Mental Health (Wales) Measure 2010

2010 nawm 7

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–
   (a) is professionally concerned with the patient's medical treatment; or
   (b) falls within a description specified in regulations made by the Welsh Ministers.

Status: *Point in time view as at 03/01/2012. This version of this part 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, PART 4. (See end of Document for details)*

(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

I1 S. 31 in force for specified purposes at 3.1.2012 by S.I. 2011/3046, **art. 2(a)** (with art. 5)

I2 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–
  (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."

Commencement Information

I3 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)

I4 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."

Commencement Information

I5 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–

Status: *Point in time view as at 03/01/2012. This version of this part 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, PART 4. (See end of Document for details)*

"**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;
- (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

I6 S. 34 in force for specified purposes at 3.1.2012 by S.I. 2011/3046, **art. 2(c)** (with art. 5)

I7 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.”

Commencement Information

I8 S. 35 in force at 3.1.2012 by S.I. 2011/3046, **art. 2(d)** (with art. 5)

VALID FROM 02/04/2012

36 Welsh qualifying informal patients

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

“**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."

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–
   (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."

Commencement Information

I9 S. 37 in force at 3.1.2012 by S.I. 2011/3046, **art. 2(e)** (with art. 5)

VALID FROM 02/04/2012

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–

"**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."

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) ".

Commencement Information

I10 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."

Commencement Information

I11 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 03/01/2012. This version of this part 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, PART 4.