

*Draft Regulations laid before the National Assembly for Wales under section 143(3DB) of the Mental Health Act 1983, for approval by resolution of the National Assembly for Wales.*

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DRAFT WELSH STATUTORY INSTRUMENTS

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**2011 No. (W. )**

**MENTAL HEALTH, WALES**

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

**EXPLANATORY NOTE**

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

[To be completed after consultation]

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**2011 No. (W. )**

**MENTAL HEALTH, WALES**

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

*Made* [date to be inserted (2011)]

*Coming into force for the purposes of regulation 3(2)  
and for the purposes of Welsh qualifying informal patients  
in regulations 2, 3(4), and 5(1) and (3)* [date to be inserted (2012)]

*Coming into force for all other purposes* [date to be inserted (2011)]

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<sup>(1)</sup> and by sections 12 and 204 of the National Health Service (Wales) Act 2006<sup>(2)</sup>.

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) Subject to paragraph (3), these Regulations come into force on [date to be inserted].

(3) These Regulations come into force on [date to be inserted] for the purposes of regulation 3(2) and for purposes relating to Welsh qualifying informal patients in regulations 2, 3(4), and 5(1) and (3).

(4) These Regulations apply in relation to Wales.

**Interpretation**

**2.** In these Regulations —

“the Act” means the Mental Health Act 1983;

“IMHA” means an independent mental health advocate;

“independent mental health advocacy service” means the service provided to a Welsh qualifying compulsory patient or a Welsh qualifying informal patient by a provider of advocacy services; and

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(1) 1983 c.20 sections 130E to 130L were inserted by the Mental Health (Wales) Measure 2010 nawm 7.  
(2) 2006. c.42.

“provider of advocacy services” 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 and is present in the area of the Local Health Board, whether in a hospital or registered establishment located within the area, 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, 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 under a contract of service; or
- (b) engaged under a contract for services.

### **Appointment requirements for independent mental health advocates**

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

- (a) has appropriate experience or training or an appropriate combination of experience and training; and
- (b) is of integrity and good character.

(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 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 of the Police Act 1997<sup>(1)</sup> which includes —

- (a) where the person is to provide advocacy services for Welsh qualifying 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 patients who have attained the age of 18, suitability information relating to vulnerable persons (within the meaning of section 113BB of that Act).

### **Independence requirements for independent mental health advocates**

**5.**—(1) The independence requirements in regulation 3(6) and (7) are that, so far as practicable, a person is to 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; or
- (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 of the Act, in addition to the requirements in paragraph (1) a person is to 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.

(3) For the purposes of section 130E(5) of the Act a person is not professionally concerned with the Welsh qualifying compulsory patient's medical treatment or the Welsh qualifying informal patient's medical treatment if he or she —

- (a) is acting, or has acted on one or more occasions, as an IMHA for the patient in accordance with sections 130F or 130G of the Act; or
- (b) is representing or supporting, or has represented or supported, the patient other than in accordance with sections 130F or 130G of the Act, but is not otherwise involved in the patient's treatment.

### **Persons who may be visited and interviewed by an IMHA for the purpose of providing help to a Welsh qualifying compulsory patient admitted under section 4 of the Act**

**6.** In the case of a Welsh qualifying compulsory patient who has been admitted for assessment under section 4 of the Act, the IMHA may visit and interview —

- (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.

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(1) 1997 c.50.

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

**Revocation**

7. The Mental Health (Independent Mental Health Advocates) (Wales) Regulations 2008<sup>(1)</sup> are hereby revoked.

*Edwina Hart*

Minister for Health and Social services, one of the Welsh Ministers

Date

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<sup>(1)</sup> S.I. 2008/2437 (W.210).