WELSH STATUTORY INSTRUMENTS

2011 No. 2501 (W.273)

MENTAL HEALTH, WALES

The Mental Health (Independent Mental Health Advocates) (Wales) Regulations 2011

Made - - - - 18 October 2011

Coming into force in accordance with regulation 1(2)

The Welsh Ministers make these Regulations in exercise of the powers conferred by sections 130E(2), (3)(a) and (b), (4)(b), (5)(b), (7) and 130H(1)(b) of the Mental Health Act 1983(**1**) and by sections 12, 203 and 204 of the National Health Service (Wales) Act 2006(**2**).

A draft of this instrument, has been laid before the National Assembly for Wales in accordance with section 143(3DB) of the Mental Health Act 1983, and approved by resolution of the National Assembly for Wales.

Title, commencement and application

1.—(1) The title of these Regulations is the Mental Health (Independent Mental Health Advocates) (Wales) Regulations 2011.

(2) These Regulations come into force—

(a) insofar as they relate to Welsh qualifying informal patients(**3**) on 2 April 2012; and

(b) for all other purposes on 3 January 2012.

(3) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations—

"the Act" ("*y Ddeddf*") means the Mental Health Act 1983;

"IMHA" ("*EIMA*") means an independent mental health advocate;

"independent mental health advocacy service" ("*gwasanaeth eiriolaeth iechyd meddwl annibynnol*") means the service provided to a Welsh qualifying compulsory patient(**4**) or a Welsh qualifying informal patient by a provider of advocacy services; and

(**1**) 1983 c. 20 sections 130E to 130L were inserted by the Mental Health (Wales) Measure 2010 nawm 7.
(**2**) 2006 c. 42.
(**3**) Please see section 130J of the Mental Health Act 1983 for the definition of Welsh qualifying informal patients.
(**4**) Please see section 130I of the Mental Health Act 1983 for the definition of Welsh qualifying compulsory patients.

"provider of advocacy services" ("*darparydd gwasanaethau eiriolaeth*") means a body or person, including a voluntary organisation, that employs persons who may be made available to act as an IMHA.

Arrangements for independent mental health advocates

3.—(1) Subject to directions that may be given by the Welsh Ministers, a Local Health Board must make such arrangements as it considers reasonable to enable IMHAs to be available to act in respect of a Welsh qualifying compulsory patient who—

(a) is liable to be detained in a hospital or registered establishment, whether or not in a hospital or registered establishment located within the area of the Local Health Board, and is present in the area of the Local Health Board at the time when the independent mental health advocacy service is to be provided;

(b) is subject to guardianship under the Act or is a community patient and is present in the area of the Local Health Board at the time when the independent mental health advocacy service is to be provided; or

(c) qualifies under section 130I(3) of the Act and is present in the area of the Local Health Board at the time when the independent mental health advocacy service is to be provided.

(2) Subject to directions that may be given by the Welsh Ministers, a Local Health Board must make such arrangements as it considers reasonable to enable IMHAs to be available to act in respect of a Welsh qualifying informal patient who is present in a hospital or registered establishment located within the area of the Local Health Board at the time when the independent mental health advocacy service is to be provided.

(3) In making arrangements under paragraphs (1) and (2) a Local Health Board may make arrangements with a provider of advocacy services.

(4) In making arrangements under paragraphs (1) and (2) a Local Health Board must, as far as reasonably practicable, have regard to the diverse circumstances (including but not limited to the ethnic, linguistic, cultural and demographic needs) of Welsh qualifying compulsory patients and Welsh qualifying informal patients in respect of whom the Local Health Board may exercise those functions.

(5) No person may act as an IMHA unless that person is approved by the Local Health Board or is employed to act as an IMHA by a provider of advocacy services with which a Local Health Board has made arrangements under paragraph (3).

(6) Before approving any person under paragraph (5) a Local Health Board must be satisfied that the person satisfies the appointment requirements in regulation 4 and the independence requirements in regulation 5.

(7) A Local Health Board must ensure that any provider of advocacy services with whom it makes arrangements under paragraph (3) is required, in accordance with the terms of that arrangement, to ensure that any person who—

(a) is employed by that provider of advocacy services; and

(b) is made available to act as an IMHA,

satisfies the appointment requirements in regulation 4 and the independence requirements in regulation 5.

(8) In this regulation a person is employed by the provider of advocacy services if that person is—

(a) employed by the provider of advocacy services under a contract of service; or

(b) engaged by the provider of advocacy services under a contract for services.

Appointment requirements for independent mental health advocates

4.—(1) The appointment requirements referred to in regulation 3(6) and (7) are that a person—

(a) has appropriate experience or training or an appropriate combination of experience and training;

(b) is of integrity and good character; and

(c) is not employed under a contract of service by the Local Health Board for whose area the appointment is made.

(2) In determining whether a person satisfies the appointment requirement in paragraph (1)(a) regard must be had to standards in any Codes of Practice issued by the Welsh Ministers under section 118 (codes of practice) of the Act, and any guidance that may be from time to time issued by the Welsh Ministers.

(3) For the purposes of paragraph (2) standards may include any qualifications that the Welsh Ministers may determine as appropriate.

(4) Before a determination is made for the purposes of paragraph (1)(b) in relation to any person, there must be obtained in respect of that person, an enhanced criminal record certificate issued pursuant to section 113B (enhanced criminal record certificates) of the Police Act 1997(**5**) which includes—

(a) where the person is to provide advocacy services for Welsh qualifying compulsory patients and Welsh qualifying informal patients who have not attained the age of 18, suitability information relating to children (within the meaning of section 113BA of the Police Act 1997); and

(b) where the person is to provide advocacy services for Welsh qualifying compulsory patients and Welsh qualifying informal patients who have attained the age of 18, suitability information relating to vulnerable persons (within the meaning of section 113BB of the Police Act 1997).

Independence requirements for independent mental health advocates

5.—(1) The independence requirements referred to in regulation 3(6) and (7) are that, so far as practicable, a person must be able to act independently of any individual, who—

(a) is professionally concerned with the medical treatment of the Welsh qualifying compulsory patient or the Welsh qualifying informal patient;

(b) requests that person to visit or interview the Welsh qualifying compulsory patient or the Welsh qualifying informal patient.

(2) In the case of a Welsh qualifying compulsory patient who has been admitted for assessment under section 4 (admission for assessment in cases of emergency) of the Act, in addition to the requirements in paragraph (1) a person must be able to act independently of—

(a) the approved mental health professional or nearest relative who made the application for admission in accordance with section 4(2) of the Act; and

(b) the doctor who provided the medical recommendation in accordance with section 4(3) of the Act,

where the persons specified in (a) and (b) are not also professionally concerned with the medical treatment of the Welsh qualifying compulsory patient.

(**5**) 1997 c. 50.