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WELSH STATUTORY INSTRUMENTS

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**2011 No. 3046 (W.321) (C.116)**

**MENTAL HEALTH, ENGLAND AND WALES**

**The Mental Health (Wales) Measure 2010 (Commencement  
No.1 and Transitional Provision) Order 2011**

Made - - - - 18 December 2011

The Welsh Ministers make the following Order in exercise of the powers conferred by sections 52(2) and 55(3) of the Mental Health (Wales) Measure 2010(1).

**Title and interpretation**

1.—(1) The title of this Order is the Mental Health (Wales) Measure 2010 (Commencement No.1 and Transitional Provision) Order 2011.

(2) In this Order—

- (a) “the Measure” (“*y Mesur*”) means the Mental Health (Wales) Measure 2010;
- (b) “qualifying patient” (“*claf cymwys*”) has the same meaning as in section 130C of the Mental Health Act 1983(2);
- (c) “Welsh qualifying informal patients” (“*cleifion anffurfiol cymwys Cymru*”) has the same meaning as in section 130J of the Mental Health Act 1983(3).

**Provisions of the Measure coming into force on 3 January 2012**

2. The following provisions of the Measure come into force on 3 January 2012—

- (a) Section 31 (independent mental health advocates: Wales) except in so far as it relates to Welsh qualifying informal patients;
- (b) Section 32 (further provision about independent mental health advocacy for Welsh qualifying compulsory patients);
- (c) Section 34 (independent mental health advocates: supplementary powers and duties) except in so far as it relates to Welsh qualifying informal patients;
- (d) Section 35 (Welsh qualifying compulsory patients);
- (e) Section 37 (duty to give information about independent mental health advocates to Welsh qualifying compulsory patients);

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(1) [2010 nawm 7](#).

(2) [1983 c. 20](#). Section 130C was inserted by section 30 of the Mental Health Act [2007 \(c. 12\)](#).

(3) Section 130J was inserted by section 36 of the Measure.

- (f) Section 39 (application of the Mental Health Act 1983 code of practice to Welsh independent mental health advocates) except in so far as it relates to Welsh qualifying informal patients;
- (g) Section 40 (procedures for making regulations under the Mental Health Act 1983) except in so far as it relates to Welsh qualifying informal patients;
- (h) Section 44 (codes of practice);
- (i) Section 53(1) (consequential etc amendments) except in so far as it relates to Welsh qualifying informal patients;
- (j) Section 54 (repeals) except in so far as it relates to Welsh qualifying informal patients;
- (k) Schedule 1 (consequential amendments to the Mental Health Act 1983) except in so far as it relates to Welsh qualifying informal patients; and
- (l) Schedule 2 (repeals) except in so far as it relates to Welsh qualifying informal patients.

### **Provisions of the Measure coming into force on 2 April 2012**

- 3. The following provisions of the Measure come into force on 2 April 2012—
  - (a) Section 31 (independent mental health advocates: Wales) in so far as not already commenced;
  - (b) Section 33 (further provision about independent mental health advocacy for Welsh qualifying informal patients);
  - (c) Section 34 (independent mental health advocates: supplementary powers and duties) in so far as not already commenced;
  - (d) Section 36 (Welsh qualifying informal patients);
  - (e) Section 38 (duty to give information about independent mental health advocates to Welsh qualifying informal patients);
  - (f) Section 39 (application of the Mental Health Act 1983 code of practice to Welsh independent mental health advocates) in so far as not already commenced;
  - (g) Section 40 (procedures for making regulations under the Mental Health Act 1983) in so far as not already commenced;
  - (h) Section 53(1) (consequential etc amendments) in so far as not already commenced;
  - (i) Section 54 (repeals) in so far as not already commenced;
  - (j) Schedule 1 (consequential amendments to the Mental Health Act 1983) in so far as not already commenced; and
  - (k) Schedule 2 (repeals) in so far as not already commenced.

### **Provisions of the Measure coming into force on 8 May 2012**

- 4. The following provisions of the Measure come into force on 8 May 2012—
  - (a) Section 1 (meaning of “local mental health partners”);
  - (b) Section 2 (joint schemes for the provision of local primary mental health support services);
  - (c) Section 4 (failures to agree schemes);
  - (d) Section 5 (meaning of “local primary mental health support services”);
  - (e) Section 11 (inclusion of schemes under this Part in children and young people’s plans);
  - (f) Section 43 (amendment of the Local Authority Social Services Act 1970) in so far as it relates to sections 1, 2, 4, 5 and 11 of the Measure; and

(g) Section 45 (Part 1: power to secure regional provision).

**Transitional provision**

5.—(1) This article applies where a qualifying patient in Wales is receiving help under arrangements made under section 130A of the Mental Health Act 1983.

(2) From the 3 January 2012 the help is to be treated as if it had been given under arrangements made under section 130E of the Mental Health Act 1983.

18 December 2011

*Lesley Griffiths*  
Minister for Health and Social Services, one of  
the Welsh Ministers

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## EXPLANATORY NOTE

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

This Order is made under sections 52(2) and 55(3) of the Mental Health (Wales) Measure 2010 (“the Measure”).

This is the first commencement order to be made under the Measure. It commences Part 4 of the Measure which amends the Mental Health Act 1983 (“the 1983 Act”) in relation to Independent Mental Health Advocates (“IMHAs”). The 1983 Act, as amended by Part 4, will require the Welsh Ministers to make arrangements for help to be provided by IMHAs to two client groups: Welsh qualifying compulsory patients and Welsh qualifying informal patients.

This Order also commences some of the provisions of Part 1 of the Measure which requires the local mental health partners to take reasonable steps to agree a scheme for the provision of local primary mental health support services and contains powers for the Welsh Ministers in the event of a failure to agree such a scheme.

This Order also commences section 44 of the Measure which enables the Welsh Ministers to prepare a code of practice for the guidance of (i) local authorities, LHBs, care co-ordinators and any other persons in relation to their functions under the Measure and (ii) any persons in connection with the operation of the provisions of the Measure.

Article 2 lists the provisions which are to come into force on 3 January 2012 and for which purposes. Article 3 lists the provisions which come into force on 2 April 2012 and for which purposes.

Article 4 lists the provisions, which form part of Part 1 of the Measure, which come into force on 8 May 2012.

The Order also makes a transitional provision so that those who are receiving help under arrangements made under section 130A of the Mental Health Act 1983 are treated, from 3 January 2012, as if they are receiving help under arrangements made under section 130E of that Act.

This is the first commencement order, but see also section 55(1) of the Measure for the provisions that came into force on the date two months after which the Measure was approved by Her Majesty in Council.