



**Cynulliad Cenedlaethol Cymru
The National Assembly for Wales**

**Y Pwyllgor ar y Gorchymyn Arfaethedig ynghylch
Darparu Gwasanaethau Iechyd Meddwl
The Proposed Provision of Mental Health Services
LCO Committee**

**Dydd Mawrth, 6 Mai 2008
Tuesday, 6 May 2008**

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Cofnodir y trafodion hyn yn yr iaith y llefarwyd hwy ynddi yn y pwyllgor. Yn ogystal,
cynhwysir cyfieithiad Saesneg o gyfraniadau yn y Gymraeg.

These proceedings are reported in the language in which they were spoken in the committee.
In addition, an English translation of Welsh speeches is included.

Aelodau'r pwyllgor yn bresennol
Committee members in attendance

Janice Gregory	Llafur Labour
Bethan Jenkins	Plaid Cymru The Party of Wales
Val Lloyd	Llafur Labour
David Melding	Ceidwadwyr Cymreig (Cadeirydd y Pwyllgor) Welsh Conservatives (Committee Chair)
Jenny Randerson	Democratiaid Rhyddfrydol Cymru Welsh Liberal Democrats

Eraill yn bresennol
Others in attendance

Claire Fife	Rheolwr Ddeddfwriaeth Iechyd Meddwl Mental Health Legislation Manager
Edwina Hart	Aelod Cynulliad, Llafur (Y Gweinidog dros Iechyd a Gwasanaethau Cymdeithasol) Assembly Member, Labour (The Minister for Health and Social Services)

Swyddogion Gwasanaeth Seneddol y Cynulliad yn bresennol
Assembly Parliamentary Service officials in attendance

Anna Daniel	Clerc Clerk
Olga Lewis	Dirprwy Glerc Deputy Clerk

Dechreuodd y cyfarfod am 9.41 a.m.
The meeting began at 9.41 a.m.

Cyflwyniad, Ymddiheuriadau a Dirprwyon
Introduction, Apologies and Substitutions

[1] **David Melding:** Good morning and welcome to this meeting of the Proposed Mental Health Services LCO Committee. I will just go through the usual housekeeping announcements and remind everyone that proceedings will be conducted in Welsh and English. When Welsh is spoken, a translation is available on the headset by turning to channel 1; channel 0 will amplify proceedings. Please switch off all electronic equipment completely, or it will interfere with our recording equipment. We do not anticipate a fire drill this morning, so if we hear the fire alarm, please follow the instructions of the ushers with all due application and speed.

[2] We have had no apologies, and therefore no substitutions.

9.41 a.m.

Gorchymyn Cynulliad Cenedlaethol Cymru (Cymhwysedd Deddfwriaethol)
(Rhif 6) 2008 (Ynghylch Darparu Gwasanaethau Iechyd Meddwl)

**National Assembly for Wales (Legislative Competence) (No. 6) Order 2008
(Relating to Provision of Mental Health Services)**

[3] **David Melding:** It is now my task to welcome Edwina Hart to this morning's meeting to talk about this proposed legislative competence Order. Although it does not emanate from your department, Edwina, you have taken an interest from the start. We have a range of questions that we will put to you, reflecting upon the evidence that we have heard in our meetings to date. I will start.

[4] You have expressed goodwill towards the intention to seek legislative competence in this area of mental health provision and services, and I wonder if that is because you have reflected on the current limitations upon the Assembly, and particularly the Assembly Government, in terms of what can be done to improve services around assessment, advocacy and treatment. At the moment, do you feel that there are any particular barriers stopping us from developing the best possible legislative framework?

[5] **The Minister for Health and Social Services (Edwina Hart):** If I may, I would like to start my evidence today with a statement of support for the broad principles of this LCO. There is a clear commitment in 'One Wales' to making mental health a key priority. Jonathan's proposals are in complete harmony with the evidence that I received when I went out to discuss issues around mental health with various charities some time ago. With the co-operation of Jonathan and other party spokespeople, I took evidence from the voluntary sector about their concerns for enhancing mental health legislation. I must also say that I was disappointed that I was not able to impact upon the legislation that recently went through Westminster. However, as mental health is a high priority, it is important that we send out the right message—I think that it was Bill from Hafal who made that point in evidence to you. The LCO is helpful in the way that it deals with advocacy issues, because that is the area where there are severe limitations within Wales that need to be legislated for. I hope that that helps.

[6] **David Melding:** On the technical point about the current system, is there anything in particular that you would like to mention, or is it just that the broad competence over these areas would be welcome?

[7] **Edwina Hart:** Broad competence would be welcome, but we also have the national service frameworks, which are supposed to cover services for adults, children and young people. As we develop the Measures, we will have the opportunity to see how this legislation can be used to help. That is the area that I am most happy about.

[8] **David Melding:** That is as far as we need to go, without delving into the reasons why the current system is not optimum.

[9] **Bethan Jenkins:** I think that my question still concentrates on the current system. You mentioned the limitations and that the revised adult mental health national service framework encompasses duties and targets on statutory and non-statutory bodies. Do you think that this competency is needed when there are already targets in place for those who seek treatment?

[10] **Edwina Hart:** Yes, I do. It is important that we add to what we have got. There are many issues that the current legislation is not addressing in some key areas. We have secondary legislation powers under the Mental Health Act 1983, but those do not cover assessment, treatment and advocacy or those who are not subject to compulsion. I regret that we did not secure the framework powers under the Mental Health Bill as I would have wished. So, I think that this competency Order allows us to deal with some issues that are

important.

[11] There are various duties for the NHS and for local government in terms of the provision of services that, individually, go some way to secure assessments, but taken collectively, that is not cohesive across Wales. So issues arise on vital details that we need to deal with.

[12] **Janice Gregory:** It has been suggested in evidence received by this committee that the impact on mental health services by way of the amended 1983 Act is, as yet, unknown. Do you think that the proposed Order should be delayed until that impact can be assessed and if not, why not?

[13] **Edwina Hart:** No, I do not think that we should delay. I think that we could wait forever to look at the outcome of how legislation works in another place. Jonathan's proposals end in meeting the needs of people to whom the legislation does not apply. That is quite important. If mental health is a priority, we must tackle this, because we have waited long enough for that last Bill and I do not think that we want to wait any longer for some of the measures that are contained in Jonathan's proposals. You could wait forever and not produce any better legislation, in terms of experience.

[14] **Jenny Randerson:** We have heard from several witnesses about the system in Scotland. To what extent might the Scottish system of mental health care provide an effective model for Wales?

[15] **Edwina Hart:** I am very interested in the issues in Scotland—I have taken a great interest in those issues. We can learn lessons from Scotland, but I also think that they can learn from us in terms of how we are taking this Order forward.

[16] There is a different approach in some areas. For example, compulsion applies only to those with impaired decision making, which is not a feature of the legislation here. There are some thoughtful elements in the Scottish legislation, which I think that we can broadly support, but I want to signal my intention that, should competence be achieved—as I am confident that it will—the Government will take an inclusive and open approach to developing Measures, which will be very useful. There are also the issues of improving access for service users, improving support and reducing the burden of ill health. This Order will help to take those matters forward. The service providers and commissioners of advocacy should always be at the core of how we deal with services in this process. That is what we have learnt in terms of some of the issues that the Scots have looked at.

[17] **Jenny Randerson:** Do you have any evidence on aspects of the Scottish legislation that are not working well? Where do you think that we can improve upon it?

[18] **Edwina Hart:** I am not certain that we have had any indication from the Scots that their legislation is not working well. Claire, do you know?

[19] **Ms Fife:** The Scottish Government has not indicated as much. However, we were aware from some of the professionals working in Scotland that they found some of the legislation quite bureaucratic and slightly impenetrable. However, as the Minister said, the inclusive approach towards service delivery is broadly welcomed.

[20] **Jenny Randerson:** The definition of treatment in the Scottish legislation includes nursing care, psychological intervention, habilitation and rehabilitation. That is similar to the definition of treatment that will apply in the amended Mental Health Act 1983. Do you think that either of those definitions of treatment, or a different one, should be included in the proposed Order, or do you think that that should be left to future Measures?

[21] **Edwina Hart:** There are obviously significant similarities between the definition in the Mental Health Act 1983 and Mental Health (Care and Treatment) (Scotland) Act 2003. What we see in both is the breadth covered by treatment, which I think is the most important aspect of this. As I think I have said, definition is important, but I prefer the definition of 'treatment' adopted in the 1983 legislation. That is my view.

9.50 a.m.

[22] **Val Lloyd:** The proposed Order would allow future Measures to place a duty on the health service in Wales to provide assessment and treatment. Do you think that duties should be placed on bodies other than the health service, and, if so, which services should be provided by those bodies? You mentioned local government in an earlier answer.

[23] **Edwina Hart:** The evidence that you received from the Association of Directors of Social Services clearly set out the scope for the involvement of the service in that area. As far I am concerned, there should be a duty on local government, and it is one area that I want the committee to consider. I was pleased to hear that Jonathan does not mind looking at this issue again, as he is the sponsor of this LCO. Local authorities have a key role in delivering health services and so the duty should not just be on the health service, but on local government as well.

[24] **Val Lloyd:** To expand on that, do you think that any duties should be placed on the police?

[25] **Edwina Hart:** This is difficult for us, because the police service is not devolved to Wales. We have an excellent relationship with the police and so perhaps that could be achieved without necessarily placing duties on them. The Association of Chief Police Officers in Wales wants a closer working relationship with the health service, and so I think that we could work on that. I do not think that we necessarily have to include it in any legislation to get an effective working relationship. However, that is very much a personal opinion.

[26] **Val Lloyd:** Are there any other bodies that statutory duties could, or should, be placed on?

[27] **Edwina Hart:** No. I think that local government and the health service will be sufficient in this case.

[28] **David Melding:** That is very clear. Janice has the next questions.

[29] **Janice Gregory:** We all know what an important role the voluntary sector plays in providing services to those with a mental disorder. Do you think that the proposed Order provides sufficient scope for that role to continue, and does the Order need to refer to its role specifically?

[30] **Edwina Hart:** I think that we all recognise the role of the voluntary sector in developing mental health services. We probably would not be having this discussion today if it had not been for the lobbying of the voluntary sector on many mental health issues over the past few years. The sector provides day-to-day services to many people, not only those with mental health problems, but their carers as well, whom they assist. The voluntary sector is a key player, but the fact that local government and health will have a statutory duty placed on them is sufficient, as they have a relationship with the voluntary sector. It will be a matter of how those organisations that have a statutory duty plan their services with the voluntary sector, and I think that that is sufficient.

[31] **Val Lloyd:** The proposed Order currently excludes those receiving compulsory treatment under the Mental Health Act 1983 from any future Measures. Do you support that exclusion, and if not, why not?

[32] **Edwina Hart:** That is a difficult question. I agree with the exclusion of those under the 1983 Act, to a certain extent. I have already identified the key objective of people receiving early intervention, to reduce the likelihood of compulsion being required. So, I agree that it is right in respect of assessment and treatment, but I wonder about patients under guardianship, as that is an issue. The Order is currently silent on that, and I am not sure whether that was Jonathan's intention, but the committee might well want to explore that issue.

[33] **David Melding:** We will make a note of that. It has not been raised with us, but we will have the opportunity to put that to Jonathan, given that you feel that it is a significant area. Val, are you happy with that? I see that you are, so we can move on.

[34] **Bethan Jenkins:** Going back to advocacy, what are your views on the integration of advocacy for those who are detained and those who are not detained? We have had evidence from some organisations to the effect that they would like it to be more cohesive. Do you agree with that, or do you think that it should be kept separate for now, so that there is a clear defining line between the two?

[35] **Edwina Hart:** There are some wider issues on advocacy that fit into that point. My concern about advocacy is that it be delivered with equality across the piece. There is an issue about the national advocacy qualification, as anyone who is offering it in any system must be fully qualified. In the long run, that issue will have to be addressed.

[36] **Bethan Jenkins:** However, do you not believe that it should be addressed within this particular legislative competence Order?

[37] **Edwina Hart:** Not necessarily, but I will take advice from my officials, as this has been the subject of discussion.

[38] **Ms Fife:** The Minister has asked officials to look at whether advocacy should not be excluded in the way that it is for patients under the Mental Health Act 1983. The Minister has been extremely concerned that patients under that Act might fall outside the scope of any future Measure advocates, if I may call them that, and that people who are detained under the Act might have an imbalance of access. So, the Minister is keen to understand whether the Order needs to be amended to include patients who are detained under the Act in respect of advocacy.

[39] **Bethan Jenkins:** Are you currently looking into that?

[40] **Edwina Hart:** Yes. Since we started to discuss these issues, this has come out of the woodwork, as it were. We need to look at these areas in light of how we deliver future services.

[41] **Bethan Jenkins:** Who do you believe should provide or commission independent advocacy, and do you believe that this is a matter for this proposed Order or for any future Measure?

[42] **Edwina Hart:** Independence has to be defined, and that is an issue. The nature of advocacy is its independence, because that is what you expect. If you are to advocate on someone's behalf, you must be an appropriate person to do that, and that would have to be set out in Measures. I am also not certain, Chair, about the term 'mental health advocate', as that

is the term that will be used under the new Mental Health Act 2007, and I would not want any confusion with this Order about what mental health advocate means. Those issues will have to be considered in committee. I am not sure what term we could use instead, but it is too closely linked to the current legislation that has gone through at Westminster. We do not want to confuse people who are working in the field with a mismatch of terms.

[43] **Bethan Jenkins:** Is that where we can go back to the Scottish example, perhaps, as it would be useful to list what would be termed as 'independent' to get a measure of clarity?

[44] **Edwina Hart:** We can look at that issue through Measures.

[45] **David Melding:** The crucial matter is whether it can be written into the LCO, but that might be difficult because of what you are suggesting. However, it could be addressed at the Measure stage.

[46] **Janice Gregory:** Moving on to cross-border issues, the proposed Order makes reference to services being provided by the health service in Wales. Could that create any difficulties, such as when a patient or service user receives services in England but resides in Wales?

[47] **Edwina Hart:** We see no difficulty with cross-border issues.

[48] **Janice Gregory:** Thank you. Evidence has suggested that if we had a distinct legal framework of mental health services in Wales, it could affect the recruitment of staff to the health service in Wales, as professionals trained in England would not be familiar with our legislation. Do you have any views on that?

[49] **Edwina Hart:** I am afraid that I do not accept that. Legislation works differently on both sides of the border in a number of areas. Given the limitations of the Order, we are not talking about anything that is changing the main framework in the UK; we are talking about additionality. I would have thought that it would be enormously attractive to some mental health workers to come across the border and be recruited here, because they will see this as the correct way to be going forward. People are already looking at the fact that this action is being taken here, and would very much like it to be taken in England.

[50] **Val Lloyd:** I now turn to the very important role of carers, Minister. We have heard about the importance of carers from a number of witnesses, which all of us around this table would agree with 100 per cent, I am sure. Carers already have certain rights to an assessment, but do you feel that they should be covered explicitly by the proposed Order?

[51] **Edwina Hart:** I understand that you took evidence from Bob Woodward.

[52] **David Melding:** Yes, from Cardiff Community Health Council.

10.00 a.m.

[53] **Edwina Hart:** He was on about that issue. I do not think that the LCO should be extended to cover carers at this time, but there is an issue with carers that we might want to look at for future Measures. However, I will look carefully at the evidence that you have taken on the role of carers. There is no doubt that there is sometimes an impact on the mental health of carers, as they look after people, and that will have to be addressed. However, I would like to see these issues dealt with in the wider discussion on carers and see what emerges from your discussions.

[54] **Val Lloyd:** Thank you. My supplementary question has also been covered.

[55] **Bethan Jenkins:** I know that there has been some concern from children's charities, such as the NSPCC and from the children's commissioner about the definition in the Order of 'persons' who are suffering from a mental disorder. What is your concern over that? Will any future Measure incorporate the child and adolescent mental health services strategy, or do you think that children are incorporated, as it stands?

[56] **Edwina Hart:** The Order is age blind; that is how I have viewed it. My reading is that it does cover children and young people, and, as far as I am concerned—and Jonathan could clarify this in the explanatory memorandum—it is age blind, and so that is sufficient for me.

[57] **Bethan Jenkins:** Okay. That covers my second question.

[58] **Jenny Randerson:** Within this Order, mental disorder is defined as any disorder or disability of the mind. Do you think that is a suitable definition, and, if not, why not?

[59] **Edwina Hart:** I find this quite a difficult question, and I am sure that it is a question that concerns the committee. I acknowledge that there are opinions on both sides, but I think that Jonathan has put the right term in the Order. 'Mental stress' has been suggested by Mind Cymru. It has raised the issue with me and I accept its point of view. However, people can be stressed for a lot of reasons, such as arguments within families and with loved ones and so on. It is part of the human condition. At the end of the day, mental disorder is a much more clearly defined term, in my opinion, and so I support its inclusion.

[60] **Jenny Randerson:** The proposed Order aims to allow future Measures to provide services to those who 'may' be mentally disordered, as well as people with a confirmed diagnosis. Do you think that that terminology is inclusive enough to enable us to provide help to all those who need it?

[61] **Edwina Hart:** That is an issue for lawyers. Hafal made that suggestion to you. There is an issue with early intervention for people who have not previously needed services, but, ultimately, this is a legal opinion and is not a matter for me. I can understand why this point has been made, but I am not sure how you can deal with it in this legislative competence Order.

[62] **Jenny Randerson:** Some witnesses have suggested that the Order should focus on those with a serious mental condition. Therefore, I am suggesting that this is too all-inclusive as a term.

[63] **Edwina Hart:** I will be honest with you, Jenny, and I will take advice from Claire, but I am not certain about this. I would need more advice before answering that, and you as a committee probably need more advice on it as well. I have not really considered that, because it is not my legislation; it is only because it has arisen in the evidence that you have received that we have given it some consideration.

[64] **Jenny Randerson:** Do you think the Order should specifically include those who have previously had a mental disorder and are now recovering? Do you think it should be explicit about that?

[65] **Edwina Hart:** We have talked about this, have we not?

[66] **Ms Fife:** We have. What the Minister has been keen to ensure is that it is broad, as she has said. If it were restricted to people who have had a previous diagnosis, it might be overly limiting, and, to reflect back on what Bill Walden-Jones from Hafal said, you would

not want to preclude early intervention for people who have not previously accessed services. So, that might be unnecessarily restrictive. However, that kind of work could be taken forward in Measures, and provided the ‘may be’ is encompassed within it, you would have that flexibility in the future should you wish to go down that route.

[67] **David Melding:** Minister, if I understood you correctly earlier, in response to the question on whether we should define treatment and give a whole list as is done in some legislation—and the Scottish Act was quoted—you said that that should be addressed in a Measure rather than in the legislative competence Order. You have also said that you would like the Order to include local authorities. Some witnesses said that perhaps the term ‘treatment and care’ would be a more comprehensive way of capturing what we are about and would have a very particular relevance to local authorities. So, if we write in ‘local authorities’ or recommend that they are included, should we, if we are going to have general terms in the LCO to allow for more specific development in the Measure, instead of saying ‘treatment’, say ‘treatment and care’?

[68] **Edwina Hart:** I think that the lawyers would need to look at that, but I think that it is appropriate, if we can, to define what is meant by ‘treatment’. We must recognise that treatment is wider than medical intervention. The purpose of this is that issues can be dealt with by a wide range of professional groups, which include social workers and people within local government. There is a definition in the Mental Health Act 1983, which states that medical treatment includes nursing, psychological intervention, and specialist mental health habilitation, rehabilitation and care. I know that you have also looked at how the Scots have dealt with this in terms of legislation. That is about getting the breadth. In the context of our discussion regarding where our duties lie, and the importance of the recovery of modern active intervention, we ought to perhaps put a definition in. I am sorry that I cannot be more helpful, but this is quite a tricky area in terms of the advice that we would need from lawyers with regards to the Scottish legislation. However, I take your point that it is not just about treatment but about care, which is the wider breadth of this Order, which is coming across. It is a very difficult area.

[69] **David Melding:** Given your direct, candid and to-the-point style, we have got through many questions. The evidence from your department is very clear. Are there any issues that Members wish to raise? Do you want to add anything, Edwina? We usually give witnesses the opportunity to make further comments should they feel that something has not been covered by the questions.

[70] **Edwina Hart:** I would just like to say that the inclusive way in which this has been dealt with across Wales is enormously helpful in terms of the discussion. I, as Minister, am very interested in how this proceeds. I am more than happy to continue to give assistance to the committee. However, I want to stress that I think that local government should be included in this because if we do not include local government in health matters, we will have lost one side and an opportunity to deal with this in a holistic manner.

[71] **Bethan Jenkins:** The National Autistic Society has expressed concerns regarding the fact that people with autism sometimes fall out of the loop of being defined as having a mental health disorder. Where do you see this LCO coming into play in that regard, or would that again be for the Measure stage?

[72] **Edwina Hart:** That would be for the Measure stage.

[73] **David Melding:** Thank you, Minister. We are very grateful for your offer of further help with our work. We intend to have an initial discussion on the evidence and our initial findings in two weeks’ time. Shortly after that, we will draft our report. Given the importance of the evidence that we have heard from you this morning, there are some issues around legal

definitions and the overlap between the Mental Health Act 1983 as amended and what we may be recommending in terms of the LCO. It would be helpful if I could have an exchange of correspondence with you. I will write to you with regard to some of the matters that I think that we would like further help with, if possible, within that timeframe so that we can then share correspondence. I do not think that it will be necessary for us to hear any further evidence from you in person, but an exchange of correspondence might be helpful. As I said, we are very grateful for your evidence this morning and the way in which you have been prepared. I think that we have had the clearest of steers about the importance that you place on this competence coming to the Assembly and that the Executive would find this useful. You are clearly determined to develop more comprehensive and broader mental health services with the possibility of much earlier intervention. I am sure that Jonathan Morgan, the Member who is sponsoring this LCO, will appreciate your support. We will have a session with him to discuss some of the issues that you have raised. Once again, I thank you and your officials for your attendance this morning.

10.10 a.m.

Dyddiad y Cyfarfod Nesaf
Date of Next Meeting

[74] **David Melding:** The next meeting will be a week from today—someone will now tell me what the date of it is. It is 13 May. We will be taking evidence from three organisations, so, again, we will have a lot of work to do at that meeting, but it is important that we get through that as efficiently as possible. We will come prepared and try to finish at a reasonable hour. With that, I conclude this morning's meeting and thank you all for your attendance.

Daeth y cyfarfod i ben am 10.10 a.m.
The meeting ended at 10.10 a.m.