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STATUTORY INSTRUMENTS

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**2008 No. 3166**

**MENTAL HEALTH, ENGLAND**

**The Mental Health Act 1983 (Independent Mental Health Advocates) (England) Regulations 2008**

<i>Made</i>	- - - -	<i>9th December 2008</i>
<i>Laid before Parliament</i>		<i>16th December 2008</i>
<i>Coming into force</i>	- -	<i>1st April 2009</i>

The Secretary of State in exercise of the powers conferred by section 130A of the Mental Health Act 1983<sup>(1)</sup> and by sections 7, 8, 14, 19, 75, 272(7) and (8) and 273(4) of the National Health Service Act 2006<sup>(2)</sup>, makes these Regulations.

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Mental Health Act 1983 (Independent Mental Health Advocates) (England) Regulations 2008.

(2) These Regulations shall come into force on 1st April 2009.

(3) These Regulations apply in relation to England only.

**Interpretation**

2. In these Regulations—

“the Act” means the Mental Health Act 1983;

“commissioning body” means a body, individual or group of individuals (or any combination of these) authorised under regulations 3 and 10 of the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002<sup>(3)</sup> or regulation 4 of the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000<sup>(4)</sup> to exercise section 130A functions;

“IMHA” means an independent mental health advocate;

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(1) 1983 c.20. Section 130A was inserted by section 30 of the Mental Health Act 2007 (c.12), together with section 130C(5) (which provides that the Secretary of State is “the appropriate national authority” in section 130A for a qualifying patient in England).

(2) 2006 c.41.

(3) S.I. 2002/2375; relevant amending instruments are S.I. 2003/1497, 2004/865, 2006/359, 2007/559 and 1818.

(4) S.I.2000/617.

“provider of advocacy services” means a person (including a voluntary organisation) that employs or engages individuals who may be made available to act as an IMHA but does not include a commissioning body;

“section 130A functions” means the Secretary of State’s functions under section 130A of the Act.

### **Directions in respect of section 130A functions**

3.—(1) Where a commissioning body, in exercising section 130A functions, enters into arrangements with an individual who may be made available to act as an IMHA the Secretary of State directs that the commissioning body must be satisfied that the conditions set out in regulation 6 are satisfied.

(2) Where a commissioning body, in exercising section 130A functions, enters into arrangements with a provider of advocacy services the Secretary of State directs that such arrangements must include a term that the provider of advocacy services is satisfied that the conditions set out in regulation 6 are satisfied.

(3) The Secretary of State directs that a commissioning body, in exercising section 130A functions must, as far as reasonably practicable, have regard to the diverse circumstances (including but not limited to the ethnic, cultural and demographic needs) of qualifying patients in respect of whom that commissioning body may exercise those functions.

### **Amendment of the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000**

4. In regulation 5(b) (functions of NHS bodies) of the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000, for “and 117” substitute “, 117 and 130A”.

### **Amendment of the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002**

5.—(1) The National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002 are amended as follows.

(2) In regulation 2 (interpretation) after the definition of “prison”, insert—

““qualifying patient” has the same meaning as in section 130C of the Mental Health Act 1983;”.

(3) In regulation 3 (functions of the Secretary of State exercisable by Strategic Health Authorities and Primary Care Trusts)—

(a) at the end of paragraph (7)(a)(i), delete “and”;

(b) after paragraph (7)(a)(ii), add—

“(iii) qualifying patients resident in Scotland, Wales or Northern Ireland who are present in its area and who do not fall under the responsibility of another Primary Care Trust under head (i) above; and

(iv) qualifying patients present in Wales who are liable to be detained under the Mental Health Act 1983 in a hospital or registered establishment in its area and who do not fall under the responsibility of another Primary Care Trust under head (i) and (ii) above.”;

(c) after paragraph (11) add—

“(12) In this regulation, “registered establishment” has the same meaning as in section 34(1) of the Mental Health Act 1983.”.

(4) In regulation 10 (arrangements by Primary Care Trusts for exercise of functions)—

- (a) in paragraph (1) for “paragraphs (5)”, substitute “paragraphs (1A), (5)”;
- (b) after paragraph (1), insert—

“(1A) A Primary Care Trust may not exercise jointly with an NHS trust any functions under section 130A of the Mental Health Act 1983.”.

(5) After the entry relating to section 121 of the Chronically Sick and Disabled Persons Act 1970<sup>(5)</sup> in Part 2 of Schedule 1 (Secretary of State Functions exercisable by (A) Primary Care Trusts and (B) Strategic Health Authorities for Specified Purposes Only)—

- (6) in column (1), add the following entry—

““Mental Health Act 1983—

section 130A”;

- (a) in column (2), add the following entry—

“Making such arrangements as considered reasonable to enable independent mental health advocates to help qualifying patients”.

### **Independent Mental Health Advocates: conditions**

6.—(1) A person may not act as an IMHA unless the conditions specified in paragraph (2) are satisfied.

- (2) Those conditions are that the person referred to in paragraph (1)—

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

(3) For the purposes of the condition referred to in paragraph (2)(a) regard must be had to standards in guidance that may be issued from time to time by the Secretary of State.

(4) The standards referred to in paragraph (3) may include any qualification that the Secretary of State may determine as appropriate.

(5) For the purposes of the condition referred to in paragraph (2)(b) 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<sup>(6)</sup> (enhanced criminal record certificates); 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 (criminal record certificates).

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<sup>(5)</sup> 1970 c.44.

<sup>(6)</sup> 1997 c.50. Sections 113A and 113B were inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 (c.15). Section 113A was amended by paragraph 14 of Schedule 9 to the Safeguarding Vulnerable Groups Act 2006 (c.47), section 78 of the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14) and section 50 of the Criminal Justice and Immigration Act 2008 (c.4). Section 113B was amended by paragraph 14 of Schedule 9 to the Safeguarding Vulnerable Groups Act 2006, paragraph 149 of Schedule 16 to the Armed Forces Act 2006 (c.52) and section 79 of the Protection of Vulnerable Groups (Scotland) Act 2007.

**Persons not professionally concerned with a patient's medical treatment**

7. For the purposes of section 130A(5) of the Act a person is not to be regarded as professionally concerned with a qualifying patient's medical treatment if that person—

- (a) is representing the patient in accordance with—
  - (i) arrangements made for the purposes of section 130A functions;
  - (ii) arrangements made other than for the purposes of that section;
- (b) has in the past represented the qualifying patient in accordance with arrangements referred to in sub-paragraph (a) and in doing so was not otherwise professionally concerned in that patient's treatment.

Signed by authority of the Secretary of State for Health.

9th December 2008

*Phil Hope*  
Minister of State,  
Department of Health

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## EXPLANATORY NOTE

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

Section 130A of the Mental Health Act 1983 (c.20) (“the Act”) provides that the Secretary of State shall make arrangements to enable Independent Mental Health Advocates (IMHAs) to be available to help qualifying patients. These Regulations contain provisions about the arrangements for the appointment of IMHAs and as to who can be appointed to act as an IMHA.

Regulation 3 directs that where relevant a commissioning body or provider of advocacy services must ensure that an individual who is appointed to act as an IMHA satisfies the conditions in regulation 6. Commissioning bodies are also directed to take reasonable steps to ensure that the different needs and circumstances of qualifying patients, in respect of whom they may exercise the functions under section 130A of the Act (“section 130A functions”) are taken into consideration.

Regulation 4 amends regulation 5(b) of the NHS Bodies and Local Authorities Partnership Arrangements Regulations 2000 (S.I. 2000/617) to include section 130A functions in the definition of “Functions of NHS bodies”.

Regulation 5 amends the National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002 (S.I. 2002/2375) so that section 130A functions are exercisable by a commissioning body i.e. (1) Strategic Health Authorities, for performance management purposes, and (2) by Primary Care Trusts. Regulation 3 of those Regulations is amended to provide for circumstances where a Primary Care Trust must exercise section 130A functions for the benefit of qualifying patients who are not otherwise within their area or the area of another Primary Care Trust and who are (1) resident in Scotland, Wales or Northern Ireland but are present in its area, and (2) present in Wales, but liable to be detained under the Act in a hospital or registered establishment in its area. A further amendment is made to regulation 10 of those Regulations preventing Primary Care Trusts exercising section 130A functions jointly with NHS trusts.

Regulation 6 provides that a person can only act as an IMHA if he has satisfied certain requirements as to experience, training, good character and independence. That regulation also provides that in deciding whether to appoint a person to act as an IMHA, regard is to be had to guidance issued from time to time by the Secretary of State.

Regulation 7 specifies those who are not to be treated as concerned in the patient’s treatment (a status that would otherwise prevent them from acting as an IMHA).