

Royal College of Psychiatrists: Welsh Division

Submission on Proposed Mental Health Services Legislative Competence Order

The Royal College of Psychiatrists Welsh Division thanks the Committee for the opportunity to comment on the proposed Legislative Competence Order.

Committee members will be aware that the Royal College of Psychiatrists as a member of the Mental Health Alliance made important contributions to the debate on the Mental Health Act 2007 for England and Wales. Members of the Welsh Division have made contributions to the drafting of the Code of Practice and Deprivation of Liberty Safeguards in Wales.

There were many concerns about the early proposals to change mental health legislation in England and Wales including the lack of reciprocity. Measures such as a right to advocacy for those subject to compulsion were only added at later stages in the Parliamentary process.

The Royal College of Psychiatrists is consequently supportive of the focus on the needs of people with mental disorders and of legislation which addresses the balance between rights and compulsion. The intention to create Measures to secure early assessment and potential intervention and for independent advocacy for those not subject to compulsion is welcomed.

The wording of the LCO is broad, and this is felt to be appropriate as it would allow Measures to be more specifically drafted in due course. As an example the specific requirement for appropriate hospital accommodation for women with post natal depression made by the Mental Health (Care and Treatment) (Scotland) Act is reported to have transformed these services.

Modern mental health services are usually delivered jointly by health and local authority services in association with voluntary sector services, and again to look to Scottish Legislation, The Mental Health (Care and Treatment) (Scotland) Act 2003 lays duties upon local authorities as well as upon health services.

If the intention of the LCO is to develop rapidly responsive and comprehensive services, it would seem relevant that duties of assessment and support should include Local Authorities, unless the current legislative arrangements are felt to be adequate for that purpose.

Treatments for mental disorders vary from specific treatments such as physical and psychological treatments to social and milieu approaches. It would be inappropriate to seek to define treatment unless it is to specifically recognise that treatment does cover such a broad perspective.

If treatment is broadly defined, many other services provide support to individuals with psychiatric disorders and contribute in important ways to recovery. It is not clear why the duties are laid on health services alone unless treatment is to be defined very narrowly.

The matter of choice of treatments is not identified, although clearly choice of and acceptability of treatment options to patients is key to the treatment of mental health problems as in other medical treatments.

There is the issue of treatments not available in Wales, for example specialist services for those with eating disorders are very limited in Wales. Can we presume the duty to provide includes a duty to commission new services as well as directly provide services?

At present we believe it appropriate to limit legislative competence to exclude those detained under the Mental Health Act. The Mental Health Act covers England and Wales and there could be and would be complex cross border issues around those subject to detention under the Act, many of whom are placed in services in England.

We are aware that the Committee will not engage in detailed discussion on how the proposed measures should be implemented or the financing of policies. Nonetheless the Committee cannot be unaware of the patchy development towards modern community and primary health care based services and it must be incumbent upon the Assembly to work with service providers to support these changes.

The explanatory memorandum quotes the Wales Audit Office report in 2005 which outlined the differences in service provision across Wales and the progress to be made in developing modern services. That report identified that mental health services are not always seen as a local priority and that mental health funding does not facilitate effective long-term service planning and development. Services will need on-going support and development in association with the LCO to ensure that the political priorities are met.

The intention of the LCO is to ensure that people who may have mental disorders have early access to assessment and treatment before their illness deteriorates to the point of requiring compulsory treatment. However it is not the case that all mental disorders, however distressing to the individual will deteriorate to a situation where compulsory treatment is required, and there is the potential that there could be inappropriate diversion of services towards assessment.

There is also the intent that this legislation would support the development and wider availability of services such as psychological treatments, which the College would strongly support. However the above qualification applies here also. We presume that Measures would be introduced with care to ensure balanced and stepwise development.

There must be a further note of caution in the support for the LCO. The Mental Health Act 2007 comes into force in October 2008 and the Deprivation of Liberty Safeguards Amendment to the Mental Capacity Act will be enacted in 2009. These, particularly the latter, are major pieces of legislation with as yet unknown impact upon services. Additional legislation would need to be carefully crafted and considered to dovetail in and not disrupt what will be a major service change to cope with the legislation already in train and with other proposed structural developmental and modernising changes which are in the wings.

In summary the College is supportive of the proposals and would wish to work constructively to achieve legislation and services which improve the lives of people with psychiatric disorders in Wales.