

BMA Cymru Wales response to Senedd Health and Social Care Committee Scrutiny of the Legislative Consent Memorandum: Mental Health Bill

Annex 1

To inform the Health and Social Care Committee's scrutiny of the Legislative Consent Memorandum ("the LCM") on the Mental Health Bill ("the Bill"), we would welcome your views on the matters listed below.

Overall views

1. Your overall views on the policy objectives of the Bill to:

a. 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; and

- *The BMA welcomes reform of the Mental Health Act and hopes that this Bill will help to bring mental health legislation in line with changes in psychiatric practice and improve the rights of patients with mental ill health.*
- *We believe that to facilitate these welcome changes it is crucial that healthcare services are provided with the resources they need to deliver timely, skilled and compassionate care to support improved mental health provision. This includes better access to mental health beds, increases in workforce numbers and improved workforce planning. To this end we support amendment 134 tabled by Baroness Tyler of Enfield and Lord Scriven to introduce a new clause, after clause 50, which would make provision for a general duty to secure sufficient resources for services in the community.*
- *It is only with better resourced mental health services, and strong public mental health measures, that we can begin to mitigate the numbers of people getting to the point of crisis in the first place.*
- *We support changes to Community Treatment Orders (CTOs) to empower patients and advocate for those supporting individuals under CTOs. We are aware there is very limited evidence that CTOs improve patient outcomes and are used disproportionately in people from minority backgrounds.*
- *The BMA has concerns regarding the introduction of a register of patients at risk and how this list will be populated and maintained. Greater clarity should be provided as to how the information will be gathered and maintained.*



b. introduce measures to improve the care and support of people with a learning disability and autistic people, reducing reliance on hospital-based care.

- *For there to be a reduced reliance on care in hospitals, there needs to be a significant expansion of services available in the community. Without such an expansion, vulnerable people will fall through their gaps.*
- *Unlike in England, there is very limited data on professionals working in learning disabilities services in Wales, still less on professionals working with people with a learning disability with a mental illness. However, we understand from members that provision is poor.*
- *There needs to be a funding announcement in the Bill that would go some way to recruiting a workforce that can respond to an increase in the use of community services by those with learning disabilities.*
- *Such an expanded workforce would also go some way to prevent people from getting to a crisis point in the first place, thus helping to decrease the use of the Mental Health Act. Given that it can be a distressing experience, detention should only be used when necessary.*

2. What barriers do you think currently exist in accessing mental health services in Wales, and does the Bill address these adequately?

- *Firstly, it is important to note that unlike the UK Government in England, the Welsh Government does not collect statistics centrally on the prevalence or profile of SMI in Wales.*
- *The Royal College of Psychiatrists in Wales, therefore, has called for “more accurate and routine data collection...to drive an intelligence-driven approach to understanding and meeting the needs of Wales’ SMI [Severe Mental Illness] population.” The College goes on to say it believes that a National Audit of SMI should be commissioned by the Welsh Government. The BMA would strongly support this call.*

Impact on areas of devolved competence

Do you support the principle of Westminster legislating in areas that are devolved to the Welsh Government?

- *We have no comment to make on the constitutional question, although in an English and Welsh legal system it clearly makes sense to standardise the law across both countries. Most pertinently, as justice is not a devolved matter, those reforms of the Mental Health Bill that relate to prisoners detained under the Mental Health Act mean consistency must be ensured.*
- *Some patients may receive treatment on a cross-border basis, particularly in the context of inappropriate out of area placements. On 1 March 2024, for example, 48*

acute mental health patients within Betsi Cadwaladr University Health Board were being treated out of area, at a daily cost of £35,589.76. Some of these patients may well be under the Mental Health Act, and many may well have been sent over the border to England. Alignment across the two countries is therefore of paramount importance.

Alignment with policy priorities

Do you think the provisions of the Mental Health Bill align with the Welsh Government's Mental Health strategy and broader policy priorities?

Are there specific Welsh priorities or policies that should be better reflected in the Bill?

Cross-border considerations

How will the Bill address the movement of patients across the Wales-England border, ensuring smooth collaboration between services?

Application of the Mental Health Act 1983: autism and learning disability

How will the Bill's provisions integrate with Welsh Government's efforts to reduce mental health-related hospital admissions? Specifically, your views on proposals to amend the Mental Health Act 1983 so that people with a learning disability and/or autism cannot be detained for compulsory treatment unless they have a "psychiatric disorder".

Consultation with the community clinician

Your views on proposals to introduce a new requirement for hospital clinicians to collaborate with a second professional from a community service when making decisions regarding the use and operation of community treatment orders ("CTO").

Nominated person

Your views on:

- a. the proposed introduction of a "nominated person" role to replace the nearest relative in decision-making;
- b. the extent to which this proposed reform is consistent with the Welsh Government's vision for a rights-based approach to mental health care?

Deprivation of liberty

How does the Bill address the use of compulsion and deprivation of liberty in mental health care (e.g. to shorten the period etc), and does it respect Wales's legislative competence in these areas?

Are the safeguards for patients sufficient, particularly for children, young people, and those with learning disabilities or neurodiverse conditions?

Transfers from prison to hospital: time limits

Your views on proposals to introduce a statutory 28-day time limit within which individuals with a severe mental health need must be transferred from prison to hospital for treatment under the 1983 Act.

- *The BMA is supportive of provisions in the Bill under clause 35 to introduce a 28-day transfer period from prisons to hospital for those experiencing acute mental ill health. However, we believe that these provisions should be subject to review to ensure that they do not result in negative consequences should the existing NHS provision not be adequately supported to meet the need of an increase in patient numbers, many of whom are likely to have complex needs.*
- *We also have some concerns regarding how the existing system will operate with this legislation. In particular, the 28-day limit for transfer from a place of safety to hospital could potentially de-prioritise transfers using the Ambulance Service, meaning that other prisoners may face potential delays in accessing much needed care. We know anecdotally from our members that transfers to hospitals from prisons are already often triaged as there is a shortage of staff to facilitate them.*

Help and information for patients

Your views on proposals to place a duty on Local Health Boards in Wales to make arrangements they consider appropriate for making information available about advance choice documents (“ACD”) and helping those people they consider appropriate to create ACDs.

- *The BMA supports the principle that people at risk of detention are informed of their ability to make an Advance Choice Document, and (if they accept) are supported to make one as outlined in section 42 of the Bill. However, we also recognise that this could place significant additional demand on the responsible workforce and will also require significant work to be undertaken to increase awareness around the need for these documents and more support for this documentation to be put in place.*

Early intervention and community based support

Are the provisions for crisis intervention and preventive care adequate and in line with the Welsh Government’s focus on early intervention and community-based support?

Removal of police stations and prisons as places of safety

Your views on proposals to remove police stations and prisons as a place of safety for adults experiencing a mental health crisis.

- *We are broadly supportive of the Bill’s intention under clause 46 to remove police stations and prisons as a place of safety. Although we would again stress the importance of ensuring that provision is made to ensure that those who require*

places of safety can be adequately accommodated within appropriate health settings. The BMA requires assurance that resource is being given to safe alternatives to police cells.

- *There is also a delineation between severe and enduring mental illness and other manifestations of distress, and this Bill must include greater clarity as to what constitutes an inappropriate use of a police cell (considering a person perhaps with personality disorder who presents in crisis). There is a danger this will put more pressure on under-resourced services and health services may carry a larger risk.*

Children and young people

Does the Bill adequately consider the needs of children and young people in Wales, particularly given the higher rates of mental health concerns reported post-pandemic?

Workforce

What impact will the Bill have on mental health practitioners and services in Wales, particularly in the context of staffing pressures and workforce development?

- *As previously laid out, there are considerable shortages in the psychiatry workforce, which has been forecasted by Health Education and Improvement Wales (HEIW) to fall by 7.2% between 2020-26.*
- *The Bill introduces policies that would require greater consultation on the part of the responsible clinician, including possible collaboration between clinicians and community teams/professionals. BMA agrees in principle with ensuring scrutiny over those who have care over some of the most vulnerable in society. However, there must be some recognition that where there is more scrutiny and need for greater consultation, there is more work, and Wales does not have a workforce with capacity to work accordingly.*
- *As also previously laid out, greater pressures on community care will also require much better resourcing of community mental health services for people with a learning disability.*