
WELSH STATUTORY INSTRUMENTS

2023 No. 281 (W. 42)

NATIONAL HEALTH SERVICE, WALES

The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) (Amendment) Regulations 2023

<i>Made</i>	- - - -	<i>7 March 2023</i>
<i>Laid before Senedd Cymru</i>		<i>9 March 2023</i>
<i>Coming into force</i>	- -	<i>1 April 2023</i>

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 113(2) and (3), and 115 of the Health and Social Care (Community Health and Standards) Act 2003(1), and sections 1, 11(2) and (3), and 12(1) of the NHS Redress (Wales) Measure 2008(2).

Title and commencement

1.—(1) The title of these Regulations is the National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) (Amendment) Regulations 2023.

(2) These Regulations come into force on 1 April 2023.

Amendments to the National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011

2.—(1) The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011(3) are amended as follows.

(2) In regulation 2(1)—

(a) in the definition of “Welsh NHS body”—

(i) omit the “or” after sub-paragraph (a);

(ii) after sub-paragraph (b) insert—

“or

(1) 2003 c. 43. Section 113(2)(d) was inserted by section 10 of the NHS Redress (Wales) Measure 2008 (nawm 1). Section 113(3)(b) was repealed by section 95 of, and paragraph 45 of Schedule 5 to, and section 166 of, and Schedule 15 to, the Health and Social Care Act 2008 (c. 14). There are other amendments, but none is relevant to these Regulations. The functions of the National Assembly for Wales are now exercisable by the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

(2) 2008 nawm 1.

(3) S.I. 2011/704 (W. 108).

- (c) a Special Health Authority;”;
- (b) at the appropriate places insert—
 - ““representative” (“*cynrychiolydd*”) has the meaning given in regulation 12(2);
 - “Special Health Authority” (“*Awdurdod Iechyd Arbennig*”) means a body established by an order made under section 22 of the 2006 Act; but does not include any cross-border Special Health Authority (within the meaning of section 8A(5) of the 2006 Act);”.
- (3) In regulation 3—
 - (a) the existing provision becomes paragraph (1);
 - (b) after that paragraph insert—
 - “(2) In complying with its obligations under these Regulations, a responsible body must not disclose personal data to a person who is not the data subject, unless that person is a representative of the data subject.
 - (3) In paragraph (2), “data subject” and “personal data” have the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).”
- (4) In regulation 12—
 - (a) in paragraph (1)(a) for “a person who is receiving or has received services from a responsible body” substitute “a patient”;
 - (b) in paragraph (9), after “redress” insert “, or a patient,”.
- (5) In regulation 14(1)—
 - (a) in sub-paragraph (c), after “Wales” insert “, unless the Public Services Ombudsman for Wales has recommended that the Welsh NHS body offers a form of redress under Part 6 of these Regulations, in which case the Welsh NHS body may undertake a further investigation of the concern under these Regulations only for the purpose of determining whether a qualifying liability exists or may exist and to offer a form of redress in accordance with the recommendations of the Public Services Ombudsman for Wales;”;
 - (b) in sub-paragraph (f) omit the words from the first reference to “is” to “and”;
 - (c) in sub-paragraph (i), after “proceedings” insert “(including the pre-action stage of those proceedings)”;
 - (d) omit the “or” after sub-paragraph (i);
 - (e) after sub-paragraph (j) insert—
 - “; or
 - (k) where the responsible body is Health Education and Improvement Wales, a concern which does not relate to the provision of health care by that body.”
- (6) In regulation 25(2), at the beginning insert “Subject to regulation 29(2),”.

7 March 2023

Eluned Morgan
Minister for Health and Social Services, one of
the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011 (“the Principal Regulations”).

Regulation 2(2) amends regulation 2 of the Principal Regulations (interpretation) by—

- defining “Special Health Authority” and inserting “Special Health Authority” into the definition of “Welsh NHS body”, so that the Principal Regulations will apply to Special Health Authorities in Wales but will not apply to cross-border Special Health Authorities;
- inserting a definition of “representative”.

Regulation 2(3) amends regulation 3 of the Principal Regulations (general principles for the handling and investigation of concerns) to make clear that responsible bodies must not provide personal data to a person who is not the data subject (unless that person is a representative of the data subject).

Regulation 2(4) makes technical amendments to regulation 12 of the Principal Regulations (persons who may notify concerns), clarifying that regulation 12(1)(a) is a reference to a patient and that references to a patient include a representative of that patient.

Regulation 2(5) makes amendments to regulation 14 of the Principal Regulations (matters and concerns excluded from consideration under the arrangements) so that—

- where the Public Services Ombudsman for Wales has recommended that the Welsh NHS body offers a form of redress under Part 6 of the Principal Regulations, the Welsh NHS body may undertake a further investigation of the concern under the Principal Regulations only for the purpose of determining whether a qualifying liability exists or may exist and to offer a form of redress in accordance with the recommendations of the Public Services Ombudsman for Wales;
- any concern resolved to the satisfaction of the person who notified it by the end of the next working day after the day on which it was notified is excluded from the remainder of the Principal Regulations (prior to this amendment, this only applied to concerns notified verbally);
- the reference to “civil proceedings” in sub-paragraph (i) explicitly includes the pre-action stage of those proceedings;
- the application of the Principal Regulations to Health Education and Improvement Wales (“HEIW”) is limited to the provision of health care by HEIW.

Regulation 2(6) makes a technical amendment to regulation 25 of the Principal Regulations (duty to consider redress). The amendment makes clear that an offer of financial redress under regulation 25 of the Principal Regulations may not be made when the Welsh NHS body considers that the value of the qualifying liability exceeds £25,000.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from Welsh Government, Cathays Park, Cardiff, CF10 3NQ and is published on www.gov.wales.