

## **Explanatory Memorandum to the Mental Health (Regional Provision) (Wales) Regulations 2012**

This Explanatory Memorandum has been prepared by the Department for Health, Social Services and Children and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Mental Health (Regional Provision) (Wales) Regulations 2012. I am satisfied that the benefits outweigh any costs.

**Lesley Griffiths AM**

Minister for Health and Social Services

26 March 2012

## **Part 1 – Explanatory Memorandum**

### **1. Description**

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1. The Mental Health (Regional Provision) (Wales) Regulations 2012 will provide for regional provision arrangements between certain Local Health Boards (LHBs) and local authorities in Wales, which will require the delivery of local primary mental health support services under Part 1 of the Mental Health (Wales) Measure 2010 (“the Measure”), and the undertaking of assessments of former users of secondary mental services under Part 3 of the Measure on a regional basis.

### **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

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2. This is the first set of Regulations to be made relating to Part 1 of the Measure and the second set to be made relating to Part 3 of the Measure.
3. The powers to make these Regulations are found in sections 45, 46 and 52(2) of the Measure, and are subject to the affirmative procedure.
4. It is proposed that these Regulations are made before the commencement of the main provisions of Parts 1 and 3 of the Measure. However, the powers to make these Regulations have commenced in accordance with section 55(1) and (2)(b) of the Measure.
5. These Regulations contain provisions to allow for a split commencement date. This split commencement means that:
  - a. the duty to agree schemes in relation to the provision of primary mental health services on a regional basis will come into force on the 8 May 2012, immediately after the coming into force of section 45 (part 1: power to secure regional provision) of the Measure. Certain sections of Part 1 of the Measure also come into force on the 8 May 2012 to enable schemes to be agreed in anticipation of the remainder of Part 1 coming into force in October 2012.
  - b. the duty to agree arrangements for assessment of former users of secondary mental health services on a regional basis will come into force on the 6 June 2012, immediately after the coming into force of section 46 (part 3: power to secure regional provision) of the Measure. Part 3 of the Measure will also come into force on the 6 June 2012.

### **3. Legislative background**

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6. These Regulations may be made in exercise of powers conferred on the Welsh Ministers by sections 45, 46 and 52(2) of the Mental Health (Wales) Measure 2010.

### **4. Purpose and intended effect of the legislation**

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7. These Regulations relate to arrangements for delivering services under Part 1 and Part 3 of the Measure. A brief overview of each of the relevant Parts of the Measure has therefore been included in this section by way of context.

#### *Local Primary Mental Health Support Services*

8. Part 1 of the Measure 2010 places statutory duties on Local Health Boards and local authorities in Wales to work together to develop joint schemes for the provision of local primary mental health support services and to provide such services in all local authority areas in Wales.
9. Section 1 of Part 1 of the Measure introduces the term 'local mental health partners' to describe the bodies (LHBs and local authorities) which will be responsible for providing primary mental health support services.
10. The services that will be delivered by local primary mental health support services are:
  - a) comprehensive mental health assessments for individuals who have first been seen by their GP, but for whom the GP considers a more detailed assessment is required; in some cases, individuals may be referred by secondary mental health services;
  - b) treatment by way of short-term interventions, 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, solution-focussed therapy, stress management, anger management and education;
  - c) provision of information and advice to individuals 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);

d) 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;

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.

11. These services are aimed at individuals of all ages who are experiencing mild to moderate, or stable but severe and enduring, mental health problems.
12. The Measure requires Local Health Boards and local authorities to enter into partnerships as 'local mental health partners' for the purpose of meeting their statutory duties under Parts 1 and 3 in each local authority area in Wales. However, sections 45 and 46 of the Measure provide regulation-making powers which facilitate LHBs and local authorities to enter into partnerships and agree schemes which are wider than a single local authority area, by way of regional provision arrangements.
13. In April 2011 Welsh Government officials contacted LHBs and local authorities in Wales to establish whether they would be interested in principle in adopting regional provision arrangements in relation to Part 1 of the Measure. All LHBs and local authorities, with the exception of Powys, informed the Welsh Government that they were interested in exploring the possibility of entering into partnerships for agreeing schemes to deliver primary mental health support services which would involve more than one local authority in partnership with one LHB.
14. Powys LHB and local authority initially expressed interest in entering into arrangements with other Local Health Boards for the provision of Part 1 (and Part 3 services) on the basis of Powys local authority area being split between the relevant Boards. However, as the powers used to introduce these Regulations would not enable such an arrangement, Powys LHB and local authority will become local mental health partners under section 1 of the Measure for the purposes of agreeing a scheme and providing services under Part 1 of the Measure, and for making arrangements under Part 3 of the Measure, and will retain responsibility for the provision of mental health services in the LHB/local authority area.
15. In all cases except Powys, LHBs and local authorities expressed a preference for entering into regional provision arrangements whereby each LHB would develop a scheme and deliver services in partnership with all of the local authority areas within its geographical boundaries (e.g. Hywel Dda Local Health Board would develop a scheme and deliver services in partnership with the three local authorities within its geographical footprint - Carmarthenshire County Council, Ceredigion County Council and Pembrokeshire County Council).

### *Assessments of Former Users of Secondary Mental Health Services*

16. Part 3 of the Measure will enable adults who have been discharged from secondary mental health services, but who subsequently believe that their mental health is deteriorating to such a point as to require such care and treatment again, to refer themselves back to secondary services directly for an assessment of their mental health, without necessarily needing to first go to their general practitioner or elsewhere for a referral.
17. To this end, Part 3 of the Measure requires 'local mental health partners' in each local authority area (i.e. the relevant LHB and local authority) to agree arrangements for dealing with requests from former users of secondary mental health services for assessment where these are requested. Section 46 of the Measure provides a regulation-making power to facilitate LHBs and local authorities to enter into regional arrangements for the provision of such assessments.
18. As with Part 1, all LHBs and local authorities (except Powys) initially indicated to the Welsh Government that they wished to explore the possibility of entering into regional arrangements for the provision of assessments under Part 3 of the Measure, with each LHB entering into partnership arrangements with all of the local authorities within its geographical boundaries (as per paragraph 13 above).

### *Regional Provision Arrangements for Part 1 and Part 3*

19. As set out above, all of the LHBs and local authorities for which provision is made in these Regulations had previously informed the Welsh Government that they were content to arrange and provide services under Part 1 and Part 3 of the Measure on a regional basis. These Regulations have therefore been drafted in a way which facilitates the type of regional provision arrangements requested and requires LHBs and local authorities to deliver services on this basis.
20. These regulations will 'disapply' Parts 1 and 3 of the Measure in relation to certain local authority areas, and instead apply those Parts, and so far as necessary Parts 5 and 6, in relation to each of the 'regions' of combined local authority areas which are set out in column 1 of Schedule 2. The local authorities whose areas make up these regions are then combined with the relevant LHB and identified as 'local mental health partners' for the purposes of Part 1 and Part 3 of the Measure.
21. This arrangement will effectively mean that the duties which previously rested with partnerships between a local authority and an LHB in relation to Parts 1 and 3 of the Measure will instead fall to each of the mental health partners in the regions listed in column 2 of Schedule 2 of the Regulations.
22. Any regional schemes or arrangements made under these Regulations do not extend to arrangements for dealing with requests for assessment

under Parts 1 and 3, or the determination of usual residence under Part 3, both of which would continue to be determined on a local authority, rather than regional basis.

23. These regional working arrangements are binding, with LHBs and local authorities obliged to agree schemes and arrangements on the basis of their partnerships. LHBs and local authorities who have become local mental health partners would not be able to agree separate schemes or arrangements for areas within the LHB area.
24. The schemes and arrangements entered into for each region will be required to make provision for those below the age of 18, as well as adults: any regional schemes made under these Regulations would apply in respect of children as well as adults, as Part 1 services must be provided to individuals of all ages. Any regional Part 3 arrangements would also be required to make provision for individuals below the age of 18 discharged from services who will reach their 18<sup>th</sup> birthday within the relevant discharge period (3 years from the date of discharge).

## **5. Consultation**

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25. Details of the consultation undertaken are included in the Regulatory Impact Assessment that has been completed for these Regulations, and is set out in part 2 of this document.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **6. Options**

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26. This section of the RIA presents two different options in relation to the policy objectives of the proposed Regulations (see Section 4 of Part 1 of this document). Both of the options are 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 section 7 of this RIA.

27. The options are:

- Option 1 – do nothing
- Option 2 – facilitate regional provision arrangements through the Regulations

#### **Option 1 – Do nothing**

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28. This option proposes not making the Regulations.

29. In response to a written request from the Welsh Government seeking information as to how they intended to arrange and deliver their statutory duties under Part 1 and Part 3 of the Mental Health (Wales) Measure 2010, and drawing their attention to the regional provision arrangements available under sections 45 and 46, all LHBs and local authorities in Wales (with the exception of Powys LHB and local authority which will become local mental health partners under section 1 of the Measure for the purposes of agreeing a scheme under Part 1 of the Measure and arrangements under Part 3 of the Measure) informed the Welsh Government that they were interested in exploring the possibility of entering into regional provision arrangements within the geographical area of the relevant LHB.

30. If the Welsh Government were not to make these Regulations, LHBs and local authorities would still be required to agree joint schemes for the provision of local primary mental health support services under Part 1 of the Measure, and to agree arrangements for undertaking assessments of former users of secondary mental health services under Part 3 of the Measure. However, without these Regulations being made, they would be required to agree schemes and make individual arrangements for each of the 22 local authority areas in Wales, rather than schemes and arrangements for the 6 regions provided for by these Regulations, which cover 21 local authority areas (Powys LHB and local authority are not included in these 6 regions; they will become local mental health partners under section 1 of the Measure).

31. Therefore, not making these Regulations would result in 22 local schemes and arrangements being prepared and delivered (one for each local authority area in Wales) between the relevant LHBs and relevant local authorities.

## **Option 2 – Make Regulations**

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32. This option proposes making the Regulations.

33. Making these Regulations will require LHBs and local authorities in Wales to work together in partnership on a regional basis to develop and deliver local primary mental health support services under Part 1 of the Mental Health (Wales) Measure 2010, and to make arrangements for the assessment of former users of secondary mental health services under Part 3 of the Measure.

34. This approach, which LHBs and local authorities have confirmed that they wish to adopt, will facilitate them in meeting their statutory duties under Part 1 and Part 3 of the Measure through 6 regional schemes and arrangements, rather than a separate scheme for each local authority. Coordinating and delivering services on an LHB-wide basis, rather than developing and delivering individual schemes for each local authority area in Wales, could potentially result in reduced planning and delivery costs for partners. This collaborative approach would be in keeping with the Welsh Government's focus on strengthening joint working arrangements and achieving greater service integration between public sector organisations.

## **7. Costs and benefits**

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35. The costs associated with developing and delivering local primary mental health support services under Part 1 of the Measure and introducing and delivering assessments of former users of secondary mental health services under Part 3 of the Measure are set out in the Explanatory Memorandum to the Measure<sup>1</sup>. These Regulations will not impact on the costs set out in that document.

### **Costs and benefits of Option 1 (do nothing)**

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36. If these Regulations were not made, LHBs and local authorities would be required to develop and deliver a scheme for Part 1, and arrangements under Part 3, for each of the 22 local authority areas in Wales, rather than the 6 regions which are provided for by the arrangements in these Regulations, which will cover all local authority areas with the exception of Powys.

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<sup>1</sup> <http://www.assemblywales.org/bus-home/bus-legislation/bus-legmeasures/business-legislation-measures-mhs-2.htm>



37. It is possible that the establishment of 22 Part 1 schemes and 22 Part 3 arrangements across Wales would entail more time and effort, and incur more resource and administrative costs for LHBs and local authorities than would the development of 6 regional schemes and arrangements. In addition, the delivery and monitoring of services provided by 22 schemes and arrangements might also incur higher ongoing staffing and administrative costs over time than would be the case if services were delivered by the 6 regions which would be established by these Regulations (Powys LHB and local authority are not included in these 6 regions; they will become local mental health partners under section 1 of the Measure).

### **Costs and benefits of Option 2 (make Regulations)**

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38. If made, these Regulations would enable LHBs and local authorities to develop schemes and arrangements on a regional LHB-wide basis, rather than separately for each local authority area in Wales.
39. Developing and delivering 6 regional schemes, rather than 22 local authority-wide schemes may potentially be a more effective approach than developing and delivering 22 separate schemes and arrangements. Making these Regulations could potentially result in more strategic regional configuration and delivery of services with resulting efficiency savings, by reducing duplication of services and administrative costs.

### **Summary**

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40. For the reasons set out at paragraphs 33-35 above, the Welsh Government's preferred approach is to make these Regulations.

## **8. Consultation**

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42. In Autumn 2011 Welsh Government undertook a formal 12 week consultation exercise on the draft Mental Health (Regional Provision) (Wales) Regulations 2012. 24 written responses were received, including responses from all LHBs in Wales (often submitted on behalf of their local authority partners also).
43. A detailed consultation report has been published on the Welsh Government's website, but a summary of the views received is set out in the following paragraphs.
44. There was wide-ranging support for the proposed approach set out in the draft Regulations, with the majority of respondents agreeing that such arrangements would help ensure a more coherent approach to provision, a wider range of services, and greater economies of scale than might otherwise be possible under multiple local authority schemes.

45. All LHBs responded positively to the draft Regulations, indicating their support for regional provision, and in many cases, the support of their local authority partners also in joint responses. Several LHBs and local authorities reported that the proposed approach was in keeping with existing regional or collaborative working arrangements within mental health services and other policy areas.
46. A number of issues of potential concern were raised by some respondents; for instance, several stakeholders suggested that with more partners involved in developing and delivering services there could be greater organisational complexities, with a potentially increased risk of discord or disagreement, or services which were 'more remote and less responsive'.
47. Given that a large majority of respondents (75%), including all LHBs, agreed with the suggested approach, the Welsh Government has not amended the draft Regulations post-consultation.
48. The Welsh Government is confident that mental health service planners and providers will be able to resolve any operational or administrative issues, such as those raised by some respondents and recorded in the summary above, and will continue to provide guidance and practical support to LHBs and local authorities in meeting their statutory duties under the Mental Health (Wales) Measure 2010.

## **9. Competition assessment**

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49. The competition filter is required to be completed if the subordinate legislation affects business, charities and/or the voluntary sector. The filter is therefore not required in respect of these Regulations.

## **10. Post implementation review**

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50. Section 48 of the Measure places the Welsh Ministers under a duty to review the operation of Measure, and to publish a report of the findings of the review. The report must be published no later than four years after the commencement of the principal provisions of Part 1 and Part 3 of the Measure.
51. It is intended that the review relating to the delivery of local primary mental health services under Part 1 of the Measure and assessments of former users of secondary mental health services under Part 3 of the Measure, will take account of these Regulations on the establishment and delivery of those services.
52. The report of the review will be placed before the National Assembly for Wales, in accordance with section 48(9) of the Measure.