

LEGISLATIVE CONSENT MEMORANDUM

Mental Health Bill

Legislative Consent Motion

1. The draft motion, which will be tabled by the Health Minister, is:

“That this Assembly this Assembly endorses the principle of extending the amendment to the UK Mental Health Bill to Northern Ireland, to ensure private providers delivering publicly funded mental health services are accountable under the Human Rights Act 1998, insofar as the provisions of that amendment relate to matters falling within the legislative competence of the NI Assembly, and agrees to the amendment’s extension to Northern Ireland”.

Background

2. This memorandum has been laid before the Assembly by the Health Minister under Standing Order 42A(2). The UK Mental Health Bill was introduced in the House of Lords on 6 November 2024. The latest version of the Bill and supporting documents can be found at: <https://bills.parliament.uk/bills/3884>
3. The Bill has completed its House of Lords stages and is progressing through the House of Commons, with Public Bill Committee sittings scheduled for 10–26 June 2025.

Summary of the Bill and the amendment and its policy objectives

4. The UK Government’s Mental Health Bill seeks to modernise the Mental Health Act 1983 (England and Wales), enhancing patient autonomy, rights, and transparency. Changes proposed in this Bill include tightening the detention criteria in the MHA 1983 and providing for more frequent reviews; limiting the period that people with autism or a learning disability

can be detained; and removing prisons and police stations as “places of safety” in the act. In Northern Ireland, mental health is governed by the Mental Health (Northern Ireland) Order 1986.

5. An amendment, tabled on 3 June 2025, responds to the High Court judgment in *Sammut v Next Steps Mental Healthcare Ltd* [2024], which exposed unequal application of the Human Rights Act 1998 (HRA) to private providers delivering publicly funded mental health services. The amendment designates these providers as “public authorities” under section 6(3)(b) of the HRA when delivering specific services, ensuring compliance with the European Convention on Human Rights (ECHR).
6. The amendment applies to:
 - Medical treatment or assessments for mental disorders for informal hospital patients, when arranged or funded by public authorities.
 - After-care services under section 117 of the Mental Health Act 1983 (applicable in England and Wales).
7. Those impacted by this amendment in Northern Ireland include:
 - Mental health patients
 - Any private health and care providers commissioned now or in the future by Health and Social Care (HSC) Trusts
 - Department of Health and HSC Trusts, responsible for arranging and paying for mental health services and treatment.

Provisions which deal with a Devolution Matter

8. The amendment engages the HRA, a reserved matter, but affects devolved health and social care services in Northern Ireland, engaging the legislative competence of the NI Assembly. Key provisions include:
 - Designating private providers as “public authorities” under the HRA for specific publicly funded mental health services.
 - Ensuring ECHR compliance for mental health patients, addressing the gap highlighted in the *Sammut* ruling.
9. The Departmental Solicitor’s Office (DSO) confirms that these provisions engage the legislative consent process due to their impact on devolved matters.

Reasons for making the Provisions

10. In Northern Ireland, mental health patients receiving publicly funded services from private providers currently lack consistent HRA protections, limiting their ability to challenge ECHR breaches. This amendment ensures equitable human rights protections across the UK, addressing disparities exposed by the Sammut ruling.
11. The amendment supports the Bamford Review's principles, enhancing patient rights and dignity, and holds private providers accountable under the HRA.

Reasons for utilising the Bill rather than an Act of the Assembly

12. Whilst the affected matters fall within the NI Assembly's competence, inclusion in the UK Mental Health Bill is preferable for the following reasons:
 - **Timeliness:** Pursuing equivalent local legislation would be time-consuming, risking delays and disparities in human rights protections compared to the rest of the UK.
 - **Efficiency:** Inclusion in UK-wide legislation allows Assembly time to focus on local measures without immediate alternative legislative vehicles.
 - **Consistency:** The amendment ensures uniform ECHR protections across the UK, avoiding regional disparities.

Consultation

13. The Department of Health has collaborated with the Department of Health and Social Care (DHSC) to ensure the amendment reflects Northern Ireland's position without altering its existing mental health framework. No specific Northern Ireland concerns have been raised to date during the Parliamentary stages.
14. The Health Committee was provided with written briefing by Departmental officials.

Human Rights and Equality

15. The DHSC, through the Secretary of State for Health and Social Care, Wes Streeting MP, confirms the Bill's compatibility with the ECHR

Financial Implications

16. The Bill's Explanatory Notes –

<https://publications.parliament.uk/pa/bills/lbill/59-01/047/en/5901047en09.htm> – give an indication of financial implications

in England and Wales associated with the Bill, should it become law. There are however no anticipated additional financial requirements locally associated with the proposed new provisions. Potential compliance and legal liability costs for Health and Social Care Trusts may arise, though specific financial impacts are not yet quantified.

Summary of Regulatory Impact

17. The DHSC's Impact Assessment identifies no significant regulatory impacts. The amendment clarifies the HRA's application, with no additional burdens on private providers beyond ECHR compliance. No specific impact in Northern Ireland is anticipated on employment, charities, social economy enterprises and the voluntary sector. Monitoring will occur through existing mental health service frameworks, with feedback from HSC Trusts and service users.

Engagement to date with the Committee for Health

18. The Minister of Health will write to the Health Committee advising them of his plans to progress with a Legislative Consent Motion (LCM) seeking the Northern Ireland Assembly's agreement.

Conclusion

19. The Minister of Health is supportive of the intentions underpinning the Bill. The Minister of Health considers this amendment a critical opportunity to enhance human rights protections for mental health patients in Northern Ireland, ensuring consistency with the rest of the UK and alignment with the Bamford Review in so far as the provisions of the Mental Health Bill, dealing with transferred matters, should extend to Northern Ireland.

Department of Health

11 June 2025