



Llywodraeth Cynulliad Cymru  
Welsh Assembly Government

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Welsh Assembly Government

## Consultation Document

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

Consultation on the draft Regulations and  
the draft Explanatory Memorandum and  
Regulatory Impact Assessment

Date of issue: **21 February 2011**

Action required: Responses by **16 May 2011**

## Overview

This consultation is about draft regulations relating to independent mental health advocacy under the Mental Health Act 1983.

## How to respond

The closing date for replies is 16 May 2011.

Please mark the subject of your email/letter 'Consultation on IMHA Regulations'. We would be grateful if your response could include information about you.

A sample questionnaire for completion is given at Annex 1, and replies should be returned either electronically or by post to:

Mental Health Legislation Team  
Welsh Assembly Government  
Cathays Park  
Cardiff  
CF10 3NQ

Email: [mentalhealthandvulnerablegroups@wales.gsi.gov.uk](mailto:mentalhealthandvulnerablegroups@wales.gsi.gov.uk)

## Further information and related documents

Large print, Braille and alternate language versions of this document are available on request.

There are three Annexes to this consultation document:

**Annex 1:** Consultation response form

**Annex 2:** Draft Mental Health (Independent Mental Health Advocates) (Wales) Regulations 2011

**Annex 3:** Draft Explanatory Memorandum and Regulatory Impact Assessment

## Contact Details

For further information:

Mental Health Legislation Team  
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## Data Protection

How the views and information you give us will be used.

Any response you send us will be seen in full by Welsh Assembly Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Assembly Government staff to help them plan future consultations.

The Welsh Assembly Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Assembly Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

## **Introduction**

1. The Mental Health Act 1983 (“the 1983 Act”) governs the compulsory treatment of certain people who have a mental disorder. The Mental Health Act 2007 amended the 1983 Act, and one of the key amendments was the introduction of independent mental health advocacy.
2. In Wales these new provisions began in November 2008, and from that date there has been a requirement for independent mental health advocacy services to be available to provide support for ‘qualifying patients’ who are receiving assessment or treatment under the 1983 Act.
3. The Mental Health (Wales) Measure 2010 (“the Measure”) has recently been passed by the National Assembly for Wales, and further amends the 1983 Act, so as to provide for an expanded statutory scheme of independent mental health advocacy, both for patients subject to compulsion under the 1983 Act, and those in hospital informally (ie not under compulsion).
4. These draft Regulations are to be made by the Welsh Ministers in exercise of powers under the 1983 Act, and powers of direction under the National Health Service (Wales) Act 2006, and relate to independent mental health advocacy.

## **Legislative background to the Regulations**

5. Sections 130E to 130L of the Mental Health Act 1983 are concerned with the provision of independent mental health advocacy in Wales.
6. These sections place duties on the Welsh Ministers to make arrangements for the provision of such services in Wales, and set out the powers, functions and duties of persons appointed to act as advocates. Such advocates are referred to in the 1983 Act as Independent Mental Health Advocates (IMHAs).
7. Sections 130E, 130F, 130G and 130H also contain powers which may be exercised by the Welsh Ministers to make regulations in relation to advocacy.
8. The Welsh Ministers previously had similar powers in relation to advocacy under section 130A of the 1983 Act and exercised these when the Mental Health (Independent Mental Health Advocates) (Wales) Regulations 2008 [SI 2008/2437 (W210)] were made. Those Regulations provide for advocacy in relation to certain groups of compulsory patients, and do not provide for informal patients at all.
9. However, as a result of changes made to the 1983 Act by the Measure, section 130A only applies in relation to England. The Welsh Ministers new powers sit within sections 130E, 130F, 130G and 130H. The new powers are wider than those in section 130A, and allow provision to be made in regulations for an expanded group of compulsory patients, and informal patients in hospitals and registered establishments.

10. The powers of the Welsh Ministers to direct LHBs regarding the provision of IMHA in relation to their areas are contained in section 12 of the National Health Service (Wales) Act 2006. Section 204 of that Act provides that regulations or an instrument in writing must give such directions.
11. The Welsh Assembly Government proposes commencing the expansion of independent mental health advocacy in relation to detained patients in October 2011 and in relation to informal patients at the beginning of 2012. In both cases the actual dates are still to be confirmed. These regulations will therefore have a split commencement date.

## **Overview of the Regulations**

12. The Welsh Ministers may make Regulations which establish –
  - a) the arrangements for IMHAs to be appointed;
  - b) any approval requirements for IMHAs to act, including any appointment or independence requirements which IMHAs must meet;
  - c) the circumstances under which a person is not to be regarded as being professionally concerned with a patient's medical treatment;
  - d) details of persons who may be visited and interviewed by an IMHA for the purpose of providing help to a Welsh qualifying patient; and
  - e) directions to LHBs regarding the provision of independent mental health advocacy in relation to their areas.
13. These draft Regulations revoke the existing Mental Health (Independent Mental Health Advocates) (Wales) Regulations 2008 [SI 2008/2437 (W210)], and also make the following provisions:
  - a) LHBs are required to make arrangements for IMHAs to be available to act for Welsh qualifying compulsory patients (in the circumstances set out in Regulation 3(1)) and for Welsh qualifying informal patients where such patients are in hospitals or registered establishments located in the area of the LHB (as provided in Regulation 3(2)).
  - b) LHBs may make arrangements with a provider of advocacy services for the provision of IMHAs.
  - c) LHBs must have regard to the circumstances (including, but not limited to, ethnic, cultural and demographic needs) of the patients for whom IMHAs may act, when they make arrangements for the provision of independent mental health advocacy services.
  - d) Only persons approved by an LHB or employed to act as an IMHA by a provider with whom the LHB has made arrangements, can act as an IMHA,

and such a person has to meet certain appointment requirements (see Regulation 3(6) and (7), and Regulations 4 and 5).

- e) IMHAs must, so far as practicable, be able to act independently of persons professionally concerned with the medical treatment of Welsh qualifying patients. The IMHA must also act independently of any persons who ask the IMHA to visit and interview a patient.
- f) In the case of a patient detained under section 4 of the 1983 Act, the IMHA must also be able to act independently of the approved mental health professional (AMHP) or the nearest relative who made the section 4 application, or doctor involved in the application for admission to hospital.
- g) Regulation 5(3) provides clarification of the meaning of 'professionally concerned with medical treatment' in relation to persons who have acted as an advocate previously for a patient.
- h) In the case of a patient detained under section 4 of the 1983 Act, the AMHP, nearest relative who made the section 4 application, or doctor involved in the application for admission to hospital under section 4 of the Act may be visited and interviewed by the IMHA (Regulation 6).

14. A copy of the draft Regulations are included in Annex 2. Your views on these draft Regulations are welcome as part of this consultation.

## **Overview of the Explanatory Memorandum and Regulatory Impact Assessment**

- 15. The Standing Orders of the National Assembly for Wales require that an Explanatory Memorandum be laid before the Assembly to accompany Regulations, such as the Regulations being consulted upon here.
- 16. In some cases the Explanatory Memorandum must include a regulatory impact assessment (RIA). Amongst other matters an RIA will include an option appraisal, setting out the costs, benefits and risks of making the proposed legislation.
- 17. A draft Explanatory Memorandum (including an RIA) has been prepared for these Regulations, and is included at Annex 3. Your views on this draft document are welcome as part of this consultation.

## **Equality Impact Assessment**

- 18. The Welsh Assembly Government is committed to making sure that as policies, strategies, action plans and legislation are developed, every effort is made to actively contribute to an environment that is free from discrimination. Part of this is about assessing the impact that policies and actions may have on the people of Wales, to make sure that the Welsh Assembly Government does not discriminate but takes every opportunity to promote equality and good relations.

19. As part of the consultation on these Regulations we would welcome your views on the potential impact of the proposed legislation on:

- a) Disability
- b) Race
- c) Gender and gender reassignment
- d) Age
- e) Religion and belief and non-belief
- f) Sexual orientation
- g) Human Rights

20. Further information on 'Inclusive Policy Making', the Welsh Assembly Government's version of Equality Impact Assessment, can be accessed at:  
<http://wales.gov.uk/topics/equality/publications/ipmguide2/?lang=en>

## **Consultation questions**

21. In relation to the draft Regulations, the Welsh Assembly Government would welcome your views on the following questions:

- a) Do you agree that Local Health Boards should be responsible for making arrangements for independent mental health advocacy? If not, who do you think ought to be given this responsibility, and what are the reasons for your views?
- b) Are the arrangements set out in Regulation 3(1) and 3(2) clear, so that LHBs may make comprehensive provision for independent mental health advocacy for qualifying patients in their area?
- c) Are the appointment requirements set out in Regulation 4 sufficiently robust? Should IMHAs have to meet different or further requirements?
- d) Regulation 5 sets out the independence requirements for IMHAs; are these practical and appropriate? Should further requirements be made?
- e) Do you agree that the IMHA should be able to visit and interview the persons set out in Regulation 6?
- f) Are there any other persons, over and above those professionally concerned with the medical treatment of patient (as set out in the 1983 Act) and those in Regulation 6, which the IMHA should be able to visit and interview?

22. In relation to the draft Explanatory Memorandum, the Welsh Assembly Government would welcome your views on:

- a) Is there sufficient information in the Explanatory Memorandum to understand the purpose and effect of these Regulations?

- b) Do you agree with the preferred option in the Regulatory Impact Assessment (option 2 – make regulations)? If not, please provide further details.
- c) Are you content with the estimated costs/benefits regarding the implementation of these Regulations? If not, please supply evidence to support your views.

23. We would welcome your views on the potential impact of the proposed legislation on:

- a) Disability
- b) Race
- c) Gender and gender reassignment
- d) Age
- e) Religion and belief and non-belief
- f) Sexual orientation
- g) Human Rights

24. If there are any other matters relating to these Regulations or Explanatory Memorandum that you wish to raise, please do so as part of your response.

25. A sample questionnaire for completion is given at Annex 1, together with the details for replying to this consultation.