

MENTAL HEALTH (WALES) MEASURE 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

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.