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WELSH STATUTORY INSTRUMENTS

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**2008 No. 2437 (W.210)**

**MENTAL HEALTH, WALES**

**The Mental Health (Independent Mental Health Advocates) (Wales) Regulations 2008**

<i>Made</i>	- - - -	<i>15 September 2008</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>17 September 2008</i>
<i>Coming into force</i>	- -	<i>3 November 2008</i>

The Welsh Ministers make these Regulations in exercise of the powers conferred by section 130A of the Mental Health Act 1983(1) and by sections 12 and 204 of the National Health Service (Wales) Act 2006(2).

**Title, commencement and extent**

1.—(1) The title of these Regulations is the Mental Health (Independent Mental Health Advocates) (Wales) Regulations 2008 and they come into force on 3 November 2008.

(2) These Regulations apply in relation to Wales.

**Interpretation**

2. In these Regulations —

“the Act” (“*y Ddeddf*”) means the Mental Health Act 1983;

“IMHA” (“*EAIM*”) means an independent mental health advocate;

“provider of advocacy services” (“*darparrydd gwasanaethau eirioli*”) means a body or person, including a voluntary organisation, that employs persons who may be made available to act as an IMHA;

“qualifying patients” (“*cleifion cymwys*”) mean those persons who qualify for help from an IMHA under sections 130C(2), (3) and (4) of the Act

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(1) 1983 (c. 20). Section 130A was inserted by the Mental Health Act 2007 (c. 12).

(2) 2006 c. 42.

### **Arrangements for independent mental health advocates**

3.—(1) Subject to directions that may be given by Welsh Ministers, a Local Health Board will make such arrangements as it considers reasonable to enable IMHAs to be available to act in respect of a qualifying patient who—

- (a) is liable to be detained in a hospital or registered establishment which is in the area of the Local Health Board;
- (b) is subject to guardianship under the Act or is a community patient and is usually resident in the area for which the Local Health Board is established;
- (c) qualifies under section 130C(3) of the Act and is usually resident in the area for which the Local Health Board is established.

(2) In making arrangements under paragraph (1) a Local Health Board may make arrangements with a provider of advocacy services.

(3) No person may act as an IMHA unless that person is approved by the Local Health Board or is employed by a provider of advocacy services to act as an IMHA.

(4) Before approving any person under paragraph (3) a Local Health Board must be satisfied that the person satisfies the appointment requirements in regulation 4.

(5) A Local Health Board must ensure that any provider of advocacy services with whom it makes arrangements under paragraph (2) is required, in accordance with the terms of that arrangement, to ensure that any person who—

- (a) is employed by that provider of advocacy services, and
- (b) is made available to act as an IMHA,

satisfies the appointment requirements in regulation 4.

(6) For the purposes of regulation 2(2) of the Local Health Boards (Functions) (Wales) Regulations 2003(3) a Local Health Board is not responsible for making arrangements in accordance with paragraph (1) in respect of a qualifying patient if that qualifying patient—

- (a) is usually resident in the area for which the Local Health Board is established; and
- (b) is liable to be detained in a hospital or registered establishment which is not in the same area in which he or she is usually resident.

### **Appointment requirements for independent mental health advocates**

4.—(1) The appointment requirements in regulation 3(4) and (5) are that a person—

- (a) has appropriate experience or training or an appropriate combination of experience and training;
- (b) is of integrity and good character; and
- (c) will act independently of any person who
  - (i) requests that person to visit or interview the qualifying patient;
  - (ii) is professionally concerned with the medical treatment of the qualifying patient.

(2) In determining whether a person satisfies the appointment requirement in paragraph (1)(a) regard will be had to standards in guidance that may from time to time be issued by Welsh Ministers.

(3) For the purposes of paragraph (2) standards may include any qualification that Welsh Ministers may determine as appropriate.

(4) Before a determination is made for the purposes of paragraph (1)(b) in relation to any person, there must be obtained in respect of that person—

- (a) an enhanced criminal record certificate issued pursuant to section 113B of the Police Act 1997(4); or
  - (b) if the purpose for which the certificate is required is not one prescribed under subsection (2) of that section, a criminal record certificate issued pursuant to section 113A of that Act.
- (5) For the purposes of section 130A(5) a person is not professionally concerned with the qualifying patient's medical treatment if he or she—
- (a) is acting, or has acted, as an IMHA for the qualifying patient in accordance with section 130B of the Act; or
  - (b) is representing or supporting, or has represented or supported, the qualifying patient other than in accordance with section 130B but is not otherwise involved in the qualifying patient's treatment.
- (6) In this regulation a person is employed by the provider of advocacy services if that person is—
- (a) employed under a contract of service; or
  - (b) engaged under a contract for services.

15 September 2008

*Edwina Hart*  
Minister for Health and Social Services, one of  
the Welsh Ministers

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(4) 1997 c. 50. Sections 113A to 113D are inserted by section 163 of the Serious Organised Crime and Police Act 2005 (c. 14).

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

1. These Regulations contain provisions about the arrangements for the appointment of Independent Mental Health Advocates (IMHAs). They contain provision about who may be appointed to act as an IMHA.

2. Regulation 3 provides—

- (a) that Local Health Boards (LHB) must make arrangements for IMHAs to be available to patients who qualifying for help under section 130C of the Mental Health Act 1983 (“the Act”). Qualifying patients are those patients who are
  - (i) liable to be detained in hospital (other than under sections 4, 5(2)(4), 135 or 136 of the Act);
  - (ii) subject to guardianship or community treatment orders;
  - (iii) informal patients who are being considered for a form of treatment that falls under section 57 of the Act;
  - (iv) informal patients who have not attained the age of 18 years and are being considered for a form of treatment under section 58A of the Act (regulation 3(1));
- (b) that LHBs may make arrangements with providers of advocacy services for the provision of IMHAs (regulation 3(2));
- (c) that any person who is appointed to act as an IMHA must either be approved by the LHB or employed by a provider of advocacy services (regulation 3(3));
- (d) that before approving an IMHA the LHB must be satisfied that he or she meets the appointment requirements (regulation 3(4));
- (e) that a provider of advocacy services should be required to ensure that any IMHAs who they may employ satisfy the appointment requirements (regulation 3(5));
- (f) clarification on which LHB is responsible for making arrangements for an IMHA to act for a patient whilst the patient is detained in hospital.

3. Regulation 4 sets out the appointment requirements that an IMHA must satisfy before they may be appointed.

4. A full impact assessment has not been produced for this instrument as no significant impact on the private or voluntary sector is foreseen.