

**Draft NATIONAL ASSEMBLY FOR WALES (LEGISLATIVE  
COMPETENCE) (HEALTH AND HEALTH SERVICES AND SOCIAL  
WELFARE) ORDER 2010**

**NOTE ON THE DRAFT ORDER LAID BEFORE THE ASSEMBLY ON THE 2nd DECEMBER 2009 AND THE DIFFERENCES BETWEEN IT AND THE PROPOSED ORDER AS SRCUTINISED BY THE LEGISLATION COMMITTEE.**

**Summary of the main changes**

1. The original proposed LCO would have conferred legislative competence in relation to three aspects of mental health-
  - *the assessment by the health service in Wales of persons who are or may be mentally disordered persons;*
  - *duties on the health service in Wales to provide treatment for mentally disordered persons;*
  - *independent mental health advocacy for persons who are or may be mentally disordered persons.*

These have now been combined into a single item –

- *assessment of mental health and treatment of mental disorder.*
2. The exception in relation to compulsory detention, treatment etc. has been revised.
  3. An additional Matter 15.10 has been added – “*Social care services connected to mental health*”.
  4. The original proposed LCO excepted advocacy for persons detained etc. under the Mental Health Act 1983 Act but included advocacy other than that specifically provided under that Act. The current version of the proposed Matter makes no specific reference to advocacy under the 1983 Act, but the draft LCO

does specifically exclude advocacy under the Mental Capacity Act 2005.

### **Relationship of the changes to the views of the Assembly Legislation Committee**

5. The Committee recommended that, “as a general principle, the proposed Order should be broadly drafted to allow the Assembly greater flexibility to identify the scope and definition of the rights and duties in relation to the provision of mental health services in subsequent Measures.” The draft LCO has been amended significantly from the proposed LCO considered by the Committee, in a way which reflects the Committee’s wish for broad drafting.
6. The next recommendation was that local authorities should be brought within the scope of the LCO, which at that time dealt exclusively with the Health Service. The LCO as originally proposed was confined to Field 9 (that being the Field to which the ballot proposal and subsequent motion and approval made specific reference); to go beyond that would not have been appropriate when drafting the original proposed LCO. Although local authorities are not specifically mentioned, the new Matter 15.10 (“*social care services connected to mental health*”) would permit Measures to confer powers and impose duties on local authorities.
7. The Committee recommended that the wording of the exception in relation to compulsory treatment and detention should be reviewed, and also that the Member in charge should seek to reach agreement with the Minister in relation to the question of guardianship. This has been done, and guardianship is now specifically excluded by paragraph (a)(iii) of Matter 9.2.

8. A further recommendation was that the exception in relation to compulsory treatment and detention should not apply to advocacy services. The specific reference to competence in relation to advocacy has now been removed, so any proposal to deal with advocacy in a Measure would have to come within “assessment”, “treatment” or “social care services”. The revised LCO does however specifically exclude advocacy services under the Mental Capacity Act 2005 from the competence sought. The Committee’s final recommendation in relation to terminology is therefore no longer relevant.
9. It was suggested that the term “mentally disordered persons” should be replaced by “persons with mental disorders”. Neither term is in fact used in the revised draft, which refers instead to the “*treatment of mental disorder*”.
10. The Committee recommended the use of the term “treatment and care” be used to reflect the range of services required. Care is included in the definition of “*treatment of mental disorder*”, but social care services has been added as a separate Matters to reflect the way in which Schedule 5 to the Government of Wales Act is divided into different Fields.

### **Relationship of the changes to the views of the Welsh Affairs Committee**

11. The form of the proposed LCO was amended substantially by the Member in charge following consideration of the Assembly Committee’s report and discussions with the Minister and her officials. The revised version was laid before Parliament on 21 May 2009. It was considered by the Welsh Affairs Committee, which reported on 20 October 2009. The WAC’s conclusions and recommendations are set out in pages 26-28 of its report.

12. The WAC was generally supportive of the proposed LCO as revised, and the “use of broad drafting in the proposed Order.” It was satisfied that the proposed exclusions were appropriate. The WAC recommended reconsideration of the drafting of the exception of advocacy services. The draft LCO does not incorporate any change to the drafting of that exception.

### **Technical Drafting changes**

13. A small number of minor drafting changes have also been made, including:
- the date of the Order has been updated;
  - the numbers of Matters reflect those matters inserted by previous LCOs;

### **Conclusion**

14. The principle of the granting of legislative competence in relation to the assessment of mental health and the treatment of mental disorder has been agreed by both the Assembly Committee and the Welsh Affairs Committee. As recommended by the Assembly Committee and agreed by the Welsh Affairs Committee, competence in relation to related social care services has been added to the competence. The detailed drafting has been revised following discussions between the Member in charge and those supporting him on the one hand and the Minister and her officials on the other hand.

Legal Services

National Assembly for Wales

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