

## Senedd Member Briefing: LCM on the Mental Health Bill

### Introduction

This briefing has been prepared by the Royal College of Psychiatrists Wales to inform the debate on the Legislative Consent Motion on the Mental Health Bill, to be held on Tuesday 7 October.

The Royal College of Psychiatrists is the professional medical body responsible for supporting psychiatrists throughout their careers and setting and raising standards of psychiatry. The College aims to improve the outcomes of people with mental illness and intellectual disabilities and improve the mental health of individuals, their families and communities. RCPsych Wales represents more than 600 consultant and trainee psychiatrists in Wales.

We are grateful to the Health and Social Care Committee and Legislation, Justice and Constitution Committee for their detailed and thorough scrutiny of the various Legislative Consent Memoranda.

Our response to the Health and Social Care Committee's initial targeted call for written evidence is [available here](#).

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### Overall Position on the Bill

We welcomed the publication of the Mental Health Bill by the UK Government last year as an important opportunity to modernise the Mental Health Act 1983 and improve the lives of people with mental illness in Wales and England.

In particular, we value the Bill's focus on supporting relational care, where clinicians work in partnership with patients so that compulsory admissions are centred on therapeutic benefit and safety for all.

However, we believe there are areas where the UK Government could and should have gone further, drawing on our clinical expertise, to enhance protections, prevent unintended consequences, and avoid widening existing inequalities. These concerns are set out in Appendix A to this document.

Notwithstanding these concerns, **RCPsych Wales recommends that Senedd Members grant legislative consent to the Bill.** We recognise that the Bill offers a long-overdue

opportunity to strengthen mental health law and, despite its limitations, it is important that these reforms progress.

Our support is not unqualified but reflects the balance of risks: we believe that the benefits of reform outweigh the shortcomings, provided that implementation in Wales is tailored to our distinct policy and legislative landscape.

This includes important work to develop an enhanced and updated Code of Practice which better meets the needs of mental health patients and supports preventative measures and early intervention in the community.

Listening to clinical voices and expertise will be essential to ensure that implementation of the Mental Health Bill is effective, safe, and grounded in real-world practice. RCPsych Wales stands ready to work in partnership with the Welsh Government and Senedd Members to that end.

### **Workforce Considerations**

Successful implementation these reforms in Wales depends on investment in an expanded and fully trained workforce. Without this, the Bill's aims to strengthen patient rights, safeguards and services will not be realised.

We note that Welsh Government officials are in early discussions with Health Education and Improvement Wales (HEIW) to assess the current workforce and plan future development. It is vital that the College is fully engaged in this work.

In the longer term, RCPsych Wales continues to call for a dedicated psychiatry workforce plan from HEIW to future-proof specialist services, developed in full consultation with the profession.

Although we welcomed the Strategic Mental Health Workforce Plan published in 2022, it has not met expectations, and progress on addressing shortages has been too slow. The psychiatry workforce has been projected to fall by 7.2% between 2020 and 2026, which will further undermine service delivery.

A clearer and more ambitious approach is urgently needed to meet rising and increasingly complex demand, to respond to new treatments and technologies, and to strengthen coordination between mental health and other specialist services.

### **Reforms to the Mental Health (Wales) Measure 2010**

Alongside reform of the Mental Health Act 1983, RCPsych Wales supports taking forward amendments to the Mental Health Measure. We welcomed the opportunity to back earlier proposals through James Evans MS's Mental Health Standards of Care (Wales) Bill and remain supportive of efforts to strengthen the legislation.

We recommend removing the current age restriction on who can request a re-assessment of their mental health, and extending this right to individuals specified by the patient. At present only adults can make such a request, leaving children and young people disadvantaged. Amending the Measure would establish parity in law and align with the UNCRC, which guarantees children the right to the highest attainable standard of health (Article 24) and the right to be heard (Article 12).

People's rights would also be strengthened by introducing remote (virtual) assessments by Second Opinion Appointed Doctors (SOADs) and support from Independent Mental Health Advocates (IMHAs). These would not replace in-person assessments but rather increase choice and autonomy for patients.

We would welcome an update from the Welsh Government on the timing and approach for taking forward reforms to the Measure, following the commitment made by the Minister for Mental Health and Wellbeing in Plenary last November.

## **Digitisation**

RCPsych Wales believes that the Welsh Government should invest in a world-leading national approach to digitising the Mental Health Act.

This is essential to modernise practice, strengthen patient rights, and support safe and efficient care by clinicians. Current paper-based processes cause delays, errors and confusion, adding to clinician workload and reduced productivity.

A digital system would make information accurate, accessible and secure, improving coordination between services and ensuring that decisions under the Act are transparent and auditable. It would also reduce bureaucracy, freeing clinicians to focus more on therapeutic care while ensuring that patients' rights and choices are properly recorded and respected.

Without digitisation, reforms to the Act risk being undermined by outdated systems. The Welsh Government should therefore prioritise investment in digital solutions, developed in partnership with clinicians, patients and carers, to ensure the system is rooted in lived experience and backed by professional expertise.

## Appendix A: RCPsych Concerns Regarding the Mental Health Bill

### Concerns Regarding Changes to Detention Criteria

Section 2 (admission for assessment) and Section 3 (admission for treatment) criteria now include tests for whether harm 'may be caused' and the 'likelihood' of the harm. The College has concerns about both terms.

The term 'may be caused' is a new concept in the Mental Health Act. The term is vague and could apply to almost any level of risk (since risk is never zero). It also blurs the complex causes of harm, oversimplifies risk, and could also encourage defensive practice (detaining people "just in case") rather than balanced clinical decisions.

The term 'likelihood' means probability. Research has repeatedly underlined the difficulty of predicting serious harms such as violence or suicide.<sup>1</sup> It is not realistic to expect Mental Health Act assessors, Approved Clinicians etc. to provide probabilities of harm. Courts and tribunals may expect exact figures that don't actually exist, leading to confusion and unreliable judgments.

Overall, both terms introduce ambiguity and false precision into the detention criteria. This risks creating unnecessary complexity and pressure on clinicians, without improving patient care or legal safeguards.

The College has recommended removing these terms from the Bill and simplifying the detention criteria. The focus should be on a clear, holistic assessment of risk in the context of significant mental disorder, using wording that clinicians and tribunals can apply consistently. We have suggested amending the criteria to require the following:

- a) the patient is suffering from mental disorder of a nature or degree;
- b) there is a significant risk of serious harm to the health or safety of the patient or of another person;
- c) it is necessary, given the nature or degree of the harm, for the patient to receive medical treatment (or assessment);
- d) the necessary treatment (or assessment) cannot be provided unless the patient is detained under this Act; and
- e) appropriate treatment (or assessment) is available for the patient.

### Concerns Regarding New Clinical Definitions

The Bill introduces clinical definitions of autism and learning disability, and a new term, 'psychiatric disorder'.

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<sup>1</sup> Royal College of Psychiatrists, CR201, [Rethinking risk to others in mental health services](#).

To our knowledge this is the first time mental health law has tried to define clinical conditions in primary mental health legislation and the first time the term 'psychiatric disorder' has ever been used in statute.

We are concerned that this mixes up legal and clinical concepts and risks causing confusion.

We have recommended keeping the legal definition of 'mental disorder', excluding specific conditions where needed (as in the 1983 Act), and removing the term 'psychiatric disorder' from the Bill.

### **Risks of Excluding LD/Autism from Hospital Admission**

The Bill excludes, for the purposes of Part 2 (civil sections) of the Act, learning disabilities and autism as grounds for compulsory treatment under section 3, unless there is a co-occurring psychiatric disorder requiring hospital care.

We welcome the emphasis on supporting people with learning disabilities or autism in the community, but some individuals present risks that cannot always be managed outside hospital.

These changes could have serious unintended consequences and may worsen the inequalities the Wessely Review sought to address.

If hospital admission is restricted, people with high-risk behaviours may be drawn into the criminal justice system, or detained under Liberty Protection Safeguards, which offer fewer protections.

In addition, those not detained under the Mental Health Act could lose access to section 117 aftercare, leaving them without appropriate health and social care.

### **Concerns Regarding Part 2 & Part 3 Distinctions**

The changes to how the Act will apply to people with learning disabilities or autism under Part 2 (civil sections) will not extend to Part 3 (criminal sections). This means that individuals entering the criminal justice system could still be detained under the Act for learning disabilities or autism.

The College is concerned that this creates a two-tier system, with patients detained under Part 3 having different rights and safeguards from those under Part 2, even when treated in the same hospital.

There is no evidence that such a distinction improves public protection; instead, it risks undermining patient rights and weakening principles that should apply equally to all people with mental disorders.

We have also warned that these reforms may worsen existing inequalities. People from racialised communities – particularly Black men, who are disproportionately detained through the criminal justice system – would be more likely to face unequal treatment.

Clinically, applying two different definitions of “mental disorder” – excluding learning disability and autism in Part 2 but including them in Part 3 – will be confusing for psychiatrists and difficult in practice.

### **Advance Choice Documents**

We welcome the inclusion of Advance Choice Documents (ACDs) in the Bill as a means of enhancing patient choice and autonomy.

However, we believe that a statutory right to an ACD, as opposed to a duty on health boards to make information available about them, would be better for ensuring that all patients who could benefit from an ACD can get one, thereby reducing detentions and improving therapeutic relationships.

ACDs can reduce the amount of involuntary treatment a person living with severe mental illness and/or learning disability and autism receives. Placing them on a statutory footing would also help to reduce racial disparities in the level of detentions.

We would encourage the Welsh Government to introduce a statutory right to ACDs in Wales in any future Wales-specific mental health legislation.

### **Commencement**

We agree with concerns expressed by Legislation, Justice and Constitution Committee that the absence of separate commencement powers for Welsh Ministers in relation to Wales is undesirable.

The inclusion of such powers would give Welsh Ministers the ability to decide when and how to bring forward the Mental Health Bill in a way that reflects Wales’ distinct policy and legislative landscape.

This flexibility would allow for better alignment with Welsh priorities, ensure the necessary workforce and infrastructure are in place, and support a smoother and more effective implementation.

Without such powers, there is a risk that commencement could be driven by circumstances in England, rather than what is right for Wales.