

Y Gwir Anrh/Rt Hon Rhodri Morgan AC/AM
Prif Weinidog Cymru/First Minister for Wales



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Our ref / Ein cyf: MB/FM/753/06

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Dear David

On the 5th of December 2006 I undertook to provide you with a detailed response to your question regarding why the Assembly did not seek framework powers or a Welsh clause to the Mental Health Bill 2006.

Before I turn to the substantive points of your question, I would wish to make you aware that the Mental Health Bill does in fact contain two clauses concerning matters in Wales. The first at clause 36 is concerned with Local Health Boards (LHBs). The purpose of this clause is to make it clear (for the purposes of the Mental Health Act 1983) that the managers are the Local Health Board in respect of a hospital vested in a LHB. The second clause, clause 37, amends the provisions in section 143 of the 1983 Act which makes provision in relation to the exercise of regulation, order and rule making powers. In particular it provides the procedure to be applied when such powers are exercised by the Welsh Ministers, as it will be after May 2007.

However I suspect the main point you were seeking me to clarify was the matter of framework powers under this Bill.

The Minister for Health and Social Services decided against seeking framework provisions in respect of the Mental Health Bill for the following reasons:

- Like the Act that it will amend, the Bill is concerned with vulnerable people who are detained and treated under compulsion. The 1983 Act is concerned with the detention of patients to ensure that they receive treatment for their mental disorder where they pose a risk of harm to themselves or to others. As such the Act sets out processes for compulsion which are common to patients whether from Wales or England, rather than reflecting the structural differences between the NHS in Wales and the NHS in England
- In practice, the definitions and exclusions for mental disorder are the essential elements of who may be detained. It would not be appropriate to have difference in definition between Wales and England, not least because of the significant cross border issues that would arise. This could also affect recruitment and retention of doctors, nurses, social workers and other health professionals.

- The proposed provisions in the Bill for Supervised Community Treatment will provide for compulsion in the community where this is judged by the clinician as appropriate and safe, and the Assembly will ensure that there is extensive guidance on this within the Code of Practice for Wales. The Adult Mental Health National Service Framework (NSF) "*Raising the Standard*" sets out in Standard 6 the model of service we require; in particular specifying assertive outreach and crisis resolution and home treatment services and the Code of Practice for Wales will be drafted to be consistent with the NSF. You will be aware that there will be a separate Code of Practice for England.
- The provisions that are being proposed for the amending Bill in terms of the provisions for nearest relative are to remedy an ECHR incompatibility within primary legislation and therefore must be completed. This is the position also in respect of the Bournemouth safeguards. Such amendments must be made to the primary legislation.
- You will be aware from the Bill that the Assembly will have significant regulation - making powers in respect of determining who may perform the functions of the Approved Mental Health Professional, approved clinician and the responsible clinician, together with determining their training and qualifications and regulation. This will enable Wales to regulate in such a way as meets our service requirements and if appropriate, adopt a different approach to that adopted in England as to which professionals can undertake these roles.
- The Assembly will also have significant regulation-making powers in respect of determining when the referral periods will occur in respect of the Mental Health Review Tribunal.

These reasons are also set out in the relevant statement of information that has been published following the introduction of the Mental Health Bill into the House of Lords.

There is also a commitment to the development of a separate Code of Practice for Wales which will provide the Assembly with the opportunity to emphasise the importance of our strategies, not only in adult mental health but also older persons and children, with their themes of empowerment and equity.

The Health & Social Services Committee will be discussing the Mental Health Bill 2006 in their January meeting, and they will, I am sure, be watching the parliamentary scrutiny of this Bill with much interest, as will I.

Yours
Rhodri