

Date: Thursday 14 October 2004  
Venue: Committee Rooms 3&4, National Assembly for Wales, Cardiff Bay  
Title: Draft Mental Health Bill - Response from the Association of Directors of Social Services (Wales)



**ASSOCIATION OF DIRECTORS OF SOCIAL  
SERVICES (WALES)  
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CYMDEITHASOL (CYMRU)**

**Draft Mental Health Bill 2004  
Evidence from ADSS Wales**

The following comments have been compiled on behalf of the ADSS in Wales and represent key aspects upon which we would like to respond.

1. General Remarks

ADSS in Wales recognises that the Draft Mental Health Bill 2004 is a fundamental part of the Government's strategy to improve mental health provision. We further acknowledge that a modern legal framework is required to reflect the way in which services increasingly need to develop.

In this context, ADSS in Wales supports the need for a new Mental Health Act. Nevertheless, we believe that progress towards a modern mental health system in Wales has been limited. Although examples of new and innovative community approaches are beginning to emerge they remain hampered by inadequate levels of investment, which restrict the capacity to develop *robust* alternatives to traditional service provision.

We acknowledge that within Wales a range of reviews have been recently commissioned which will help to identify both progress in modernisation and provide the opportunity to address gaps in service provision that currently exist. However, it is our view that substantial additional investment in new services will be required and without it,

services will simply not be equipped to put the safeguards in place that the Government believes will help reduce levels of compulsion.

We acknowledge the Government's commitment to investment in mental health services and also accept that it has given indications as to the workforce requirements generated by the Bill. However, in Wales we believe that additional investment in services has, to date, been inadequate and we would argue that the workforce assessment has been under-estimated.

## 2. Definition of Mental Disorder

ADSS in Wales view the 2004 definition of Mental Disorder and associated conditions as an improvement upon the earlier draft, particularly in terms of a raised threshold around self-harm etc. However, whilst acknowledging the Government's attempt to ensure that people with particular needs, e.g., associated substance misuse problems, are not excluded from the provisions where compulsion is necessary, we remain of the view that the revised definition and associated conditions will result in an increase in levels of compulsory detention.

## 3. Assessment as a non-resident patient

ADSS in Wales supports the general principle of providing non-compulsory mental health care within community settings wherever this is appropriate and feasible. ADSS in Wales further recognises that existing statute already confers powers to facilitate care in the community settings where it cannot be provided without the use of compulsory powers e.g., Guardianship. We welcome the clarification on how the formal powers in the Bill for assessment in the community can be implemented.

However, as stated earlier, the levels of community service are, in our view, not sufficiently developed at this stage to allow for equivalent assessment when compared with in-patient settings. With this in mind and given the current pressure on in-patient beds, we remain concerned that people will be subjected to formal powers in the community that are not sufficiently comprehensive and driven by a 'supply' rather than 'needs' led agenda.

We recognise the desire of the Government to attempt to restrict relapse and facilitate recovery by encouraging the maintenance of contact with informal support networks through the introduction of community orders. However, the protection of others from harm (including emotional harm)

is often a significant factor in the decision to compulsorily admit under current legislation. The impact of community orders upon carers and caring networks should not therefore be under-estimated.

#### 4. The Approved Mental Health Professional

ADSS in Wales welcomes the positive references to the contribution made by Approved Social Workers under the current Mental Health Act.

ADSS acknowledges that the integration agenda is facilitating the development of “generic” skills within services. However, we remain disappointed that the Approved Social Worker role has not been retained within the new Bill. We also believe that the Government has over estimated the desire of other professional groups to take on this important role. In this context, we believe that the Government’s assessment that only a further 50 WTE social workers will be required is an under-estimate.

Despite this we are heartened by the commitment to ensuring Local Authorities control the approval process under new arrangements. We also welcome the reassurances that have been given on the importance of the social, environmental and cultural contexts in both the examination process and in the training and approval of Approved Mental Health Professionals.

#### 5. The Tribunal System

As outlined in our 2002 response, the proposals around a 28 day review of continued treatment by a Tribunal are seen as positive. However, ‘resource capacity’ both within services and the Tribunal membership is inevitably a concern, given the increased workload foreseen in the Regulatory Impact Assessment.

#### 6. Aftercare and Charging for Services

ADSS in Wales welcomes the commitment to introducing fair and equitable arrangements for facilitating return to the community. It supports the proposed exemptions from charging for services along the lines of the current intermediate care policy.

#### 7. Inspection Arrangements

As outlined in our 2002 response, ADSS in Wales requests further clarity on the remit of the Healthcare Commission in respect of social care

services delivered under any new Act. We would also be keen to understand how this might compliment and benefit from the work of bodies such as the Social Services Inspectorate for Wales (SSIW).

#### 8. A Code of Practice for Wales

ADSS welcomes the proposal to create a separate Code of Practice for Wales.

#### 9. Police Powers

ADSS in Wales remain unconvinced that an emergency police power of removal and detention without warrant is necessary and are concerned that it may be open to abuse.

#### 10. Children and Young People with Serious Mental Disorder

ADSS in Wales welcome the further clarifications on the proposals in respect of children and Young People.