

Sarah Murphy AS/MS
Y Gweinidog Iechyd Meddwl a Llesiant
Minister for Mental Health and Wellbeing



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref : MA/SM/1042/25

Mike Hedges MS,
Chair, Legislation, Justice & Constitution Committee
Welsh Parliament
Cardiff Bay
Cardiff
CF99 1SN

13 June 2025

Dear Mike,

Thank you for your report on the Legislative Consent Memorandum for the Mental Health Bill received in April and my thanks for your agreement to a slight delay in our submission to you.

Please find attached the Welsh Government's response to these recommendations.

Yours sincerely,

A handwritten signature in black ink that reads "S. Murphy". The signature is fluid and cursive, with the first letter 'S' being particularly large and prominent.

Sarah Murphy AS/MS
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Minister for Mental Health and Wellbeing

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

The Welsh Government's Legislative Consent Memoranda on the Mental Health Bill

Welsh Government response to the Legislation, Justice and Constitution Committee's report

June 2025

In April 2025, the Legislation, Justice and Constitution Committee submitted its report on the Welsh Government's Legislative Consent Memoranda for the Mental Health Bill. The report includes three conclusions and eight recommendations. This is the Welsh Government's response to those recommendations.

Introduction

The Mental Health Bill ("the Bill") was introduced in the House of Lords on 6 November 2024.

The UK Government's stated policy objectives are to 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.

It contains a number of amendments to the Mental Health Act 1983 ("the Act"). The measures in this Bill are generally intended to strengthen the voice of patients subject to the Act. They add statutory weight to patients' rights to be involved in planning for their care, and to inform choices regarding the treatment they receive. The reforms will increase the scrutiny of detention to ensure it is only used when, and as long, as necessary. The Bill also seeks to limit the use of the 1983 Act to detain people with a learning disability and autistic people.

The Act provides the legal framework for the detention and compulsory treatment of individuals with mental disorders who may pose a risk to themselves or others. The primary focus of recent reforms to the Act has been Parts 2 and 3, which address civil patients (patients who are liable to be detained in hospital and who are not subject to the Act as a consequence of any involvement with the

criminal justice system) and offenders with mental disorders, respectively. Over two thirds of those detained under the Act are civil patients (under Part 2).

The last major amendment to the Act took place in 2007, introducing Community Treatment Orders (CTOs), Independent Mental Health Advocates (IMHAs), and modified detention criteria. Part 3 governs the treatment of offenders with relevant mental disorders, divided into restricted and unrestricted patients. Restricted patients, who pose a public safety risk, are under stricter controls by the Secretary of State for Justice, whereas unrestricted patients are treated similarly to civil patients, with fewer restrictions.

The latest reforms, which are being put forward in the Mental Health Bill introduced into Parliament in 2024, are based on the findings of the 2018 Independent Review of the Act, led by Professor Sir Simon Wessely. The review highlighted significant problems with the Act's application and culture, and it made 154 recommendations. The Westminster government accepted most of these recommendations and, following consultations and pre-legislative scrutiny, a draft Bill was introduced in 2022 and revised and introduced in 2024 to incorporate changes on the basis of the feedback received.

Given that the Act covers both reserved and devolved areas, there are well established partnership arrangements in Wales which support the safe operation of the Act, particularly where there is an interface between the justice system and the health system in Wales. The new Act, once it comes into force, will build on those established arrangements to ensure that its implementation is carried out smoothly and effectively.

In Wales, the Mental Health (Wales) Measure 2010 ("the Measure") is a unique piece of legislation designed to provide a legal framework to improve mental health services. Implementation of the services required by the Measure began, on a phased basis, in January 2012 and includes improved access to mental health services within primary care; care and treatment plans and care coordinators for everyone receiving secondary mental health services; self-referral back into mental health services for adults discharged from secondary mental health services; and extending the availability of independent mental health advocacy. The Measure aimed to improve access to support in primary care but also to strengthen the rights of people accessing mental health services, but who are not subject to the Act.

The Measure is primarily aimed at supporting earlier intervention and preventing escalation to more specialised services or detention under the Act.

The Act is primary legislation in England and Wales that governs the assessment, treatment and rights of individuals for people with a mental health disorder. The Act includes both reserved and devolved areas, and the interface between both – for instance between the criminal justice system and health services – means that a UK Bill is the appropriate mechanism to deliver these policy changes.

Given the mix of reserved and devolved areas in the Act and in this Bill, legislating on a Wales-only basis would not achieve the same policy intent across the justice and health systems as this UK Bill does. Where the Bill makes provisions that have regard to devolved matters, the consent of the Senedd has been sought.

Our Mental Health (Wales) Measure is Wales-only legislation and aims to set out how services need to work together to provide mental health support in the community. The Act is largely about compulsory powers and admission to, or discharge from, hospital.

Responses to the eight recommendations

Recommendation 1

The Committee recommends that

The Welsh Government should provide more detailed information outlining why it believes the consent of the Senedd is not required for clauses 9, 33, 47 and 48 of the Bill as introduced.

Response: Reject

I am of the view that the above clauses do not have regard to devolved matters and as such the consent of the Senedd is not sought in relation to these clauses.

For example, the purpose of clause 9 is to deal with the remission of, or where relevant, the release of, prisoners and detainees with severe mental health needs back to their place of detention when they no longer require treatment - highlighting the close interaction between devolved and reserved matters within this Bill. In this instance, it is my view that this does not have sufficient regard to devolved matters requiring the consent of the Senedd.

It is this approach that has ultimately led to the conclusions that the consent of the Senedd is not sought in respect of these clauses.

Financial Implications – None

Recommendation 2

The Committee recommends that

The Welsh Government should seek the Senedd's consent for clauses 9, 33, 47 and 48 of the Bill as introduced.

Response: Reject

As explained in my response to recommendation 1 above, I do not consider that the Senedd's consent is required in respect of the above clauses as they do not have regard to devolved matters.

Financial Implications – None

Recommendation 3

The Committee recommends that

The Minister should explain what consideration the Welsh Government gave to keeping the Senedd updated on the work it was undertaking in relation to the Bill, between publication of the UK Government's White Paper and the introduction of the Welsh Government's Legislative Consent Memorandum.

Response: Accept

During the consultation process on the White Paper, Welsh Government officials did receive and review consultation responses from Wales. However, the Bill was not included in the King's Speech in November 2023 and it did not feature in the legislative programme for that year. No further work was undertaken by officials on the UK Bill at that stage.

Financial Implications – None

Recommendation 4

The Committee recommends that

Given that that the Welsh Government appears to have been working with the UK Government on the Bill for at least four years, the Minister should explain why it has not been possible to introduce a Bill into the Senedd for scrutiny.

Response: Accept

As covered in the response to recommendation 3, work on the UK Bill ceased in November 2023.

In my responses to the Health and Social Care Committee, I was clear about why we should be working collaboratively with the UK Government on this UK Bill. The Act is primary legislation in England and Wales that governs the assessment, treatment and rights of individuals for people with a mental health disorder. The Act includes both reserved and devolved areas, and the interface between both – for instance between the criminal justice system and health services – means that, a UK Bill is the appropriate mechanism to deliver these policy changes.

Given the mix of reserved and devolved areas in the Act and in this Bill, legislating on a Wales-only basis would not achieve the same policy intent across the justice and health systems as this UK Bill does. Where the Bill makes provisions that have regard to devolved matters, the consent of the Senedd has been sought.

Financial Implications – None

Recommendation 5

The Committee recommends that

The Minister should explain how her approach of using a UK Government Bill to legislate in relation to mental health respects devolution.

Response: Accept

My approach of using this UK Government Bill and recommending consent is in line with our principles on UK Legislation and allows us to deliver positive provision in the best interests of Wales.

I have covered some of this in my response to recommendation 4. The Act applies where individuals need to be detained for urgent or emergency assessment and/or treatment, and the individual may not consent to that treatment. The latest published data shows that in 2021-22 there were 2,231 formal admissions to mental health hospital beds, and overall admissions continue to fall.

The Act includes powers for the police to detain individuals and there is also an interface with prisons and the wider criminal justice system – so it is clear why this needs to be legislated for at a UK level.

The Mental Health (Wales) Measure 2010 applies to a much broader cohort engaged with primary and secondary mental health services – Local Primary Mental Health Support Services alone received more than 6,200 referrals each month since the start of January 2023. We have introduced unique legislation in Wales which has improved support and safeguards for most people who come in to contact with our mental health services. The Act is concerned with compulsory powers for assessment and treatment across health services and the criminal justice system.

I recognise the Senedd is afforded less scrutiny through this approach, but I need to balance the consideration with the need to deliver positive change for Wales. Being part of this Bill ensures the people in Wales are being protected in the same way as those in England, thereby delivering key policy objectives in the area of mental health.

Financial Implications – None

Recommendation 6

The Committee recommends that

The Minister should list all the clauses in the Bill where the interrelationship between reserved matters and devolved matters is closely intertwined and explain that relationship in each case.

Response: Reject

The interrelationship between reserved matters and devolved matters is closely intertwined in many of the Bill's clauses.

I referred to clause 9 of the Bill as one such clause where the interaction between devolved and reserved matters is so closely intertwined but where I consider that the provision does not have regard to devolved matters requiring the consent of the Senedd.

There are many other examples of such clauses where the relationship is closely intertwined. For example (not exhaustive) clause 34 (transfers from prison to hospital: conditions); clause 35 (transfers from prison to hospital: time limits);

clause 47 (remand for a person's own protection etc); and clause 48 (removal of interim remand patients to and from Channel Islands or Isle of Man) (as at the Bill's introduction).

I have considered in each of these cases whether the clause has regard to devolved matters, and where I have concluded that they do, the consent of the Senedd has been sought.

Financial Implications -None

Recommendation 7

The Committee recommends that

The Welsh Government should seek the Senedd's consent for clause 53 of the Bill as introduced.

Response: Reject

No consent has been sought in relation to clause 53 as introduced as this is a technical provision clarifying commencement of the Bill rather than a substantive provision. The Senedd's consent has been sought in respect of the substantive provisions of the Bill which I have concluded have regard to devolved matters.

Financial Implications -None

Recommendation 8

The Committee recommends that

The Welsh Government should make representations to the UK Government to seek the Bill's amendment for the purposes of including commencement powers for the Welsh Ministers

Response: Reject

The commencement provision ensures that policy objectives under the Bill can be implemented by the UK Government. This avoids potential complexity and impracticality that may arise if separate commencement provisions were included in the Bill in relation to Wales, which does not appear necessary within the context of this Bill.

My officials continue to meet on a weekly basis with UK Government officials and have developed effective and collaborative working relationships. This will ensure that provisions are commenced at an appropriate time in Wales.

Financial Implications – None