

**EXPLANATORY MEMORANDUM TO
THE MENTAL HEALTH ACT 1983 (INDEPENDENT MENTAL HEALTH
ADVOCATES) (ENGLAND) REGULATIONS 2008**

2008/3166

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

This Instrument makes regulations governing the appointment of persons to act as Independent Mental Health Advocates (IMHAs). It also directs Primary Care Trusts to make arrangements for IMHAs to be available to help qualifying patients, on behalf of the Secretary of State.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None.

4. Legislative Context

This Instrument is part of the implementation of the Mental Health Act 2007 (“2007 Act”), which amends the Mental Health Act 1983 (“1983 Act”). Section 30 of the 2007 Act requires the Secretary of State to make such arrangements as he considers reasonable to enable IMHAs to be available to help qualifying patients. The Government’s intention is that IMHA services are established locally, rather than commissioned directly by the Department of Health. This Instrument directs Primary Care Trusts (PCTs) to exercise this duty on behalf of the Secretary of State, and makes provisions about the arrangements for the appointment of IMHAs and appointment requirements for IMHAs.

5. Territorial Extent and Application

This Instrument applies to England. There are separate, though similar, regulations for Wales.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 The Government, in amending the 1983 Act, introduced statutory independent mental health advocates for certain patients subject to compulsory measures under the Act (“qualifying patients”). Qualifying patients are most patients who are liable to be detained under the Act, patients on supervised community

treatment or under guardianship and certain other patients whose treatment is subject to special safeguards under the Act.

- 7.2 IMHAs will help qualifying patients understand and exercise their legal rights. Mental health advocacy is already available as a non-statutory service from a number of agencies in parts of England, but current provision is not uniform and is unregulated.
- 7.3 The main provisions of the 2007 Act were introduced on 3rd November 2008. However, a decision was made not to bring the provisions on IMHAs into force in England until 1st April 2009, because of the need to develop suitable commissioning and training arrangements before the service is introduced.
- 7.4 Under these regulations, commissioning responsibility for IMHA services will be broadly the same as for other healthcare provision. PCTs will commission IMHA services for the people for whom they commission mental health services. PCTs will have flexibility when exercising these duties, for example they may jointly commission with or delegate commissioning to other PCTs. Arrangements for IMHA services may also be included within partnership arrangements with local social services authorities under section 75 of the National Health Service Act 2006.
- 7.5 The regulations also set minimum appointment requirements for IMHAs and specifies who must check that an IMHA meets these requirements, accordant to commissioning arrangements.

8. Consultation outcome

- 8.1 Public consultation on draft IMHA regulations took place as part of the programme of consultation on draft secondary legislation arising from the 2007 Act, which ran from October 2007 to January 2008. A range of stakeholder views were sought and there were an array of events and workshops.
- 8.2 Generally, the proposals were welcomed. Responses mainly focussed on whether Primary Care Trusts or Local Authorities should have responsibility for commissioning IMHA services as a local level; opinions were divided on this issue, as there were perceived to be advantages and disadvantages to either body having commissioning responsibility.
- 8.3 A summary of responses to the consultation exercise generally may be found at
http://www.dh.gov.uk/en/Consultations/Responsestoconsultations/DH_084607

9. Guidance

- 9.1 Guidance for PCTs on commissioning IMHA services will be published shortly after the regulations are laid. The Mental Health Act 1983 Code of Practice also provides guidance on the role and rights of the IMHA.

10. Impact

- 10.1 An impact assessment on the duty to provide statutory IMHA services was carried out in the Mental Health Bill: Regulatory Impact Assessment revised June 2007:

http://www.dh.gov.uk/en/Publicationsandstatistics/Legislation/Regulatoryimpactassessment/DH_076477.

An extract is appended to this EM at **Annex A**.

Further work has not changed this assessment.

11. Regulating small business

11.1 The legislation will apply to any small business that is commissioned by a PCT to provide IMHA services on its behalf. No additional consultation was carried out specifically in respect of small businesses. This is because the requirements will not impose any additional requirements on the providers of IMHA services above those that any reputable organisation (of any size) whose staff work with vulnerable people, would normally undertake.

12. Monitoring and review

12.1 The purpose of the regulations is to help ensure that qualifying patients have access to IMHA services of an appropriate quality. It will be for PCTs to include in their local arrangements, the necessary standards and procedures for ensuring the quality of the service provided on their behalf.

13. Contact

Jessica Prout at the Department of Health (tel: 020 7972 3962 or e-mail: Jessica.Prout@dh.gsi.gov.uk) can answer any queries about the instrument.

Annex A-Impact assessment extract

Independent Mental Health Advocacy

Government amendments passed in the Commons will also require that independent mental health advocacy should be available to certain patients subject to the powers or safeguards of the Mental Health Act. An advocate will meet the patient at the request of the patient themselves, their nearest relative, responsible clinician or an AMHP. The patient's advocate will – if the patient consents – have the right to see any hospital or local authority records relating to the patient. The advocate will also have the right to meet the patient in private, and to visit and interview anyone professionally concerned with the patient's medical treatment. There will be a power available to the Secretary of State and Welsh Ministers to make regulations governing the standards and qualifications required of advocates.

Benefits

The provisions are similar to those in the draft Mental Health Bill 2004. They have been supported strongly by stakeholders, who have generally welcomed the amendments. Advocacy will help patients in developing their understanding of the elements of their detention and treatment. It will also provide important support to patients in exercising their rights under the Act.

Risks

Although advocacy services are available currently, they are not subject to monitoring, either of quality or of quantity. Thus there is a risk that the implementation of access to advocacy will require time to complete, and that the quality of advocacy services may be inconsistent. With these risks in mind, the UK and Welsh Assembly Governments will consider further the full implementation date for access to advocacy. As part of the implementation project for the Bill, work is under way on guidance both for providers of advocacy services, and for commissioners of advocacy, and on proposed guidance for advocacy training and qualifications.

Costs

Because current advocacy services are not monitored, the Government has taken a zerobased approach to costing advocacy services, based on an average of 4 hours of advocacy (+ 2 hours for travel and administration) for each detained patient. On this basis, adding in administrative support for advocacy, the estimated cost of the amendment is **£8.087m** for England and Wales together. Again, this is an estimate, and further work will be required to finalise the costing. This will appear in the final version of the RIA.