

Draft Regulations laid before the National Assembly for Wales under section 52(5)(b) of the Mental Health (Wales) Measure 2010, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2012 No. (W.)

MENTAL HEALTH, WALES

**The Mental Health (Primary Care
Referrals and Eligibility to Conduct
Primary Mental Health
Assessments) (Wales) Regulations
2012**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations contain provisions made under powers contained in sections 7(6)(a) and 47(1) of the Mental Health (Wales) Measure 2010 (“the Measure”).

Section 6 of the Measure enables general practitioners to refer patients who are registered with them to a local mental health partner for the area where the patient is usually resident for a primary mental health assessment.

Section 7(6)(a) of the Measure gives Welsh Ministers the power to specify further categories of individual whom primary care providers may refer for a primary mental health assessment.

In reliance upon the power contained in section 7(6)(a) of the Measure, regulation 3(1) provides that a primary care provider may refer any person who is entitled to primary medical services provided under Part 4 of the National Health Service (Wales) Act 2006 for a primary mental health assessment if that person appears to be in need of such an assessment. The only exception to this is for categories of individual who fall within the descriptions set out in section 8(1) of the Measure which includes individuals liable to be detained under the Mental Health Act 1983 and individuals receiving secondary mental health services.

Regulation 3(2) provides that the primary care provider must, if it makes a referral for a primary mental health assessment, make the referral to the Local Health Board or the Local Authority for the local authority area where the primary care provider carries on the majority of its business or activities.

Regulation 3(1) is widely drafted to enable a primary care provider to make a referral in respect of any person who appears to be in need of a primary mental health assessment. Persons whom a primary care provider would be able to refer in accordance with regulation 3(1) would include persons from vulnerable groups such as asylum seekers, homeless persons; gypsies and travellers; prisoners; migrant workers and students. Regulation 3(1) also enables a primary care provider to refer persons who are not registered with his or her practice or to refer persons who are registered with another provider of primary medical services (or equivalent services) whether in Wales or elsewhere.

Section 47(1)(b) of the Measure gives Welsh Ministers the power to make regulations making provision about the eligibility of individuals to carry out primary mental health assessments under section 9 of the Measure.

Part 3 of the Regulations makes provision about the eligibility requirements that a person must meet before a person may carry out a primary mental health assessment. Professional requirements that a person must satisfy are set out in the Schedule.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result a Regulatory Impact Assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy may be obtained from the Mental Health and Vulnerable Groups Division, Welsh Government, Cathays Park, CF10 3NQ.

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**The Mental Health (Primary Care
Referrals and Eligibility to Conduct
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Assessments) (Wales) Regulations
2012**

Made 2012

Coming into force 1 October 2012

The Welsh Ministers make these Regulations in exercise of the powers conferred by sections 7(6)(a), 47(1)(a) and (2), and 52(2) of the Mental Health (Wales) Measure 2010⁽¹⁾.

A draft of this instrument has been laid before the National Assembly for Wales in accordance with section 52(5)(b) of the Measure, and approved by resolution of the National Assembly for Wales.

Part 1 - General

Title, commencement and application

1.—(1) The title of these Regulations is The Mental Health (Primary Care Referrals and Eligibility to Conduct Primary Mental Health Assessments) (Wales) Regulations 2012 and they come into force on 1 October 2012.

(2) These Regulations apply in relation to Wales.

(1) 2010 nawm 7.

Interpretation

2. In these Regulations—

“local mental health partners” (*“partneriaid iechyd meddwl lleol”*) has the meaning provided in section 1 of the Measure;

“local primary mental health support services” (*“gwasanaethau cymorth iechyd meddwl sylfaenol lleol”*) has the meaning provided in section 5 of the Measure;

“primary care provider” (*“darparyydd gofal sylfaenol”*) has the meaning provided in section 51(1) of the Measure;

“primary medical services” (*“gwasanaethau meddygol sylfaenol”*) means—

- (a) medical services provided under Part 4 of the 2006 Act whether by—
 - (i) a contractor with whom a general medical services contract has been entered into with a Local Health Board under section 42 of that Act;
 - (ii) a person with whom arrangements have been made under section 50 of that Act by a Local Health Board;
 - (iii) a registered medical practitioner employed for the purposes of section 41(2)(a) of that Act by a Local Health Board; or
 - (iv) a registered medical practitioner with whom a Local Health Board has made arrangements under section 41(2)(b) of that Act; or
- (b) medical services provided by—
 - (i) a registered medical practitioner under arrangements made between a registered medical practitioner and a person responsible for the provision or running of a contracted out prison (within the meaning of section 84(4) of the Criminal Justice Act 1991⁽¹⁾) in Wales; or
 - (ii) a registered medical practitioner employed by Her Majesty’s Prison Service in Wales;

“primary mental health assessment” (*“asesiad iechyd meddwl sylfaenol”*) has the meaning provided in section 51(1) of the Measure;

“relevant local mental health partner” (*“partner iechyd meddwl lleol perthnasol”*) means the local mental health partner that is responsible for providing the majority of the local primary mental

(1) 1991 c.53.

health support services under the Scheme agreed under section 2 of the Measure. If a Scheme is not agreed under section 2 of the Measure, the relevant local mental health partner is the Local Health Board for the local authority area in question;

“scheme” (“*cynllun*”) means a scheme that local mental health partners must take all reasonable steps to agree in accordance with section 2 of the Measure;

“the 2006 Act” (“*Deddf 2006*”) means the National Health Service (Wales) Act 2006(1);

“the Measure” (“*y Mesur*”) means the Mental Health (Wales) Measure 2010(2).

Part 2 – Primary Care Referrals

Persons whom a primary care provider may refer to local primary mental health support services

3.—(1) Subject to section 8(1) of the Measure(3), a primary care provider may refer any person—

- (a) who is entitled to receive primary medical services, and
- (b) who appears to be in need of a primary mental health assessment,

for a primary mental health assessment.

(2) In accordance with section 7(5) of the Measure, the primary care provider must, if it determines to make a referral for a primary mental health assessment, make such a referral to the local mental health partner for the local authority area in which the primary care provider carries on the majority of its business or activities.

(1) 2006 c.42.

(2) 2010 nawm 7.

(3) In accordance with section 7(1)(a) a primary care provider may not refer an individual who falls within any of the descriptions in section 8(1) of the Measure. Section 8(1) applies to individuals who are liable to be detained under the Mental Health Act 1983; an individual who is subject to guardianship under that Act; an individual who is a community patient within the meaning of that Act and an individual who is receiving secondary mental health services.

Part 3 – Eligibility Requirements for Persons who may conduct Primary Mental Health Assessments

Eligibility requirements for persons who may conduct primary mental health assessments

4.—(1) A person is eligible to perform the functions of a local mental health partner to carry out a primary mental health assessment if that person—

- (a) fulfils one or more of the professional requirements in the Schedule to these Regulations; and
- (b) has demonstrated to the satisfaction of the relevant local mental health partner that he or she has appropriate experience, skills or training, or an appropriate combination of experience, skills and training.

(2) When determining whether a person satisfies the appointment requirement in paragraph (1)(b) regard must be had to standards in any Codes of Practice issued under section 44 (codes of practice) of the Measure, and any guidance that may from time to time be issued by the Welsh Ministers.

Lesley Griffiths

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

PROFESSIONAL REQUIREMENTS

1. The professional requirements are that a person must be—

- (a) a qualified social worker registered with the Care Council for Wales or the General Social Care Council;
- (b) a first or second level nurse, registered in Sub-Part 1 or Sub-Part 2 of the Register maintained under article 5 of the Nursing and Midwifery Order 2001⁽¹⁾, with the inclusion of an entry indicating that his or her field of practice is mental health or learning disabilities nursing;
- (c) an occupational therapist who is registered in Part 6 of the Register maintained under article 5 of the Health Professions Order 2001⁽²⁾;
- (d) a practitioner psychologist who is registered in Part 14 of the Register maintained under article 5 of the Health Professions Order 2001; or
- (e) a registered medical practitioner.

(1) S.I. 2002/253.

(2) S.I. 2002/254.