

Healthcare Inspectorate Wales

Submission on Proposed Mental Health Services Legislative Competence Order

Healthcare Inspectorate Wales (HIW) is responsible for undertaking reviews and investigations into the provision of NHS funded care either by or for Welsh NHS organisations in order to provide independent assurance about and to support the continuous improvement in the quality and safety of Welsh NHS funded care. HIW is also responsible for undertaking reviews and investigations into independent healthcare settings which include acute hospitals, mental health establishments, dental anaesthesia settings, hospices, private medical practices and specialised clinics. From April 2009 HIW will undertake the monitoring functions under the Mental Health Act 1983 that are vested in Welsh Ministers and currently the responsibility of the Mental Health Act Commission.

1. *Would the terms of the proposed Order confer the appropriate powers on the National Assembly for Wales to allow for the implementation of the policy proposals outlined in the Explanatory Memorandum?*

Yes, in general.

2. *Is the scope of the proposed Order appropriate, too narrow or too broad to allow the Assembly to bring forward the Measures to address issues you believe should be addressed via legislation in the field of Mental Health in Wales? If necessary, how should the proposed Order be re-drafted and why?*

The Order and supporting documentation need to clarify to whom it is applicable. The explanatory memorandum refers to the adult mental health strategy and NSF, which could be taken as implying the Order will apply only to adult services or patients. If this is case, the Order could be applicable to some 16 and 17 year olds but not others. The criteria which define whether a young person accesses child or adult mental health services vary across Wales, and depend on age and other factors, such as educational status.

3. *The proposal is to impose duties on the Health Service to provide assessment of and treatment for mentally disordered persons. Should it cover duties on other bodies?*

Mental health services are often delivered by multi-disciplinary and multi-agency teams, particularly in association with social care, so duties should apply equally to these partners.

There needs to be clarity around the definition of "the Health Service" to identify whether duties fall upon registered independent healthcare settings who provide mental health services.

Duties should fall upon both the providers and commissioners of mental health services to arrange and deliver assessment and treatment for individuals.

There should also be clarity about the duties on those responsible for the care of individuals who may be mentally ill to ensure that they are assessed, for example registered care settings, other independent healthcare settings or prisons

4. *The parts of the proposed Matter which relate to assessment and treatment (paragraphs (a) and (b)) are limited to "the health service in Wales". Would this deal appropriately with any cross-border issues?*

So long as there is a duty clearly laid on commissioners to ensure provision of treatment, there should be no problem for Welsh patients whose care and treatment they are arranging outside Wales. There is potential for dispute over patients in Wales whose care is commissioned by an organisation outside Wales who would not be bound by the duties, but these may well be better addressed by Measures related to the Order.

5. *In relation to assessment of persons and advocacy services, the matter applies to persons "who are or may be mentally disordered". What are your views on this?*

We would suggest that "appear to be" is a better phrase.

6. *Is it appropriate to limit legislative competence to exclude persons detained under the Mental Health Act 1983?*

Yes, as patients have rights and services have responsibilities under the Act

7. *Is the definition of "mentally disordered persons" in the proposed Order appropriate? If not, how should the definition be re-drafted and why?*

Yes, as it matches that of the Mental Health Act

8. *Should the term "treatment" also be defined within the matter?*

We feel it would be helpful to have a definition which matches those used in the Mental Health Act and other legislation