 2 of the 1983 Act, or of other arrangements for his treatment or care.

Clause 50 also amends section 136 (removal etc of mentally disordered persons without a warrant) of the 1983 Act to enable an “authorised person” (in addition to a constable) to remove a person who appears to be suffering from mental disorder to a place of safety if it is necessary to do so in the interests of that person or for the protection of other persons.

The stated purpose of clause 50 is to provide better inter-agency response and remove the need for the presence of police at mental health incidents in the absence of any risk.

UK Government amendment 36 is now seeking to have clause 50 removed from the Bill. This amendment is connected to amendments 26, 27, 28, and 29.

#### **v. Schedule 2 - Nominated Person**

The non-UK Government amendment to Schedule 2 amends paragraph 11 of new Schedule A1 inserted by Schedule 2 to the Bill (which is to be inserted before Schedule 1 to the 1983 Act).

The amendment makes provision for the Approved Mental Health Professional (AMHP) to appoint one of a range of individuals (and provides for how to choose between them in the event that there is more than one person who may be appointed) as a patient’s nominated person in circumstances where the patient is under the age of 16 and a local authority does not have parental responsibility for the patient.

UK Government amendments 40 and 41 are seeking to overturn and substitute this provision with a new provision.

Amendment 40 revises the provision to remove current sub-paragraphs (3) to (5), substituting a new sub-paragraph (3) as follows:

“(3) If no local authority has parental responsibility for the relevant patient but there are one or more other persons who have parental responsibility and who are willing to act as the nominated person, the approved mental health professional must appoint one of them.”

Amendment 41 is consequential on amendment 40, updating the cross-reference to the relevant sub-paragraph (i.e. sub-paragraph (3)).

14. There are three further Government amendments also requiring consent.

#### **vi. Clause 45 - Advance choice documents**

Clause 45 inserts sections 130M (advance choice documents: England) and 130N (advance choice documents: Wales) into the 1983 Act. These new sections will place a duty on NHS England and Integrated Care Boards in England, and Local Health Boards in Wales, to make such arrangements as they consider appropriate for making available information about advance choice documents (“ACD”) and helping such of those people as they consider appropriate to create ACDs.

The aim of the clause is stated to be improving patient choice and autonomy. The introduction of statutory ACDs provides an opportunity for a person with severe mental illness to set out their wishes, feelings, beliefs and values in a document which can be used to inform decision making if in the future they lack capacity / are too unwell to express these things themselves.

UK Government amendments 34 and 35 make further amendments to new sections 130M (for England) and 130N (for Wales). In the Welsh context, the revisions provide that Local Health Boards must make arrangements for bringing information and help available under new section 130N to the attention of such people as they consider appropriate, and impose further requirements on Local Health Boards in relation to their duty to make arrangements to make available information about advance choice documents and to help people to make advance choice documents.

These amendments require consent in part – ie only in relation to changes to new section 130N, which applies to Wales.

#### **vii. Schedule 3 - Independent Mental Health Advocates (“IMHA”)**

This amendment (amendment 43) amends Schedule 3 to the Bill, to provide that section 130J of the 1983 Act is also amended (ie the definition of Welsh qualifying informal patient).

The definition in section 130J of the 1983 Act of Welsh qualifying informal patient was inserted by the Mental Health (Wales) Measure 2010. The amendment intends to widen the scope of the exception to exclude those detained under any legislation or by virtue of a court order (rather than just those detained under the Mental Health Act 1983). It does this by substituting paragraph (c) with “the patient is not liable to be detained under this Act or any other legislation or by virtue of a court order”.

#### **viii. Clause 30 - Periods for tribunal applications**

Clause 30(1) amends the periods when civil patients may apply to the mental health tribunal under section 66 of the 1983 Act, giving patients more opportunities to apply to the tribunal.

An amendment was tabled on 14 April to amend clause 30(1) to additionally amend the time frame in section 66(2)(e) of the 1983 Act - reducing the time frame specified there from 6 months to 3 months. That provision applies in relation to a patient transferred from guardianship to a hospital in pursuance of regulations made under section 19 of the 1983 Act.

The amendment is consequential on clause 29(2) of the Bill and changes the period within which an application to the tribunal may be made where a patient is transferred from guardianship to a hospital to align that period with the initial detention period in relation to the patient (which clause 29 changes from 6 months to 3 months).

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

15. UK Government agree that consent is required for all the amendments described above.
16. In my view, the amendments to the provisions listed in paragraphs 8 to 14 make relevant provision because they have 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**

17. 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.
18. 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.
19. 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.
20. 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.
21. 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**

22. 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. Total costs (England and Wales) for the 20-year appraisal period are estimated at £5.7 billion.
23. 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.
24. If the Senedd consents to the LCM and the subsequent SLCMs including this one, 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**

25. 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.
26. Therefore, I recommend that the Senedd gives its consent.

**Sarah Murphy MS**  
**Minister for Mental Health and Wellbeing**  
**30 June 2025**