

Sarah Murphy MS
Minister for Mental Health and Wellbeing

4 February 2025

Dear Sarah,

Legislative Consent Memoranda on the Mental Health Bill

At its meeting on 27 January 2025, the Committee considered the Welsh Government's Legislative Consent Memoranda on the Mental Health Bill.

To inform our consideration of the memoranda, we would be grateful if you could provide further information in relation to the questions outlined in the attached Annex.

I would be grateful for a response to these questions by 20 February 2025.

Yours sincerely,



Mike Hedges
Chair

ANNEX

Question 1: Why do you believe that it is appropriate to make these provisions for Wales in a UK Government Bill, rather than in a Bill introduced to the Senedd?

Question 2: How did your involvement in the Bill occur, and when was the final decision made to seek provision for Wales in a UK Government Bill?

Question 3: The Independent Review recommending reform to the *Mental Health Act 1983* was concluded in 2018 and the UK Government published a draft Bill setting out planned changes to the 1983 Act in 2022, which was not taken forward in the last Parliament. Could you please outline:

- i. Whether the draft Bill published in 2022 made provision for Wales;
- ii. What view the Welsh Government took of the draft Bill at the time;
- iii. If you are aware of the reasons for the delays in relation to that UK Government Bill.

Question 4: The Legislative Consent Memorandum laid on 10 January 2025 outlines the communication which has taken place between the Welsh Government and the UK Government in relation to this Bill.

- i. What policy development work has been undertaken by the Welsh Government in relation to mental health?
- ii. What role did the Welsh Government play in the development of the proposals in the Bill, and how has its policy development work been reflected in the Bill?

Question 5: What evidence and/or data has been obtained from Welsh stakeholders or in relation to Welsh patients during the development of the Bill, and how is this reflected in the Bill?

Question 6: Which clauses in the Bill take account of specific Welsh circumstances?

Question 7: What are your views on a suggestion that the Welsh Government has piggybacked on a Bill that was designed for England?

Question 8: Paragraph 13 of the Legislative Consent Memorandum states that "There is a significant amount of cross-border provision of mental health services between Wales and England. Not taking provisions in this Bill risks increasing divergence between services available in the two countries."

What consideration did the Welsh Government give to legislating in parallel to the UK Parliament through a Bill introduced to the Senedd, to reduce the risk of divergence between services available in England and Wales?

Question 9: Paragraph 15 of the Legislative Consent Memorandum states that "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".

- i. What is the balance between reserved matters and devolved matters in the Bill?
- ii. What is the interrelationship between reserved matters and devolved matters in the Bill and how intertwined are they?

Question 10: Why does the Welsh Government not believe that consent is required in respect of clauses 9, 33, 47 and 48, particularly given that the Welsh Government believes that consent is required for other provisions of a similar nature, such as clauses 34 and 35 (relating to transfers of prisoners)?

Question 11: It would appear that the Secretary of State will retain the power to make regulations in a devolved area under clause 51. Why is this necessary, and are you content with the Secretary of State having these powers?

Question 12: New Clause 52 provides the Welsh Ministers with equivalent powers to make consequential provision to amend primary legislation in relation to Welsh devolved areas. This power is equivalent to that which is provided to the Secretary of State in clause 51.

- i. Did you request for the affirmative procedure to apply to this Henry VIII power and if not, why?
- ii. Who would make the final decision on whether the affirmative procedure will apply – the UK Government or the Welsh Government?
- iii. If the Welsh Government wanted to apply the affirmative procedure to this power, would there be any barrier to that happening? For example, does the fact that it is a UK Government Bill mean that the UK Government will have the final decision on the choice of the scrutiny procedure?

Question 13: Clause 53(3) provides that many provisions in the Bill will not come into force until regulations are made to that effect by the Secretary of State.

- i. Why are there no commencement powers for the Welsh Ministers?
- ii. Do you have any concerns about the fact that the Welsh Government does not have control to commence the provisions when they want to, to ensure that the NHS in Wales and other connected stakeholders are ready to implement these changes at the relevant time?
- iii. Why are you not seeking consent for clause 53?

Question 14: Please can you explain how Committees of the Senedd can engage with the Welsh Government in order to propose amendments to the Bill, should they wish to do so?

Question 15: Is the Welsh Government planning to request any other changes to be made to the Bill?