

# **MENTAL HEALTH (WALES) MEASURE 2010**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These Explanatory Notes are for the Mental Health (Wales) Measure 2010 which was passed by the National Assembly for Wales on 2 November 2010 and approved by Her Majesty in Council on 15 December 2010. They have been prepared by the Health and Social Services Directorate General of the Welsh Assembly Government to assist the reader of the Measure. The Explanatory Notes should be read in conjunction with the Measure but are not part of it.

### **COMMENTARY ON SECTIONS**

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

2. This section creates the term ‘local mental health partners’ to describe the bodies (local authorities and Local Health Boards (LHBs)) which are responsible for providing primary mental health support services. Local mental health partners are also responsible for making arrangements for the assessment of former users of secondary mental health services (under Part 3 of the Measure). The term is therefore of relevance to the whole Measure, not just Part 1.
3. Given that LHB areas are wider than local authority areas, LHBs will be local mental health partners in multiple areas, albeit with a different partner in each local authority area.

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

4. Local mental health partners are required to take reasonable steps to agree a scheme which secures the provision of primary mental health support services for the local authority area. The schemes established under section 2 will set out the arrangements for the services, including the type and extent of the local primary mental health treatment that will be made available as part of the services, and which partner is responsible for the different aspects of the service.
5. This provision, when read with provisions for cooperative and joint working set out in section 41 of the Measure, allows for flexibility for the mental health partners and allows a diverse range of delivery mechanisms, so that the scheme can be responsive to the needs of the population of the local authority area. However it also ensures that at a strategic level both bodies are involved in setting out the arrangements under which the services are to be delivered, and will have clear responsibilities to provide particular services.
6. A particularly important aspect of local primary mental health support services is the primary mental health assessment, which acts as a ‘gateway’ to the other services – particularly local primary mental health treatment. There is a right to an assessment where an individual (of any age) is referred by their GP, or where a GP refers an individual who is not registered with the GP but who falls within a category of additional persons listed in the regulations made under section 7(6)(a) of the Measure.

7. In addition, the scheme may confer rights to assessment on other categories or groups, such as individuals receiving secondary mental health services, and those subject to compulsion under the Mental Health Act 1983.
8. It is anticipated that as services develop and improve, schemes will need to be reviewed and altered. Subsection (6) of section 2 provides that the schemes may be altered, including those schemes made by Welsh Ministers under section 4 of the Measure.

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

9. **Section 3** requires local mental health partners to provide primary mental health support services in accordance with their agreed scheme. By virtue of section 51(3) the duty to provide services can be discharged by making arrangements for provision by a third party, but the responsibility for provision of services remains with the local mental health partner.

### ***Section 4 – Failure to agree schemes***

10. It is recognised that there may be occasion when agreement between local mental health partners cannot be reached; section 4 allows the Welsh Ministers to determine the scheme for the provision of primary mental health support services in a local authority area if the mental health partners cannot agree one. During any such time when there is no agreed scheme, it is important to ensure that services will continue to be provided to individuals. LHBs will be responsible for this.

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

11. This section describes the services which constitute primary mental health support services and which, by virtue of sections 3 or 4, must be provided by whichever of the partners is responsible for providing particular services under the agreed scheme.

### ***Sections 6 to 8 – Duties to carry out primary mental health assessments (various)***

12. This group of sections provide that primary mental health assessments must be carried out in respect of certain individuals, and may be carried out (if the scheme so provides) in respect of other persons. The purpose of an assessment is set out in section 9.
13. **Section 6** establishes a duty to undertake an assessment of an individual referred by the GP with whom they are registered, to the local primary mental health partners for the area where that individual is usually resident. In practice it is anticipated that a referral will be made to the mental health professionals operating within the established scheme.
14. **Section 7** provides that referrals may also be made by a GP where the individual is not registered with them, if such individuals fall within a category of persons prescribed in regulations made by the Welsh Ministers. This will provide access to local primary mental health support services to certain categories of people who do not have a usual residence, or registration with a GP.
15. It is anticipated that the significant majority of patients subject to compulsion under the 1983 Act, or already receiving secondary mental health services, would not necessarily benefit from local primary mental health services. The local mental health partners will decide if some or all of these patients are to be entitled to assessment or treatment under the scheme. Section 8 therefore provides that if a scheme enables it, referrals may also be made in respect of such a patient by a practitioner from within secondary mental health services. Where a scheme enables such referrals, the scheme must also set out who is entitled to make referrals to the primary mental health support services.

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

16. Where a primary mental health assessment is required to be undertaken, that assessment will identify two things:

- local primary mental health treatment which might improve or prevent a deterioration in the person's mental health; and
  - any other services which might improve or prevent a deterioration in the person's mental health.
17. Assessments may only be conducted by a practitioner who is eligible to undertake such an assessment; eligibility will be determined by regulations made under section 47 of the Measure.

***Section 10 – Action following a primary mental health assessment***

18. This section relates to the second aspect of assessment, which is where services other than local primary mental health treatment, might benefit the individual. The local primary mental health partner responsible for assessment must first consider whether provision of services would be its responsibility, and if so, decide whether to provide them. Where that partner does not consider it is the provider, the partner must make an onward referral to the body that the partner considers would be responsible.

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

19. Under section 26 of the Children Act 2004 and the Children and Young People's Plan (Wales) Regulations 2007, all children's services authorities in Wales are required to publish and review a children and young person's plan. The joint scheme made by the joint partners for a local authority area under Part 1 of the Measure, must be included in the Children and Young People's Plan for that area.

***Section 12 – Meaning of "relevant patient"***

20. The purpose of this section is to identify those patients for whom a care coordinator will be appointed, and in respect of whom the duties in relation to care and treatment planning, and cooperation of service provision, are to apply. The patients are those who receive secondary mental health services; such services are defined in section 49 of the Measure.

***Section 13 – Meaning of "mental health service provider"***

21. **Section 13** establishes what is meant by a mental health service provider within the context of this Part of the Measure.
22. Welsh Ministers have been included in the list of mental health service providers as they have general and specific powers under the National Health Service (Wales) Act 2006 to provide services. However subsection (2) makes clear that where an LHB is providing a service under a function in relation to which directions have made the function exercisable by the LHB under the 2006 Act, the service is to be treated as being provided by the LHB and not the Welsh Ministers.

***Section 14 – Duty to appoint care coordinator for a relevant patient***

23. A care coordinator must be appointed in relation to each individual (of any age) receiving secondary mental health services, as soon as is reasonably practicable after the person becomes a relevant patient.
24. The Measure recognises that over time the care coordinator for an individual may change, perhaps to reflect the changing needs of the person receiving services, and where this happens the duty to appoint a care coordinator continues. The Measure also allows for the temporary appointment of a care coordinator, where the care coordinator (for whatever reason) is temporarily unable to act. These provisions will ensure that all

persons receiving secondary mental health services will have a care coordinator for as long as they receive those services.

25. The duty to appoint a care coordinator sits with a relevant mental health service provider (namely an LHB or local authority). Section 15 provides the mechanism to identify on whom the duty falls. An LHB or local authority may delegate the function (but not the responsibility) of appointment of a care coordinator to another LHB or local authority. This is provided for by sections 14(5) and (6) of the Measure in respect of LHBs, and by the Local Government Act 2000 and associated regulations in respect of local authorities.

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

26. Care and treatment provision within secondary mental health services is often undertaken by a range of different professionals and via a number of agencies, reflecting the complex and sometimes enduring needs that users of those services may have. This complexity of provision is recognised in the Measure, as section 15 provides a mechanism for identifying the provider with the duty to appoint a care coordinator, as follows:
  - where an LHB, and only an LHB, is responsible for providing services they will be the relevant service provider with the duty to appoint the care coordinator;
  - where a local authority, and only a local authority, is responsible for providing services, or where the patient is under the guardianship of a local authority and not also receiving secondary mental health services from an LHB, the local authority will be the relevant service provider;
  - where both the LHB and the local authority are responsible for providing services, regulations will set out the mechanism for identifying the relevant service provider.

### ***Section 16 – Further provision about the appointment of care coordinators***

27. In every case the relevant service provider may only appoint a care coordinator who is eligible to be appointed; eligibility will be determined by regulations made under section 47 of the Measure.

### ***Section 17 – Duty to coordinate provision of mental health services***

28. Under this section a mental health service provider is under a duty to coordinate the different mental health services it provides, so as to improve the effectiveness of those services for the individual patient. A provider is also under a duty to coordinate its mental health services with those provided by another mental health service provider or not-for-profit third sector provider.
29. The mental health services that must be coordinated (if applicable for the individual service user) are secondary mental health services which include certain community care services (see section 49 of the Measure), local primary mental health support services, and (where applicable) the exercise of a local authority's powers in relation to guardianship under the 1983 Act.
30. The care coordinator may (at any time) give advice to the service provider(s) on how the duty to coordinate services can be achieved. Where such advice is given the service provider must consider this advice, and at any time the service provider may also seek the advice of the patient's care coordinator on how services can be coordinated.

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

31. The importance of a collaborative approach to care planning is enshrined in section 18 of the Measure: the care coordinator is required to work with the patient and the

service provider(s) to agree the outcomes which services aim to achieve (outcomes must include achievements in at least one of the areas listed in section 18(1)(a)) and the mechanisms for achieving those outcomes. These matters are to be recorded on a written care and treatment plan, which may, from time to time, be reviewed and if necessary revised.

32. There may be occasions, for example the patient is unable or unwilling to engage in discussion about his or her care and treatment plan, where such agreement cannot be reached. Where agreement cannot be reached a plan must still be drawn up (in subsections (4), (5) and (6)). This means that all patients receiving secondary mental health services will have a care and treatment plan which describes the outcomes which the delivery of services is designed to achieve.
33. The form and content of the care and treatment plan will be prescribed in regulations. Such regulations may also make provision for who must be consulted in developing the plan, and who should receive a written copy of the care and treatment plan.
34. So far as it is reasonably practicable to do so, a mental health service provider must ensure the provision of the mental health services for a relevant patient in accordance with the patient's current care and treatment plan.

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

35. Local mental health partners (see section 1) are required to take all reasonable steps to agree arrangements for responding to requests for assessments from former users of secondary mental health services, and undertaking those assessments.
36. Potentially, different mental health partners may well want to carry out different aspects of the assessment. For example, a local authority is likely to be better placed to decide whether a person might benefit from community care services than an LHB. Therefore the requirement to make arrangements for the carrying out of assessments does not require the whole of each assessment to be carried out by a single partner.

### ***Section 20 – Duty to carry out assessments***

37. In accordance with the arrangements made, the local mental health partners must undertake an assessment and make any referrals required as a consequence of that assessment.

### ***Section 21 – Failure to agree arrangements***

38. Where suitable arrangements for the undertaking of assessments cannot be agreed between local mental health partners section 21 allows the Welsh Ministers to determine the arrangements for the local authority area. During any such time when there are no arrangements in place, it is important to ensure that individuals are able to make a request for assessment if they believe they stand in need of such an assessment, and LHBs will be responsible for undertaking assessments in these circumstances.

### ***Section 22 – Entitlement to assessment***

39. Subsection (1) contains all the conditions which must be met in order for a person to be entitled to an assessment. This includes the requirement being made within the relevant discharge period (see section 23 below).
40. Because a person is only entitled to an assessment if they had previously received secondary mental health services (whether as an adult or a child), subsections (2) and (3) set out what it means for a person to have been discharged from such services. It should be read along with the definition of secondary mental health services in section 49 of the Measure.

***Section 23 – Assessments: the relevant discharge period***

41. The entitlement to assessment is not open-ended, and previous services users will only be able to exercise their entitlement to further assessment for a certain period of time following their discharge from secondary mental health services. The duration of this period of time will be set out in regulations made by the Welsh Ministers.
42. The entitlement to assessment may also come to an end in other circumstances, and these will also be set out in regulations made by the Welsh Ministers.

***Section 24 – Provision of information about assessments***

43. In order that individuals are able to seek an assessment in the circumstances provided for in section 22, it is important that they are aware of their entitlement should they need to exercise it. Therefore when an individual is discharged from secondary services the LHB or local authority (as the case may be) is under a duty to provide written information about the assessment arrangements made under Part 3 of this Measure. Such a duty also arises in respect of individuals discharged from secondary mental health services before their 18th birthday, where (by virtue of the duration of the relevant discharge period) they will become eligible for assessment after their 18th birthday (subject to the other conditions for eligibility also being met).

***Section 25 – Purpose of assessment***

44. A previous service user will be able to seek a further assessment of their mental health, with a view to determining whether secondary mental health services may be once more required to improve or prevent a deterioration of the individual's mental health. The assessment may also reveal that community care services (other than those which would be considered secondary mental health services), or perhaps housing or well-being services might improve or prevent a deterioration of the person's mental health. Where services are identified which would be provided by a body other than that assessing partner, a suitable referral must be made (as provided for in section 28). Where an assessment identifies the need for a service which may be provided by a mental health provider, that provider must consider provision (see section 27).

***Section 26 – Assessments: further provision***

45. In all cases it is important that the person is aware of the findings of their assessment, and mental health service providers are required to provide a written report of their assessment which sets out what, if any, services that may improve or prevent a deterioration in the person's mental health have been identified.
46. Both the assessment and the written outcome of assessment should be undertaken in a timely manner, as soon as reasonably practicable after a request is made. The Welsh Ministers can specify the time period that reports must be made in.

***Section 27 – Action following an assessment***

47. Where secondary mental health services or other community care services have been identified as part of the assessment which might improve or prevent deterioration in a person's mental health, and either of the local mental health partners would be responsible for providing those services, they must consider whether or not they will provide such services.

***Section 28 – Referrals relating to housing or well-being services***

48. The assessment may identify that housing or well-being services are potentially required which might improve or prevent a deterioration in a person's mental health. Where one of the mental health providers would not be responsible for providing such a service, a referral to the relevant provider of those services must be made or

the individual invited to apply for the service, as the case may be. As some housing and well-being services are only potentially available if applied for by the individual who considers that they may require them, this section respects the different access requirements (referral or self-application) for those services.

### ***Section 29 – Determination of usual residence***

49. The right to assessment for an adult under this Part of the Measure is a right to assessment by the local mental health partners of the local authority where he or she is usually resident. There may be occasion when it is unclear where the person is usually resident, and in those circumstances a decision as to usual residence will be made in accordance with arrangements set out in regulations made by the Welsh Ministers.

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

50. The right to assessment will be available to persons who have been subject to guardianship (within the meaning of the Mental Health Act 1983) who have not also been in receipt of secondary mental health services (subject to the other eligibility criteria of this Part also being met).

## **Part 4: Mental health advocacy**

51. Part 4 of the Measure amends the Mental Health Act 1983 in relation to Independent Mental Health Advocacy (IMHA). It separates the elements of the 1983 Act dealing with IMHA in Wales from the related elements dealing with IMHA in England. This has required the amendment of certain existing sections of the 1983 Act to apply in relation to England-only, and the addition of a number of new sections which deal solely with arrangements in relation to Wales.
52. The amendments in relation to England are contained in Schedules 1 and 2 of the Measure. The new sections in relation to Wales are:
- sections 31 to 38 of the Measure insert new sections 130E to 130L to the 1983 Act;
  - section 39 of the Measure amends section 118 of the 1983 Act in respect of IMHAs in relation to Wales;
  - section 40 of the Measure amends section 143 of the 1983 Act in respect of the Assembly procedure to be applied to the making of the first regulations relating to IMHA in Wales.

### ***Section 31 – Independent mental health advocates: Wales***

53. This section creates new section 130E in the 1983 Act which places a duty on the Welsh Ministers to make arrangements for help to be provided by IMHAs. Such help must be made available to two client groups: Welsh qualifying compulsory patients and Welsh qualifying informal patients.
54. The persons who are considered to be Welsh qualifying compulsory patients are set out in new section 130I of the 1983 Act (as introduced by section 35 of the Measure). New section 130J (as introduced by section 36 of the Measure) sets out the persons who are considered to be Welsh qualifying informal patients.
55. The Welsh Ministers can make regulations setting out, for example, the standards and qualifications that will need to be met by an individual in order to be approved as an IMHA. These regulations can make different provisions for different cases. This will allow account to be taken of the different needs of different groups of patients.

***Section 32 – Further provision about independent mental health advocacy for Welsh qualifying compulsory patients***

56. New section 130F of the 1983 Act is introduced by section 32 of this Measure. Section 130F sets out the nature of the help which must be made available for Welsh qualifying compulsory patients.

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

57. **Section 33** introduces new section 130G into the 1983 Act, the effect of which is to set out the nature of the help which an IMHA may must be made available to Welsh qualifying informal patients.
58. The reference to help in obtaining information about and understanding the authority by which treatment is given will be, in the case of patients who lack mental capacity in relation to the treatment, the authority provided by section 5 of the Mental Capacity Act 2005.

***Section 34 – Independent mental health advocates: supplementary powers and duties***

59. New section 130H of the 1983 Act, as introduced by section 34 of the Measure, applies in respect of both Welsh qualifying compulsory patients and Welsh qualifying informal patients. IMHAs may meet such patients in private, and visit and interview anyone professionally concerned with the patient's medical treatment. Regulations may be made by the Welsh Ministers to specify other persons who the IMHA may visit and interview.
60. Where a patient has the capacity, or is competent, to consent to records being made available to an IMHA (and does consent), the IMHA may require the production of any hospital or local authority records relating to the patient. If a patient lacks the capacity or is not competent to consent to records being made available to an IMHA, the record holder can still allow access to such records. The record holder can only do this if it is appropriate and relevant to the help the advocate will provide to the patient, and such access does not conflict with a valid decision of a donee of deputy (within the meaning of the Mental Capacity Act 2005).
61. An IMHA must meet with a Welsh qualifying compulsory patient on the reasonable request of the patient themselves, the patient's nearest relative, the responsible clinician, an approved mental health professional (AMHP), a social worker professionally concerned with the patient, hospital managers or a person duly authorised on their behalf, or the patient's donee or deputy.
62. An IMHA must meet with a Welsh qualifying informal patient on the reasonable request of the patient themselves, the hospital managers or a person duly authorised on their behalf, the patient's carer, the patient's donee or deputy, or a social worker professionally concerned with the care, treatment or assessment of the patient.
63. A patient is not obliged to accept the help provided or offered by an IMHA.

***Section 35 – Welsh qualifying compulsory patients***

64. This section introduces new section 130I into the 1983 Act, which has the effect of determining which patients are considered to be Welsh qualifying compulsory patients.

***Section 36 – Welsh qualifying informal patients***

65. This section introduces new section 130J into the 1983 Act, which has the effect of determining which patients are considered to be Welsh qualifying informal patients.

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

66. The person(s) responsible for ensuring the patient understands that such help is available to them is known as the ‘responsible person’. Section 130K(2) defines who the responsible person is in relation to the different groups of Welsh qualifying compulsory patients. The responsible person must also provide written information regarding the IMHA service to the nearest relative, donee or deputy (if any) of a qualifying compulsory patient.

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

67. Similar ‘information-giving’ arrangements in respect of Welsh qualifying informal patients are provided by new section 130L of the 1983 Act.

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

68. Section 118 of the 1983 Act imposes a duty on the Welsh Ministers to prepare, publish and, from time to time, revise a Code of Practice for the guidance of those concerned with the admission, treatment, guardianship and supervised community treatment of mentally disordered patients. Section 39 of the Measure inserts new subsection (1A) into section 118 of the 1983 Act, which would apply in relation to Wales only, and provides that the Code of Practice will also provide guidance to IMHAs.
69. **Section 118** is further amended to provide that IMHAs are added to the list of people who shall have regard to the Code of Practice. Section 118(2D) confirms in statute the status of the Code of Practice, as elaborated on by the House of Lords in the case of *R v Ashworth Hospital Authority* (now Mersey Care National Health Service Trust) *ex parte* Munjaz [2005] UKHL 58.
70. The responsibility for preparing and revising the Code of Practice in relation to Wales was transferred to the National Assembly for Wales in 1999, but, by virtue of the Government of Wales Act 2006, this function was transferred to and is now exercisable by the Welsh Ministers. The Welsh Ministers made the Mental Health Act 1983 Code of Practice for Wales in September 2008.

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

71. Section 143 of the 1983 Act makes general provision regarding regulations, orders and rules. Section 40 of the Measure inserts new subsections into section 143 of the 1983 Act, the effect of which is that the first use of the principal regulation-making powers relating to IMHA within Wales, are made using the affirmative procedure.

***Section 41 – Cooperative and joint working between Local Health Boards and local authorities***

72. This section provides for co-operative and joint working between local authorities and LHBs for the purposes of their functions under Parts 1, 2 and 3 of the Measure. Different working arrangements can be reached in respect of the differing aspects of the Measure.
73. A diverse range of delivery options is available. For example, even if a LHB was responsible (under the scheme for local primary mental health support services) for providing all services, a local authority could provide premises for a mental health support services team; the team could all be employed by a LHB and the work could be funded by a joint-budget into which the authority and the Board make contributions. Alternatively, some of the team could be employed by a local authority but be put at the disposal of the LHB using the local authority’s power in section 41(1)(a) to provide staff to the Board.

74. Subsection (3) makes clear that in relation to Parts 1 and 3 of the Measure the partners are empowered to ‘act jointly’ if, in the circumstances, they consider this appropriate.

#### ***Section 42 – Information sharing***

75. The purpose of this section is to provide a clear statutory basis for information sharing in the exercise of functions under Parts 1, 2 and 3 of this Measure. However subsection (3) makes it clear that this section merely provides a power to supply information. It does not authorise disclosure of information which is prohibited by other statutory provisions, such as those in the Data Protection Act, or other law, such as the common law of confidence.

#### ***Section 43 – Amendment of the Local Authority Social Services Act 1970***

76. This section amends the Local Authority Social Services Act 1970 so that the functions of a local authority under Parts 1, 2 and 3 of this Measure are social services functions. One of the effects of amending the 1970 Act in this way is that directions can be given to local authorities by the Welsh Ministers under section 7 of that Act.

#### ***Section 44 – Codes of Practice***

77. Under section 44 the Welsh Ministers may prepare and from time to time revise one or more Codes of Practice, and arrange for any such Codes to be published. A Code can be for the guidance of particular persons (for example LHBs) and for any persons in connection with the operation of the provisions of the Measure. Persons with functions under the Measure (for example, care coordinators) must have regard to the Code(s). A Code must be consulted upon before being made, and must be laid before the National Assembly for Wales where it is subject to the negative resolution procedure. A Code which has been made may only be withdrawn by a direction of the Welsh Ministers, and any such direction must be laid before the Assembly.

#### ***Section 45 – Part 1: power to secure regional provision***

78. **Part 1** of the Measure, in effect, creates partnerships between a local authority and the LHB for local primary mental health support services for the area of the local authority, which are limited to that area. However section 45 provides that the Welsh Ministers may, by regulations, modify the operation of Part 1 so that schemes can be made for an area wider than a local authority area – in effect regions.
79. Subsection (1) therefore extends the area, by dis-applying the local authority area established in Part 1 and applying it to a new area. Subsection (2) then reconstructs the concept of partners in the scheme, and in each scheme there must be at least one LHB and one local authority, but this does not prevent more than one LHB or more than one local authority also being a partner in the new scheme for the new area. It also does not prevent partners comprising LHBs and/or local authorities whose geographic area does not sit within the area where the partnership will deliver local primary mental health support services.
80. For example, it may be the case that a Health Board covers a geographic area of four local authorities and that the five partners within that area (the Health Board and the four local authorities) consider that a single scheme for the whole of the Health Board area is a safe, economic and clinically appropriate approach to take to deliver local primary mental health support services. Regulations could be made to enable this to take place.

#### ***Section 46 – Part 3: power to secure regional provision***

81. **Section 43** makes equivalent provision for Part 3 as is provided by section 42 above.

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

82. The regulation making powers of section 47 will enable the Welsh Ministers to set out the qualifications, skills, training or experience that professionals should possess in order to deliver primary care assessments or to coordinate care within secondary mental health services.

***Section 48 – Duty to review the Measure***

83. **Section 48** places the Welsh Ministers under a duty to review the operation of the Measure for the purposes of publishing one or more reports. A report must be published within four years of the commencement of the principal provisions of Part 1, and also of Parts 2, and 3, and 4 of the Measure. A review preceding publication of a report may be commenced at any time, provided the Welsh Ministers are satisfied that sufficient time has passed since the relevant Part or provision of the Measure has been commenced. A copy of a report must be laid before the National Assembly for Wales.

***Section 49 – Meaning of secondary mental health services***

84. This section provides the meaning of secondary mental health services, a term used in various provisions throughout Parts 1, 2 and 3 of the Measure. Within this context community care services has the same meaning as in section 46 of National Health Service and Community Care Act 1990, ie services which a local authority may provide or arrange to be provided under any of the following provisions
- Part III of the National Assistance Act 1948;
  - section 45 of the Health Services and Public Health Act 1968;
  - section 254 of, and Schedule 20 to, the National Health Service Act 2006, and section 192 of, and Schedule 15 to, the National Health Service (Wales) Act 2006;
  - section 117 of the Mental Health Act 1983.
85. The Welsh Minister may use an order to amend or expand the meaning of secondary mental health services for the purposes of any provision of the Measure. The Welsh Ministers may also, for example, use such an order or orders to provide that services delivered within other jurisdictions are to be considered as equivalent to secondary mental health services within Wales, for the purposes of relevant sections of Part 3.

***Section 50 – Meaning of housing or well-being services***

86. This section provides the meaning of housing and well-being services, a term used in various provisions throughout Parts 1, 2 and 3 of the Measure.
87. **Section 50(1)(b)** provides delegated powers to specify services relating to well-being (including housing), over and above those relating to the allocation of and the securing of accommodation by local housing authorities under Part 7 of the Housing Act 1996.

***Section 51 – General interpretation***

88. This section provides the meaning of various terms used throughout the Measure.
89. The purpose of subsection (3) is that whenever reference is made in the Measure to the provision of a service by a person, it is also read as meaning the provision of a service under arrangements made by that person.
90. Subsection (5) confirms that (unless the context otherwise requires) a care coordinator acts on behalf of the relevant mental health service provider with the responsibility for appointing them, when they perform their functions.

### ***Section 52 – Orders and regulations***

91. This section provides general arrangements at subsections (1) and (2) for making orders and regulations under this Measure. Subsections (3) to (6) then establish the Assembly procedures for making those orders and regulations.

### ***Section 53 – Consequential etc amendments***

92. It is recognised that any Measure concerned with health and social care must accommodate itself within an existing (and often complex) legislative scheme which is set out in a raft of Acts of Parliament. It is further recognised that this legislative landscape will also change over time as further Measures or Acts are made. The power at section 49(2) provides for consequential amendments to other legislation which may arise through the operation of this Measure. The power is limited as it can only be used in relation to consequential amendments in relation to the Measure or to give full effect to it. The power cannot be used for other purposes.

### ***Section 54 – Repeals***

93. Section 54 gives effect to Schedule 2.

### ***Section 55 – Commencement***

94. Provisions of the Measure will come into force in accordance with commencement orders made by Welsh Ministers.

### ***Section 56 – Short title***

95. This section establishes the Measure's title as the 'Mental Health (Wales) Measure 2010'.

### ***Schedule 1***

96. Schedule 1 is introduced by section 53.

### ***Schedule 2***

97. Schedule 1 is introduced by section 54.

## **RECORD OF PROCEEDINGS IN THE NATIONAL ASSEMBLY FOR WALES**

The following table sets out the dates for each stage of the Measure's passage through the National Assembly for Wales. The Record of Proceedings and further information on the passage of this Measure can be found on the National Assembly for Wales' website at: <http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislation-measures-mhs-2.htm>

<i>Stage</i>	<i>Date</i>
Introduced	22 March 2010
Stage 1 – Debate	13 July 2010
Stage 2 Scrutiny Committee – consideration of amendments	30 September 2010
Stage 3 Plenary – consideration of amendments	2 November 2010
Stage 4 Approved by the Assembly	2 November 2010
Royal Approval in Privy Council	15 December 2010