



House of Commons
Welsh Affairs Committee

**Proposed National Assembly
for Wales (Legislative
Competence) (Health and
Health Services and Social
Welfare) Order 2009:
Government Response to the
Committee's Fourteenth
Report of Session 2008-09**

**First Special Report of Session 2009-
10**

*Ordered by the House of Commons
to be printed 15 December 2009*

The Welsh Affairs Committee

The Welsh Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Office of the Secretary of State for Wales (including relations with the National Assembly for Wales).

Current membership

Dr Hywel Francis MP (*Labour, Aberavon*) (Chairman)
Mr David T.C. Davies MP (*Conservative, Monmouth*)
Ms Nia Griffith MP (*Labour, Llanelli*)
Mrs Siân C. James MP (*Labour, Swansea East*)
Mr David Jones MP (*Conservative, Clwyd West*)
Mr Martyn Jones MP (*Labour, Clwyd South*)
Rt Hon Alun Michael MP (*Labour and Co-operative, Cardiff South and Penarth*)
Mr Albert Owen MP (*Labour, Ynys Môn*)
Mr Mark Pritchard MP (*Conservative, The Wrekin*)
Mr Mark Williams MP (*Liberal Democrat, Ceredigion*)
Mr Hywel Williams MP (*Plaid Cymru, Caernarfon*)

Powers

The committee is one of the Departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the Internet via www.parliament.uk.

Publications

The reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/parliamentary_committees/welsh_affairs_committee.cfm.

Committee staff

The current staff of the Committee is Dr Sue Griffiths (Clerk), Alison Groves (Second Clerk), Anwen Rees (Inquiry Manager), Christine Randall (Senior Committee Assistant), Annabel Goddard (Committee Assistant), Tes Stranger (Committee Support Assistant) and Rebecca Jones (Media Officer).

Contacts

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First Special Report

The Committee published its Fourteenth Report of Session 2008-09 *The proposed National Assembly for Wales (Legislative Competence) (Health and Health Services and Social Welfare) Order 2009* on 30 October 2009. The Secretary of State for Wales wrote a letter to the Chairman of the Committee on 10 December 2009 which is published as an Appendix to this Special Report. The draft Order *The National Assembly for Wales (Legislative Competence) (Health and Health Services and Social Welfare) Order 2010*, together with an Explanatory Memorandum, is also published as an Appendix to this Special Report.

Appendices

Letter from the Secretary of State for Wales to the Chairman of the Committee

I have today laid the draft National Assembly for Wales (Legislative Competence) (Health and Health Services and Social Welfare) Order 2010 for approval by resolution of the House.

This Legislative Competence Order relates to mental health, and was approved by the National Assembly on 9 December. This backbench LCO was brought forward by Jonathan Morgan AM, and is endorsed by the Welsh Assembly Government.

I would like to thank the Welsh Affairs Committee for having undertaken a thorough and effective inquiry into the proposed Order. I was pleased that the Committee agreed a clear need for this LCO had been identified and acknowledged the effective co-operation between the Wales Office, the Welsh Assembly Government and Mr Morgan.

Both the Welsh Affairs Committee and National Assembly Committee that scrutinised the Order requested that the Explanatory Memorandum makes clear to whom any new duties created by future Assembly Measures and imposed on the NHS and local authorities would apply. Whilst both Committees were satisfied that the LCO extended competence in relation to persons with a current or previous diagnosis of mental disorder, as well as those without such a diagnosis, the Memorandum now confirms that position (at paragraph 7.14).

The Welsh Affairs Committee in its recommendations correctly noted that it is not the intention to disapply in Wales the right to an Independent Mental Health Advocate (IMHA) for those subject to compulsory powers under the Mental Health Act 1983. The Committee suggested the drafting of the LCO should be amended to make this clear.

The drafting of the LCO has been carefully reconsidered by Jonathan Morgan, the Welsh Assembly Government and the UK Government in light of the Committee's suggestion. It was decided, on balance, not to modify the LCO to exclude from competence advocacy for those subject to the 1983 Act. The Explanatory Memorandum has been amended (at paragraph 7.20) to make this clearer.

In giving evidence, officials confirmed the Assembly Government's support for the development of independent mental health advocacy in Wales, including for those subject to compulsion under the 1983 Act. The IMHA scheme has been operating in Wales since November 2008, and I expect the Welsh Assembly Government to develop it further, providing an important safeguard for patients. However, excluding competence in relation to IMHA would limit the National Assembly's flexibility to further improve and develop the advocacy scheme in Wales.

In contrast, the competence as defined would enable the National Assembly to update the IMHA scheme over time and potentially to replace it with an improved and expanded scheme to deliver specialist mental health advocacy to patients subject to compulsion or otherwise.

I enclose a copy of the draft Order and accompanying Explanatory Memorandum.

Rt Hon Peter Hain MP
Secretary of State for Wales

10 December 2009

