



# Mental Health (Wales) Measure 2010

2010 nawm 7

## PART 1

### LOCAL PRIMARY MENTAL HEALTH SUPPORT SERVICES

#### *Meaning of “local mental health partners”*

#### **1 Meaning of “local mental health partners”**

For the purposes of this Measure, the local mental health partners for a local authority area are—

- (a) the Local Health Board established under section 11 of the National Health Service (Wales) Act 2006 for an area which includes the local authority area; and
- (b) the local authority for that area.

#### **Commencement Information**

**II** S. 1 in force at 8.5.2012 by S.I. 2011/3046, art. 4(a) (with art. 5)

#### *Local primary mental health support services*

#### **2 Joint schemes for the provision of local primary mental health support services**

- (1) The local mental health partners for a local authority area must take all reasonable steps to agree a scheme—
  - (a) which identifies the treatment which is to be made available for that area for the purposes of this Part (“local primary mental health treatment”); and
  - (b) for securing the provision for that area of the services, including local primary mental health treatment, described in section 5 (“local primary mental health support services”).

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Changes to legislation: There are currently no known outstanding effects for the Mental Health (Wales) Measure 2010. (See end of Document for details)*

- (2) If a scheme is agreed, the partners must ensure that it is recorded in writing.
- (3) A scheme must identify the extent to which each of the partners is to be responsible for providing local primary mental health support services.
- (4) A scheme may provide that–
  - (a) one of the partners is to be responsible for providing all local primary mental health support services for the local authority area;
  - (b) primary mental health assessments are to be made available in respect of all or particular descriptions of the individuals described in section 8(1);
  - (c) primary mental health assessments are to be carried out in respect of particular categories of individual who would not otherwise be entitled to an assessment.
- (5) If a scheme makes provision under subsection (4)(b), it must also provide for particular descriptions of staff working in secondary mental health services to be able to refer an individual referred to in that subsection for a primary mental health assessment.
- (6) The partners may alter a scheme (including a scheme determined by the Welsh Ministers under section 4 and a scheme which has already been altered) if they agree the alterations.
- (7) If a scheme is altered under subsection (6), the partners must ensure that the alterations are recorded in writing.

#### Commencement Information

**I2** S. 2 in force at 8.5.2012 by S.I. 2011/3046, art. 4(b) (with art. 5)

VALID FROM 01/10/2012

### **3 Duty to provide local primary mental health support services**

- (1) Unless section 4(1)(a) applies, the local mental health partners for a local authority area must provide local primary mental health support services in accordance with–
  - (a) a scheme for their area agreed under section 2; or
  - (b) a scheme for their area determined by the Welsh Ministers under section 4.
- (2) If a scheme has been altered under section 2(6) or 4(2) the services must be provided in accordance with the altered scheme.

### **4 Failures to agree schemes**

- (1) If the local mental health partners for an area cannot agree a scheme under section 2–
  - (a) for so long as there is no agreement, the Local Health Board must decide what local primary mental health treatment is to be made available in the local authority area in question and is responsible for providing local primary mental health support services for that area;
  - (b) the Local Health Board must inform the Welsh Ministers that agreement cannot be reached;

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- (c) the Welsh Ministers may determine a scheme and, if they do, must record it in writing.
- (2) If one partner wishes to alter a scheme, but the other does not, the scheme may, upon a request being made to the Welsh Ministers by either partner, be altered by the Welsh Ministers to such extent as the Welsh Ministers think fit.
- (3) If the Welsh Ministers alter a scheme under subsection (2), they must record the alterations in writing.

**Commencement Information**

**I3** S. 4 in force at 8.5.2012 by S.I. 2011/3046, art. 4(c) (with art. 5)

## 5 Meaning of “local primary mental health support services”

- (1) Local primary mental health support services are the following–
  - (a) the carrying out of primary mental health assessments in accordance with the following provisions of this Part;
  - (b) the provision for an individual, following a primary mental health assessment, of the local primary mental health treatment identified by the assessment as being treatment which might improve or prevent a deterioration in the individual's mental health;
  - (c) the making of referrals as described in section 10, following a primary mental health assessment, concerning other services the provision of which might improve or prevent a deterioration in the assessed individual's mental health;
  - (d) the provision of information, advice and other assistance to primary care providers to meet the providers' reasonable requirements for such information, advice and other assistance for the purpose of improving the services related to mental health which they provide or arrange;
  - (e) the provision for patients and their carers of information and advice about the services available to them, to meet their reasonable requirements for such information and advice.
- (2) In subsection (1)(e)–
  - “carers” (“*gofalwyr*”) means members of the families of patients, and friends of patients, who are involved in their care and in the case of a patient who is a child, includes the child's local authority foster parent (within the meaning of section 22C(12) of the Children Act 1989);
  - “patients” (“*cleifion*”) means individuals who have, or may have, a mental disorder;
  - “services” (“*gwasanaethau*”) means–
    - (a) secondary mental health services;
    - (b) community care services (not being secondary mental health services);
    - (c) services provided under Part III of the Children Act 1989 (not being secondary mental health services);
    - (d) housing or well-being services; and
    - (e) education or training which may be beneficial to a patient's mental health.

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#### Commencement Information

**I4** S. 5 in force at 8.5.2012 by S.I. 2011/3046, art. 4(d) (with art. 5)

### *Primary mental health assessments*

VALID FROM 01/10/2012

#### **6 Duties to carry out primary mental health assessments: referrals for registered patients in primary care**

- (1) This section applies to an individual—
  - (a) who does not fall within any of the descriptions in section 8(1); and
  - (b) in respect of whom a relevant referral for the purposes of this section is made.
- (2) A primary mental health assessment must be carried out in respect of the individual in accordance with section 9.
- (3) A relevant referral for the purposes of this section means a request that an individual has a primary mental health assessment which meets the following conditions.
- (4) The first condition is that the request is made by—
  - (a) a contractor with whom a general medical services contract has been entered into under section 42 of the National Health Service (Wales) Act 2006 by—
    - (i) the Local Health Board to which the request is made, or
    - (ii) where the request is made to a local authority, the Local Health Board which is the authority's local mental health partner;
  - (b) a person with whom arrangements have been made under section 50 of that Act by—
    - (i) the Local Health Board to which the request is made, or
    - (ii) where the request is made to a local authority, the Local Health Board which is the authority's local mental health partner;
  - (c) a registered medical practitioner employed for the purposes of section 41 of that Act by—
    - (i) the Local Health Board to which the request is made, or
    - (ii) where the request is made to a local authority, the Local Health Board which is the authority's local mental health partner.
- (5) The second condition is that the individual in respect of whom the request is made is a registered patient of the contractor, person or practitioner making the referral.
- (6) The third condition is that the request is made to a local mental health partner for the local authority area in which the individual is usually resident.
- (7) For the purposes of this section and sections 7 and 8 a request is to be treated as made by a contractor under a general medical services contract entered into under section 42 of the National Health Service (Wales) Act 2006, a person with whom arrangements have been made under section 50 of that Act, or a practitioner

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employed for the purposes of section 41 of that Act, if it is made with the contractor's, person's or practitioner's authority.

## 7 Duties to carry out primary mental health assessments: other primary care referrals

- (1) This section applies to an individual—
  - (a) who does not fall within any of the descriptions in section 8(1); and
  - (b) in respect of whom a relevant referral for the purposes of this section is made.
- (2) A primary mental health assessment must be carried out in respect of the individual in accordance with section 9.
- (3) A relevant referral for the purposes of this section means a request that an individual has a primary mental health assessment which meets the following conditions.
- (4) The first condition is that the request is made by—
  - (a) a contractor with whom a general medical services contract has been entered into under section 42 of the National Health Service (Wales) Act 2006 by—
    - (i) the Local Health Board to which the request is made, or
    - (ii) where the request is made to a local authority, the Local Health Board which is the authority's local mental health partner;
  - (b) a person with whom arrangements have been made under section 50 of that Act by—
    - (i) the Local Health Board to which the request is made, or
    - (ii) where the request is made to a local authority, the Local Health Board which is the authority's local mental health partner;
  - (c) a registered medical practitioner employed for the purposes of section 41 of that Act by—
    - (i) the Local Health Board to which the request is made, or
    - (ii) where the request is made to a local authority, the Local Health Board which is the authority's local mental health partner; or
  - (d) a registered medical practitioner providing services to prisoners under arrangements made between the registered medical practitioner and a person responsible for the provision or running of a contracted out prison (within the meaning of section 84(4) of the Criminal Justice Act 1991) in Wales.
- (5) The second condition is that the request is made to a local mental health partner for the local authority area in which the contractor, person or practitioner carries on the majority of the contractor's, person's or practitioner's business or activities.
- (6) The third condition is that the individual in respect of whom the request is made falls within a category specified in—
  - (a) regulations made by the Welsh Ministers; or
  - (b) the scheme for that local authority area under section 2(4)(c).

### Commencement Information

**I5** S. 7 partly in force; s. 7 in force at 15.2.2011 in so far as it confers power to make subordinate legislation see s. 55

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## **8 Duties to carry out primary mental health assessments: secondary mental health care referrals**

- (1) This section applies to an individual who falls within any of the following descriptions—
  - (a) an individual who is liable to be detained under the Mental Health Act 1983;
  - (b) an individual who is subject to guardianship under that Act;
  - (c) an individual who is a community patient within the meaning given by section 17A of that Act;
  - (d) an individual who is receiving secondary mental health services.
- (2) A primary mental health assessment must be carried out in respect of the individual in accordance with section 9 if—
  - (a) the relevant scheme provides under section 2(4)(b) that primary mental health assessments are to be made available in respect of all or specified categories of the individuals referred to in subsection (1);
  - (b) the individual falls within the scheme's description of those individuals in respect of whom primary mental health assessments are to be made available; and
  - (c) a relevant referral for the purposes of this section is made.
- (3) A relevant referral for the purposes of this section means a request that an individual has a primary mental health assessment which meets the following conditions.
- (4) The first condition is that the request is made to a local mental health partner for the local authority area in which the individual is usually resident.
- (5) The second condition is that the request is made by a member of staff who falls within a category specified in the scheme for that local authority area under section 2(5).

VALID FROM 01/10/2012

## **9 Conduct of primary mental health assessments**

- (1) A primary mental health assessment is an analysis of an individual's mental health which identifies—
  - (a) the local primary mental health treatment (if any) which might improve or prevent a deterioration in the individual's mental health (any treatment so identified must be provided: see sections 3 and 5); and
  - (b) other services (if any) which might improve or prevent a deterioration in the individual's mental health.
- (2) The local mental health partners must ensure that the assessment is carried out by an individual who is eligible to carry out primary mental health assessments under regulations made under section 47.
- (3) The reference to other services in subsection (1)(b) is a reference to—
  - (a) secondary mental health services;

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- (b) services of a type that are normally provided by primary care providers;
- (c) community care services (not being secondary mental health services);
- (d) services provided under Part III of the Children Act 1989 (not being secondary mental health services);
- (e) housing or well-being services; and
- (f) education or training which may be beneficial to an individual's mental health.

VALID FROM 01/10/2012

## **10 Action following a primary mental health assessment**

- (1) Where a primary mental health assessment identifies under section 9(1)(b) services which might improve, or prevent a deterioration in, an individual's mental health, the local mental health partner which carried out the assessment must—
  - (a) if the partner considers that it would be the responsible authority for providing any of the services, decide whether or not the provision of any of those services is called for; and
  - (b) if the partner considers that it would not be the responsible authority for providing any of the services, make a referral to the person whom the partner considers would be the responsible authority for providing those services.
- (2) A referral under subsection (1)(b) must inform the recipient that—
  - (a) the local mental health partner making the referral has identified services which it considers might improve, or prevent a deterioration in, the individual's mental health; and
  - (b) that the partner considers that the recipient would be the responsible authority for providing those services.
- (3) A person to whom a referral has been made must decide whether the provision of any of the services to which the referral relates is called for.
- (4) In this section “responsible authority” means the person who would be responsible for providing services if a decision were made to provide the services.
- (5) Nothing in this section requires or authorises a referral to be made to a responsible authority constituted, or acting exclusively, for an area wholly within England.

### *Amendment to Children Act 2004*

## **11 Inclusion of schemes under this Part in Children and Young People's plans**

After section 26(1B)(b) of the Children Act 2004 insert the following—

- “(c) the scheme for the authority's area under Part 1 of the Mental Health (Wales) Measure 2010.”

### **Commencement Information**

**I6** S. 11 in force at 8.5.2012 by S.I. 2011/3046, art. 4(e) (with art. 5)

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## PART 2

### COORDINATION OF AND CARE PLANNING FOR SECONDARY MENTAL HEALTH SERVICE USERS

#### *Definitions*

#### **12 Meaning of “relevant patient”**

- (1) For the purposes of this Part, an individual is a relevant patient if a mental health service provider is responsible for providing a secondary mental health service for the individual.
- (2) An individual who does not fall within subsection (1) is also a relevant patient if—
  - (a) the individual is under the guardianship of a local authority in Wales; or
  - (b) a mental health service provider has decided that the individual would be provided with a secondary mental health service if the individual cooperated with its provision.

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#### **Commencement Information**

**I7** S. 12 in force at 6.6.2012 by S.I. 2012/1397, art. 2(a)

#### **13 Meaning of “mental health service provider”**

- (1) For the purposes of this Part, mental health service providers are the following—
  - (a) the Welsh Ministers;
  - (b) a Local Health Board;
  - (c) a local authority in Wales.
- (2) But the Welsh Ministers are not to be treated as being responsible for providing any service that is provided in the exercise of a function to which a direction given under section 12(1) of the National Health Service (Wales) Act 2006 relates.

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#### **Commencement Information**

**I8** S. 13 in force at 6.6.2012 by S.I. 2012/1397, art. 2(b)

#### *Appointment of care coordinators*

#### **14 Duty to appoint a care coordinator for a relevant patient**

- (1) The relevant mental health service provider for a relevant patient must appoint an individual as care coordinator for the patient to perform in relation to the patient the functions conferred on care coordinators by and under this Part.
- (2) The duty under subsection (1) is to be performed as soon as is reasonably practicable after—
  - (a) an individual becomes a relevant patient; or



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- (b) in a case where an individual permanently ceases to be appointed as a relevant patient's care coordinator, that permanent cessation.
- (3) Where the relevant mental health service provider considers that a patient's care coordinator is for whatever reason temporarily unable to act as such, the provider may appoint an individual to be the patient's temporary care coordinator to perform in relation to the patient the functions referred to in subsection (1).
- (4) A temporary appointment under subsection (3) ceases when the relevant mental health service provider considers that the individual previously appointed as care coordinator has regained the ability to act as such, in which case that individual's appointment shall revive.
- (5) Arrangements may be made between two Local Health Boards for the functions of one of them under subsection (1) or (3) to be exercised by the other.
- (6) Any arrangements under subsection (5) do not affect the responsibility of a Local Health Board as relevant mental health service provider under subsection (1) or (3).
- (7) Section 15 makes provision about the identification of the relevant mental health service provider for a relevant patient.

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**Commencement Information**

**19** S. 14 in force at 6.6.2012 by S.I. 2012/1397, art. 2(c)

**15 Identification of the relevant mental health service provider for a relevant patient**

- (1) This subsection applies where—
  - (a) a Local Health Board is responsible for providing a secondary mental health service for a relevant patient; and
  - (b) a local authority is not responsible for providing such a service.
- (2) Where subsection (1) applies, the Board is the relevant mental health service provider.
- (3) This subsection applies where—
  - (a) a Local Health Board is responsible for providing a secondary mental health service for a relevant patient; and
  - (b) a local authority is also responsible for providing such a service.
- (4) Where subsection (3) applies, the identification of one of the persons referred to in that subsection as the relevant mental health service provider is to be made in accordance with provision in regulations made by the Welsh Ministers.
- (5) Regulations under subsection (4) may—
  - (a) provide for disputes as to the operation of the regulations to be determined by the Welsh Ministers;
  - (b) provide for the Welsh Ministers to make such determination as they think fit requiring payments to be made by one of the persons referred to in subsection (3) to the other person in the light of a determination referred to in paragraph (a);

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- (c) identify a provider as the relevant mental health service provider pending a determination under paragraph (a).
- (6) Where neither subsection (1) nor subsection (3) apply, the relevant mental health service provider is–
- (a) if a local authority is responsible for providing the patient with a secondary mental health service, the authority;
  - (b) if the patient is under the guardianship of a local authority, the authority;
  - (c) where neither paragraph (a) nor (b) apply but the Welsh Ministers are responsible for providing a secondary mental health service for the patient, the Welsh Ministers.

**Commencement Information**

- I10** S. 15 in force in so far as not already in force at 6.6.2012 by S.I. 2012/1397, art. 2(d)  
**I11** S. 15 partly in force; s. 15 in force at 15.2.2011 in so far as it confers power to make subordinate legislation see s. 55

**16 Further provision about the appointment of care coordinators**

- (1) A provider must not appoint an individual as a care coordinator under section 14(1) unless the individual is eligible to be appointed as a care coordinator under regulations made under section 47.
- (2) A provider must not appoint an individual as a care coordinator under section 14(1) from amongst the staff of another person without that person's consent.
- (3) Unless regulations made by the Welsh Ministers provide otherwise, an individual's appointment as a care coordinator does not come to an end as a result of a change in a relevant patient's relevant mental health service provider as identified under section 15.
- (4) A relevant mental health service provider may terminate the appointment of an individual appointed as a care coordinator under section 14(1).

**Commencement Information**

- I12** S. 16 in force in so far as not already in force at 6.6.2012 by S.I. 2012/1397, art. 2(e)  
**I13** S. 16 partly in force; s. 16 in force at 15.2.2011 in so far as it confers power to make subordinate legislation see s. 55

*Coordination of mental health services*

**17 Duty to coordinate provision of mental health services**

- (1) For the purpose of improving the effectiveness of the mental health services provided to a relevant patient, a mental health service provider must take all reasonable steps to ensure that–
  - (a) different mental health services which it is responsible for providing for the patient are coordinated with each other;

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- (b) the mental health services which it is responsible for providing for the patient are coordinated with any other such services the provision of which is the responsibility of any other mental health service provider;
  - (c) the mental health services which it is responsible for providing are coordinated with any services related to mental health provided for the patient by a voluntary organisation.
- (2) A mental health service provider may seek the advice of a patient's care coordinator as to how the provider should discharge its duty under subsection (1).
- (3) A care coordinator may at any time give advice to a mental health service provider as to how the provider should discharge its duty under subsection (1).
- (4) A mental health service provider must have regard to any advice given under subsections (2) and (3) in discharging its duty under subsection (1).
- (5) In this section mental health services are—
- (a) secondary mental health services;
  - (b) services under Part 1 of this Measure;
  - (c) things done in the exercise of a local authority's powers in section 8 of the Mental Health Act 1983 in respect of a person who is subject to the authority's guardianship.
- (6) In this section “voluntary organisation” means a body whose activities are carried on otherwise than for profit.

**Commencement Information**

**I14** S. 17 in force for specified purposes at 6.6.2012 by S.I. 2012/1397, art. 2(f)

## **18 Functions of the care coordinator**

- (1) A relevant patient's care coordinator must work with the relevant patient and the patient's mental health service providers—
- (a) with a view to agreeing the outcomes which the provision of mental health services for the patient are designed to achieve, including (but not limited to) achievements in one or more of the following areas—
    - (i) finance and money;
    - (ii) accommodation;
    - (iii) personal care and physical well-being;
    - (iv) education and training;
    - (v) work and occupation;
    - (vi) parenting or caring relationships;
    - (vii) social, cultural or spiritual;
    - (viii) medical and other forms of treatment including psychological interventions;
  - (b) with a view to agreeing a plan (“a care and treatment plan”) for achieving those outcomes;
  - (c) in connection with the review and revision of a care and treatment plan in accordance with provision in regulations made by the Welsh Ministers.

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- (2) Where a care and treatment plan has been agreed, the care coordinator must record the plan in writing.
- (3) Subsections (4) and (5) apply if the outcomes referred to in subsection (1)(a) or the plan referred to in subsection (1)(b) cannot be agreed between the persons mentioned in subsection (1).
- (4) If the relevant patient has a sole mental health service provider, the provider must, having regard to any views expressed by the relevant patient, determine the outcomes which the provision of mental health services for the patient are designed to achieve and determine a plan for achieving those outcomes.
- (5) If the relevant patient has more than one mental health service provider, each provider must, having regard to any views expressed by the patient, determine the outcomes which the provision of mental health services by the provider are designed to achieve and determine a plan for achieving those outcomes.
- (6) The care coordinator must–
  - (a) where a plan has been determined under subsection (4), record the plan in writing;
  - (b) where plans have been determined under subsection (5), record all of them in writing in a single document.
- (7) The records made under subsection (6) are care and treatment plans for the purposes of subsection (1)(c) and (8) to (10).
- (8) The Welsh Ministers may by regulations make provision as to–
  - (a) the form and content of care and treatment plans;
  - (b) any persons whom the care coordinator is to consult in connection with the exercise of the coordinator's functions under subsection (1)(a) or (b);
  - (c) the obligations of persons specified in the regulations in connection with the agreement or determination of care and treatment plans;
  - (d) the persons to whom written copies of a care and treatment plan are to be provided (including in specified cases the provision of copies without the consent of the relevant patient to whom the plan relates);
  - (e) the information to be provided by mental health service providers to an individual who has ceased to be a relevant patient.
- (9) The provision that may be made by regulations under subsection (1)(c) includes (but is not limited to) provision–
  - (a) for care and treatment plans to be reviewed and revised in specified circumstances;
  - (b) conferring a discretion upon the care coordinator as to whether a review or revision is to be carried out;
  - (c) as to any persons whom the care coordinator is to consult in connection with a review or revision;
  - (d) imposing obligations upon persons specified in the regulations in connection with a review or revision;
  - (e) as to the provision of copies of revised plans to specified persons (including in specified cases the provision of copies without the consent of the relevant patient to whom the plan relates).

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(10) So far as it is reasonably practicable to do so, a mental health service provider must ensure that mental health services for a relevant patient are provided in accordance with the patient's current care and treatment plan.

(11) In this section “mental health services” has the same meaning as in section 17(5).

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**Commencement Information**

**I15** S. 18 in force for specified purposes at 6.6.2012 by S.I. 2012/1397, art. 2(g)

**I16** S. 18 partly in force; s. 18 in force at 15.2.2011 in so far as it confers power to make subordinate legislation see s. 55

### PART 3

## ASSESSMENTS OF FORMER USERS OF SECONDARY MENTAL HEALTH SERVICES

### *Assessment arrangements*

#### **19 Arrangements for assessment of former users of secondary mental health services**

- (1) The local mental health partners for a local authority area must take all reasonable steps to agree arrangements for—
  - (a) the carrying out of assessments in accordance with sections 25 and 26 for adults who are usually resident in that area and are entitled to such assessments under section 22; and
  - (b) the making of referrals described in section 28(1) following such assessments.
- (2) If arrangements have been agreed, the partners must ensure that the arrangements are recorded in writing.
- (3) The arrangements must identify the extent to which each of the partners is to carry out those assessments and make those referrals.
- (4) The arrangements may provide that—
  - (a) one of the partners is to provide all the assessments and make all the referrals;
  - (b) different aspects of an assessment, and different referrals following an assessment, will be undertaken by different partners.
- (5) The partners may alter their arrangements (including arrangements determined by the Welsh Ministers under section 21 and arrangements which have already been altered) if they agree the alterations.
- (6) If arrangements are altered under subsection (5), the partners must ensure that the alterations are recorded in writing.

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**Commencement Information**

**I17** S. 19 in force at 6.6.2012 by S.I. 2012/1397, art. 2(h)

*Status: Point in time view as at 06/06/2012. This version of this Measure contains provisions that are not valid for this point in time.*  
*Changes to legislation: There are currently no known outstanding effects for the Mental Health (Wales) Measure 2010. (See end of Document for details)*

## 20 Duty to carry out assessments

- (1) Unless section 21(1)(a) applies, the local mental health partners for a local authority area must carry out assessments and make referrals in accordance with—
  - (a) the arrangements for their area agreed under section 19; or
  - (b) the arrangements for their area determined by the Welsh Ministers under section 21.
- (2) If arrangements have been altered under section 19(5) or 21(2), assessments must be carried out and referrals made in accordance with the altered arrangements.

### Commencement Information

**I18** S. 20 in force at 6.6.2012 by S.I. 2012/1397, art. 2(i)

## 21 Failure to agree arrangements

- (1) If the partners cannot agree arrangements under section 19—
  - (a) for so long as there is no agreement, the Local Health Board must carry out the assessments referred to in section 19(1)(a) and make the referrals referred to in section 19(1)(b);
  - (b) the Local Health Board must inform the Welsh Ministers that agreement cannot be reached;
  - (c) the Welsh Ministers may determine arrangements and, if they do, must record them in writing.
- (2) If one partner wishes to alter the arrangements, but the other does not, the arrangements may, upon a request being made to the Welsh Ministers by either partner, be altered by the Welsh Ministers to such extent as the Welsh Ministers think fit.
- (3) If the Welsh Ministers alter arrangements under subsection (2), they must record the alterations in writing.

### Commencement Information

**I19** S. 21 in force at 6.6.2012 by S.I. 2012/1397, art. 2(j)

### *Assessment entitlements*

## 22 Entitlement to assessment

- (1) An adult is entitled to an assessment as described in section 25 if—
  - (a) the adult requests either of the local mental health partners for the local authority area in which the adult is usually resident to carry out such an assessment;
  - (b) the adult has been discharged from secondary mental health services (whether or not the services were the responsibility of the local mental health partner to whom the request for an assessment is made);
  - (c) the request is made within the relevant discharge period (see section 23); and

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- (d) the local mental health partner to whom the request is made does not consider the request to be frivolous or vexatious.
- (2) For the purposes of subsection (1)(b), an adult has been discharged from secondary mental health services if the adult was being provided with a secondary mental health service or services but is no longer, for whatever reason, being provided with any secondary mental health service.
- (3) The reference to an adult being discharged from secondary mental health services includes a discharge that occurred when the adult was a child.

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**Commencement Information**

**I20** S. 22 in force at 6.6.2012 by S.I. 2012/1397, art. 2(k)

### 23 Assessments: the relevant discharge period

- (1) The relevant discharge period in relation to an adult—
  - (a) begins on the date on which the adult was discharged from secondary mental health services (within the meaning of section 22(2)); and
  - (b) ends upon the expiry of the period of time specified in regulations made for the purposes of this section by the Welsh Ministers.
- (2) The relevant discharge period also ends if, before the expiry of the period of time referred to in subsection (1)(b), an event specified in regulations made by the Welsh Ministers occurs.

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**Commencement Information**

**I21** S. 23 in force in so far as not already in force at 6.6.2012 by S.I. 2012/1397, art. 2(l)

**I22** S. 23 partly in force; s. 23 in force at 15.2.2011 in so far as it confers power to make subordinate legislation see s. 55

### 24 Provision of information about assessments

- (1) Where a Local Health Board discharges an adult from secondary mental health services, the Board must provide the adult with information in writing about entitlement to assessment under this Part if, at the date of discharge, no local authority is providing the adult with a secondary mental health service.
- (2) Where a local authority discharges an adult from secondary mental health services, the authority must provide the adult with information in writing about entitlement to assessment under this Part if, at the date of discharge, no Local Health Board is providing the adult with a secondary mental health service.
- (3) Where the relevant discharge period begins when an individual is a child and ends when that individual becomes an adult, the Board or authority has the same duty to provide that individual with information about their entitlement to an assessment as it has to provide an adult with such information under subsections (1) and (2).

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- (4) For the purposes of this section, a Board or authority discharges an individual from secondary mental health services when it implements a decision that the Board or authority no longer needs to provide the individual with any such service.

**Commencement Information**

**I23** S. 24 in force at 6.6.2012 by S.I. 2012/1397, art. 2(m)

*Assessment process*

**25 Purpose of assessment**

An assessment under this Part is an analysis of an adult's mental health which identifies–

- (a) the secondary mental health services (if any) which might improve or prevent a deterioration in the mental health of the person being assessed;
- (b) the community care services, not being secondary mental health services, (if any) which might improve or prevent a deterioration in the mental health of the person being assessed; and
- (c) the housing or well-being services (if any) which might improve or prevent a deterioration in the mental health of the person being assessed.

**Commencement Information**

**I24** S. 25 in force at 6.6.2012 by S.I. 2012/1397, art. 2(n)

**26 Assessments: further provision**

- (1) An assessment under this Part must be carried out as soon as is reasonably practicable after the request referred to in section 22(1) is made.
- (2) The local mental health partners must ensure that–
  - (a) an assessment results in a single report in writing which records whether the assessment has identified any services in accordance with section 25; and
  - (b) a copy of that report is provided to the adult who has been assessed within such period following completion of the assessment as is specified in regulations made by the Welsh Ministers.
- (3) Where a sole local mental health partner has carried out an assessment under this Part, the partner must, if it considers it appropriate to do so, provide a copy of the report to the other partner as soon as it is reasonably practicable to do so.

**Commencement Information**

**I25** S. 26 in force in so far as not already in force at 6.6.2012 by S.I. 2012/1397, art. 2(o)

**I26** S. 26 partly in force; s. 26 in force at 15.2.2011 in so far as it confers power to make subordinate legislation see s. 55



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## 27 Action following an assessment

- (1) Subsection (2) applies where an assessment under section 25(a) or (b) has identified secondary mental health services or community care services (not being secondary mental health services) which might help to improve, or prevent a deterioration in, an adult's mental health.
- (2) Where one of the local mental health partners would be the responsible authority in relation to any such service, that partner must decide whether the provision of the service is called for.
- (3) In this section “responsible authority” means the authority which would be responsible for providing services if a decision were made to do so.

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### Commencement Information

I27 S. 27 in force at 6.6.2012 by S.I. 2012/1397, art. 2(p)

## 28 Referrals relating to housing or well-being services

- (1) Unless subsection (2) applies, where a secondary mental health assessment has under section 25(c) identified a housing or well-being service which might help to improve, or prevent a deterioration in, an adult's mental health, the partner must ask the responsible service provider to consider whether to provide the service to the adult or, if that is not appropriate, whether to invite the adult to apply for the service.
- (2) Where the local authority mental health partner would be the responsible service provider in relation to such a housing or well-being service, the authority must decide whether the provision of the service is called for or, if that is not appropriate, whether to invite the adult to apply for the service.
- (3) In subsections (1) and (2), “responsible service provider” means a person carrying out activities in Wales who would provide the service if a decision were made to do so.

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### Commencement Information

I28 S. 28 in force at 6.6.2012 by S.I. 2012/1397, art. 2(q)

## Supplementary

## 29 Determination of usual residence

- (1) For the purposes of this Part, any question as to the local authority area in which an adult usually resides is to be determined in accordance with provision in regulations made by the Welsh Ministers.
- (2) The provision that may be made in regulations under subsection (1) includes (but is not limited to) provision—
  - (a) conferring power to determine the local authority area in which an adult usually resides;
  - (b) for deeming an adult to be usually resident in an area.

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#### Commencement Information

**I29** S. 29 in force in so far as not already in force at 6.6.2012 by S.I. 2012/1397, art. 2(r)

### 30 Application of this Part to persons under local authority guardianship

- (1) This section applies to an individual—
  - (a) who has ceased to be under the guardianship of a local authority, and
  - (b) upon so ceasing, was not being provided with any secondary mental health service.
- (2) For the purposes of this Part, the individual is to be treated as having been discharged from secondary mental health services on the date on which the individual ceased to be under the guardianship of the local authority.

#### Commencement Information

**I30** S. 30 in force at 6.6.2012 by S.I. 2012/1397, art. 2(s)

## PART 4

### MENTAL HEALTH ADVOCACY

### 31 Independent mental health advocates: Wales

After section 130D of the Mental Health Act 1983 insert—

#### “130E Independent mental health advocates: Wales

- (1) The Welsh Ministers shall make such arrangements as they consider reasonable to enable persons (“independent mental health advocates”) to be available to help—
  - (a) Welsh qualifying compulsory patients; and
  - (b) Welsh qualifying informal patients.
- (2) The Welsh Ministers may by regulations make provision as to the appointment of persons as independent mental health advocates.
- (3) The regulations may, in particular, provide—
  - (a) that a person may act as an independent mental health advocate only in such circumstances, or only subject to such conditions, as may be specified in the regulations;
  - (b) for the appointment of a person as an independent mental health advocate to be subject to approval in accordance with the regulations.
- (4) In making arrangements under this section, the Welsh Ministers shall have regard to the principle that any help available to a patient under the arrangements should, so far as practicable, be provided by a person who is independent of any person who—

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- (a) is professionally concerned with the patient's medical treatment; or
  - (b) falls within a description specified in regulations made by the Welsh Ministers.
- (5) For the purposes of subsection (4) above, a person is not to be regarded as professionally concerned with a patient's medical treatment merely because he is representing him in accordance with arrangements—
- (a) under section 35 of the Mental Capacity Act 2005; or
  - (b) of a description specified in regulations under this section.
- (6) Arrangements under this section may include provision for payments to be made to, or in relation to, persons carrying out functions in accordance with the arrangements.
- (7) Regulations under this section and sections 130F to 130H—
- (a) may make different provision for different cases;
  - (b) may make provision which applies subject to specified exceptions;
  - (c) may include transitional, consequential, incidental or supplemental provision.”

#### Commencement Information

- I31** S. 31 in force in so far as not already in force at 2.4.2012 by S.I. 2011/3046, art. 3(a) (with art. 5)
- I32** S. 31 in force for specified purposes at 3.1.2012 by S.I. 2011/3046, art. 2(a) (with art. 5)
- I33** S. 31 partly in force; s. 31 in force at 15.2.2011 in so far as it confers power to make subordinate legislation see s. 55

## 32 Further provision about independent mental health advocacy for Welsh qualifying compulsory patients

After section 130E of the Mental Health Act 1983 insert—

### “130F Arrangements under section 130E for Welsh qualifying compulsory patients

- (1) The help available to a Welsh qualifying compulsory patient under arrangements under section 130E shall include help in obtaining information about and understanding—
- (a) the provisions of this Act by virtue of which he is a qualifying compulsory patient;
  - (b) any conditions or restrictions to which he is subject by virtue of this Act;
  - (c) what (if any) medical treatment is given to him or is proposed or discussed in his case;
  - (d) why it is given, proposed or discussed;
  - (e) the authority under which it is, or would be, given; and
  - (f) the requirements of this Act which apply, or would apply, in connection with the giving of the treatment to him.
- (2) The help available under the arrangements to a Welsh qualifying compulsory patient shall also include—

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- (a) help in obtaining information about and understanding any rights which may be exercised under this Act by or in relation to him;
- (b) help (by way of representation or otherwise)—
  - (i) in exercising the rights referred to in paragraph (a);
  - (ii) for patients who wish to become involved, or more involved, in decisions made about their care or treatment, or care or treatment generally;
  - (iii) for patients who wish to complain about their care or treatment;
- (c) the provision of information about other services which are or may be available to the patient;
- (d) other help specified in regulations made by the Welsh Ministers.”

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**Commencement Information**

- I34** S. 32 in force in so far as not already in force at 3.1.2012 by S.I. 2011/3046, art. 2(b) (with art. 5)  
**I35** S. 32 partly in force; s. 32 in force at 15.2.2011 in so far as it confers power to make subordinate legislation see s. 55

**33 Further provision about independent mental health advocacy for Welsh qualifying informal patients**

After section 130F of the Mental Health Act 1983 insert—

**“130G Arrangements under section 130E for Welsh qualifying informal patients**

- (1) The help available to a Welsh qualifying informal patient under arrangements under section 130E shall include help in obtaining information about and understanding—
  - (a) what (if any) medical treatment is given to him or is proposed or discussed in his case;
  - (b) why it is given, proposed or discussed;
  - (c) the authority under which it is, or would be, given.
- (2) The help available under the arrangements to a Welsh qualifying informal patient shall also include—
  - (a) help (by way of representation or otherwise)—
    - (i) for patients who wish to become involved, or more involved, in decisions made about their care or treatment, or care or treatment generally;
    - (ii) for patients who wish to complain about their care or treatment;
  - (b) the provision of information about other services which are or may be available to the patient;
  - (c) other help specified in regulations made by the Welsh Ministers.”

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**Commencement Information**

- I36** S. 33 in force in so far as not already in force at 2.4.2012 by S.I. 2011/3046, art. 3(b) (with art. 5)

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*Status: Point in time view as at 06/06/2012. This version of this Measure contains provisions that are not valid for this point in time.*  
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**I37** S. 33 partly in force; s. 33 in force at 15.2.2011 in so far as it confers power to make subordinate legislation see s. 55

### **34 Independent mental health advocates: supplementary powers and duties**

After section 130G of the Mental Health Act 1983 insert–

#### **“130H Independent mental health advocates for Wales: supplementary powers and duties**

- (1) For the purpose of providing help to a patient in accordance with arrangements made under section 130E, an independent mental health advocate may–
  - (a) visit and interview the patient in private;
  - (b) visit and interview–
    - (i) any person who is professionally concerned with his medical treatment;
    - (ii) any other person who falls within a description specified in regulations made by the Welsh Ministers;
  - (c) require the production of and inspect any records relating to his detention, treatment or assessment in any hospital or registered establishment or to any after-care services provided for him under section 117 above;
  - (d) require the production of and inspect any records of, or held by, a local social services authority which relate to him.
- (2) But an independent mental health advocate is not entitled to the production of, or to inspect, records in reliance on subsection (1)(c) or (d) above unless–
  - (a) in a case where the patient has capacity or is competent to consent, he does consent; or
  - (b) in any other case, the production or inspection would not conflict with a decision made by a donee or deputy or the Court of Protection and the person holding the records, having regard to such matters as may be prescribed in regulations under section 130E above, considers that–
    - (i) the records may be relevant to the help to be provided by the advocate;
    - (ii) the production or inspection is appropriate.
- (3) For the purpose of providing help to a Welsh qualifying compulsory patient in accordance with the arrangements, an independent mental health advocate shall comply with any reasonable request made to him by any of the following for him to visit and interview the patient–
  - (a) the patient;
  - (b) the person (if any) appearing to the advocate to be the patient's nearest relative;
  - (c) the responsible clinician for the purposes of this Act;
  - (d) an approved mental health professional;
  - (e) a registered social worker who is professionally concerned with the patient's care, treatment or assessment;

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- (f) where the patient is liable to be detained in a hospital or registered establishment, the managers of the hospital or establishment or a person duly authorised on their behalf;
  - (g) the patient's donee or deputy.
- (4) For the purpose of providing help to a Welsh qualifying informal patient in accordance with the arrangements, an independent mental health advocate shall comply with any reasonable request made to him by any of the following for him to visit and interview the patient–
- (a) the patient;
  - (b) the managers of the hospital or establishment in which the patient is an in-patient or a person duly authorised on their behalf;
  - (c) any person appearing to the advocate to whom the request is made to be the patient's carer;
  - (d) the patient's donee or deputy;
  - (e) a registered social worker who is professionally concerned with the patient's care, treatment or assessment.
- (5) But nothing in this Act prevents the patient from declining to be provided with help under the arrangements.
- (6) In subsection (2) above the reference to a patient who has capacity is to be read in accordance with the Mental Capacity Act 2005.
- (7) In subsection (4) above–
- (a) “carer”, in relation to a Welsh qualifying informal patient, means an individual who provides or intends to provide a substantial amount of care on a regular basis for the patient, but does not include any individual who provides, or intends to provide care by virtue of a contract of employment or other contract with any person or as a volunteer for a body (whether or not incorporated);
  - (b) “registered social worker” means a person included in the principal part or the visiting European part of a register maintained under section 56(1) of the Care Standards Act 2000.
- (8) In subsections (2) to (4) above–
- (a) the reference to a donee is to a donee of a lasting power of attorney (within the meaning of section 9 of the Mental Capacity Act 2005) created by the patient, where the donee, in making the decision referred to in subsection (2) or the request referred to in subsection (3) or (4), is acting within the scope of his authority and in accordance with that Act;
  - (b) the reference to a deputy is to a deputy appointed for the patient by the Court of Protection under section 16 of that Act, where the deputy, in making the decision referred to in subsection (2) or the request referred to in subsection (3) or (4), is acting within the scope of his authority and in accordance with that Act.”

#### Commencement Information

- I38** S. 34 in force in so far as not already in force at 2.4.2012 by S.I. 2011/3046, art. 3(c) (with art. 5)
- I39** S. 34 in force for specified purposes at 3.1.2012 by S.I. 2011/3046, art. 2(c) (with art. 5)

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*Status: Point in time view as at 06/06/2012. This version of this Measure contains provisions that are not valid for this point in time.*  
**Changes to legislation:** There are currently no known outstanding effects for the Mental Health (Wales) Measure 2010. (See end of Document for details)

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**I40** S. 34 partly in force; s. 34 in force at 15.2.2011 in so far as it confers power to make subordinate legislation see s. 55

### 35 Welsh qualifying compulsory patients

After section 130H of the Mental Health Act 1983 insert–

#### “130I Welsh qualifying compulsory patients

- (1) This section applies for the purposes of section 130E above.
- (2) A patient is a Welsh qualifying compulsory patient if he is–
  - (a) liable to be detained under this Act (other than under section 135 or 136 below) and the hospital or registered establishment in which he is liable to be detained is situated in Wales;
  - (b) subject to guardianship under this Act and the area of the responsible local social services authority within the meaning of section 34(3) above is situated in Wales; or
  - (c) a community patient and the responsible hospital is situated in Wales.
- (3) A patient is also a Welsh qualifying compulsory patient if the patient is to be regarded as being in Wales for the purposes of this subsection and–
  - (a) not being a qualifying patient falling within subsection (2) above, he discusses with a registered medical practitioner or approved clinician the possibility of being given a form of treatment to which section 57 above applies; or
  - (b) not having attained the age of 18 years and not being a qualifying patient falling within subsection (2) above, he discusses with a registered medical practitioner or approved clinician the possibility of being given a form of treatment to which section 58A above applies.
- (4) For the purposes of subsection (3), a patient is to be regarded as being in Wales if that has been determined in accordance with arrangements made for the purposes of that subsection and section 130C(3), and published, by the Secretary of State and the Welsh Ministers.
- (5) Where a patient who is a Welsh qualifying compulsory patient falling within subsection (3) above is informed that the treatment concerned is proposed in his case, he remains a qualifying patient falling within that subsection until–
  - (a) the proposal is withdrawn; or
  - (b) the treatment is completed or discontinued.”

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#### Commencement Information

**I41** S. 35 in force at 3.1.2012 by S.I. 2011/3046, art. 2(d) (with art. 5)

### 36 Welsh qualifying informal patients

After section 130I of the Mental Health Act 1983 insert–

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*Status: Point in time view as at 06/06/2012. This version of this Measure contains provisions that are not valid for this point in time.*  
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### **“130J Welsh qualifying informal patients**

- (1) This section applies for the purposes of section 130E above.
- (2) A patient is a Welsh qualifying informal patient if—
  - (a) the patient is an in-patient at a hospital or registered establishment situated in Wales;
  - (b) the patient is receiving treatment for, or assessment in relation to, mental disorder at the hospital or registered establishment; and
  - (c) no application, order, direction or report renders the patient liable to be detained under this Act.”

#### **Commencement Information**

**I42** S. 36 in force at 2.4.2012 by S.I. 2011/3046, art. 3(d) (with art. 5)

### **37 Duty to give information about independent mental health advocates to Welsh qualifying compulsory patients**

After section 130J of the Mental Health Act 1983 insert—

#### **“130K Duty to give information about independent mental health advocates to Welsh qualifying compulsory patients**

- (1) The responsible person in relation to a Welsh qualifying compulsory patient (within the meaning given by section 130I above) shall take such steps as are practicable to ensure that the patient understands—
  - (a) that help is available to him from an independent mental health advocate; and
  - (b) how he can obtain that help.
- (2) In subsection (1) above, the “responsible person” means—
  - (a) in relation to a Welsh qualifying compulsory patient falling within section 130I(2)(a) above (other than one also falling within paragraph (b) below), the managers of the hospital or registered establishment in which he is liable to be detained; or
  - (b) in relation to a Welsh qualifying compulsory patient falling within section 130I(2)(a) above and conditionally discharged by virtue of section 42(2), 73 or 74 above, the responsible clinician;
  - (c) in relation to a Welsh qualifying compulsory patient falling within section 130I(2)(b) above, the responsible local social services authority within the meaning of section 34(3) above;
  - (d) in relation to a Welsh qualifying compulsory patient falling within section 130I(2)(c) above, the managers of the responsible hospital;
  - (e) in relation to a Welsh qualifying compulsory patient falling within section 130I(3) above, the registered medical practitioner or approved clinician with whom the patient first discusses the possibility of being given the treatment concerned.
- (3) The steps to be taken under subsection (1) above shall be taken—



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- (a) where the responsible person falls within subsection (2)(a) above, as soon as practicable after the patient becomes liable to be detained;
  - (b) where the responsible person falls within subsection (2)(b) above, as soon as practicable after the conditional discharge;
  - (c) where the responsible person falls within subsection (2)(c) above, as soon as practicable after the patient becomes subject to guardianship;
  - (d) where the responsible person falls within subsection (2)(d) above, as soon as practicable after the patient becomes a community patient;
  - (e) where the responsible person falls within subsection (2)(e) above, while the discussion with the patient is taking place or as soon as practicable thereafter.
- (4) The steps to be taken under subsection (1) above shall include giving the requisite information both orally and in writing.
- (5) The responsible person in relation to a Welsh qualifying compulsory patient falling within section 130I(2) above (other than a patient liable to be detained by virtue of Part 3 of this Act) shall, except where the patient otherwise requests, take such steps as are practicable to furnish any person falling within subsection (6) with a copy of any information given to the patient in writing under subsection (1) above.
- (6) A person falls within this subsection if—
- (a) the person appears to the responsible person to be the patient's nearest relative;
  - (b) the person is a donee of a lasting power of attorney (within the meaning of section 9 of the Mental Capacity Act 2005) created by the patient and the scope of the donee's authority includes matters related to the care and treatment of the patient;
  - (c) the person is a deputy appointed for the patient by the Court of Protection under section 16 of that Act and the scope of the deputy's authority includes matters related to the care and treatment of the patient.
- (7) The steps to be taken under subsection (5) above shall be taken when the information concerned is given to the patient or within a reasonable time thereafter.”

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**Commencement Information**

**143** S. 37 in force at 3.1.2012 by S.I. 2011/3046, art. 2(e) (with art. 5)

**38** **Duty to give information about independent mental health advocates to Welsh qualifying informal patients**

After section 130K of the Mental Health Act 1983 insert—

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*Status: Point in time view as at 06/06/2012. This version of this Measure contains provisions that are not valid for this point in time.*  
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**“130L Duty to give information about independent mental health advocates to Welsh qualifying informal patients**

- (1) The responsible person in relation to a Welsh qualifying informal patient (within the meaning given by section 130J above) shall take such steps as are practicable to ensure that the patient understands—
  - (a) that help is available to him from an independent mental health advocate; and
  - (b) how he can obtain that help.
- (2) In subsection (1) above, the “responsible person” means the managers of the hospital or registered establishment to which the patient is admitted as an in-patient.
- (3) The steps to be taken under subsection (1) above shall be taken as soon as practicable after the patient becomes an in-patient.
- (4) The steps to be taken under subsection (1) above shall include giving the requisite information both orally and in writing.
- (5) The responsible person in relation to a Welsh qualifying informal patient shall, except where the patient otherwise requests, take such steps as are practicable to furnish any person falling within subsection (6) with a copy of any information given to the patient in writing under subsection (1) above.
- (6) A person falls within this subsection if—
  - (a) the person appears to the responsible person to be a carer of the patient;
  - (b) the person is a donee of a lasting power of attorney (within the meaning of section 9 of the Mental Capacity Act 2005) created by the patient and the scope of the donee's authority includes matters related to the care and treatment of the patient;
  - (c) the person is a deputy appointed for the patient by the Court of Protection under section 16 of that Act and the scope of the deputy's authority includes matters related to the care and treatment of the patient.
- (7) In subsection (6), “carer”, in relation to a Welsh qualifying informal patient, means an individual who provides or intends to provide a substantial amount of care on a regular basis for the patient, but does not include any individual who provides, or intends to provide care by virtue of a contract of employment or other contract with any person or as a volunteer for a body (whether or not incorporated);
- (8) The steps to be taken under subsection (5) above shall be taken when the information concerned is given to the patient or within a reasonable time thereafter.”

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**Commencement Information**

**I44** S. 38 in force at 2.4.2012 by S.I. 2011/3046, art. 3(e) (with art. 5)

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*Status: Point in time view as at 06/06/2012. This version of this Measure contains provisions that are not valid for this point in time.*  
**Changes to legislation:** There are currently no known outstanding effects for the Mental Health (Wales) Measure 2010. (See end of Document for details)

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### **39 Application of the Mental Health Act 1983 code of practice to Welsh independent mental health advocates**

- (1) Section 118 of the Mental Health Act 1983 is amended as follows.
- (2) After subsection (1) insert–
  - “(1A) The Code which must be prepared, and from time to time revised, in relation to Wales shall also be for the guidance of independent mental health advocates appointed under arrangements made under section 130E below”.
- (3) In subsection (2D), after “subsection (1)(a) or (b)” insert “ and subsection (1A) ”.

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#### **Commencement Information**

- I45** S. 39 in force in so far as not already in force at 2.4.2012 by S.I. 2011/3046, art. 3(f) (with art. 5)  
**I46** S. 39 in force for specified purposes at 3.1.2012 by S.I. 2011/3046, art. 2(f) (with art. 5)

### **40 Procedures for making regulations under the Mental Health Act 1983**

- (1) Section 143 of the Mental Health Act 1983 is amended as follows.
- (2) In subsection (3A), for “(3D)” substitute “ (3DB) ”.
- (3) After subsection (3D) insert–
  - “(3DA) Subsection (3C) does not apply to regulations to which subsection (3DB) applies.
  - (3DB) A statutory instrument which contains (alone or with other provisions) the first regulations to be made under any of the following provisions–
    - (a) section 130E(2),
    - (b) section 130E(4)(b),
    - (c) section 130E(5)(b),
    - (d) section 130F(2)(d),
    - (e) section 130G(2)(c), or
    - (f) section 130H(1)(b)(ii),must not be made unless a draft of the instrument containing the regulations has been laid before, and approved by resolution of, the National Assembly for Wales.”

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#### **Commencement Information**

- I47** S. 40 in force in so far as not already in force at 2.4.2012 by S.I. 2011/3046, art. 3(g) (with art. 5)  
**I48** S. 40 in force for specified purposes at 3.1.2012 by S.I. 2011/3046, art. 2(g) (with art. 5)

*Status: Point in time view as at 06/06/2012. This version of this Measure contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Mental Health (Wales) Measure 2010. (See end of Document for details)*

## PART 5

### GENERAL

#### 41 Cooperative and joint working between Local Health Boards and local authorities

- (1) Local mental health partners may for the purposes of their functions under Parts 1 and 3 of this Measure–
  - (a) provide staff, goods, services, accommodation or other resources to each other;
  - (b) establish and maintain a pooled fund.
- (2) Local Health Boards and local authorities may for the purposes of their functions under Part 2 of this Measure–
  - (a) provide staff, goods, services, accommodation or other resources to each other;
  - (b) establish and maintain a pooled fund.
- (3) For the purposes of subsections (1) and (2) a pooled fund is a fund–
  - (a) which is made up of contributions by persons mentioned in subsections (1) and (2); and
  - (b) out of which payments may be made towards expenditure incurred in the discharge of functions under Parts 1 to 3.
- (4) The local mental health partners may, if they think fit, exercise any of their functions under Parts 1 and 3 jointly.

#### Commencement Information

**I49** S. 41 in force at 6.6.2012 by S.I. 2012/1397, art. 2(t)

#### 42 Information sharing

- (1) A local mental health partner (partner 1) may supply to the other partner (partner 2) information–
  - (a) which partner 1 has obtained in the discharge of its functions under Part 1 or 3 of this Measure; and
  - (b) which relates to an individual for whom local primary mental health support services are being, or might be, provided by partner 2 or an adult in respect of whom partner 2 is exercising functions under Part 3 of this Measure.
- (2) Local authorities, Local Health Boards and the Welsh Ministers may supply to each other information–
  - (a) which any of them have obtained in the discharge of their functions under Part 2 of this Measure; and
  - (b) which relates to a relevant patient for the purposes of that Part.
- (3) Nothing in subsection (1) or (2) authorises the disclosure of any information in contravention of any provision of, or made under, this or any other Measure or any Act of Parliament or Act of the National Assembly for Wales (whenever passed or made) which prevents disclosure of the information.

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- (4) This section is without prejudice to any other power of a local authority, Local Health Board or the Welsh Ministers to supply information.

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**Commencement Information**

**I50** S. 42 in force at 6.6.2012 by S.I. 2012/1397, art. 2(u)

**43 Amendment of the Local Authority Social Services Act 1970**

- (1) The Local Authority Social Services Act 1970 is amended as described in subsection (2).
- (2) At the end of the table in Schedule 1 to the Act insert–

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“Mental Health (Wales) Measure 2010 Parts 1 to 3	Local primary mental health support services, coordination of and care planning for secondary mental health service users, assessments of former users of secondary mental health services.”
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**Commencement Information**

**I51** S. 43 in force at 6.6.2012 by S.I. 2012/1397, art. 2(v)

**I52** S. 43 in force for specified purposes at 8.5.2012 by S.I. 2011/3046, art. 4(f) (with art. 5)

**44 Codes of practice**

- (1) The Welsh Ministers may prepare, and from time to time revise, one or more codes of practice for the following purposes–
- (a) for the guidance of local authorities, Local Health Boards, care coordinators or any other persons in relation to their functions under this Measure;
  - (b) for the guidance of any persons in connection with the operation of the provisions of this Measure.
- (2) The Welsh Ministers must arrange for any such code or revised code to be published.
- (3) In performing their functions under this Measure, the persons mentioned in subsection (1)(a) must have regard to any code of practice published under this section.
- (4) Before preparing or revising any such code, the Welsh Ministers must consult any persons they consider appropriate.
- (5) The Welsh Ministers must lay copies of any such code or revised code before the National Assembly for Wales; and if the National Assembly for Wales passes a resolution requiring the code to be withdrawn, the Welsh Ministers must withdraw the code.
- (6) No resolution may be passed by the National Assembly for Wales under subsection (5) in respect of a code or revised code after the expiration of the period of 40 days beginning with the day on which a copy of the code was laid before the Assembly.

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- (7) For the purposes of subsection (6) no account is to be taken of any time during which the National Assembly for Wales is dissolved or is in recess for more than four days.
- (8) The Welsh Ministers may revoke any code of practice by direction.
- (9) Any direction under subsection (8) must be laid before the National Assembly for Wales.

#### Commencement Information

**I53** S. 44 in force at 3.1.2012 by S.I. 2011/3046, art. 2(h) (with art. 5)

### 45 Part 1: power to secure regional provision

- (1) The Welsh Ministers may by regulations make provision for and in connection with—
- (a) disapplying (for so long as the regulations are in force) Part 1 in relation to two or more local authority areas; and
  - (b) instead applying that Part and, so far as necessary this Part and Part 6, in relation to the combined areas of the authorities referred to in paragraph (a) (that combined area being referred to in this section as a “region”).
- (2) The provision made by regulations under subsection (1) must include provision specifying at least one Local Health Board and one local authority as the mental health partners for the region (and it does not matter if no part of the area for which such a Board or authority is constituted falls within the region).
- (3) The provision that may be made by regulations under subsection (1) includes (but is not limited to) provision—
- (a) specifying more than one such Board or authority amongst the mental health partners for the region;
  - (b) making such modifications of Part 1 as appear to the Welsh Ministers to be necessary or expedient.

#### Commencement Information

**I54** S. 45 in force at 8.5.2012 by S.I. 2011/3046, art. 4(g) (with art. 5)

### 46 Part 3: power to secure regional provision

- (1) The Welsh Ministers may by regulations make provision for and in connection with—
- (a) disapplying (for so long as the regulations are in force) Part 3 in relation to two or more local authority areas; and
  - (b) instead applying that Part and, so far as necessary this Part and Part 6, in relation to the combined areas of the authorities referred to in paragraph (a) (that combined area being referred to in this section as a “region”).
- (2) The provision made by regulations under subsection (1) must include provision specifying at least one Local Health Board and one local authority as the mental health partners for the region (and it does not matter if no part of the area for which such a Board or authority is constituted falls within the region).

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- (3) The provision that may be made by regulations under subsection (1) includes (but is not limited to) provision—
- (a) specifying more than one such Board or authority amongst the mental health partners for the region;
  - (b) making such modifications of Part 1 as appear to the Welsh Ministers to be necessary or expedient.

**Commencement Information**

**I55** S. 46 in force in so far as not already in force at 6.6.2012 by S.I. 2012/1397, art. 2(w)

**47 Regulations as to the individuals who may carry out primary mental health assessments and act as care coordinators**

- (1) The Welsh Ministers may by regulations make provision about the eligibility of individuals to—
- (a) exercise the function of a local mental health partner to carry out primary mental health assessments under section 9;
  - (b) be appointed as a care coordinator under section 14.
- (2) The regulations may make provision relating to a person's—
- (a) qualifications;
  - (b) skills;
  - (c) training; or
  - (d) experience.
- (3) The regulations may make different provision in relation to the eligibility of individuals to carry out a primary mental health assessment compared to that which is made in relation to the eligibility of individuals to be appointed as care coordinators.

**Commencement Information**

**I56** S. 47 in force at 6.6.2012 by S.I. 2012/1397, art. 2(x)

VALID FROM 01/10/2012

**48 Duty to review the Measure**

- (1) The Welsh Ministers must review the operation of this Measure for the purposes of publishing a report or reports in accordance with subsections (3) to (6).
- (2) Before undertaking a review of the operation of any part or provision of the Measure, the Welsh Ministers must satisfy themselves that there has been sufficient time for that part or provision to have been in operation; but this is subject to subsections (3) to (6).
- (3) A report on a review of the operation of Part 1 must be published within four years of the commencement of all the duties contained in the following provisions: sections 2(1), 3(1), 4(1), 6(2), 7(2), 8(2), 9(2) and 10(1) to (3).

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- (4) A report on a review of the operation of Part 2 must be published within four years of the commencement of all the duties contained in the following provisions: sections 13(1), 16(1) and 17(1) and (10).
- (5) A report on a review of the operation of Part 3 must be published within four years of the commencement of all the duties contained in the following provisions: sections 18(1) and (3), 19, 23(1) and (2), 25, 26(2) and 27(1) and (2).
- (6) A report on a review of the operation of Part 4 must be published within four years of the commencement of all the duties contained in section 130E(1) of the Mental Health Act 1983, as inserted by section 31 of this Measure.
- (7) Any two or more reports may be published in the same document.
- (8) For the purposes of this section, “commencement” means commencement for any case, class of case, area or purpose.
- (9) The Welsh Ministers must lay a copy of any report required to be published under subsections (3) to (6) before the National Assembly for Wales.

## PART 6

### MISCELLANEOUS AND SUPPLEMENTAL

#### 49 Meaning of secondary mental health services

- (1) Subject to the following provisions of this section, for the purposes of this Measure, a secondary mental health service is—
  - (a) a service in the form of treatment for an individual's mental disorder which is provided under Part 1 of the National Health Service (Wales) Act 2006;
  - (b) a service provided under section 117 of the Mental Health Act 1983;
  - (c) a community care service the main purpose of which is to meet a need related to an adult's mental health;
  - (d) a service provided for a child under Part III of the Children Act 1989 the main purpose of which is to meet a need related to that child's mental health.
- (2) For the purposes of subsection (1), a service is not to be taken as provided under Part 1 of the National Health Service (Wales) Act 2006 if it is provided under—
  - (a) section 41 of that Act;
  - (b) a general medical services contract entered into by a Local Health Board under section 42 of that Act;
  - (c) arrangements for the provision of primary medical services entered into by a Local Health Board under section 50 of that Act;
  - (d) Schedule 1 to that Act.
- (3) A service in the form of treatment for an individual's mental disorder includes a service that, in the opinion of the person providing or making arrangements for the provision of the service, is intended to treat a mental disorder that the individual receiving the service is suspected to have.
- (4) The Welsh Ministers may, by order –



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- (a) specify other services that are to be regarded as secondary mental health services for the purpose of any provision of this Measure;
- (b) provide that services that would otherwise be regarded as secondary mental health services for the purpose of any provision of this Measure are not to be so regarded.

## 50 Meaning of housing or well-being services

- (1) For the purposes of this Measure, “housing or well-being services” means—
- (a) the allocation of accommodation by a local housing authority under Part 6 of the Housing Act 1996 (allocation of housing accommodation) or the securing of accommodation by such an authority under Part 7 of that Act (homelessness);
  - (b) any services related to well-being (including housing) which are specified in regulations made by the Welsh Ministers (whether or not provided by or under arrangements made with a public authority);
  - (c) the provision of information or advice about any service falling within paragraph (a) or (b) above (whether or not provided by or under arrangements made with a public authority).
- (2) The reference to services in subsection (1)(b) includes payments, grants and loans.

## 51 General interpretation

- (1) In this Measure—
- “adult” (“*oedolyn*”) means a person aged 18 or above;
  - “child” (“*plentyn*”) means a person who has not attained the age of 18;
  - “community care services” (“*gwasanaethau gofal cymunedol*”) has the same meaning as in section 46 of the National Health Service and Community Care Act 1990;
  - “functions” (“*swyddogaethau*”) includes powers and duties;
  - “housing or well-being services” (“*gwasanaethau tai neu wasanaethau llesiant*”) must be construed in accordance with section 50;
  - “local authority” (“*awdurdod lleol*”) means a county council or a county borough council;
  - “local authority area” (“*ardal awdurdod lleol*”) means a principal area in Wales within the meaning of section 20 of the Local Government Act 1972;
  - “Local Health Board” (“*Bwrdd Iechyd Lleol*”) means a Board established under section 11 of the National Health Service (Wales) Act 2006;
  - “local mental health partners” (“*partneriaid iechyd meddwl lleol*”), and related expressions, must be construed in accordance with section 1;
  - “local primary mental health treatment” (“*triniaeth iechyd meddwl sylfaenol leol*”), in relation to a local authority area, means the treatment referred to in the scheme for the area agreed under section 2 or determined by the Welsh Ministers under section 4(1)(c) or, where there is no scheme, the treatment which a Local Health Board has decided to make available for the area under section 4(1)(a);
  - “primary care provider” (“*darparnydd gofal sylfaenol*”) means a contractor under a general medical services contract entered into under section 42 of the National Health Service (Wales) Act 2006, a person with whom arrangements

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have been made under section 50 of that Act, a registered medical practitioner employed by a Local Health Board for the purposes of section 41 of that Act, and a registered medical practitioner providing services to prisoners under arrangements made between the registered medical practitioner and a person responsible for the provision or running of a contracted out prison (within the meaning of section 84(4) of the Criminal Justice Act 1991) in Wales;

“primary mental health assessment” (“*asesiad iechyd meddwl sylfaenol*”) is an assessment under section 9;

“registered patient” (“*claf cofrestredig*”) means—

- (a) in relation to a contractor under a general medical services contract entered into under section 42 of the National Health Service (Wales) Act 2006, an individual—
  - (i) whom the contractor has accepted as a patient under regulations made under section 47(3)(a) of that Act, and
  - (ii) in respect of whom the contractor has not terminated responsibility under regulations made under section 47(3)(c) of that Act;
- (b) in relation to a person with whom arrangements have been made under section 50 of that Act, an individual—
  - (i) whom the person has accepted as a patient under regulations made under section 52(8)(a) of that Act, and
  - (ii) in respect of whom the person has not terminated responsibility under regulations made under section 52(8)(c) of that Act;
- (c) in relation to a registered medical practitioner employed by a Local Health Board for the purposes of section 41 of that Act, an individual falling within a category specified in regulations made by the Welsh Ministers;

“secondary mental health services” (“*gwasanaethau iechyd meddwl eilaidd*”) has the meaning given by section 49;

“treatment” (“*triniaeth*”) means treatment for mental disorder within the meaning of field 9 of Part 1 of Schedule 5 to the Government of Wales Act 2006.

- (2) For the purposes of this Measure, an individual is under the guardianship of a local authority in Wales if a local authority has, in respect of the individual, the powers in section 8(1) of the Mental Health Act 1983.
- (3) In this Measure any reference (however expressed) to a service being provided by a person includes a reference to a service being provided under arrangements made by the person.
- (4) Until the coming into force of section 8(1) of the Children and Young Persons Act 2008, all references to section 22C(12) of the Children Act 1989 are to be read as references to section 23(3) of the Children Act 1989.
- (5) References in this Measure to a care coordinator are to be construed as references to a care coordinator acting on behalf of the mental health service provider who had responsibility for appointing the individual as care coordinator under section 14(1) or (3), unless the context otherwise requires.

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## 52 Orders and regulations

- (1) Any power of the Welsh Ministers to make an order or regulations under this Measure is exercisable by statutory instrument.
- (2) Any power of the Welsh Ministers to make an order or regulations under this Measure includes power—
  - (a) to make different provision for different cases or classes of case, different areas or different purposes;
  - (b) to make provision generally or subject to specified exemptions or exceptions or only in relation to specific cases or classes of case;
  - (c) to make such incidental, supplemental, consequential, transitory, transitional or saving provision as the Welsh Ministers think fit.
- (3) Any statutory instrument containing regulations made under this Measure or an order under section 53(3)(b) is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (4) Subsection (3) does not apply to regulations and orders to which subsections (5) and (6) apply.
- (5) A statutory instrument containing (alone or with other provisions)—
  - (a) an order under section 49(4) or section 53(3)(a), or
  - (b) regulations under section 7(6)(a), 23(1)(b), 23(2), 45 or 46,must not be made unless a draft of the instrument has been laid before, and approved by resolution of, the National Assembly for Wales.
- (6) A statutory instrument containing (alone or with other provisions) the first regulations to be made under section 18(1)(c) or 18(8) must not be made unless a draft of the instrument has been laid before, and approved by resolution of, the National Assembly for Wales.

## 53 Consequential etc amendments

- (1) Schedule 1 has effect to make minor and consequential amendments in connection with Part 4.
- (2) The Welsh Ministers may by order make such provision as the Welsh Ministers consider appropriate for the general purposes, or any particular purposes, of this Measure, or in consequence of, or for giving full effect to, any provision made by this Measure or regulations under sections 45 and 46.
- (3) The provision that may be made in an order under subsection (2) includes provision to amend, repeal, revoke or modify the application of any provision of—
  - (a) any Act of Parliament or Act or Measure of the National Assembly for Wales (including this Measure); and
  - (b) subordinate legislation.
- (4) In this section “subordinate legislation” has the same meaning as in the Interpretation Act 1978.

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### Commencement Information

**I57** S. 53 partly in force; s. 53(2)-(4) in force at 15.2.2011 see s. 55

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- I58** S. 53(1) in force in so far as not already in force at 2.4.2012 by S.I. 2011/3046, **art. 3(h)** (with art. 5)  
**I59** S. 53(1) in force for specified purposes at 3.1.2012 by S.I. 2011/3046, **art. 2(i)** (with art. 5)

## 54 Repeals

Schedule 2 has effect to make repeals in connection with Part 4.

### Commencement Information

- I60** S. 54 in force in so far as not already in force at 2.4.2012 by S.I. 2011/3046, **art. 3(i)** (with art. 5)  
**I61** S. 54 in force for specified purposes at 3.1.2012 by S.I. 2011/3046, **art. 2(j)** (with art. 5)

## 55 Commencement

- (1) The provisions in subsection (2) come into force at the end of the period of two months beginning on the day on which this Measure is approved by Her Majesty in Council.
- (2) The provisions are—
  - (a) those contained in this Part (other than in sections 53(1) and 54); and
  - (b) any provision conferring power to make regulations or an order, to the extent that the provision confers such power.
- (3) The remaining provisions of this Measure come into force in accordance with provision made by the Welsh Ministers by order.

## 56 Short title

This Measure may be cited as the Mental Health (Wales) Measure 2010.

**Status:**

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**Changes to legislation:**

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