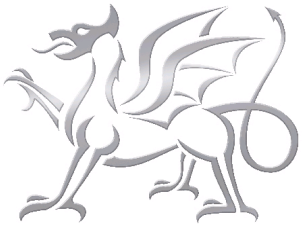

Llywodraeth Cynulliad Cymru
Welsh Assembly Government

MENTAL HEALTH (WALES) MEASURE 2010

Explanatory Memorandum

incorporating the Regulatory Impact Assessment, Explanatory Notes and Delegated Powers Memorandum

October 2010

GPM-17-EM-S2

MENTAL HEALTH (WALES) MEASURE 2010

Explanatory Memorandum to proposed Mental Health (Wales) Measure 2010

This Explanatory Memorandum has been prepared by the Health and Social Services Directorate General of the Welsh Assembly Government and is laid before the National Assembly for Wales.

The Explanatory Memorandum sets out the background to the policy objectives, the provisions, and the scope of the proposed Mental Health (Wales) Measure ("the proposed Measure"). It was originally prepared and laid in accordance with Standing Order 23.18 in March 2010, and a revised Memorandum is now laid in accordance with Standing Order 23.41.

Member's Declaration

In my view the provisions of the proposed Mental Health (Wales) Measure, introduced by me on 22 March 2010, would be within the legislative competence of the National Assembly for Wales.

Edwina Hart MBE OStJ AM
Minister for Health and Social Services
Assembly Member in charge of the Proposed Measure

22 October 2010

CONTENTS

PART 1

1. Description

1. The proposed Measure places duties on Local Health Boards and local authorities in Wales in relation to assessment of mental health and treatment of mental disorder. It also makes provision in relation to independent mental health advocacy for qualifying patients – those are persons subject to certain of the compulsory powers of the Mental Health Act 1983, and persons receiving assessment or treatment in hospital for a mental disorder.

2. Legislative background

2. The National Assembly for Wales (Legislative Competence) (Health and Health Services and Social Welfare) Order 2010 conferred legislative competence on the National Assembly of Wales in the field of health and health services and in the field of social welfare (Field 9 and Field 15 respectively within Schedule 5 to the Government of Wales Act 2006).

3. Matter 9.2, was inserted by the Order under Field 9: Health and Health Services within Schedule 5 to the 2006 Act as follows:

> *"Matter 9.2*
>
> *Assessment of mental health and treatment of mental disorder.*
>
> *This matter does not include any of the following –*
>
> *(a) subjecting patients to-*
>
> *(i) compulsory attendance at any place for the purposes of assessment or treatment,*
>
> *(i) compulsory supervision, or*
>
> *(ii) guardianship;*
>
> *(b) consent to assessment or treatment;*
>
> *(c) restraint;*
>
> *(d) detention.*
>
> *For the purposes of this matter, "treatment of mental disorder" means treatment to alleviate, or prevent a worsening of, a mental disorder or one or more of its symptoms or manifestations; and it includes (but is not limited to) nursing, psychological intervention, habilitation, rehabilitation and care."*

4. This enables the National Assembly to legislate on the assessment of mental health and treatment of mental disorder. The competence enables duties to be placed on NHS bodies and social services providers to assess a person's mental health. The competence allows such duties to be imposed in respect of individuals (of all ages) with a current or previous diagnosis of mental disorder, as well as those who are presenting with symptoms of mental ill health for the first time. In addition, it enables duties to be placed on NHS bodies and social services providers in respect of the treatment of a person's assessed mental disorder.

5. Matter 15.10 was inserted under Field 15: Social Welfare in Schedule 5 to the 2006 Act as follows:

> *"Matter 15.10*
>
> *Social care services connected to mental health.*
>
> *This matter does not include the independent mental capacity advocacy services established by Part 1 of the Mental Capacity Act 2005.".*

6. Matter 15.10 extends legislative competence as regards the provision of social care services to the area of mental health. Other matters relating to social care

services have been added under field 15 by the National Assembly for Wales (Legislative Competence) (Social Welfare and Other Fields) Order 2008, by which social care services are defined as: *"any of the following provided in connection with the well being of any person: residential or non-residential care services; advice; counselling or advocacy services; financial or any other assistance."*

7. In addition, Article 3(3) of the Order provides a definition of advocacy as *"services providing assistance (by way of representation or otherwise) in connection with the well-being of any person".* Notwithstanding that this is in Field 15 (Social Welfare), this definition will encompass advocacy connected with health related matters as well as social services.

8. Matter 15.10 provides the National Assembly with competence in relation to advocacy, apart from Independent Mental Capacity Advocacy services established under the Mental Capacity Act 2005. The competence conferred does however cover all other aspects of advocacy, including Independent Mental Health Advocacy (IMHA) under the Mental Health Act 1983.

9. The National Assembly for Wales has the power to make this proposed Measure by virtue of section 94 of the Government of Wales Act 2006.

3. Purpose and intended effect of the legislation

Background

10. Mental health problems are very common - about one in six adults suffer from a significant mental health problem at any point in time. There are a wide range of mental health problems, from common disorders of depression and anxiety, with a combined prevalence of about 17% in Great Britain, to the less common psychotic illnesses such as schizophrenia with a per year prevalence of around 0.5%[1].

11. In older people, depression and dementia are the most common mental health problems, but older people can also experience those types of mental health problems outlined above. Under-detection of mental ill-health in older people is widespread, due to the nature of the symptoms and the fact that many older people live alone. It is estimated that the number of patients with diagnosed and undiagnosed dementia in Wales is 39,000 (representing 1.3% of the population). Dementia can also occur before the age of 65; it is estimated that there are just over 3,000 people with dementia in this age group in Wales[2].

12. There were just over 11,000 admissions to mental health inpatient facilities in Wales in 2008/09 (the latest year for which figures are available)[3].

13. Organisations have reported the informed views of service users who point to the importance of receiving early assessment and treatment for mental ill-health: *"…clients and carers know from experience that if a person receives early treatment for their mental illness they are much less likely to become so ill that they need compulsory treatment"* (Hafal, 2007).

14. Some users of mental health services can experience difficulty negotiating with mental health professionals and ensuring that their own point of view is acknowledged. These difficulties apply both to the practical activities of daily life as well as help with their mental health problems. Service users sometimes have little information about their mental ill-health and the various alternatives for treatment and care. Advocacy seeks to address this imbalance by ensuring that their voice is heard, that they are able to make informed choices, and that their rights are safeguarded.

15. Despite the existing framework of legislation relating to mental health policy and service delivery, guidance and National Service Frameworks (NSFs), consultations with service users, service providers, mental health professionals

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[1] Office for National Statistics (2000) *Psychiatric morbidity among adults living in private households in Great Britain*

[2] Based on information provided by the Alzheimer's Research Trust (2010)

[3] Welsh Assembly Government (2010) Admission of patients to mental health facilities in Wales, 2008-09 (including patients detained under the Mental Health Act 1983) and patients subject to supervised community treatment [SDR 102/2010]

and others, have identified gaps within existing legislation and service provision in respect of assessment, treatment and advocacy. Namely:

a. the existing legislative framework does not provide for a comprehensive duty in relation to the provision of the assessment of mental health and the treatment of mental disorder outside of compulsion;

b. the need for an improved focus on early intervention and treatment through statutory duties regarding the provision of assessment and treatment, which is the preferred option of many service users and their families and carers;

c. extant duties on local authorities to provide certain assessments do not translate into duties to provide services arising out of those assessments;

d. the duties for assessment by local authorities are applicable only in respect of those who have *already* been diagnosed as mentally disordered, and not those who *appear* to be exhibiting symptoms or manifestations of such disorder. This can result in individuals having to reach a certain level of ill health before becoming eligible for assessment;

e. there exists a patchwork of duties in respect of specialist mental health assessment and treatment within secondary services. In Wales, such services are increasingly provided on a multidisciplinary basis, which involves a range of professionals and services. Those working within such services are keen to ensure, in line with the Welsh Assembly Government's strategies and service frameworks for mental health, that multidisciplinary working in this way should be strengthened. This would allow for a more seamless approach to service provision for the individual recipient, and for those services to be focussed on the needs of the individual in line with effective care planning;

f. the existing legislative framework does not provide for a wide ranging and comprehensive advocacy service for those experiencing mental health problems. There is a need to ensure that advocacy is available for people at a time when their mental health and usual support mechanisms may be breaking down, leaving them vulnerable when key decisions about treatment and support may need to be made.

16. This proposed Measure has several interlinked policy objectives relating to the care and treatment of those experiencing mental health problems, delivered at both primary and secondary care levels.

Objectives

17. The intended effect of the proposed Measure is to provide local primary mental health support services at an earlier stage than is currently the case in many

parts of Wales, for individuals who are experiencing mild to moderate and stable severe and enduring mental health problems - the aim being to lessen the risk of further decline in mental health, and in some cases, to reduce the potential need for subsequent inpatient treatment and possible compulsory detention. The proposed Measure also seeks to provide that all individuals accepted into secondary mental health services in Wales have a dedicated care coordinator and receive a care and treatment plan, and that service users discharged from secondary mental health services have access back to those services when they believe that their mental health may be deteriorating. In addition, the proposed Measure proposes that statutory mental health advocacy provision be extended beyond that which is currently required.

18. This intended effect will be achieved through the proposed Measure's five policy objectives:

- to provide assessment of an individual's mental health and, where appropriate, provide treatment of an individual's mental disorder within primary care, by establishing a duty for Local Health Boards (LHBs) and local authorities to deliver primary mental health support services across Wales;

- to institute statutory requirements around care and treatment planning and care coordination within secondary mental health services;

- to require that secondary mental health services have in place arrangements to ensure the provision of timely access to assessment for previous service users;

- to extend the group of 'qualifying patients' under the Mental Health Act 1983 entitled to receive support from an Independent Mental Health Advocate (IMHA), so that the majority of patients subject to the formal powers of that Act are able to receive IMHA support if required;

- to enable all patients receiving assessment or treatment for mental disorder in hospital to have access to independent and professional specialist mental health advocacy.

Further detail on each of these objectives is given below.

Local primary mental health support services

19. The aim of this policy objective is that throughout Wales there will be local primary care mental health support services and that these will be delivered by Local Health Boards (LHBs) and local authorities, in partnership. These services will offer assessment of an individual's mental health and provide advice and/or treatment of an individual's mental disorder within primary care which, in accordance with the principles underpinning mental health services in Wales, will be outcome-focussed and set within a model aimed at recovery for the service user.

20. These services are not intended to be part of the existing General Medical Services regime provided (in the main) by General Practitioners (GPs) but are intended to act as a bridge between GP provision and secondary mental health services.

21. The Welsh Assembly Government recognises that primary care plays a crucial role in delivering effective mental health services within a mental health whole system: between 30% and 50% of people with severe mental illness are only in contact with primary care[4].

22. However, the 2005 Baseline Review undertaken by the Wales Audit Office[5] identified that mental health services in general practices are often underdeveloped. In addition, the Sainsbury Centre for Mental Health identifies certain individuals whose mental health problems cannot be managed with confidence in primary care, but who are not appropriate for secondary care services. The Sainsbury Centre refers to this group of people as *"the neglected majority"* and found that this group has the following characteristics:

    - they have continuing mental health difficulties despite several treatment options from primary care, but do not have a severe and enduring mental health problem;

    - their employment or accommodation is frequently at risk;

    - their physical health, or other long term condition, is frequently worsened by their mental health problem.

23. The 2005 Baseline Review confirmed that whilst community mental health teams (CMHTs) provide support at secondary care level for people with severe and enduring mental health problems, *"…in many parts of Wales services for the less severely mentally ill are often underdeveloped and as a result CMHTs receive referrals from GPs for this client group."*

24. Policy Implementation Guidance issued by the Welsh Assembly Government in July 2006[6] on adult mental health services within primary healthcare settings in Wales identified that if *"mental health experience is limited within a [primary care health team] it can result in avoidable delays, missed or mis-diagnosis and inappropriate referral to specialist services. Strengthening mental health primary care is likely to impact favourably on not only tier one services but also on effective movement throughout the entire care pathway."*

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[4] Cohen, A., Singh, SP., and Hague, J (2004) *The Primary Care Guide to Managing Severe Mental Illness* London: The Sainsbury Centre for Mental Health

[5] Wales Audit Office (2005) *Adult mental health services in Wales: A baseline review of service provision* Cardiff: Wales Audit Office

[6] Department of Health and Social Services (2006) *WHC (2006) 053 Adult Mental Health Services in Primary Healthcare Settings in Wales Policy Implementation Guidance* Cardiff: Welsh Assembly Government

25. Local primary mental health support services will be beneficial not only in supporting individuals to remain in primary care where they will receive appropriate and effective assessment and treatment, but also in reducing referrals to secondary care, and in improving the knowledge base within GP practices on managing mental ill-health.

26. Local primary mental health support services will deliver:

    a. in-depth, focussed mental health assessments for individuals who have first been seen by a primary medical services practitioner such as a GP, and considered by that practitioner to require such an assessment;

    b. short-term interventions to the service user, either individually or through group work, if this has been identified as appropriate following assessment. Such treatment may include counselling, a range of psychological interventions including cognitive behavioural therapy (and computerised CBT), solution-focussed therapy, stress management, anger management, education and information;

    c. provision of support and advice to GPs and other primary care workers (such as practice nurses) to enable them to safely manage and care for people with mental health problems;

    d. provision of information and advice for service users and their carers about treatment and care, including the options available to them, as well as 'signposting' them to other sources of support (such as support provided by third sector organisations);

    e. supporting the onward referral and co-ordination of next steps with secondary mental health services, where this is felt to be appropriate for an individual.

27. These services are aimed at individuals (of all ages) who are experiencing mild to moderate and stable severe and enduring mental health problems.

28. By requiring that local primary mental health support services are established, the proposed Measure will place statutory obligations on health and social care bodies which are consistent with current mental health policy.

Coordination of and care planning for secondary mental health service users

29. The policy objective is that throughout Wales all individuals accepted into secondary mental health services for treatment will have a care and treatment plan prepared and regularly reviewed by a care coordinator. This will apply to individuals of all ages within secondary mental health services.

30. The Care Programme Approach (CPA) is currently the framework in Wales for the care of people accepted into adult secondary mental health services (i.e. those delivered beyond primary care level) both in community and inpatient

settings. It is intended that CPA will be extended to secondary child and adolescent mental health services also.

31. CPA was formally introduced in 2003, and supported by Welsh Assembly Government Policy Guidance[7]. CPA provides for:

- a systematic arrangement for assessing people's health and social care needs on an holistic basis;
- the formulation of a care plan which addresses those needs;
- the appointment of a key worker (known as a care coordinator) to keep in close touch with the service user and monitor care;
- regular reviews and, when appropriate, changes to the care plan.

32. The CPA has been the subject of targets under the NHS performance management regime in Wales, and the 2009/10 and 2010/11 Annual Operating Framework contains a national target relating to the CPA.

33. However, it has become clear that there have been differing levels of implementation of CPA within adult mental health services across Wales for a number of years, and recent evidence[8] indicates that significant variations continue to the present time. There have also been anecdotal concerns over recent years that care and treatment plans are not being effectively developed with service users. The Assembly Government wishes to see the emphasis of care and treatment planning move towards care that is outcome-focussed and set within a model aimed at recovery for the service user, and it is these principles which underpin this policy objective of the proposed Measure.

34. The proposed Measure will place duties on service providers (LHBs and local authorities) to act in a coordinated manner to improve the effectiveness of the mental health services provided to an individual. Also:

a. there will be a care and treatment plan for all service users (irrespective of age) who have been assessed as requiring care and treatment within secondary mental health services;

b. the plan will be developed by a care coordinator in consultation with the service user (so far as practicable, taking into account their capacity and cooperation) and service provider(s), and overseen by the care coordinator;

c. the plan will outline the expected outcomes of services, and how those outcomes are to be achieved. This process will be informed by an holistic needs assessment and a risk assessment;

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[7] Welsh Assembly Government (2003) *Mental Health Policy Guidance – The Care Programme Approach for Mental Health Service Users: A Unified and Fair System for Assessment and Managing Care*

[8] Elias E and Singer L (2009) *A review of the care programme approach in Wales.* Delivery Support Unit and National Leadership and Innovation Agency for Health (unpublished)

d. the plan will be in writing;

e. the plan will be subject to periodic review and variation to reflect any changes in the type of care and treatment which may be required by the service user over time.

35. In all cases the application of CPA should be based on the principles of the recovery model. This means that the assessment of needs and risks, and the planning and delivery of proposed care or treatment should work towards maximising an individual's ability to live a fulfilled life as independently as possible.

36. It is accepted that whilst all secondary mental health services should already be delivering care and treatment within the framework of CPA, provision is currently variable across Wales. Establishing statutory requirements via this proposed Measure will embed the use of CPA within Wales and help deliver improved services to users of those services.

37. It is also anticipated that statutory care and treatment planning will lead to the greater involvement of service users in decisions which are made in relation to their care and treatment, and better outcomes for them.

38. In addition, the design and delivery of care and treatment plans will foster more cohesive, focussed and effective cross-discipline working amongst mental health and social care professionals in delivering services.

Assessments of former users of secondary mental health services

39. The aim of this policy is to enable individuals who have been discharged from secondary mental health services, but who subsequently believe that that their mental health is deteriorating to such a point as to require specialist intervention again, to refer themselves back to secondary services directly, without necessarily needing to first go to their general practitioner or elsewhere for a referral.

40. Discharge from specialist care (such as secondary mental health services) is regarded as a key outcome of the recovery model within mental health, the aim of which is to regain good mental health and achieve a better quality of life for the individual. However, concerns exist that one of the barriers to effective discharge is the possibility that individuals who may be relapsing may encounter long delays in attempting to re-access the service if this is once more required at a future time. To prevent this possibility, practitioners may on occasions retain clients on operational lists within secondary services who might otherwise be discharged as their condition has improved to such a point as to no longer require the direct support of those services.

41. Retention of the client, albeit with understandable motives, fails to realise the importance of discharge for the individual within the recovery model. It can also

lead to a significant number of 'open-cases' within services, with resulting adverse impact on operational capacity.

42. This policy therefore aims to encourage safe and effective discharge, by providing individuals with a mechanism to swiftly re-access services should these be required again at a later stage.

43. Where an individual makes such a request, an assessment of whether that person stands in need of secondary mental health services must be undertaken by the relevant mental health partners (the local authority and the LHB).

44. Eligible persons will be those aged 18 and over who have previously received treatment within secondary services for a mental disorder and who have since been discharged from those services. The entitlement to seek an assessment will not be indefinite, but rather governed by a 'relevant discharge period' within which such a request must be made. The duration of this period will be set out in regulations made under this proposed Measure. Individuals who have received and been discharged from secondary mental health services whilst below the age of 18, are also eligible for reassessment if they reach the age of 18 during the relevant discharge period (provided that they meet all the other eligibility criteria).

45. The statutory duty to provide an assessment will be placed upon both the LHB and local authority for the area within which the individual requesting the assessment usually resides. Regulations will set out how this scheme will operate in practice, including in relation to individuals who may have moved from one LHB or local authority area to another since discharge, or have received treatment outside of Wales.

46. Where an assessment concludes that further services are required for an individual, such services may be provided directly by the mental health partners; by the service partners making arrangements for the delivery of services by another provider; or by a referral to other appropriate services (including housing and welfare services).

47. It is important that service users are aware of this entitlement, and LHBs and local authorities will be required to make arrangements to ensure that when service users are discharged from secondary services they are made aware of this entitlement.

Mental health advocacy

48. Advocacy can lead to an improved experience of mental health services for individuals, including *"the potential for advocacy to secure basic rights; create choice; improve the identification and understanding of mental health needs; promote self-advocacy and involvement in decision making; challenge discrimination; and promote access to complimentary ways of healing and*

practical help"[9]

49. In recognition of the importance and value of independent advocacy within mental health, Key Action 6 of the Welsh Assembly Government's National Service Framework for Adult Mental Health Services[10] recognised the need for a range of independent, trained and dedicated advocacy services to be made available and promoted across Wales.

50. This proposed Measure provides for an expanded statutory scheme of independent mental health advocacy, both for patients subject to the compulsion under the Mental Health Act 1983, and those in hospital informally (ie not under compulsion).

Mental health advocacy (compulsory patients)

51. The Mental Health Act 1983 governs the compulsory treatment of certain people who have a mental disorder. The 1983 Act was amended by the Mental Health Act 2007, and one of the key amendments was the introduction of Independent Mental Health Advocacy (IMHA).

52. In Wales these new provisions began in November 2008, and from that date there has been a requirement for IMHA services to be available to provide support for 'qualifying patients' who are receiving assessment or treatment under the 1983 Act. The IMHA service is provided by independent advocacy providers through contracts with LHBs.

53. 'Qualifying patients' are individuals detained under the longer term assessment and treatment powers of the 1983 Act, including community treatment orders and guardianship. Qualifying patients are also informal patients for whom section 57-type treatments are being proposed or informal patients under the age of 18 years for whom electro-convulsive therapy (ECT) is proposed.

54. The role of the IMHA is to provide help and support to a qualifying patient. This includes ensuring that the individual understands the provisions of the 1983 Act relevant to their detention or treatment, the conditions or restrictions that they are subject to, the medical treatment that they will receive, and their rights under the 1983 Act. In meeting this statutory role an IMHA will also support an individual in articulating their views and in taking decisions relating to their treatment and care under the Act. An IMHA will not however make any decisions on behalf of the patient.

55. The policy objective in this proposed Measure is to extend the group of Welsh qualifying patients who are entitled under the 1983 Act to receive the support of an IMHA to include patients subject to the emergency admission and holding

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[9] Newbigging, K et al (2007) *Mtetezi: Developing mental health advocacy with African and Caribbean Men* London: Social Care Institute for Excellence

[10] Welsh Assembly Government (2005) *Raising the Standard: The Revised Adult Mental Health National Service Framework and Action Plan for Wales*

powers of that Act who do not currently attract such support, namely individuals who are subject to sections 4, 5(2) and 5(4)[11].

56. The proposed Measure also seeks to expand the role of the IMHA in relation to all Welsh qualifying compulsory patients, to enable the IMHA to provide a form of advocacy which is wider in scope than that currently described in the 1983 Act. IMHAs will be able to:

    a. provide help in obtaining information in relation to, and understanding of, the medical treatment and care currently being provided to the patient and any which may be being proposed for the future, why this is being proposed, and any alternative options which may be available to them;

    b. represent the views of the patient, or assist the patient in articulating those views, to those involved with the provision of the patient's treatment and care;

    c. provide support (including by way of representation or otherwise) to patients seeking resolution to issues which concern them, including access to relevant complaints procedures where relevant;

    d. report issues raised by patients to those providing services with the aim of encouraging service improvement;

    e. signpost patients to other relevant support services;

    f. provide help in understanding the provisions of the 1983 Act which apply to compulsory patients (if applicable).

57. To ensure that the same provisions and safeguards which exist for current qualifying patients are in place for those patients to whom the scheme will be extended, this proposed Measure seeks to make arrangements which will provide IMHAs supporting patients on sections 4, 5(2) and 5(4) with powers equivalent to those which already exist in relation to currently qualifying patients.

58. The expansion of the IMHA scheme in this way will ensure that the majority of individuals subject to the formal powers of the 1983 Act are able to receive independent help and support from an advocate should they so require.

Mental health advocacy (informal patients)

[11] Section 4 is an emergency order that lasts up to 72 hours; it is made by an approved mental health professional based on one medical recommendation. Section 5(2) is referred to as the holding power of a doctor or approved clinician; it can only be used in respect of an inpatient who wishes to leave the hospital, but whom the doctor or approved clinician considers needs to be detained for assessment or treatment. The power lasts up to 72 hours. Section 5(4) is a similar power which may only be instigated by certain qualified nurses, and lasts for a maximum duration of 6 hours.

59. In its 2005 Baseline Review of Adult Mental Health Services in Wales, the Wales Audit Office reported that although independent advocacy services were available at all adult mental health inpatient sites in Wales, the extent, availability and accessibility of such services varied significantly.

60. The intention of the proposed Measure in relation to informal patients is to ensure that independent advocacy is available to all inpatients who are receiving treatment for mental disorder (including those in non-mental health settings).

61. This advocacy service would be available to hospital inpatients of all ages that are being assessed or given treatment for a mental disorder. This includes patients for whom assessment or treatment for a mental disorder is not the primary purpose for which they have been admitted: For example, an older person admitted to a general hospital for hip replacement surgery, but who is also suffering with dementia, may receive support from an advocate in relation to any care and treatment provided in hospital in response to needs arising from the dementia.

62. In all cases the advocate will provide help, representation and support to informal patients similar to that which they provide for compulsory patients.

63. An individual will be entitled to the support of an advocate as soon as they are admitted to a hospital, and will continue to be eligible for that support for as long as they are being assessed or receiving treatment as an inpatient. If further support were required following discharge, the patient would be referred on to existing non-statutory advocacy services. The support provided would only be in relation to issues connected to care and treatment of the patient's mental health disorder. This applies even where the primary purpose for the individual's admission was not for a mental health condition.

64. By expanding statutory advocacy services to ensure that access is available to all inpatients receiving treatment for mental ill-health, whether subject to compulsion or not, the proposed Measure seeks to ensure that the rights of this often vulnerable group of patients are safeguarded. Statutory advocacy will assist inpatients in making informed decisions about their care and treatment, and support them in getting their voices heard.

Additional information

A note on age in relation to persons affected by the proposed Measure

65. The provisions of this Measure relating to Local Primary Mental Health Support Services, Care Coordination and Care and Treatment Planning, and Mental Health Advocacy (Parts 1, 2 and 4 of the Measure) apply to individuals of all ages, including children and young people and older adults.

66. As stated in paragraph 44 above, Part 3 provisions (assessments of former users of secondary mental health services) apply only to those above the age

of 18. However, individuals below the age of 18 who have been discharged from secondary mental health services, will also become eligible for assessment under Part 3 by virtue of their reaching the age of 18 during the relevant discharge period, will also be entitled to request assessment under these arrangements (provided they meet all the other eligibility criteria).

A note on prisoners and the proposed Measure

67. The planning and provision of healthcare services for persons in prison in Wales is undertaken by the relevant LHB, in partnership with the prison establishments in its area. The policy objectives of the Measure apply to prisoners in different ways, as set out below, but these arrangements apply to prisoners in state-run and private sector prisons in Wales equally:

    a. LHBs and Local Authorities will be required to ensure that local primary mental health support services are available in respect of persons detained in any of the prisons in Wales, regardless of the individual's usual residence. This will be achieved by way of regulations, and supported with guidance.

    b. Persons detained in prison in Wales, regardless of their usual residence, who receive services considered to be secondary mental health services in that prison, will have a care coordinator appointed in respect of them and a care and treatment plan.

    c. Where an individual has received secondary mental health services in the past, but are now detained in a prison in Wales, they will be deemed as though usually resident in Wales for the purposes of eligibility to seek an assessment from secondary mental health services (subject to other criteria set out in the Measure).

    d. Further, where an individual who received secondary mental health services in prison (in Wales) is subsequently released and takes up or returns to usual residence in Wales, they will also be eligible to seek an assessment from secondary mental health services (subject to other criteria set out in the Measure). Where an individual received secondary mental health services in a prison outside of Wales, their eligibility for further assessment will depend on whether those services are recognised within Part 3 as secondary mental health services – this is the same as all persons receiving services outside of Wales.

    e. Where prisoners in Wales are transferred to a hospital in England or Wales (provided by the NHS or independent sector) under sections 47 or 48 of the 1983 Act they are currently eligible for help and support from an IMHA. This eligibility is unaffected by the changes to the IMHA provisions of the 1983 Act being made by this Measure.

    f. Where prisoners in Wales receive assessment or treatment for mental disorder in a hospital in Wales other than under the 1983 Act as set out above, they will be considered to be an informal patient and therefore

also eligible to receive help and support from an IMHA. Where a prisoner in Wales is admitted as an informal patient to a hospital in England, such support will not be available.

Territorial extent

68. This proposed Measure has effect only in relation to Wales. It applies across all of Wales, and does not just affect certain parts of Wales.

Timescales

69. The provisions of the proposed Measure will be commenced at such times as the Welsh Ministers think appropriate or expedient. This recognises that some LHBs and local authorities will be required to enhance existing services, or perhaps develop new services, to meet their obligations under this legislation.

70. The current intentions are therefore to stage implementation of the various aspects of the proposed Measure, whilst still ensuring that the benefits expected to arise from the new arrangements are achieved as quickly as possible. The overall timescale is three years to achieve full implementation. On this basis (and subject to the proposed Measure being made in the financial year 2010/11) it is expected that:

- Local primary mental health support services will come into full effect in Year 3 (2012/13). Development work will take place in Years 1 and 2 ahead of commencement.

- Care planning for secondary mental health services will come into full effect in 2011.

- Secondary mental health assessments will also come into full effect in 2011.

- Mental health advocacy in respect of compulsory patients (i.e. those subject to sections 4, 5(2) and 5(4) of the 1983 Act) will come into full effect in 2011.

- Mental health advocacy in respect of informal inpatients (i.e. for those not subject to compulsion under the 1983 Act) will come into full effect in 2011/12.

71. The proposed work to support implementation is set out in Chapter 4 of Part 2 of this document.

4. Consultation

72. The 'One Wales' programme of government agreed in June 2007 between the Labour and Plaid Cymru Groups in the National Assembly, stated that the Government would "*seek legislative competence in relation to mental health".* On this basis, some 175 stakeholders in Wales were contacted on behalf of the Minister for Health and Social Services, inviting them to put forward their views as to the possible extent, scope and content of any future measures regarding mental health. Responses were analysed and the Minister met with representatives of a range of organisations along with health spokespersons from the other political groups within the National Assembly for Wales to discuss their views in October 2007.

73. A wide range of opinions were expressed during this process, a number of which focussed on matters of compulsion and detention covered by the Mental Health Act 1983. In relation to the possibility of legislating on issues beyond the scope of the 1983 Act, one respondent recognised that *"…new legislation would offer an opportunity to truly consider the mental health needs of the wider population".* Another suggested that the Assembly Government should consider the possibility of introducing a 'right' to assessment and treatment in any future legislation, noting that *"the key to reducing the use of compulsion is early intervention and treatment".* Other ideas included the introduction of a statutory duty towards care planning, increasing the availability of independent mental health advocacy in Wales, and enforcing the principles of the National Service Framework through legislation.

74. Coincidentally, in October 2007, Jonathan Morgan AM, at that time the Welsh Conservative Party Spokesperson on Health, was successful in the National Assembly for Wales periodic ballot under Standing Order 22.50, which allows an Assembly Member other than a member of the Government to bring forward a proposed Order on a subject of their choosing. Mr Morgan subsequently introduced an Order on mental health assessment, treatment and advocacy in February 2008, which quickly gained Assembly Government and cross-party support.

75. As the Order progressed, a number of potential policy options for the proposed Measure were being considered by the Assembly Government in anticipation of legislative competence being achieved. These were informed by the discussions held and the views expressed by stakeholders in October 2007.

76. Preliminary meetings were held in January 2009 with Jonathan Morgan AM and separately a range of key stakeholders, including service user and campaigning organisations, professional bodies and health and social care providers to seek their views on policy intentions which might be included in a future proposed Measure. All of the discussions were instrumental in shaping the policy aims of this proposed Measure, which were approved in principle by the Minister for Health and Social Services and further developed during 2009.

77. In July 2009, the then First Minister Rhodri Morgan AM, committed the Welsh Assembly Government to introducing a Measure in relation to mental health assessment, treatment and advocacy as part of the 2009/10 legislative programme.

78. A series of further meetings with key stakeholders were therefore held during the autumn of 2009 to consider the more detailed policy intentions which were being developed at that time. In addition, a series of stakeholder conversations were undertaken across Wales. These provided representatives from a wide range of sectors with an opportunity to consider the policy intentions for the proposed Measure with officials from the Welsh Assembly Government's Mental Health Legislation Team. Invitations were sent to a large number of organisations and over 450 individuals attended these events, representing some 70 organisations including Mind Cymru, Hafal, Gofal Cymru, Combat Stress, advocacy providers, Welsh police forces, Community Health Councils, Local Health Boards and (former) NHS Trusts, independent mental health hospitals, and local authorities from across Wales.

79. Presentations and question and answer sessions on the proposed Measure were also undertaken by the Mental Health Legislation Team at a range of events across Wales organised by the health service, professional bodies, and campaigning organisations including the Royal College of General Practitioners, the Royal College of Psychiatrists, Wales Mental Health in Primary Care, and Mental Health Action Wales. In total, 22 meetings or presentations and 'Q&A' sessions were held with stakeholders during autumn 2009. The views put forward at these events helped shape the policy intentions of the proposed Measure.

80. Due to the constraints of the legislative timetable it was not possible for the Assembly Government to hold a formal consultation exercise in relation to this Measure. The National Assembly for Wales did not gain legislative competence in relation to mental health until 11 February 2010. Holding a formal consultation on a draft Measure which the National Assembly did not yet have competence to introduce would not have been possible, as to do so would have been to pre-empt the will of both the National Assembly for Wales and of Parliament, where decisions had not yet been taken as to whether competence should be devolved. Therefore, in order to provide stakeholders with sufficient opportunities to inform the policy objectives of the proposed Measure, and to assist officials in its development, the Mental Health Legislation Team of the Welsh Assembly Government embarked on the series of meetings and conversations outlined above.

81. Assembly Government officials have also kept stakeholders informed of developments on the Mental Health LCO and the proposed Measure through a series of email bulletins. These are issued regularly to a comprehensive range of organisations and individuals, updating them at key points in the legislative process, and inviting queries or comments from them on progress.

82. This Measure has been drafted to reflect the range of views expressed by stakeholders throughout the various engagement processes outlined above. Its

key objectives have been welcomed by service user organisations and service deliverers throughout Wales.

5. Power to make subordinate legislation

83. The proposed Measure contains provisions to make subordinate legislation. Table 1 below sets out in relation to each provision:

- the person upon whom, or the body upon which, the power is conferred;
- the form in which the power is to be exercised;
- the appropriateness of the delegated power;
- the applied procedure (affirmative, negative, no procedure) if any.

84. To assist in understanding the intentions for using the proposed subordinate legislation a separate memorandum has been prepared at Annex B of this document. Annex B also sets out the appropriateness of adopting the different Assembly procedures for the legislation (for example, why the affirmative resolution procedure is adopted for certain regulations or orders).

Table 1: Summary of powers to make subordinate legislation

Section	Power conferred on	Form	Appropriateness	Procedure
Section 7(6)(a)	Welsh Ministers	Regulations	Suitable for regulations as will list additional categories of persons for whom a scheme under Part 1 must provide	Affirmative procedure
Section 14(4)	Welsh Ministers	Regulations	Suitable for regulations as provide detail for scheme which follows on from the intent of the Measure itself	Negative resolution
Section 15(3)	Welsh Ministers	Regulations	Suitable for regulations, as will be part of the scheme of appointment which follows from the intent of the Measure itself (as related to section 14(4) powers above)	Negative resolution
Sections 17(1)(c) and 17(8)	Welsh Ministers	Regulations	Suitable for regulations as provisions relate to administrative detail and procedure; also these may well need future amendments (potentially at short notice) to take account of developments within practice	First use to be subject to affirmative procedure, thereafter negative resolution

Section	Power conferred on	Form	Appropriateness	Procedure
Sections 22(1)(b) and 22(2)	Welsh Ministers	Regulations	Suitable for regulations as provisions relate to scheme which flows from the intent of the Measure, and may require periodic review	Affirmative procedure
Section 25(2)(b)	Welsh Ministers	Regulations	Suitable for regulations as provisions relate to administrative detail associated with the operation of arrangements made under the Measure	Negative resolution
Section 28(1)	Welsh Ministers	Regulations	Suitable for regulations as this maintains consistency with other subordinate legislation dealing with the same matter	Negative resolution
Section 130E Mental Health Act 1983[12]	Welsh Ministers	Regulations	The Mental Health Act 1983 currently provides delegated powers in relation to independent advocacy in the form of regulations; the Measure maintains consistency with the 1983 Act in respect of the new advocacy provisions for Wales. Such regulations will be used to provide administrative detail, and will be sufficiently flexible to respond to expected developments and improvements to advocacy within Wales	First use to be subject to affirmative procedure, thereafter negative resolution
Section 130F Mental Health Act 1983[13]	Welsh Ministers	Regulations		
Section 130G Mental Health Act 1983[14]	Welsh Ministers	Regulations		
Section 130H Mental Health Act 1983[15]	Welsh Ministers	Regulations		
Section 42	Welsh Ministers	Regulations	Suitable for regulations as will accommodate significant detail which would encumber the reading of the Measure	Affirmative
Section 43	Welsh Ministers	Regulations		Affirmative
Section 44	Welsh Ministers	Regulations	Suitable for regulations as arrangements need to be flexible to respond to future changes in professional practice	Negative resolution

[12] as inserted by section 29 of the Mental Health (Wales) Measure
[13] as inserted by section 30 of the Mental Health (Wales) Measure
[14] as inserted by section 31 of the Mental Health (Wales) Measure
[15] as inserted by section 32 of the Mental Health (Wales) Measure

Section	Power conferred on	Form	Appropriateness	Procedure
Section 45(4)	Welsh Ministers	Order	Adopted because the order will expand or amend the meaning of a term which has direct relevance on the scope of the Measure	Affirmative
Section 46(1)(b)	Welsh Ministers	Regulations	Suitable for regulations as provision relates to services which may change over time	Negative resolution
Section 49(2)	Welsh Ministers	Order	Adopted because of the nature of the provision	Affirmative (unless amending subordinate legislation)
Section 51(3)	Welsh Ministers	Order	Adopted because of the nature of the provision, given it relates to commencement	No procedure

85. The Welsh Assembly Government intend to undertake a series of formal consultations on the subordinate legislation (other than the commencement orders) made under the relevant sections of this proposed Measure.

6. Regulatory impact assessment (RIA)

86. A Regulatory Impact Assessment has been completed for this proposed Measure and follows at Part 2.

PART 2 – REGULATORY IMPACT ASSESSMENT

1. Options

87. This Chapter presents three different options in relation to the policy objectives of the proposed Measure (see Chapter 3 of Part 1 of this document). Each of the options is analysed in terms of how far they would achieve the Government's objectives, along with the risks associated with each. The costs and benefits of each option are set out in Chapter 2 of this Regulatory Impact Assessment.

88. The options are:

- Option 1 - Do nothing
- Option 2 - Deliver the policy objectives through a Measure
- Option 3 - Alternative approaches dependent on each policy objective.

1.1 Option 1 – Do nothing

Local primary mental health support services

89. Primary care plays an essential role in delivering effective mental health services. The current policy intentions in respect of primary mental health services are set out in Policy Implementation Guidance issued by the Welsh Assembly Government in 2006[16]. This identified that if *"mental health experience is limited within a [primary care health team] it can result in avoidable delays, missed or mis-diagnosis and inappropriate referral to specialist services. Strengthening mental health primary care is likely to impact favourably on not only tier one services but also on effective movement throughout the entire care pathway."*

90. The existing legislative framework in relation to the provision of health care services, particularly at secondary care level and/or by Local Health Boards (LHBs), is general in nature. There are few requirements on the statute book for the Welsh Ministers or NHS bodies to provide specific services. Instead there is a requirement to ensure the provision of treatment and care in general terms, or through primary care services - in the latter case with detailed provision being set out in regulations.

[16] Department of Health and Social Services (2006) *WHC (2006) 053 Adult Mental Health Services in Primary Healthcare Settings in Wales Policy Implementation Guidance* Cardiff: Welsh Assembly Government

91. Doing nothing would maintain the situation of a limited legislative framework in relation to the provision of specific services, and continued reliance upon non-statutory guidance.

92. Primary care based mental health workers currently run services within 19 of the 22 local authority areas of Wales, but even where there is such provision, the range of services varies, as does the number and type of professionals operating those services. For example, most offer screening, assessment, interventions, and signposting; a number also undertake a gate-keeping role between primary and secondary care; and some provide other services including counselling. Doing nothing is therefore likely to perpetuate existing disparities in the range and extent of provision within primary care, and variability in how these services are accessed and delivered.

Coordination of and care planning for secondary mental health service users

93. The current responsibilities for health and social care services in respect of care and treatment planning for patients are set out in the National Service Frameworks for child and adult mental health services,

94. The Welsh Assembly Government originally published Policy Implementation Guidance in relation to the Care Programme Approach ("CPA") in 2003[17], which applies in relation to adult secondary mental health services. This has recently been revised and replaced, by Interim Guidance[18] (which will be further revised in early 2011 to take account of this Measure and associated subordinate legislation). There is currently no equivalent guidance in relation to CAMHS, although it is intended that CPA will be extended to secondary child and adolescent mental health services.

95. The *Mental Health Act 1983 Code of Practice for Wales*[19] also contains further guidance in relation to care and treatment planning in respect of persons (of all ages) subject to compulsion.

96. The Welsh Assembly Government has also initiated performance management arrangements in respect of CPA through the Service and Financial Framework (SaFF) and more recently through the Annual Operating Framework (AOF).

97. However, despite this range of existing guidance and targets, there have been anecdotal concerns over recent years that care and treatment plans are not being effectively developed with service users, and that the CPA guidance is

[17] Welsh Assembly Government (2003) *Mental Health Policy Guidance – The Care Programme Approach for Mental Health Service Users: A Unified and Fair System for Assessment and Managing Care*
[18] Welsh Assembly Government (2010) *Delivery the Care Programme Approach in Wales: Interim Policy Implementation Guidance*
[19] Welsh Assembly Government (2008)

not being correctly followed. This position has been confirmed by a recent review of the operation of CPA in Wales[20].

98. Whilst performance management tools can be employed to encourage the delivery of CPA, the focus in respect of care and treatment planning needs to move towards planning of care that is outcome-focussed and set within a model aimed at recovery for the service user. Doing nothing is therefore likely to achieve little more than ensuring that care plans are in place for individuals, rather than improving the quality of care and treatment planning, and outcomes, for service users.

Assessments of former users of secondary mental health services

99. There are currently no legal obligations or entitlements regarding access to secondary mental health services for previous service users of the kind outlined in Part 1 of this document. Whilst some community mental health teams in Wales do operate systems similar to that which is proposed in this Measure, this is by no means universal. Furthermore, where such services are available, the access arrangements differ between teams and localities.

100. Doing nothing would maintain a situation in which service users are often unable to re-access secondary services unless they are referred by their GP. The concerns expressed by some mental health professionals, who recognise that delays in access of this kind may result in further deterioration in a person's mental health, could continue to lead to a perverse incentive for those professionals not to discharge service users from secondary mental health services.

Mental health advocacy (compulsory patients)

101. The current statutory provisions relating to IMHA are set out in the Mental Health Act 1983. These do not cover the additional short-term sections that are proposed for inclusion by this Measure. Therefore doing nothing would mean that the present situation, whereby individuals subject to detention under certain of the short-term sections of the 1983 Act are not entitled to the help and support of an IMHA in relation to their detention and treatment, would continue.

Mental health advocacy (informal patients)

102. The revised NSF for adult mental health services[21] recognised the need for a range of independent, trained and dedicated advocacy services to be made available and promoted across Wales. Key Action 6 of the NSF stated that 'non-statutory inpatient advocacy' should be in place by 2008/09.

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[20] Elias E and Singer L (2009) *A review of the care programme approach in Wales.* Bridgend*:* Delivery Support Unit and National Leadership and Innovation Agency for Health (unpublished)
[21] Welsh Assembly Government (2005) *Raising the Standard: The Revised Adult Mental Health National Service Framework and an Action Plan for Wales*

103. In its 2005 Baseline Review of Adult Mental Health Services in Wales, the Wales Audit Office reported that although advocacy services were available at all adult mental health inpatient sites in Wales, the extent, availability and accessibility of such services varied significantly. Anecdotal evidence indicates that this remains the case at the present time.

104. Doing nothing is therefore likely to maintain the present position of variable availability and accessibility for inpatient advocacy across Wales.

1.2 Option 2 – Introduce a Measure

Local primary mental health support services

105. Through this proposed Measure, it is intended to create new obligations on LHBs and local authorities to arrange and deliver mental health services within primary care.

106. The expansion of local primary mental health support services will lead to a wider coverage and range of services and treatments being provided at primary level than is currently the case. The benefits for individuals will include early access to services which are currently not available at primary level in many areas in Wales, or can be patchy and of variable quality where they do exist.

107. It is anticipated that earlier intervention and treatment will lead both to an improved experience and better clinical outcomes for this group of service users, and lessen the number of referrals currently made into secondary services by GPs when an individual's condition has eventually deteriorated to such a point as to require such specialist services. It is also expected that the provision of additional services within primary care will reduce the volume of referrals made by GPs to secondary services because primary services are limited or unavailable in their area. Fewer referrals will reduce the pressure on secondary services, enabling them to better concentrate on those individuals experiencing more severe or enduring mental disorders, to the benefit of both the deliverers and recipients of these services.

108. Finally, it is also anticipated that this policy will deliver increased levels of joint working between local authorities and LHBs and encourage improved collaboration between primary and secondary mental health services in identifying and providing appropriate treatment and care, at both levels of service provision, for those patients referred.

109. It is acknowledged that there are risks associated with taking a legislative approach to seeking to improve mental health services within primary care. However these are more towards the implementation of the legislation, rather than with the legislation itself. For example, there are risks that General Practitioners will refer all patients with mild to moderate mental health problems to the service, rather than only referring those whose care would be more appropriately managed within the service rather than by the GP. Such risks will

be responded to as part of the implementation programme.

Coordination of and care planning for secondary mental health services

110. This option proposes that a Measure will be used to place legal obligations on statutory service providers (LHBs and local authorities) to appoint a care coordinator for persons receiving care in secondary mental health services. A key function of the care coordinator will be to develop an outcome-focussed care and treatment plan in conjunction with the service user and the service provider(s).

111. This will mean that all service users within secondary care have both a care coordinator and a care and treatment plan.

112. Using legislation in this way will ensure that individuals receive an effective assessment of their needs and risks (including vulnerability) which can be translated into effective planning of care and treatment designed to address identified needs, the management of identified risk, and achieve the agreed outcomes.

113. The legal force behind the care plan will support the delivery of the care and treatment (and where applicable other services), and the legislation will provide a formal mechanism for review of whether the delivery of services has achieved the expected outcomes, and where necessary, the revision of the plan based on the conclusions of such reviews.

114. The duties contained in the Measure will be supplemented by detailed regulations (which will include specific requirements in relation to the content and management of care and treatment plans), updated guidance, and an implementation programme aimed at moving planning to an holistic, outcome-focussed, recovery-centred approach. Taken collectively this will enable the Welsh Assembly Government to redirect the focus of care planning and achieve a position whereby all service users have the support of a dedicated care coordinator and receive a plan which is relevant to their needs, regularly reviewed and updated as appropriate throughout the duration of their treatment.

115. The risks associated with this option relate to the implementation of the legislation, rather than in taking a legislative approach. For example, it will be important to ensure that services are supported in moving towards holistic care planning where such services are not currently working in that way. These risks will be addressed through the implementation programme for this proposed Measure (see Chapter 4 of this part of the document).

Assessments of former users of secondary mental health services

116. This option proposes that a Measure will be used to require the statutory service providers of secondary mental health services (LHBs and local authorities) to make arrangements for the assessment of individuals who have previously been in receipt of those services, but have subsequently been discharged, if the individual requests such an assessment.

117. An assessment undertaken under these arrangements will be of the individual's current mental health and will consider what services, if any, the individual may require. These services could be secondary mental health services, community care services, or housing or welfare services.

118. The effect of these arrangements would be to ensure that if a previous service user believes that they once more stand in need of secondary care they will be able to receive a timely assessment with clear outcomes, and where appropriate, consideration of the provision of further services, including services other than secondary mental health services.

119. This option proposes using legislation to provide, in effect, an entitlement to further assessment. The risks with taking such an approach will include ensuring that services are not inappropriately diverted to responding to requests for assessment, for example by repeat requests for assessment from an individual who has been assessed but found not to be in need of secondary mental health services. There are other implementation risks, such as ensuring that former service users are effectively informed of the arrangements, particularly where they move into or around Wales after their treatment within secondary services has come to an end. These risks will be addressed through the implementation programme for this proposed Measure (see Chapter 4 of this part of the document).

Mental health advocacy (compulsory patients)

120. This option proposes that a Measure will be used to expand the functions of Independent Mental Health Advocates (IMHAs) in respect of patients detained under the 1983 Act, as well as expanding the group of patients eligible to receive this important safeguard. Following this option will therefore result in a greater number of those patients who are subject to the powers of the 1983 Act having access to statutory independent, trained advocacy services.

121. Further, this option proposes ensuring that the powers currently available to IMHAs in respect of the existing group of qualifying patients, such as access to records, interviewing certain persons, are also available in respect of the new qualifying patients.

122. It is recognised that there are implementation risks associated with this option, not least that the capacity of existing advocacy services will need to be strengthened and developed. These risks will be addressed through the implementation programme for this proposed Measure.

Mental health advocacy (informal patients)

123. This option proposes that a Measure will be used to ensure that patients receiving assessment or treatment in hospital for a mental disorder, but not subject to the 1983 Act, will also be able to take up independent advocacy, where that advocacy is required in relation to the assessment or treatment of their mental disorder. For such an option to be effective, the Measure will also

set out the functions and powers of such an advocate, which will mirror (as far as applicable) those functions and powers of advocates for detained patients.

124. By framing this scheme within a Measure the Welsh Assembly Government will be able to stipulate the required form of the advocacy and introduce arrangements which will set standards regarding independence and training requirements for services. Such an approach will ensure that mental health advocacy is available for all non-detained inpatients requiring it, overcoming gaps in existing provision and addressing the variability in availability and quality of services where these are already established.

125. Furthermore, employing this proposed Measure to create a statutory advocacy scheme for non-detained patients will encourage the growth of professional and independent advocacy services in Wales and help further embed the principle of independent advocacy within mental health services.

126. As with the expansion of advocacy for detained patients, it is recognised that there are similar implementation risks associated with this option. The risks in relation to advocacy for both compulsory and informal patients will be addressed through the implementation programme for this proposed Measure (see Chapter 4 of this part of the document).

1.3 Option 3 – Alternative approaches

Local primary mental health support services

127. An alternative approach to introducing a Measure could be to seek improvement in the delivery and operation of primary mental health services by ensuring the Welsh Assembly Government's commitment to these services is restated within policy guidance.

128. It is recognised that such an approach may result in those disparities previously outlined in relation to the "do nothing" option, continuing. Whilst a restated commitment to primary care mental health services may encourage improvement of certain aspects of delivery within primary care, it cannot deliver all of the benefits which a legislative approach will afford. There is a possibility that services will choose not to deliver all of the components of the primary mental health services (contrary to strategic intentions regarding equitability of provision) that the proposed Measure and relevant accompanying statutory guidance would achieve.

Coordination of and care planning for secondary mental health services

129. The Welsh Assembly Government published revised interim guidance on the CPA in 2010, as part of a drive to improve understanding of the principles underpinning CPA, as well as delivery of CPA for individual services users. The final revised guidance will take full account of the final form of this proposed Measure and associated subordinate legislation, and will also apply to child and adolescent mental health services. The alternative option would

therefore be to seek to effect improvement through implementation of this revised guidance only.

130. Such an approach may result in those concerns outlined above in relation to the "do nothing" option continuing. Whilst non-statutory guidance (possibly accompanied by training and support) may improve certain aspects of care planning, it cannot deliver all of the benefits which a legislative approach will afford. There is a risk that services may wish to focus on other priorities and will choose not to deliver all of the components of care planning that the proposed Measure and relevant subordinate legislation puts forward.

Assessment of former users of secondary mental health services

131. The Welsh Assembly Government will shortly publish Policy Implementation Guidance on community mental health teams, which will state that community mental health services should operate a "self-referral" system of the kind proposed in this Measure. The alternative option in relation to this policy is therefore to rely on this guidance alone to achieve the position required.

132. However, such an approach runs the risk of perpetuating a system in which there are disparities in how self-referral systems are offered and operate. Non-statutory guidance could not be relied upon to deliver the type of entitlement proposed in this Measure, and as such there would be a continued risk that practitioners in areas where LHBs and local authorities decide not to implement guidance may continue to hold patients within services rather than discharge, as there is not a statutory provision to enable self-referral back into the service in their area.

Mental health advocacy (compulsory patients)

133. In the absence of a statutory arrangement to expand the IMHA scheme, good practice guidance could be issued to encourage Local Health Boards and/or local authorities to commission advocacy services to deliver a scheme similar to that proposed in this Measure. There is a risk though that such services would not be commissioned, or that advocates operating within expanded schemes would not have the legislative powers afforded to them which the proposed Measure would provide – including rights of access to professionals, records and facilities to interview patients.

Mental health advocacy (informal patients)

134. In the absence of creating new statutory duties in relation to inpatient advocacy, good practice guidance could be issued. Such guidance could seek to address the current disparities in the delivery of inpatient advocacy services across Wales. However, risks regarding inconsistency of contracting arrangements, funding levels and service level arrangements may not be addressed through such an approach. In addition, the issues which advocacy service providers report in undertaking their duties (for example, difficulties in advocates being able to support patients in care planning meetings, accessing records, using

private meeting areas, meeting with health and social care professionals) could continue without specific legal duties and obligations being in place.

2. Costs and benefits

2.1 Costs and benefits of option 1 (do nothing)

Local primary mental health support services

135. There are no direct additional financial costs associated with the 'do nothing' option. There are also no discernable benefits. The further development of primary mental health services will only take place if local decisions are taken to progress service development in an area, and given the current financial constraints facing the public and private sectors, such services may be not be prioritised for development.

136. It could be contended that a failure to provide effective and comprehensive primary mental health services across Wales may even, in the longer term, result in increased costs for service providers and poorer outcomes for service users.

137. Part of the rationale for developing and expanding primary care services is to provide earlier interventions for those experiencing mild to moderate and stable severe and enduring mental health problems with the aim of preventing further deterioration in an individual's health to the point where they require costlier specialist or inpatient services. Therefore, LHBs and local authorities who are not providing the primary care services proposed in this Measure could in the long term incur higher costs by having to provide specialist or inpatient care to individuals who might otherwise not have required such care had they received intervention earlier in their illness.

138. Such risks should be considered alongside the need for services to develop their capacity to respond to the anticipated demand for health and social care that could arise from the projected future increased incidence of mental health conditions (in particular depression and dementia).

Coordination of and care planning for secondary mental health services

139. Ongoing performance management of CPA will have no additional direct costs, and would continue to be used to ensure that care plans are in place for individuals. However, there are costs associated with inadequate planning of care, including poorer outcomes for individuals and their families, and ineffective care delivery and resource allocation. In the worse case, this may even lead to compromised public and patient safety, and increased potential for litigation, and reputational damage. The benefits expected to be realised in moving care and treatment planning forward on a statutory basis (as outlined in relation to the other options for care planning), will not be realised with the 'do nothing' option.

Assessments of former users of secondary mental health services

140. There are no additional direct financial costs associated with 'do nothing' in relation to this policy objective; unfortunately there are no expected benefits associated with this option either. Previous service users who consider that they require further assessment, and possibly treatment, will only be able to access such services if local arrangements are in place for them to do so or they secure a referral via their GP. Evidence indicates that such arrangements for direct self-referral are only in place in a very limited fashion at present.

141. Earlier intervention for individuals experiencing a deterioration in their mental health may well limit or reduce that deterioration, thereby avoiding the need for costly specialist or inpatient services. The 'do nothing' option therefore has the potential for increased indirect costs.

Mental health advocacy (compulsory patients)

142. There are no financial implications associated with the 'do nothing' option, and no benefits to service users or the health and social care organisations providing services. It is considered that there are considerable dis-benefits in terms of engagement, effectiveness of service delivery, and patients' rights with the 'do nothing' option.

Mental health advocacy (informal patients)

143. As the Adult NSF already requires mental health inpatient advocacy to be in place across Wales, and the forthcoming Welsh Assembly Government guidance on Children and Young People's Advocacy will continue to require local partners to make advocacy available for children with mental health problems, the 'do nothing' option should not incur additional financial costs to LHBs. However it also fails to realise the potential benefits to patients which are likely to be achieved through increasing access and availability of advocacy in inpatient settings.

2.2 Costs and benefits of option 2 (deliver through a Measure)

Local primary mental health support services (costs)

144. It is recognised that some LHBs and local authorities currently provide mental health services within primary care, albeit that these vary in terms of the models of service delivery and the amount and type of staffing to support service delivery. The Welsh Assembly Government has identified that to successfully deliver the proposed Measure in respect of primary mental health support services there will be financial costs, over and above the existing costs, and that these would need to be met by LHBs and local authorities in Wales.

145. In order to deliver local primary mental health support services, the local mental health partners will be required to first develop and agree a scheme setting out

the type of services to be delivered and which of the partners will be responsible for delivery of particular services.

146. Appropriately trained and experienced mental health professionals from a range of backgrounds (including nursing, social work, occupational therapy, psychology, psychiatry and counselling) will be required to safely and effectively deliver these services. It is anticipated that the staffing and professional expertise required to deliver these services would be drawn from existing mental health services, which will require an element of 'back-filling'.

147. At this early stage, it is not possible to estimate with absolute certainty the exact financial costs which are likely to fall to the respective mental health partners of establishing and maintaining these services over time, as many factors relating to the shape, size and delivery of services will need to be determined during the development of individual arrangements for each area. These will reflect the particular circumstances and requirements of each local authority area and will need to consider issues including the number and geographical location of services, the costs of accommodating and staffing services, and any contractual arrangements which will need to be entered into with other providers to deliver certain aspects of the service. In making local arrangements, the mental health partners will also need to consider the number of potential clients each service will be expected to cater for, and the type and potential duration of treatment sessions each client referred into the service may expect to receive. Such planning will need to take account of any existing services which may already be available within primary care in their area, including gateway workers, first access teams, primary mental health workers within child and adolescent services, and primary care counselling services.

148. It is acknowledged that there will be significant variation in actual costs arising for each mental health partnership. Further work will be required to calculate likely costs by individual local authority area.

149. If it were to be assumed that no services of the type proposed within this Measure currently existed, the estimated annual operational costs in terms of mental health professionals delivering the service in respect of persons registered with a GP would be in the region of £5.5m, as set out in Table 2 below:

Table 2: Costs for primary mental health services assuming 'zero starting point'

Factor	Result
Number of individuals registered with a GP in Wales[22]	3.15m
Number of operational staff required (based on 1:20,000[23])	157
Cost of operational staff [24]	£5.5m

150. Account also needs to be taken of the need to provide services in respect of persons not registered with a GP who may also be referred to the primary mental health services (certain categories of non GP-registered persons will be included in the schemes by virtue of regulations made under section 7(6)(a) of the proposed Measure).

151. However, as outlined above, a number of LHBs and local authorities currently provide a range of primary mental health services across Wales, although these vary in size and function.

152. As an example of existing services, under the 2009/10 Annual Operating Framework for Child and Adolescent Mental Health Services, services are required to have in place 2 primary mental health workers per 100,000 persons in each local authority area. From the latest figures available, there are currently just over 45 whole time equivalents in place. These primary mental health workers within CAMHS offer consultation and advice to professionals, and also provide services directly to young people.

153. The expected costs of services for GP-registered patients are around £5.5m, which includes the costs of existing services (in CAMHS this is estimated at £1.6m and in adult services this is estimated at £1.1m). The Minister for Health and Social Services has previously announced *additional* annual operational funding for this Part of the proposed Measure, of £3.m. In recognition of the additional categories of non GP-registered patients that may be added to the eligible persons for primary care, a further £0.5m will be made available. This puts the total *additional* annual operational funding at £3.5m.

154. The figure of £3.5m of recurring additional costs across Wales (approximately £0.159m per annum per local authority area), should be considered with caution it is likely to be at the higher end of the range, and assumes that each area would require the same level of services, which is also unlikely given existing provision.

155. The figures outlined above are based on annual operating costs at a steady state position. There are also one-off financial costs associated with

[22] Mid-year population for last published year of records
[23] This represents an improve ratio compared to the ratio that some existing services are based upon
[24] Based on mid-point of a Band 6 nurse, including on costs, totalling £35,000 per annum

establishing new services (as set out below).

156. To support mental health partners ahead of the new duties coming into force, the Welsh Assembly Government has appointed an All-Wales Primary Mental Health Lead. The role of the Lead will be to complete a comprehensive mapping of existing service provision within each local authority area, to develop a comprehensive National Service Model and provide guidance to each of the LHBs and local authorities within each local authority area on what activities will need to be undertaken to move from their current position to the position required under the improved service model.

157. The National Service Model will provide detailed information on the nature and type of services that will be delivered within primary mental health support services. It will support the clinical responses to individuals being referred to the service, and its development will take account of existing good practice within Wales and also wider afield. It is expected that the National Service Model will be available in 2011 and will cover access to assessment, triage, interventions, sign-posting and referral.

158. To facilitate planning between mental health partners, as well as supporting the development of new service configuration and operational capacity, the Welsh Assembly Government would expect there to be local implementation leads (probably covering an area of a Health Board) in place across Wales. These implementation leads would be time-limited posts and would be supported by additional one-off funding from the Welsh Assembly Government. Additional one-off funding would also be provided for capacity development within services. To this end, for each of the financial years 2010/11 and 2011/12 a further £0.5m will be made available which will meet the costs of the All-Wales Lead (including supporting their work), as well as the costs of the local leads, and capacity development.

159. From 2012/13 onwards the additional annual funding of £3.5m will be provided from the Mental Health budget on a recurring basis to fund the service. A funding mechanism will be developed to distribute these monies equitably across LHB and LA partnerships.

Local primary mental health support services (benefits)

160. The development of primary mental health services within Wales will lead to a wider range of services and treatments being provided at primary level than is currently the case in many areas. Dependent on existing provision, it is anticipated that the benefits for patients will include parity of services across Wales and earlier access to services. It is anticipated that earlier intervention and treatment will lead both to an improved experience and better clinical outcomes for this group of patients, and lessen the number of referrals currently made into secondary services by GPs when a patient's condition has deteriorated to such a point as to require specialist services.

161. It is also anticipated that the provision of local primary mental health services will reduce the volume of referrals made by GPs to secondary services in

relation to patients who are not necessarily unwell enough as to require secondary services, as can sometimes occur where primary mental health services are limited or unavailable. This in turn will reduce the pressure on secondary services and enable them to concentrate on those experiencing more severe or enduring mental disorders, benefitting both the deliverers and recipients of these services.

162. As has been contended by some service user groups and health professionals, it is also possible that early intervention and treatment for certain individuals experiencing mild to moderate mental health problems may, in some cases, prevent a subsequent deterioration in that individual's condition to the point where, ultimately, specialist inpatient services or in a small number of cases compulsory detention and/or treatment are required. This would be a desirable outcome for any individuals who may benefit, but it may also lead over the longer term to a reduced demand for inpatient or specialised mental health services in Wales and a reduction in the number of occasions on which individuals are detained or treated under the 1983 Act.

Coordination of and care planning for secondary mental health services (costs)

163. In order to successfully deliver care and treatment planning for all patients within secondary mental health services in Wales, LHBs and local authorities will be required to appoint a care coordinator in relation to each service user. The care coordinator will be responsible for preparing and agreeing a plan in writing, and reviewing and revising that plan as appropriate for the duration of that service user's care and treatment.

164. Revised Interim CPA guidance was published by the Welsh Assembly Government in July 2010, with the final guidance anticipated to be published in 2011. This will be accompanied by a programme of change management designed to refocus the emphasis of care planning within the service to ensure that person-focussed and holistic planning of care is delivered for all patients receiving secondary mental health services in Wales. As a first step in this process, in September 2010 the Faculty of Health, Life and Social Sciences at the University of Lincoln were commissioned to prepare learning resources to support the Care Programme Approach in Wales as part of the implementation programme for Part 2 of the Measure.

165. It is estimated that £0.75m of non-recurring funding will be required to meet the costs of the programme of change management; this funding will be allocated from the Mental Health budget.

166. Because the proposed Measure represents the consolidation of existing requirements regarding care and treatment planning into legislation, the new statutory duties should not create any financial or administrative burdens for the service over and above the current operational costs for delivery of mental health services. The proposed Measure will reinforce and give legal weight to existing guidance, rather than creating any additional requirements. Therefore beyond the initial tranche of funding to support re-focussing, no additional funding will be required.

Coordination of and care planning for secondary mental health services (benefits)

167. Some concerns have been expressed over recent years by service user groups and mental health professionals that care and treatment plans are not being effectively developed with service users, and that the focus of care and treatment planning needs to move towards planning of care that is outcome-focussed and set within a model aimed at recovery for the service user.

168. It is anticipated that this policy will lead to greater involvement of service users in decision making around their care and treatment, and better outcomes for those individuals. Revised CPA guidance and the additional funding which will be directed to support the re-focussing of care and treatment planning should also encourage more cohesive, focussed and effective cross-discipline working amongst mental health and social care professionals in delivering services.

169. The ultimate aim is to ensure that appropriate services are directed where they are actually required in a timely manner. If successful, this will not only benefit service users, but should also help remove inefficiencies in practice and potential wastage in care and treatment delivery, leading to potential cost savings (although unquantifiable at this stage) within the service.

Assessments of former users of secondary mental health services (costs)

170. It is not anticipated that any significant costs would be incurred by local authorities or LHBs from the proposals to be brought forward under the proposed Measure in respect of secondary mental health assessments.

171. Whilst it is imperative that record keeping systems are in place which will ensure that the entitlement to, and outcome of, assessments are recorded and communicated as appropriate to other health or local authority partners (ie, the patient's GP, housing or welfare services) it is not anticipated that health services or local authorities would require any additional administrative or ICT capacity to achieve this. Existing patient record systems could be updated to include additional information relating to an entitlement to future assessment, or to update records to include the details of any subsequent assessments which are requested and/or undertaken.

172. It is possible that on occasions individuals may request an assessment in an area other than that where they are usually resident, in which case LHBs and local authorities would be required to employ existing patient record management/transfer systems or protocols.

173. LHBs and local authorities will be required to notify patients of their entitlement to future assessment both orally and in writing (including information on how to make a request for assessment in future if required). This could be incorporated into existing discharge planning procedures without incurring any additional costs.

174. There is a theoretical possibility that some individuals having been discharged may make repeated, frivolous or vexatious requests for further assessment, which could potentially impact on services. However, it is proposed that guidance will be developed to address such issues, including defining the circumstances under which an individual's request for further assessment may be declined if certain criteria are not met.

175. The Welsh Assembly Government will provide LHBs and local authorities with implementation guidance prior to the duty coming into force, and it is likely that draft standardised information leaflets will also be produced for the service to adopt as necessary. It is anticipated that the one-off development costs associated with the guidance and draft leaflets will be less than £7,500 and will be met from within existing budgets of the Welsh Assembly Government.

Assessments of former users of secondary mental health services (benefits)

176. This aim of this duty is to encourage appropriate discharge from secondary mental health services, supported by swift re-access to specialist assessment in the event of a previous service user recognising they are, or may be, relapsing. Discharge from secondary services should be seen as a key outcome of the delivery of the recovery model, the aim of which is to regain mental health and achieve a better quality of life for the individual.

177. By encouraging a greater number of patients to be discharged from secondary services than is currently the case, and thereby reducing the number of patients each service currently holds on its lists, additional capacity could be created within those services.

178. Service users would also benefit, as any reluctance they may currently experience regarding discharge from services, given the possibility of potential future relapse and difficulty in swiftly re-accessing specialist services if these became needed again, would be mitigated by the certainty that a timely assessment would be undertaken if requested at a future time.

Mental health advocacy for compulsory patients (costs)

179. Under existing arrangements a range of independent advocacy organisations provide IMHA services to LHBs on a pooled basis across Wales. Figures provided by those organisations on the first year of operation (November 2008 to November 2009) suggest that advocates handled over 2,000 requests for support during that period. Between the nine organisations providing IMHA services in Wales, some 15 whole time equivalents[25] were engaged on IMHA casework, suggesting, that on average, each IMHA dealt with around 130 cases over the course of the year.

180. Estimates based on use of the Mental Health Act during 2008/09 (the most recent period for which complete data is available), suggests that extending

[25] A whole time equivalent (WTE) is calculated on 35 hours per week for IMHA

IMHA provision to sections 4, 5(2) and 5(4),as proposed in this Measure, would lead to a potential additional increase in demand for IMHA of approximately 16%. However, this does not take into account that current IMHA services are provided to existing qualifying patients on a business hours basis (ie. Monday to Friday, 9am to 5pm) with most IMHA providers required to respond to requests within five working days. It is acknowledged that the response times required by an IMHA service covering the 'short-term' sections of the 1983 Act – i.e. sections 4, 5(2) and 5(4) – which can last between six and seventy two hours, would need to be swifter than those which advocacy services currently provide.

181. It is also recognised that LHBs will require sufficient additional resources to enable them to commission the additional IMHA services necessary to meet the increased demand which is likely to result from the extended scheme for compulsory patients. Such additional funding would need to be made available to advocacy providers to enable them to recruit and train staff, and to make any necessary arrangements (possibly on a pooled or regional basis) for the provision of any services which may be required on an 'out of hours' basis to ensure that requests for IMHA support outside of office hours are met in a timely manner.

182. When the existing IMHA scheme was established in 2008, the Assembly Government provided LHBs with a total of £0.6m of additional recurring funding to support the original scheme – these funds were distributed to individual LHBs based on the recent use of relevant sections of the 1983 Act in their respective areas. It is proposed that the extended IMHA scheme set out in this Measure should come into operation as soon as is practicable once the Measure has gained Royal Approval, and that an additional £0.4m will be provided on an annual basis thereafter to support the expanded service. Allocations to LHBs would be based upon a formula similar to that employed in 2008. It is anticipated that this funding will be accompanied by implementation guidance from the Assembly Government which would advise LHBs on appropriate arrangements for contracting future IMHA provision, possibly to include an updated model service specification and engagement protocol, along with advice on monitoring and review arrangements.

183. Additional one-off funding of £0.25m will also be provided to enable LHBs to tender for new (or revised) contracts and allow successful bidders to develop and begin to deliver the enhanced services. Following this, recurring additional annual £0.4m funding would become available.

184. The Assembly Government has liaised closely with existing IMHA providers throughout the development of this policy. Some advocacy organisations have expressed concerns that extending IMHA to short term sections would have implications for their existing operations, in particular in relation to the potential requirement to provide advocates within shorter timescales than is currently the case, and possibly outside of business hours. However, there has also been recognition that extending IMHA to individuals detained under sections 4, 5(2) and 5(4), who under existing arrangements have no entitlement to statutory advocacy, is a worthy ambition, which may also present the advocacy

movement in Wales with new opportunities to grow, and to increase their influence within the mental health sector.

Mental health advocacy for compulsory patients (benefits)

185. The aim of this policy is to provide those individuals detained under sections 4, 5(2) and 5(4) of the 1983 Act with an entitlement to independent mental health advocacy similar to that presently enjoyed by qualifying patients on the longer term sections. This provision is intended to address the current anomaly whereby some individuals detained in hospitals under the 1983 Act have an entitlement to statutory advocacy, and others do not.

186. It is anticipated that this policy will not only benefit those individuals subject to the relevant short term sections of the 1983 Act, who will gain from having access to an independent advocate, but could also help in the ongoing drive to improve service quality, as advocates will be able to raise with service providers those issues which patients have identified as unsatisfactory during their detention or assessment.

187. This policy will also help to further embed and enhance the role and value of independent advocacy within the mental health system, and provide a tangible example of the Welsh Assembly Government's continued commitment to advocacy in Wales.

Mental health advocacy for informal patients (costs)

188. At present, patients admitted to hospital in mental health units across Wales are able to access mental health advocacy services, but evidence suggests that services are by no means regularly and consistently available within those settings. Also, where patients are admitted to hospital in non-mental health units, their access to mental health advocacy can be severely compromised.

189. The Welsh Assembly Government recognises that providing a statutory advocacy scheme for all informal patients receiving assessment or treatment for their mental health needs will incur additional costs for LHBs, and that support will need to be made available to those advocacy providers chosen to deliver these services to enable them to build capacity and deliver this scheme in a professional and independent manner.

190. The Welsh Assembly Government has established that there is a wide variety of non-statutory mental health advocacy services in existence across Wales. Such services are provided by a number of voluntary and third-sector organisations and deliver a range of services to individuals with mental health problems, including within inpatient settings. These organisations could provide capacity for the increased statutory service proposed in this policy. LHBs would be expected to undertake tendering exercises similar to those undertaken in relation to existing IMHA and Independent Mental Capacity Advocacy schemes, and enter into formal contractual arrangements with advocacy services for the provision of new IMHA for informal patients.

191. Data for the period 2008/09 shows that there were just over 9,400 occasions on which an individual was informally admitted to a mental health unit or hospital. This figure does not include those occasions on which an individual may have been admitted for a reason other than a mental health problem, but who may subsequently receive assessment or treatment for such a problem during their stay in hospital – this group would also be entitled to an advocate under this policy. No precise figures are available for this latter group, and the Welsh Assembly Government recognises that further detailed analysis on this will need to be undertaken by Local Health Board Mental Health Advocacy Planners and IMHA providers so that initial estimates can be produced and costed. It is likely that the full extent of this additional demand may not be accurately identifiable and estimable until the expanded service has been operational for some time.

192. An allocation of £1m per year of recurring funding has been allocated from the Welsh Assembly Government's Mental Health budget to support this policy. This level of funding assumes that around 50% of eligible persons may wish to take up their entitlement to an advocate, and takes account of existing provision for inpatient settings (in relation to informal patients). Consideration has also been given to the amount of time that may be spent on each case by an advocate. It is clear from existing experiences in relation to compulsory patients is that there is no "average" case time for IMHAs. It is acknowledged that the level of support to be provided by advocates in relation to informal patients will differ to that provided in relation to compulsory patients, and may be more generic in nature.

193. The £1m annual recurring funding identified in respect of this part of the Measure would be in addition to the £1m per year which will be provided for the expanded IMHA service for compulsory patients, resulting in a total annual allocation of £2m for statutory mental health advocacy services in Wales. This £2m funding is also additional to existing funding provided by LHBs and local authorities in relation to non-statutory advocacy which the Welsh Assembly Government would expect to see continue.

194. The Welsh Assembly Government will also make funds available for initial scoping work and capacity building – including additional recruitment and training. LHBs will be provided with an additional one-off £0.25m to support preparatory work in 2010/11. As now, LHBs will be expected to enter into formal contractual arrangements with independent advocacy organisations for provision of this service.

Mental health advocacy for informal patients (benefits)

195. The main beneficiaries of this policy would be those individuals receiving assessment or treatment in hospital for a mental disorder on a non-detained basis. The scheme set out in this Measure would enable them to access help, support and representation from an independent advocate, which is currently not available in many areas of Wales. By establishing minimum professional requirements and setting in place monitoring and review arrangements, the Welsh Assembly Government would also be able to assure the standard of

those services across Wales. This policy would overcome existing disparities in services and embed a system of regulated and securely funded provision.

196. As with the expansion of advocacy in respect of compulsory patients outlined above, the benefits of this policy would also extend to the independent advocacy sector in Wales. Establishing and funding statutory advocacy for non-detained patients would help cement and enhance the profile of the advocacy movement, allowing them to increase their influence and standing within the mental health community.

197. The schemes proposed in this Measure would also provide LHBs with an opportunity to consolidate and rationalise their arrangements for the provision of independent advocacy services. Under existing arrangements, LHBs commission IMHA and inpatient advocacy (where this is provided) under separate arrangements. Extending statutory advocacy should enable LHBs in future to commission services for both schemes from the same provider(s) if they so wished.

198. Patients moving from detained to informal status (or vice versa) also stand to benefit from such arrangements which would encourage continuity in provision, ideally resulting in a position whereby such individuals might retain the support of a particular advocate during any transitions between detained and informal status.

2.3 Costs and benefits of option 3 (alternative approaches)

Local primary mental health support services

199. Restating a commitment to primary mental health services in policy guidance will, superficially, result in no additional costs. However this overlooks the expectation of the Welsh Assembly Government for LHBs and local authorities to deliver these plans. Therefore the costs outlined above in relation to option 2 could be envisaged for this option as well, and would fall to LHBs and local authorities.

200. The benefits of relying on guidance are however less clear. It is to be hoped that LHBs and local authorities would meet the targets associated with developing services, but in the absence of statutory duties in this regard that cannot be assured. Similarly, whilst development of services would realise some of the associated expected benefits for service users, the current variability within service provision is likely to continue.

Coordination of and care planning for secondary mental health services

201. The revised guidance for CPA is not expected to result in additional financial benefits in itself, but the programme of change management which has been identified in option 2 (above) would still need to be delivered. The costs identified in option 2 could therefore be carried forward to this option as well. It is not clear that the expected benefits of legislation (outlined above) would be realised through guidance alone.

Assessments of former users of secondary mental health services

202. Relying on the revised Policy Implementation Guidance alone to achieve this objective would not incur any additional financial costs, but nor would this approach have the benefits anticipated in introducing legal duties and entitlements in relation to the provision of secondary mental health assessments.

203. Reliance on guidance alone is unlikely to achieve a position where all services provide the same arrangements and entitlements. As such there is a possibility that this would perpetuate the current situation whereby some services provide direct 're-access' schemes and others do not, or result in the adoption of a range of different schemes and variations in access criteria across different services. As the imposition of legal duties and entitlements to provide assessments is not expected to incur additional costs in any case, it could be contended that there would be distinct disadvantages in adopting the alternative approach of relying on guidance alone which, whilst also cost neutral, would be unlikely to achieve a prescribed and uniform assessment scheme across Wales.

Mental health advocacy (compulsory patients)

204. Implementation of any good practice guidance which the Welsh Assembly Government might issue would rely on the goodwill and cooperation of service providers. It would not be possible to enforce the guidance or ensure that its objectives were being fully met by local services, and as such it is unlikely to achieve the same results as duties prescribed in a Measure.

205. Whilst no additional costs would be incurred if this alternative approach were to be adopted, it runs the same risk as the other alternative options outlined in this section – namely, that as no means exist for enforcing such guidance and in the absence of a legal requirement to make services available, LHBs may choose to focus on other priorities or deliver a limited or different scheme in their area, with the result that services continue to develop in a patchy, variable and uncoordinated manner. Even if the Welsh Assembly Government were to support the guidance with the same levels of funding proposed for the Measure policy, it would not be able to stipulate the type of service, nor assure its delivery, in the way that could be achieved through a duty enshrined in a Measure and underpinned by subordinate legislation and statutory guidance (such as the *Mental Health Act 1983 Code of Practice for Wales*).

Mental health advocacy (informal patients)

206. No additional costs would be incurred were the Welsh Assembly Government to issue good practice guidance. However, as set out in previous paragraphs, the weakness of relying on non-binding guidance is that service providers may decide not to implement, or establish only limited services, in their area. Even if guidance were to be supported by the levels of additional funding proposed for the Measure policy, this alternative option would provide only limited

mechanisms to enable the Welsh Assembly Government or its Inspectorates to ensure that services were being implemented and delivered in the prescribed manner. Whereas a Measure would be more directive and enforceable and as such more likely to achieve the intended policy aims.

3. Competition assessment

207. The competition filter is required to be completed if the proposed Measure affects business, charities and/or the voluntary sector. The filter is therefore not required in respect of local primary mental health support services, care planning, and secondary mental health assessments.

208. Given that advocacy services in Wales are delivered (in the main) by third sector organisations, the competition filter has been applied to the two policies relating to mental health advocacy. The filter test has shown that the introduction of these two policies is unlikely to have a significant detrimental effect on competition within the advocacy sector.

209. Whilst those organisations which are contracted to provide existing statutory services could be perceived as enjoying an advantageous position in the sector, all current contracts are due for renewal within the next 18 months. LHBs will be issued with revised guidance from the Welsh Assembly Government prior to new duties coming into force which will provide advice on planning, tendering, contracting and service level arrangements in relation to the expansion of statutory services, aimed at ensuring that equitable and transparent processes are employed in the selection, appointment and delivery arrangements for future advocacy provision.

210. A mapping exercise undertaken during 2009 identified a range of independent advocacy providers across Wales who may be able to bid for new contracts, either independently or on a pooled basis. To help facilitate the preparation for, and transition to, new arrangements the Welsh Assembly Government intends to provide information, through workshops and guidance to advocacy agencies and LHBs prior to the implementation of new statutory duties to ensure that services and providers are aware of the implications of the Measure policies and the opportunities this affords the sector in Wales.

211. Tables 3 and 4 below summarise the competition filter tests.

Table 3: Competition filter test in respect of mental health advocacy for compulsory patients

Question	Response
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	Yes
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	Yes
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	Yes
Q4: Would the costs of the regulation affect some firms substantially more than others?	No

Question	Response
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

Table 4: Competition filter test in respect of mental health advocacy for informal patients

Question	Response
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	Yes
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	Yes
Q3: In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	Yes
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of firms?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	Yes
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

4. Implementation plans

212. Plans for the successful implementation of the new legislation are being made. It is anticipated that:

- Service users and their carers will be involved in implementation both nationally and locally. They will be given information and help to understand the new legislation and how it will affect them.

- Providers of primary and secondary mental health services will be provided with advice and guidance to ensure that they understand the impact of the proposed Measure on the services they arrange and provide.

- The Welsh Assembly will issue guidance to support LHBs in their preparations for meeting their new duties under the proposed Measure.

- Local authorities will also prepare for meeting their new duties, and again guidance will be issued by the Welsh Assembly Government to support this work.

- Work will be undertaken with existing IMHA service providers, and other advocacy agencies, to ensure that the details and implications of new arrangements for mental health advocacy in Wales are fully understood.

213. These initiatives will be supported by underpinning work on:

- Improving the planning and delivery of mental health care
- Supporting the provision of Welsh Language services
- Developing and modernising the workforce
- Procedures and systems
- Best practice in the planning and provision of advocacy
- Expanding current policy implementation guidance relating to mental health

214. Since April 2006 the National Leadership and Innovations Agency in Health (NLIAH) has had responsibility for NHS workforce modernisation on behalf of the Welsh Assembly Government. NLIAH has a programme to develop the mental health workforce, and this will take account of the implementation of this proposed Measure.

215. The Social Services Improvement Agency (SSIA) was set up to support local authorities increase the pace of improvement and promote excellence within social services. Hosted by the Welsh Local Government Association the SSIA is a partnership enterprise between the Association, ADSS Cymru and the Welsh Assembly Government. Discussions will be held with the SSIA to consider how the developments within this proposed Measure can be supported.

Implementation support for the policy objectives of the proposed Measure

216. As noted in Chapter 4 of Part 1 of this document, the current intentions are to stage commencement of the various policies contained in this proposed Measure, whilst still ensuring that the benefits expected to arise from the new arrangements are achieved as quickly as possible. The projected timescale is three years from Royal Approval of the Measure to achieving full implementation.

217. Table 5 below provides a summary of some of the implementation plans in relation to each Part of the proposed Measure.

Table 5: Outline of implementation programme

Provisions	Proposed arrangements
Local primary mental health support services	Duties to come into full effect in 2012/13. In 2010 an All-Wales Primary mental Health lead will be appointed to map existing services across Wales and begin work on the National Service Model. During 2010/11 and 2011/12, guidance will be developed setting out the proposed National Service Model (based on existing guidance and notable practice). Work will be undertaken with LHBs and local authorities to establish where service redesign or development is required; funding will be available (via bid allocation) to support some of that work. Such funding will support capacity building within services to enable them to begin delivering primary mental health support services ahead of the full legal obligations coming into force. Additional funding to support delivery (as set out in Chapter 2.2 of this RIA) will be made available.
Coordination of and care planning for secondary mental health support services	Duties to come into full effect in 2011. Because Care Programme Approach (CPA) has been operational in Wales for a number of years, the implementation work will focus upon improving the delivery of person-centred holistic planning of care. This will include training, advice and support. The Welsh Assembly Government has published Interim CPA Guidance based on the Measure as introduced, with a view to publishing final guidance, which will take account of the final form of the Measure and the associated subordinate legislation. Additional funding to support services in improving the quality of care planning in Wales will be made available (as set out in Chapter 2.2 of this RIA). The University of Lincoln began work in Autumn 2010 on the learning resources which will be used to support the introduction of the statutory care coordination and care and treatment duties in 2011.
Assessments of former users of secondary mental health services	Duties to come into full effect in 2011. Implementation guidance will be provided to LHBs and local authorities ahead of this Part of the proposed Measure commencing. This will reflect the Welsh Assembly Government's guidance on Community Mental Health Teams (which is Interim Guidance currently, but will be issued as Final Guidance in early 2011).

Provisions	Proposed arrangements
Mental health advocacy (compulsory patients)	Duties in respect of compulsory patients to come into effect in 2011. Existing IMHA (Independent Mental Health Advocacy) provision will need to be expanded to take account of the increased number of patients eligible to seek advocacy support as a result of this policy. Funding will therefore be made available to support capacity building, which will be complemented by revised commissioning guidance for LHBs. It is also recognised that IMHAs may benefit from further training in respect of the new services they will be required to provide. This will be considered as part of the implementation programme.
Mental health advocacy (informal patients)	Duties in respect of informal patients will come into effect in 2011/12. To support the required expansion of advocacy provision in inpatient settings, funding will be made available (as set out in Chapter 2.2 of this RIA). Similar development work will also take place as outlined above in relation to compulsory patients.

5. Post implementation review

218. The effect of the key changes within this proposed Measure will be reviewed three years from the relevant implementation date(s). The benefits of successful implementation will occur in two main areas, set out below:

Benefits for service users, their families and carers will consist of:

- improved access to services within primary and secondary care, measured for example by number and range of primary mental health support services available and number of service users assessed and treated within these;

- improved experience for service users, families and carers, measured for example by increased satisfaction with services;

- improved involvement of service users in decision making around their care and treatment, measured for example by improved satisfaction with care planning and engagement with advocacy services;

- improved provision of Welsh Language services by supporting access to assessment, treatment and advocacy in the service user's language of need/choice.

Benefits in the provision and use of services provided under the legislation will consist of:

- improved delivery of services within primary and secondary care;

- reductions in referrals to secondary care which are not accepted because such services are not appropriate;

- improved availability and accessibility of independent, trained and dedicated advocacy services within mental health inpatient settings.

219. These benefits will be reviewed in a number of ways including:

- commissioned research into the use of primary and secondary mental health services;

- commissioned research into the use, accessibility and delivery of advocacy services;

- statistical returns and management information derived from existing operational and financial systems, most typically the annual statistical returns relating to use of the Mental Health Act 1983 and the Patient Episode Database for Wales.

220. A review of the development of the legislation, and its accompanying implementation programme, will also be undertaken.

6. Summary and recommendation

221. **Option 2 (introduce a Measure)** best meets the Government's objectives by helping to ensure that:

- LHBs and local authorities provide (in partnership where possible) local primary mental health support services across Wales;
- care and treatment planning for service users within secondary mental health services will become a legal requirement;
- individuals who have been discharged from secondary mental health services may be re-assessed quickly by those services if the individual considers that they stand in need of such an assessment;
- mental health advocacy for inpatients (including for those subject to compulsion) is embedded and placed upon on a consistent statutory footing.

Annex A – Explanatory Notes

Introduction

These Explanatory Notes relate to the proposed Mental Health (Wales) Measure 2010 as laid before the National Assembly for Wales on 22 March 2010, and subsequently amended at Stage 2 (in Committee on 30 September 2010).

They have been prepared by the Health and Social Services Directorate General in the Welsh Assembly Government in order to assist the reader of the proposed Measure and to help inform debate on it. They do not form part of the proposed Measure and have not been endorsed by the National Assembly for Wales.

The Explanatory Notes need to be read in conjunction with the proposed Measure. They are not, and are not meant to be, a comprehensive description of the proposed Measure. So where a provision or part of a provision does not seem to require any explanation or comment, none is given.

List of terms and abbreviations used in the Explanatory Notes

The following terms and abbreviations are used in the Explanatory Notes:

The 1970 Act – the Local Authority Social Services Act 1970
The 1983 Act – the Mental Health Act 1983
The 2006 Act – the National Health Service (Wales) Act 2006

AMHP – approved mental health professional
IMHA – independent mental health advocate
LHB – Local Health Board

The term ‘patient’ is usually adopted within the Explanatory Notes, reflecting the language of the proposed Measure. The Welsh Assembly Government recognises that other terms, such as ‘service user’, survivor’, ‘client’, ‘consumer’ and ‘recipient’ are often used for people accessing services for care and treatment of their mental disorder.

Overview of the structure of the Mental Health (Wales) Measure 2010

The proposed Measure is divided into six Parts and two Schedules:

Part 1: Local primary mental health support services
Part 1 makes provision for the establishment and operation by Local Health Boards (LHBs) and local authorities of primary mental health support services within a local authority area. Such services will include assessment, treatment, information and advice.

Part 2: Coordination of and care planning for secondary mental health service users
For service users within secondary mental health services, Part 2 makes provision for a care and treatment plan detailing the mental health services that will be

provided to them and the outcomes those services are intended to achieve. Care and treatment plans will be developed, reviewed and overseen by a care coordinator.

Part 3: Assessments of former users of secondary mental health services
Part 3 provides an entitlement to assessment by the providers of secondary mental health services for previous service users (in particular circumstances). Provision is made for establishing the arrangements for undertaking such assessments, and any next steps following assessment.

Part 4: Mental health advocacy
Part 4 makes provision in relation to Independent Mental Health Advocacy schemes in respect of patients subject to compulsory powers of the Mental Health Act 1983 (so-called 'compulsory patients'). Provision is also made for persons not subject to detention under the 1983 Act but admitted to hospital for assessment or treatment, so-called 'informal patients'. Part 4 of the proposed Measure amends the 1983 Act to expand the existing scheme of advocacy within the 1983 Act.

Part 5: General
Part 5 is concerned with general provisions applying to one or more Parts of the proposed Measure, such as cooperative and joint working between local authorities and LHBs and information sharing, amongst other matters.

Part 6: Miscellaneous and supplemental
Part 6 of the proposed Measure is concerned with interpretation of terms used in the Measure, and general provision regarding subordinate legislation and commencement. Part 6 also introduces the Schedules to the Measure.

Schedule 1: Consequential amendments to the Mental Health Act 1983
Schedule 1 contains consequential amendments to the 1983 Act which are required by virtue of the other provisions of Part 4 of the proposed Measure.

Schedule 2: Repeals
Schedule 2 specifies the repeals made to the 1983 Act as a consequence of the provisions set out in Part 4 of proposed Measure.

The National Assembly for Wales has the power to make this proposed Measure by virtue of section 94 of the Government of Wales Act 2006.

Part 1: Local primary mental health support services

Section 1 – Meaning of "local mental health partners"

This section creates the term 'local mental health partners' to describe the bodies (local authorities and LHBs) which are responsible for providing primary mental health support services. Local mental health partners are also responsible for making arrangements for the assessment of former users of secondary mental health services (under Part 3 of the Measure). The term is therefore of relevance to the whole Measure, not just Part 1.

Given that LHB areas are wider than local authority areas, LHBs will be local mental health partners in multiple areas, albeit with a different partner in each local authority area.

Section 2 – Joint schemes for the provision of local primary mental health support services

Local mental health partners are required to take reasonable steps to agree a scheme which secures the provision of primary mental health support services for the local authority area. The schemes established under section 2 will set out the arrangements for the services, including the type and extent of the local primary mental health treatment that will be made available as part of the services, and which partner is responsible for the different aspects of the service.

This provision, when read with provisions for cooperative and joint working set out in section 38 of the proposed Measure, allows for flexibility for the mental health partners and allows a diverse range of delivery mechanisms, so that the scheme can be responsive to the needs of the population of the local authority area. However it also ensures that at a strategic level both bodies are involved in setting out the arrangements under which the services are to be delivered, and will have clear responsibilities to provide particular services.

A particularly important aspect of local primary mental health support services is the primary mental health assessment, which acts as a 'gateway' to the other services – particularly local primary mental health treatment. There is a right to an assessment where an individual (of any age) is referred by their GP, or where a GP refers an individual who is not registered with the GP but who falls within a category of additional persons listed in the regulations made under section 7(6)(a) of the Measure. Such additional persons will include prisoners.

In addition, the scheme may confer rights to assessment on other categories or groups, such as individuals receiving secondary mental health services, and those subject to compulsion under the Mental Health Act 1983.

It is anticipated that as services develop and improve, schemes will need to be reviewed and altered. Subsection (6) of section 2 provides that the schemes may be altered, including those schemes made by Welsh Ministers under section 4 of the Measure.

Section 3 – Duty to provide local primary mental health support services

Section 3 requires local mental health partners to provide primary mental health support services in accordance with their agreed scheme. By virtue of section 47, the duty to provide services can be discharged by making arrangements for provision by a third party, but the responsibility for provision of services remains with the local mental health partner.

Section 4 – Failure to agree schemes

It is recognised that there may be occasion when agreement between local mental health partners cannot be reached; section 4 allows the Welsh Ministers to determine the scheme for the provision of primary mental health support services in a local authority area if the mental health partners cannot agree one. During any such time when there is no agreed scheme, it is important to ensure that services will continue to be provided to individuals. LHBs will be responsible for this.

Section 5 – Meaning of "local primary mental health support services"

This section describes the services which constitute primary mental health support services and which, by virtue of sections 3 or 4, must be provided by whichever of the partners is responsible for providing particular services under the agreed scheme.

Sections 6 to 8 – Duties to carry out primary mental health assessments (various)

This group of sections provide that primary mental health assessments must be carried out in respect of certain individuals, and may be carried out (if the scheme so provides) in respect of other persons. The purpose of an assessment is set out in section 9.

Section 6 establishes a duty to undertake an assessment of an individual referred by the GP with whom they are registered, to the local primary mental health partners for the area where that individual is usually resident. In practice it is anticipated that a referral will be made to the mental health professionals operating within the established scheme.

Section 7 provides that referrals may also be made by a GP where the individual is not registered with them, if such individuals fall within a category of persons prescribed in regulations made by the Welsh Ministers. This will provide access to local primary mental health support services to certain categories of people who do not have a usual residence, or registration with a GP (for example, prisoners).

It is anticipated that the significant majority of patients subject to compulsion under the 1983 Act, or already receiving secondary mental health services, would not necessarily benefit from local primary mental health services. The local mental health partners will decide if some or all of these patients are to be entitled to assessment or treatment under the scheme. Section 8 therefore provides that if a scheme enables it, referrals may also be made in respect of such a patient by a practitioner from within secondary mental health services. Where a scheme enables such referrals, the scheme must also set out who is entitled to make referrals to the primary mental health support services.

Section 9 – Conduct of primary mental health assessments

Where a primary mental health assessment is required to be undertaken, that assessment will identify two things:

- local primary mental health treatment which might improve or prevent a deterioration in the person's mental health; and

- any other services which might improve or prevent a deterioration in the person's mental health.

Assessments may only be conducted by a practitioner who is eligible to undertake such an assessment; eligibility will be determined by regulations made under section 44 of the proposed Measure.

Section 10 – Action following a primary mental health assessment

This section relates to the second aspect of assessment, which is where services other than local primary mental health treatment, might benefit the individual. The local primary mental health partner responsible for assessment must first consider whether provision of services would be its responsibility, and if so, decide whether to provide them. Where that partner does not consider it is the provider, the partner must make an onward referral to the body that the partner considers would be responsible.

Section 10A – Inclusion of schemes under this Part in Children and Young People's plans

Under section 26 of the Children Act 2004 and the Children and Young People's Plan (Wales) Regulations 2007, all children's services authorities in Wales are required to publish and review a children and young person's plan. The joint scheme made by the joint partners for a local authority area under Part 1 of the Measure, must be included in the Children and Young People's Plan for that area.

Part 2: Coordination of and care planning for secondary mental health service users

Section 11 – Meaning of "relevant patient"

The purpose of this section is to identify those patients for whom a care coordinator will be appointed, and in respect of whom the duties in relation to care and treatment planning, and cooperation of service provision, are to apply. The patients are those who receive secondary mental health services; such services are defined in section 45 of the proposed Measure.

Section 12 – Meaning of "mental health service provider"

Section 12 establishes what is meant by a mental health service provider within the context of this Part of the Measure.

Welsh Ministers have been included in the list of mental health service providers as they have general and specific powers under the National Health Service (Wales) Act 2006 to provide services. However subsection (2) makes clear that where an LHB is providing a service under a function in relation to which directions have made the function exercisable by the LHB under the 2006 Act, the service is to be treated as being provided by the LHB and not the Welsh Ministers.

Section 13 – Duty to appoint care coordinator for a relevant patient

A care coordinator must be appointed in relation to each individual (of any age) receiving secondary mental health services, as soon as is reasonably practicable after the person becomes a relevant patient.

The Measure recognises that over time the care coordinator for an individual may change, perhaps to reflect the changing needs of the person receiving services, and where this happens the duty to appoint a care coordinator continues. The Measure also allows for the temporary appointment of a care coordinator, where the care coordinator (for whatever reason) is temporarily unable to act. These provisions will ensure that all persons receiving secondary mental health services will have a care coordinator for as long as they receive those services.

The duty to appoint a care coordinator sits with a relevant mental health service provider (namely an LHB or local authority). Section 14 provides the mechanism to identify on whom the duty falls. An LHB or local authority may delegate the function (but not the responsibility) of appointment of a care coordinator to another LHB or local authority. This is provided for by sections 13(2C) and (2D) of the Measure in respect of LHBs, and by the Local Government Act 2000 and associated regulations in respect of local authorities.

Section 14 – Identification of the relevant mental health service provider for a relevant patient

Care and treatment provision within secondary mental health services is often undertaken by a range of different professionals and via a number of agencies, reflecting the complex and sometimes enduring needs that users of those services may have. This complexity of provision is recognised in the Measure, as section 14 provides a mechanism for identifying the provider with the duty to appoint a care coordinator, as follows:

- where an LHB, and only an LHB, is responsible for providing services they will be the relevant service provider with the duty to appoint the care coordinator;
- where a local authority, and only a local authority, is responsible for providing services, or where the patient is under the guardianship of a local authority and not also receiving secondary mental health services from an LHB, the local authority will be the relevant service provider;
- where both the LHB and the local authority are responsible for providing services, regulations will set out the mechanism for identifying the relevant service provider.

Section 15 – Further provision about the appointment of care coordinators

In every case the relevant service provider may only appoint a care coordinator who is eligible to be appointed; eligibility will be determined by regulations made under section 44 of the proposed Measure.

Section 16 – Duty to coordinate provision of mental health services

Under this section a mental health service provider is under a duty to coordinate the different mental health services it provides, so as to improve the effectiveness of those services for the individual patient. A provider is also under a duty to

coordinate its mental health services with those provided by another mental health service provider or not-for-profit third sector provider.

The mental health services that must be coordinated (if applicable for the individual service user) are secondary mental health services which include certain community care services (see section 45 of the Measure), local primary mental health support services, and (where applicable) the exercise of a local authority's powers in relation to guardianship under the 1983 Act.

The care coordinator may (at any time) give advice to the service provider(s) on how the duty to coordinate services can be achieved. Where such advice is given the service provider must consider this advice, and at any time the service provider may also seek the advice of the patient's care coordinator on how services can be coordinated.

Section 17 – Functions of the care coordinator

The importance of a collaborative approach to care planning is enshrined in section 17 of the proposed Measure: the care coordinator is required to work with the patient and the service provider(s) to agree the outcomes which services aim to achieve and the mechanisms for achieving those outcomes. These matters are to be recorded on a written care and treatment plan, which may, from time to time, be reviewed and if necessary revised.

There may be occasions, for example the patient is unable or unwilling to engage in discussion about his or her care and treatment plan, where such agreement cannot be reached. Where agreement cannot be reached a plan must still be drawn up (in subsections (4) and (6)). This means that all patients receiving secondary mental health services will have a care and treatment plan which describes the outcomes which the delivery of services is designed to achieve.

The form and content of the care and treatment plan will be prescribed in regulations. Such regulations may also make provision for who must be consulted in developing the plan, and who should receive a written copy of the care and treatment plan.

So far as it is reasonably practicable to do so, a mental health service provider must ensure the provision of the mental health services for a relevant patient in accordance with the patient's current care and treatment plan.

Part 3: Assessments of former users of secondary mental health services

Section 18 – Arrangements for assessment of former users of secondary mental health services etc

Local mental health partners (see section 1) are required to take all reasonable steps to agree arrangements for responding to requests for assessments from former users of secondary mental health services, and undertaking those assessments.

Potentially, different mental health partners may well want to carry out different aspects of the assessment. For example, a local authority is likely to be better placed to decide whether a person might benefit from community care services than an LHB. Therefore the requirement to make arrangements for the carrying out of assessments does not require the whole of each assessment to be carried out by a single partner.

Section 19 – Duty to carry out assessments

In accordance with the arrangements made, the local mental health partners must undertake an assessment and make any referrals required as a consequence of that assessment.

Section 20 – Failure to agree arrangements

Where suitable arrangements for the undertaking of assessments cannot be agreed between local mental health partners section 20 allows the Welsh Ministers to determine the arrangements for the local authority area. During any such time when there are no arrangements in place, it is important to ensure that individuals are able to make a request for assessment if they believe they stand in need of such an assessment, and LHBs will be responsible for undertaking assessments in these circumstances.

Section 21 – Entitlement to assessment

Subsection (1) contains all the conditions which must be met in order for a person to be entitled to an assessment. This includes the requirement being made within the relevant discharge period (see section 22 below).

Because a person is only entitled to an assessment if they had previously received secondary mental health services (whether as an adult or a child), subsections (2) and (2A) set out what it means for a person to have been discharged from such services. It should be read along with the definition of secondary mental health services in section 45 of the proposed Measure.

Section 22 – Assessments: the relevant discharge period

The entitlement to assessment is not open-ended, and previous services users will only be able to exercise their entitlement to further assessment for a certain period of time following their discharge from secondary mental health services. The duration of this period of time will be set out in regulations made by the Welsh Ministers.

The entitlement to assessment may also come to an end in other circumstances, and these will also be set out in regulations made by the Welsh Ministers.

Section 23 – Provision of information about assessments

In order that individuals are able to seek an assessment in the circumstances provided for in section 21, it is important that they are aware of their entitlement should they need to exercise it. Therefore when an individual is discharged from secondary services the LHB or local authority (as the case may be) is under a duty to provide written information about the assessment arrangements made under Part 3 of this proposed Measure. Such a duty also arises in respect of individuals discharged from secondary mental health services before their 18th birthday, where

(by virtue of the duration of the relevant discharge period) they will become eligible for assessment after their 18th birthday (subject to the other conditions for eligibility also being met).

Section 24 – Purpose of assessment

A previous service user will be able to seek a further assessment of their mental health, with a view to determining whether secondary mental health services may be once more required to improve or prevent a deterioration of the individual's mental health. The assessment may also reveal that community care services (other than those which would be considered secondary mental health services), or perhaps housing or well-being services might improve or prevent a deterioration of the person's mental health. Where services are identified which would be provided by a body other than that assessing partner, a suitable referral must be made (as provided for in section 27). Where an assessment identifies the need for a service which may be provided by a mental health provider, that provider must consider provision (see section 26).

Section 25 – Assessments: further provision

In all cases it is important that the person is aware of the findings of their assessment, and mental health service providers are required to provide a written report of their assessment which sets out what, if any, services that may improve or prevent a deterioration in the person's mental health have been identified.

Both the assessment and the written outcome of assessment should be undertaken in a timely manner, as soon as reasonably practicable after a request is made. The Welsh Ministers can specify the time period that reports must be made in.

Section 26 – Action following an assessment

Where secondary mental health services or other community care services have been identified as part of the assessment which might improve or prevent deterioration in a person's mental health, and either of the local mental health partners would be responsible for providing those services, they must consider whether or not they will provide such services.

Section 27 – Referrals relating to housing or well-being services

The assessment may identify that housing or well-being services are potentially required which might improve or prevent a deterioration in a person's mental health. Where one of the mental health providers would not be responsible for providing such a service, a referral to the relevant provider of those services must be made or the individual invited to apply for the service, as the case may be. As some housing and well-being services are only potentially available if applied for by the individual who considers that they may require them, this section respects the different access requirements (referral or self-application) for those services.

Section 28 – Determination of usual residence

The right to assessment under this Part of the proposed Measure is a right to assessment by the local mental health partners of the local authority where he or she is usually resident. There may be occasion when it is unclear where the person is usually resident, and in those circumstances a decision as to usual residence will be

made in accordance with arrangements set out in regulations made by the Welsh Ministers.

Section 28A – Application of this Part to persons under local authority guardianship

The right to assessment will being available to persons who have been subject to guardianship (within the meaning of the Mental Health Act 1983) but not also in receipt of secondary mental health services (subject to the other eligibility criteria of this Part also being met).

Part 4: Mental health advocacy

Part 4 of the Measure amends the Mental Health Act 1983 in relation to Independent Mental Health Advocacy (IMHA). It separates the elements of the 1983 Act dealing with IMHA in Wales from the related elements dealing with IMHA in England. This has required the amendment of certain existing sections of the 1983 Act to apply in relation to England-only, and the addition of a number of new sections which deal solely with arrangements in relation to Wales.

The amendments in relation to England are contained in Schedules 1 and 2 of the proposed Measure. The new sections in relation to Wales are:

- sections 29 to 36 of the proposed Measure insert new sections 130E to 130L to the 1983 Act;
- section 37 of the proposed Measure amends section 118 of the 1983 Act in respect of IMHAs in relation to Wales;
- section 37A of the proposed Measure amends section 143 of the 1983 Act in respect of the Assembly procedure to be applied to the making of the first regulations relating to IMHA in Wales.

Section 29 – Independent mental health advocates: Wales

This section creates new section 130E in the 1983 Act which places a duty on the Welsh Ministers to make arrangements for help to be provided by IMHAs. Such help must be made available to two client groups: Welsh qualifying compulsory patients and Welsh qualifying informal patents.

The persons who are considered to be Welsh qualifying compulsory patients are set out in new section 130I of the 1983 Act (as introduced by section 33 of the proposed Measure). New section 130J (as introduced by section 34 of the proposed Measure) sets out the persons who are considered to be Welsh qualifying informal patients.

The Welsh Ministers can make regulations setting out, for example, the standards and qualifications that will need to be met by an individual in order to be approved as an IMHA. These regulations can make different provisions for different cases. This will allow account to be taken of the different needs of different groups of patients.

Section 30 – Further provision about independent mental health advocacy for Welsh qualifying compulsory patients

New section 130F of the 1983 Act is introduced by section 30 of this proposed Measure. Section 130F sets out the nature of the help which must be made available for Welsh qualifying compulsory patients.

Section 31 – Further provision about independent mental health advocacy for Welsh qualifying informal patients

Section 31 introduces new section 130G into the 1983 Act, the effect of which is to set out the nature of the help which an IMHA may must be made available to Welsh qualifying informal patients.

The reference to help in obtaining information about and understanding the authority by which treatment is given will be, in the case of patients who lack mental capacity in relation to the treatment, the authority provided by section 5 of the Mental Capacity Act 2005.

Section 32 – Independent mental health advocates: supplementary powers and duties

New section 130H of the 1983 Act, as introduced by section 32 of the proposed Measure, applies in respect of both Welsh qualifying compulsory patients and Welsh qualifying informal patients. IMHAs may meet such patients in private, and visit and interview anyone professionally concerned with the patient's medical treatment. Regulations may be made by the Welsh Ministers to specify other persons who the IMHA may visit and interview.

Where a patient has the capacity, or is competent, to consent to records being made available to an IMHA (and does consent), the IMHA may require the production of any hospital or local authority records relating to the patient. If a patient lacks the capacity or is not competent to consent to records being made available to an IMHA, the record holder can still allow access to such records. The record holder can only do this if it is appropriate and relevant to the help the advocate will provide to the patient, and such access does not conflict with a valid decision of a donee of deputy (within the meaning of the Mental Capacity Act 2005).

An IMHA must meet with a Welsh qualifying compulsory patient on the reasonable request of the patient themselves, the patient's nearest relative, the responsible clinician, an approved mental health professional (AMHP), a social worker professionally concerned with the patient, hospital managers or a person duly authorised on their behalf, or the patient's donee or deputy.

An IMHA must meet with a Welsh qualifying informal patient on the reasonable request of the patient themselves, the hospital managers or a person duly authorised on their behalf, the patient's carer, the patient's donee or deputy, or a social worker professionally concerned with the care, treatment or assessment of the patient.

A patient is not obliged to accept the help provided or offered by an IMHA.

Section 33 – Welsh qualifying compulsory patients

This section introduces new section 130I into the 1983 Act, which has the effect of determining which patients are considered to be Welsh qualifying compulsory patients.

Section 34 – Welsh qualifying informal patients

This section introduces new section 130J into the 1983 Act, which has the effect of determining which patients are considered to be Welsh qualifying informal patients.

Section 35 – Duty to give information about independent mental health advocates to Welsh qualifying compulsory patients

The person(s) responsible for ensuring the patient understands that such help is available to them is known as the 'responsible person'. Section 130K(2) defines who the responsible person is in relation to the different groups of Welsh qualifying compulsory patients. The responsible person must also provide written information regarding the IMHA service to the nearest relative, donee or deputy (if any) of a qualifying compulsory patient.

Section 36 – Duty to give information about independent mental health advocates to Welsh qualifying informal patients

Similar 'information-giving' arrangements in respect of Welsh qualifying informal patients are provided by new section 130L of the 1983 Act.

Section 37 – Application of the Mental Health Act 1983 code of practice to Welsh independent mental health advocates

Section 118 of the 1983 Act imposes a duty on the Welsh Ministers to prepare, publish and, from time to time, revise a Code of Practice for the guidance of those concerned with the admission, treatment, guardianship and supervised community treatment of mentally disordered patients. Section 37 of the proposed Measure inserts new subsection (1A) into section 118 of the 1983 Act, which would apply in relation to Wales only, and provides that the Code of Practice will also provide guidance to IMHAs.

Section 118 is further amended to provide that IMHAs are added to the list of people who shall have regard to the Code of Practice. Section 118(2D) confirms in statute the status of the Code of Practice, as elaborated on by the House of Lords in the case of *R v Ashworth Hospital Authority (now Mersey Care National Health Service Trust) ex parte Munjaz* [2005] UKHL 58.

The responsibility for preparing and revising the Code of Practice in relation to Wales was transferred to the National Assembly for Wales in 1999, but, by virtue of the Government of Wales Act 2006, this function was transferred to and is now exercisable by the Welsh Ministers. The Welsh Ministers made the *Mental Health Act 1983 Code of Practice for Wales* in September 2008.

Section 37A – Procedures for making regulations under the Mental Health Act 1983

Section 143 of the 1983 Act makes general provision regarding regulations, orders and rules. Section 37A of the proposed Measure inserts new subsections into

section 143 of the 1983 Act, the effect of which is that the first use of the principal regulation-making powers relating to IMHA within Wales, are made using the affirmative procedure.

Part 5: General

Section 38 – Cooperative and joint working between Local Health Boards and local authorities

This section provides for co-operative and joint working between local authorities and LHBs for the purposes of their functions under Parts 1, 2 and 3 of the proposed Measure. Different working arrangements can be reached in respect of the differing aspects of the Measure.

A diverse range of delivery options is available. For example, even if a LHB was responsible (under the scheme for local primary mental health support services) for providing all services, a local authority could provide premises for a mental health support services team; the team could all be employed by a LHB and the work could be funded by a joint-budget into which the authority and the Board make contributions. Alternatively, some of the team could be employed by a local authority but be put at the disposal of the LHB using the local authority's power in section 38(1)(a) to provide staff to the Board.

Subsection (3) makes clear that in relation to Parts 1 and 3 of the proposed Measure the partners are empowered to 'act jointly' if, in the circumstances, they consider this appropriate.

Section 39 – Information sharing

The purpose of this section is to provide a clear statutory basis for information sharing in the exercise of functions under Parts 1, 2 and 3 of this Measure. However subsection (3) makes it clear that this section merely provides a power to supply information. It does not authorise disclosure of information which is prohibited by other statutory provisions, such as those in the Data Protection Act, or other law, such as the common law of confidence.

Section 40 – Amendment of the Local Authority Social Services Act 1970

This section amends the Local Authority Social Services Act 1970 so that the functions of a local authority under Parts 1, 2 and 3 of this proposed Measure are social services functions. One of the effects of amending the 1970 Act in this way is that directions can be given to local authorities by the Welsh Ministers under section 7 of that Act.

Section 41 – Codes of Practice

Note: original section 41 was replaced by new section 41 at Stage 2 of the Assembly's consideration of this proposed Measure.

Under (new) section 41 the Welsh Ministers may prepare and from time to time revise one or more Codes of Practice, and arrange for any such Codes to be published. A Code can be for the guidance of particular persons (for example LHBs)

and for any persons in connection with the operation of the provisions of the Measure. Persons with functions under the Measure (for example, care coordinators) must have regard to the Code(s). A Code must be consulted upon before being made, and must be laid before the National Assembly for Wales where it is subject to the negative resolution procedure. A Code which has been made may only be withdrawn by a direction of the Welsh Ministers, and any such direction must be laid before the Assembly.

Section 42 – Part 1: power to secure regional provision

Part 1 of the Measure, in effect, creates partnerships between a local authority and the LHB for local primary mental health support services for the area of the local authority, which are limited to that area. However section 42 provides that the Welsh Ministers may, by regulations, modify the operation of Part 1 so that schemes can be made for an area wider than a local authority area – in effect regions.

Subsection (1) therefore extends the area, by dis-applying the local authority area established in Part 1 and applying it to a new area. Subsection (2) then reconstructs the concept of partners in the scheme, and in each scheme there must be at least one LHB and one local authority, but this does not prevent more than one LHB or more than one local authority also being a partner in the new scheme for the new area. It also does not prevent partners comprising LHBs and/or local authorities whose geographic area does not sit within the area where the partnership will deliver local primary mental health support services.

For example, it may be the case that a Health Board covers a geographic area of four local authorities and that the five partners within that area (the Health Board and the four local authorities) consider that a single scheme for the whole of the Health Board area is a safe, economic and clinically appropriate approach to take to deliver local primary mental health support services. Regulations could be made to enable this to take place.

Section 43 – Part 3: power to secure regional provision

Section 43 makes equivalent provision for Part 3 as is provided by section 42 above.

Section 44 – Regulations as to the individuals who may carry out mental health assessments and act as care coordinators

The regulation making powers of section 44 will enable the Welsh Ministers to set out the qualifications, skills, training or experience that professionals should possess in order to deliver primary care assessments or to coordinate care within secondary mental health services.

Part 6: Miscellaneous and supplemental

Section 45 – Meaning of secondary mental health services

This section provides the meaning of secondary mental health services, a term used in various provisions throughout Parts 1, 2 and 3 of the proposed Measure. Within this context community care services has the same meaning as in section 46 of

National Health Service and Community Care Act 1990, ie services which a local authority may provide or arrange to be provided under any of the following provisions

a) Part III of the National Assistance Act 1948;
b) section 45 of the Health Services and Public Health Act 1968;
c) section 254 of, and Schedule 20 to, the National Health Service Act 2006, and section 192 of, and Schedule 15 to, the National Health Service (Wales) Act 2006;
d) section 117 of the Mental Health Act 1983.

The Welsh Minister may use an order to amend or expand the meaning of secondary mental health services for the purposes of any provision of the Measure. The Welsh Ministers may also, for example, use such an order or orders to provide that services delivered within other jurisdictions are to be considered as equivalent to secondary mental health services within Wales, for the purposes of relevant sections of Part 3.

Section 46 – Meaning of housing or well-being services

This section provides the meaning of housing and well-being services, a term used in various provisions throughout Parts 1, 2 and 3 of the proposed Measure.

Section 46(1)(b) provides delegated powers to specify services relating to well-being (including housing), over and above those relating to the allocation of and the securing of accommodation by local housing authorities under Part 7 of the Housing Act 1996.

Section 47 – General interpretation

This section provides the meaning of various terms used throughout the proposed Measure.

The purpose of subsection (3) is that whenever reference is made in the Measure to the provision of a service by a person, it is also read as meaning the provision of a service under arrangements made by that person.

Subsection (5) confirms that (unless the context otherwise requires) a care coordinator acts on behalf of the relevant mental health service provider with the responsibility for appointing them, when they perform their functions.

Section 48 – Orders and regulations

This section provides general arrangements (at subsections (1) and (2) for making orders and regulations under this proposed Measure. Subsections (3), (3A), (4) and (5) then establish the Assembly procedures for making those orders and regulations.

Chapter 5 in Part 1 of the Explanatory Memorandum provides a summary table of the regulations and orders which may be made under this proposed Measure. Annex B of the Explanatory Memorandum provides information on the policy intentions for the orders and regulations.

Section 49 – Consequential etc amendments

It is recognised that any Measure concerned with health and social care must accommodate itself within an existing (and often complex) legislative scheme which is set out in a raft of Acts of Parliament. It is further recognised that this legislative landscape will also change over time as further Measures or Acts are made. The power at section 49(2) provides for consequential amendments to other legislation which may arise through the operation of this Measure. The power is limited as it can only be used in relation to consequential amendments in relation to the proposed Measure or to give full effect to it. The power cannot be used for other purposes.

This section also gives effect to Schedule 1 (which amends the 1983 Act in respect of IMHA).

Annex B – Delegated Powers Memorandum

Introduction

This Memorandum identifies the provisions in the Mental Health (Wales) Measure that confer powers on the Welsh Ministers to make subordinate legislation. It seeks to explain in each case the purpose of the power, the reason why it is thought suitable for delegated legislation and the nature of, and explanation for, any Assembly procedures that apply.

List of terms and abbreviations used in the Delegated Powers Memorandum

The following terms and abbreviations are used throughout the explanatory notes

The 1983 Act – the Mental Health Act 1983

AMHP – approved mental health professional
IMHA – independent mental health advocate
LHB – Local Health Board

The term 'patient' is usually adopted within the Memorandum, reflecting the language of the proposed Measure. The Welsh Assembly Government recognises that other terms, such as 'service user', survivor', 'client', 'consumer' and 'recipient' are often used for people accessing services for care and treatment of their mental disorder.

General statement about delegated powers

The broad aim in drawing up the proposed Measure has been to ensure that all substantive policy objectives are clearly spelt out in the Measure.

Proposals to take new delegated powers are only made where the degree of scrutiny that is given to the proposed Measure seems inappropriate given the nature of the exercise in question. For example, for one-off or occasional events an order-making power would be proposed. We propose that where straightforward administrative procedures or requirements follow logically from that which is clearly described on the face of the Measure, regulation making powers are appropriate.

Where new orders or regulations are likely to attract significant Assembly interest or would be capable of making significant changes to the operation of the Measure, we are proposing that they would be subject to affirmative resolution, thus giving Assembly Members every opportunity to debate the issues at stake.

Part 1: Local primary mental health support services

Provisions within this Part of the proposed Measure

Section 7(6)(a) provides delegated powers to prescribe certain categories of persons who must be included within the joint schemes made under Part 1 of the Measure.

Attention is also drawn to sections 42 and 44 of Part 5 of the proposed Measure detailed below.

Contribution of the delegated powers to the policy intention

When the delegated powers in section 7(6)(a) are used, the Welsh Ministers will specify categories of individuals – over and above those registered with a GP - who will be entitled to be referred to the local primary mental health support services. The Minister for Health and Social Services stated, when giving evidence to Legislation Committee No 3 on 30 September 2010, that it is the Government's intention to include persons detained in prisons within Wales within these regulations. Further groups of individuals will also be considered during discussions with stakeholders.

Form of the delegated powers

The delegated powers will take the form of regulations.

Form of Assembly procedure (if any)

These powers are subject to the affirmative resolution procedure, given that they have the potential to expand the scope of Part 1 which is itself subject to full scrutiny by the National Assembly. For this reason, it is considered appropriate that such regulations are subject to a similar level of scrutiny.

Part 2: Coordination of and care planning for secondary mental health service users

Provisions within this Part of the proposed Measure

This Part of the proposed Measure is concerned with care and treatment planning for individuals receiving secondary mental health services.

Section 14(4) provides delegated powers to identify the mental health service provider with responsibilities for appointing a care coordinator when both an LHB and a local authority provide services to a person.

Section 15(3) will enable the Welsh Ministers to make regulations setting out that the appointment of the care coordinator will cease, if the mental health service provider who appointed them no longer provides services to the individual patient.

Sections 17(1)(c) and 17(9)) provide that delegated powers may be used to prescribe the circumstances which would lead to care and treatment plans being reviewed and possibly revised. Further, the powers may be used to confer upon the care coordinator discretion as to whether review or revision of a care and treatment

plan is required. Where review or revision is required, the delegated powers may make provision as to who should be consulted in that process, what obligations (if any) will be placed on persons in connection with the review. Finally, the delegated powers can be used to set out who should receive written copies of revised care and treatment plans.

Section 17(8) gives the Welsh Ministers delegated powers to make provision for the form and content of care and treatment plans, the persons with whom the care coordinator is required to consult in determining the outcomes which services should be aimed at achieving, and consult in drawing up the care and treatment plan, as well as the placing of obligations (if any) upon such consulted persons. Section 17(8) also provides delegated powers to set out who should receive written copies of care and treatment plans, and what information should be given (if any) when a patient ceases to be in receipt of secondary mental health services.

Attention is also drawn to section 44 in Part 5 of the proposed Measure detailed below.

Contribution of the delegated powers to the policy intention

Appointment of the care coordinator
Where both an LHB and a local authority provide services for an individual, the regulations will set out which of the two providers has responsibility for the appointment of the care coordinator. Regulations have been chosen to set out the administrative mechanism for determining the responsibility for appointment, rather than including this within section 14 itself. It may be that it would be appropriate for the appointment of a care coordinator to end, if the appointing body no longer provides services for the patient. This could be accommodated within regulations made by virtue of section 15(3).

Care and treatment plans
The regulations regarding the form and content of care and treatment plans are technical in nature – it is anticipated that the matters which must be covered in a care and treatment plan will be spelt out; together with the form the care and treatment plan will take (for example, prescribing the format of the document which a care and treatment plan is to be recorded upon). The basis for the development of the regulations in relation to the matters with which care and treatment plans will cover will be Chapter 14 of the *Mental Health Act 1983 Code of Practice for Wales*[26]. Paragraph 14.24 of that Code sets out the matters which should be addressed in written care plans for patients subject to the Mental Health Act 1983 (the 1983 Act).

Because the preparation of an effective care plan will involve the care coordinator consulting with a range of individuals and services, the regulations will set out who must be consulted and who may be consulted, including the circumstances for consultation. It is expected that this will include relevant carers, as well as practitioners who it is anticipated will deliver services for the user.

[26] Welsh Assembly Government (2008)

It is expected that the service user, their GP, and relevant carers will receive a copy of the written care plan, together with those practitioners delivering care and treatment. The regulations will set out the circumstances for providing copies of care plans, including where the service user is not capable of giving their agreement to plans being shared in this way.

Care and treatment plans should be regularly reviewed, and the regulations will set out the circumstances which should prompt review, the frequency of reviews and the arrangements for undertaking reviews (including who may ask for a review). Where the review of a care plan leads to a revision, the regulations will specify who should be involved in this process and who should receive copies of the revised care plan. It is anticipated that these arrangements will reflect the arrangements for the development of the original care and treatment plan.

When secondary mental health services are no longer provided to a patient, they cease to require a care coordinator and an associated care and treatment plan. It is anticipated that regulations will be used to prescribe discharge information (such as information on relapse signatures, emergency contact numbers, etc) in these circumstances.

Form of the delegated powers

The delegated powers will take the form of regulations. This is considered to be appropriate because the technical and detailed nature of the proposed regulations would encumber the reading of the Measure itself. Further the regulations provide administrative detail that may require revision as care and treatment planning develops within Wales.

Form of Assembly procedure (if any)

The first use of the powers provided under section 17 is subject to the affirmative resolution procedure. This is considered appropriate given the matters with which the regulations deal, are central to the effective operation of Part 2. The other powers within Part 2 are subject to the negative resolution procedure.

Part 3: Assessments of former users of secondary mental health services

Provisions within this Part of the Measure

This Part of the Measure provides individuals who were previously receiving care and treatment within secondary services, but who have subsequently been discharged, with a new assessment of their need for services if they consider that this is required.

Section 22(1)(b) provides delegated powers to make provision for the period of time in which a person may be entitled to ask for an assessment following their discharge from services. Section 22(2) provides for those delegated powers to also prescribe events which would end the relevant discharge period.

The assessment must result in a single written report, which must be copied to the individual within the time set by regulations made under section 25(2)(b).

Section 28(1) provides that the Welsh Ministers may make regulations regarding the determination of a person's usual residence in connection with this Part of the Measure.

Contribution of the delegated powers to the policy intention

When the delegated powers set out in section 22(1)(b) are used, the Welsh Ministers will set out the period of time within which an individual remains entitled to ask for re-assessment. This means that the entitlement will only last for a limited duration of time after the individual is discharged from services, rather than indefinitely.

The regulation making powers provide the Welsh Ministers with flexibility to review this period of time on the basis of experience once this Part of the Measure has been in force for a while. For example, if the relevant period was set at two years and it was found that a number of requests were still being made at 3 and 4 years, it would be appropriate to consider whether the relevant period should be extended. Similarly, if it was set at five years, and most requests occurred within the first 2 or 3 years following discharge, again the Welsh Ministers would have the flexibility to consider reducing the relevant period.

Section 22(2) enables the Welsh Ministers to prescribe events which would lead to the relevant discharge period ending ahead of the expiry of the time set out in the regulations.

Section 25(2)(b) provides that the Welsh Ministers may specify the time within which a copy of the written report of the assessment must be provided to the individual who has been assessed. It will be important when setting such a timescale to ensure that individuals are provided with clear and comprehensive information in a timely manner, but that that the timescales are realistic given the nature of information which will be gathered and considered by practitioners.

Where a person wishes to request a mental health assessment they may make the request to either the LHB or the local authority for the area in which they are usually resident. Using the delegated powers provided within section 28(1) of the Measure, the Welsh Ministers will be able to establish a mechanism for determining usual residence where this is not immediately clear.

Form of the delegated powers

The delegated powers will take the form of regulations. This is considered to be appropriate because their form (ie regulations) means they must be laid before the National Assembly. This is considered important given the matters with which they deal – for example, ending the entitlement to assessment in this way. However it is anticipated that such detail will need to be reviewed over time on the basis of how this Part of the Measure is being used; the Welsh Assembly Government considers that it would be an inappropriate level of burden for the National Assembly to have to consider a new Measure each time such detail needs to change in response to changes in service provision and improvement.

Form of Assembly procedure (if any)

The powers within section 22 are subject to the affirmative procedure, given that they directly affect the eligibility of an individual under Part 3 of the Measure. The powers in sections 25 and 28 are subject to the negative resolution procedure, reflecting the operational nature of the provisions that will need to be made.

Part 4: Mental health advocacy

Provisions within this Part of the Measure

This Part of the Measure amends the Mental Health Act 1983 (the 1983 Act) in respect of Independent Mental Health Advocacy (IMHA). Following such amendment, the 1983 Act will then provide for a wider scheme of independent advocacy for individuals subject to compulsion under the Act, and for patients in hospital receiving assessment or treatment for mental disorder who are not subject to compulsion.

Section 29 of the Measure will insert new section 130E into the 1983 Act. This new section contains delegated powers (at new section 130E(2), (3) and (5)) which mirror the delegated powers set out at current section 130A(2), (3) and (5) which have been exercised by the Welsh Ministers[27]. Schedule 1 of the Measure amends current section 130A such that it applies to England only, and new section 130E will replace the regulation making powers currently available to the Welsh Ministers.

Section 130E(4) establishes a principle of independence for advocates, and introduces new delegated powers for Welsh Ministers to describe the persons from whom the IMHA should, so far as practicable, be independent.

The help and support which an IMHA may provide to a compulsory patient or an informal patient is set out in sections 130F and 130H. Sections 130F(2)(d) and 130G(2)(c) provide delegated powers for the Welsh Ministers to prescribe further forms of help and advice should this be required.

Section 130H(1)(b)(ii) allows the Welsh Ministers to set out persons other than those professionally concerned with the patient who the IMHA may visit and interview in connection with their functions under the 1983 Act.

Contribution of the delegated powers to the policy intention

When the delegated powers set out in new section 130E(2) and (3) of the 1983 Act are used the Welsh Ministers will provide that LHBs must make arrangements for IMHAs to be available to help Welsh qualifying patients. Current regulations provide that IMHAs must be approved either by the LHB or be employed by a provider of independent advocacy services. The new regulations will set out the approval scheme for IMHAs. IMHAs will, as now, be required to satisfy certain appointment

[27] Refer *The Mental Health (Independent Mental Health Advocates) (Wales) Regulations 2008* [SI 2008 No. 2437 (W.210)]

requirements before being appointed, and the current criteria will inform the provisions for future arrangements.

Section 130E(4) allows the Welsh Ministers to make regulations describing those persons from whom the IMHA must be independent. The current provisions will act as a starting point and again inform future arrangements.

The current arrangements for the independence of the IMHA from a person requesting the IMHA to visit or interview the patient will inform the provision for the use of the delegated powers under section 130E(5).

Sections 130F and 130G set out the nature of the help and support which an IMHA may provide to a compulsory or informal patient. Whilst this will be broader for compulsory patients than the current IMHA arrangements, it is important to ensure that the legislation allows for flexibility in providing further forms of help and support as the advocacy profession grows and develops. This flexibility is achieved with the delegated powers at section 130F(2)(d) and 130G(2)(c).

The regulations that may be made under section 130H(1)(b)(ii) will set out persons other than those professionally concerned with the patient who the IMHA may visit and interview in connection with their functions under the 1983 Act.

Form of the delegated powers

The delegated powers take the form of regulations. This is considered to be appropriate because they provide operational detail to support the legislative scheme. They also provide the required flexibility to respond to developments within the field of advocacy over time, particularly in relation to the nature of the help which advocates may provide to patients.

Form of Assembly procedure (if any)

The first use of the principal powers under sections 130E to 130H will be subject to the affirmative procedure, and there after any subsequent use will be subject to the negative resolution procedure.

Part 5: General

Provisions within this Part of the Measure

This Part of the Measure contains general provisions which affect various Parts of the Measure.

Section 42 provides delegated powers to the Welsh Ministers to modify the operation of Part 1 of the Measure in relation to local authority areas. Section 43 provides similar powers in relation to Part 3 of the Measure.

Section 44 within this Part gives delegated powers to the Welsh Ministers in respect of the eligibility of individuals to discharge the functions of a local mental health partner in carrying out primary mental health assessments under Part 1 of the Measure. Section 44 also provides the Welsh Ministers, with the ability to make

regulations setting out the eligibility of individuals to be care coordinators in respect of care and treatment plans in secondary mental health (Part 2 of the Measure).

Contribution of the delegated powers to the policy intention

It is intended that the powers in section 42 and 43 will be used where Welsh Ministers are advised that partnerships in areas wider than a single local authority area are required. For example, if a Health Board covered a geographic area of four local authorities, it may be that the five partners within that area (the Health Board and the four local authorities) consider that a single scheme for the whole of the Health Board area is a safe, economic and clinically appropriate approach to take to deliver local primary mental health support services. Regulations could be made to enable this to take place.

Current Welsh Assembly Government policy for the assessment of mental health and treatment of mental disorder is that services are delivered by trained, competent and skilled mental health professionals such that individual service users receive high quality and effective care and treatment appropriate to their needs.

The regulation making powers of section 44 will enable the Welsh Ministers to prescribe the qualifications, skills, training or experience that professionals should possess in order to deliver primary care assessments or to coordinate care within secondary mental health services.

Form of the delegated powers

The delegated powers in this Part of the Measure all take the form of regulations.

In relation to the powers in sections 42 and 43 whilst it is expected that local mental health partners will operate within local authority areas, it is also recognised that flexibility needs to be available to operate in other ways to encourage integrated working approaches. The level of detail which would be required to provide an alternative approach would encumber the reading of the Measure itself, and thus potentially obscure the main thrust of the policy intentions for Part 1.

In relation to the powers in section 44, regulations are adopted in recognition that what are currently considered essential requirements for the workforce may change over time to adapt to changes in practice; regulations will therefore provide the flexibility to be able to vary both the professionals who may undertake these roles and the skills, training and experience which they are required to possess. This will enable the requirements to evolve with new ways of working.

Form of Assembly procedure (if any)

The delegated powers in sections 42 and 43 are subject to the affirmative procedure, given that they have the potential to modify the operation of Part 1 which is itself subject to full scrutiny by the National Assembly. It is considered appropriate that such regulations are subject to a similar level of scrutiny. Further it is anticipated that over time the arrangements prescribed in Parts 1 and 3 of this Measure will themselves be referenced in future legislation; it is important that any modifications to the operation of those Parts made by regulations under sections 42 and 43, take

account of any future references in subsequent Measures or Acts (as the case may be).

The regulations made under section 44 will be subject to the negative resolution procedure.

Part 6: Miscellaneous and supplemental

Provisions within this Part of the Measure

The Welsh Ministers may amend or expand the meaning of secondary mental health services for the purposes of any provision of the Measure, by utilising the order-making powers provided at section 45(4).

The meaning of "housing or well-being services" is set out in section 46, and in the Measure is referred to in Parts 1, 2 and 3. Section 46(1)(b) provides delegated powers to specify services relating well-being (including housing), over and above those relating to the allocation of and the securing of accommodation by local housing authorities under Part 7 of the Housing Act 1996.

Section 48 in this Part of the Measure makes general provision regarding orders and regulations. Section 49 is concerned with consequential amendments, and introduces a power which includes the power to amend primary and subordinate legislation (at section 49(2)).

Section 51 is concerned with commencement – see below.

Contribution of the delegated powers to the policy intention

The powers of section 45(4) to amend or expand the meaning of secondary mental health services are necessary to ensure the boundaries of such a meaning continue to be carefully and appropriately drawn as services develop, change and expand. The power will also enable the Welsh Minister to encompass services from other parts of the UK, or wider, within the meaning of secondary mental health services for the purposes of relevant sections of Part 3. This would allow persons, such as prisoners, who have received services outside of Wales to qualify for assessment under Part 3 (subject to the other eligibility criteria of Part 3 also being met).

The powers of section 46(1)(b) to specify services relating to well-being (including housing) can include services such as payments, grants and loans.

It is recognised that any Measure concerned with health and social care must accommodate itself within an existing (and often complex) legislative scheme which is set out in a raft of Acts of Parliament. It is further recognised that this legislative landscape will also change over time as further Measures or Acts are made. The power at section 49(2) provides for consequential amendments to other legislation which may arise through the operation of this Measure to be accommodated. The power is limited as it can only be used in relation to consequential amendments in relation to the proposed Measure or to give full effect to it. The power cannot be used for other purposes.

Form of the delegated powers

The delegated powers at section 46 are regulation making powers. The delegated powers at section 45(4) and at section 49(2) are both order making powers.

Form of Assembly procedure (if any)

The order making power at section 45 is subject to the affirmative procedure, and the regulation making powers at section 46 are subject to the negative resolution procedure.

The order making power at section 49 is subject to the affirmative procedure (which is appropriate given its potential to amend both this Measure and other Measures, and Acts (as the case may be). Where an order made under section 49 amends subordinate legislation alone, the order making power is then subject to the negative resolution procedure.

Commencement

Section 51 provides that most of the provisions of Part 6 of the proposed Measure, together with the regulation and order-making powers, come into force at the end of the period of two months beginning on which the Measure receives Royal Approval. This will enable the necessary regulations to be made in advance of the substantive provisions of the proposed Measure coming into force. For example, the care and treatment plans will be prescribed in regulations and will need to available ahead of the duties to provide care and treatment plans (as set out in Part 2 of the proposed Measure) coming into force.

Most provisions of the Measure will be commenced at such times as the Welsh Ministers think appropriate or expedient (further information on likely timescales is given in Chapter 4 of Part 2 of the Explanatory Memorandum).

It is a usual practice for such commencement provisions to be dealt with by subordinate legislation. No Assembly procedure will apply to such orders, which is the usual practice.

Annex C – Contact information

For further information in relation to this document, please contact:

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