



## briefing

Health and Social Care - November 2009

### Getting the measure of mental health in Wales?

Details about the proposed legislative competence order (LCO)

**The proposed LCO aims to confer further legislative competency on the National Assembly for Wales (“the Assembly”) in the field of Health and Health Services so that an Assembly Measure can be brought forward in relation to Mental Health Services.**

Current legislation on mental health is largely designed for people who may become subject to compulsion and liable to detention. It does not deal with the provision of assessment, the treatment and advocacy services outside the legal framework of compulsion. The proposed LCO would entitle people who appear to be suffering from mental disorder but do not yet have a firm diagnosis of mental disorder to obtain early assessment of their condition and need for services.

#### House of Commons Welsh Affairs Committee’s Report

In July 2009, the House of Commons Welsh Affairs Committee (“the Committee”), a Parliamentary Committee which examines matters within the responsibility of the Secretary of State for Wales – including relations with the National Assembly for Wales, examined the proposed LCO and took written and oral evidence from a range of stakeholders including service user and campaigning organisations and professional and representative bodies.

On 20 October 2009, the legislative process reached a key milestone with the publication of the Committee’s Report on the proposed LCO<sup>1</sup>.

<sup>1</sup> House of Commons Welsh Affairs Committee – Proposed National Assembly for Wales (Legislative Competence) (Health and Health Services and Social Welfare) Order 2009 – Fourteenth Report of Session 2008-09

The Report acknowledges that whilst current legislation on mental health is suitable for people who may become subject to compulsion and liable to detention, the current legislative framework does not deal with the provision of assessment, the provision of treatment and advocacy services for those for whom the exercise of coercive powers are inappropriate. The Report states that there is wide support for an extension of legislative competence to deal with this gap and agreed that a clear need for the proposed LCO had been identified. The Report states that the UK Government’s view is that it does not wish to legislate in this area and notes that therefore the Legislative Competence Order procedure is the only legislative route currently available to allow the proposal, endorsed by the National Assembly of Wales, to proceed. The Committee also concluded that the proposed LCO was consistent with the Government’s commitment in ‘One Wales’ to making mental health a key priority.

The proposed LCO as originally drafted was not laid before Parliament and was not referred to the Welsh Affairs Committee. The Assembly’s Proposed Mental Health LCO Committee undertook initial pre-legislative scrutiny and recommended substantial changes and as a result, the Order was re-drafted and laid before Parliament on 21 May 2009.

The Committee found that there is widespread support for the broad drafting of the proposed LCO due to the rate of change in the development of treatment for mental health problems. They also found it appropriate that the proposed exclusions ensure that the Assembly will not be allowed to amend existing law relating to treatment without consent<sup>2</sup>, compulsory admission, guardianship or Community Treatment Orders<sup>3</sup> powers or the provisions relating to removal to a place of safety for compulsory assessment<sup>4</sup>.

It is acknowledged that Measures arising out of the proposed LCO had the potential to increase the burden on health services. However, the Report concludes that whilst it recognised that there would be an initial

<sup>2</sup> In Parts IV and IVA of the Mental Health Act 1983

<sup>3</sup> Under Part II of the Mental Health Act 1983

<sup>4</sup> The provisions in ss135 or 136 of the Mental Health Act 1983

financial cost incurred by the NHS in providing quicker access to assessment, treatment and advocacy, it is hoped that early intervention services will lead to long-term cost benefit.

### The Committee's recommendations

- The Explanatory Memorandum and Proposed LCO ought to be amended to make it clearer that whilst the duty for assessment and treatment will be for individuals not previously diagnosed, it is not intended to exclude those who were previously or are currently diagnosed.
- The proposed LCO extends the competence of the National Assembly of Wales as regards the provision of social care services to areas of mental health. The Committee was advised that Matter 15.9, as currently drafted, would allow the Assembly to disapply the right to an Independent Mental Health Advocate (IMHA) in Wales for those subject to compulsory powers under the 1983 Act (although it noted that it had received assurances that this was not the intention). The Report suggests that the LCO and Explanatory Memorandum are amended to make this clear.

### What happens next?

It will now be for the proposing member, Jonathan Morgan AM, to consider the recommendations of this Report. He may choose to make amendments to the proposed LCO based on the Committee's recommendations before laying it before the National Assembly for Wales.

The next stage of the legislative process will be for the National Assembly for Wales to consider the proposed LCO in a plenary debate at the Senedd.

Previous details about the proposed LCO can be found in our Health and Social Care – Spring 2008 briefing.

### More information

For further information about the proposed LCO or advice on Mental Health and Mental Capacity Act law contact Eve Piffaretti or Kate Russell.



**Eve Piffaretti, Partner**

T: 029 2038 5917

E: [eve.piffaretti@morgan-cole.com](mailto:eve.piffaretti@morgan-cole.com)



**Kate Russell, Solicitor**

T: 029 2038 5452

E: [kate.russell@morgan-cole.com](mailto:kate.russell@morgan-cole.com)

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