



Llywodraeth Cynulliad Cymru  
Welsh Assembly Government

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Mental Health (Wales) Measure 2010

# Implementing the Mental Health (Wales) Measure 2010

Guidance for Local Health Boards  
and Local Authorities

January 2011



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<b>Introduction</b> .....	<b>2</b>
<b>About the Implementation Guidance</b> .....	<b>2</b>
<b>Who should use the Implementation Guidance</b> .....	<b>2</b>
<b>Other supporting documentation</b> .....	<b>2</b>
<b>The Mental Health (Wales) Measure 2010</b> .....	<b>3</b>
<b>Background</b> .....	<b>3</b>
<b>Overview of the Measure</b> .....	<b>3</b>
Part 1 – Local primary mental health support services .....	3
Part 2 – Care Coordination and Care and Treatment Planning .....	4
Part 3 – Assessments of Former Users of Secondary Mental Health Services.....	4
Part 4 – Mental Health Advocacy .....	5
<b>Subordinate legislation</b> .....	<b>5</b>
<b>Codes of Practice</b> .....	<b>6</b>
Codes of Practice made under the Measure .....	6
Mental Health Act 1983 Code of Practice for Wales .....	6
Mental Capacity Act 2005 Codes of Practice (various).....	6
<b>Timescales for implementation</b> .....	<b>6</b>
<b>Implementation programme</b> .....	<b>8</b>
<b>Welsh language services</b> .....	<b>8</b>
<b>National programme led by the Welsh Assembly Government</b> .....	<b>8</b>
Funding.....	9
<b>Local Health Boards and Local Authorities – joint working</b> .....	<b>10</b>
Actions required for Part 1 of the Measure .....	10
Actions required for Part 2 of the Measure .....	11
Actions required for Part 3 of the Measure .....	12
Actions required for independent mental health advocacy .....	13
<b>Regional provision</b> .....	<b>13</b>
<b>Further information</b> .....	<b>15</b>

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## Introduction

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### About the Implementation Guidance

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1. This implementation paper has been developed by the Welsh Assembly Government, and is intended to provide guidance to statutory, independent and voluntary organisations in Wales to ensure the smooth implementation of the Mental Health (Wales) Measure 2010 (“the Measure”).
2. The implementation plan covers the key aspects of the Measure, and aims to:
  - a) Offer a broad overview of the legislation
  - b) Set out the expected timescales associated with implementation
  - c) Highlight some of the key actions that organisations will need to take to ensure timely and consistent application of the new legislation.

### Who should use the Implementation Guidance

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3. The guidance has been developed for use by Local Health Boards and Local Authorities, but it may also be of assistance to independent hospitals (and other registered establishments), third sector and voluntary organisations. User groups, carers networks, managers, clinicians and human resources staff may also find this guidance useful to support them in understanding the nature and implications of the new legislation.

### Other supporting documentation

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4. Organisations may also find the following documents of assistance in preparing for implementation of the new legislation –
  - a) The Mental Health (Wales) Measure 2010, and accompanying Explanatory Notes<sup>1</sup>
  - b) Explanatory Memorandum, incorporating the Regulatory Impact Assessment<sup>2</sup>.

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<sup>1</sup> Available at <http://www.legislation.gov.uk/mwa/2010/7/contents/enacted>

<sup>2</sup> Available at <http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislation-measures-mhs-2.htm>

# The Mental Health (Wales) Measure 2010

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## Background

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5. The Mental Health (Wales) Measure will make a number of important changes to the current legislative arrangements in respect of the assessment and treatment of people with mental health problems.
6. A Measure (such as the Mental Health (Wales) Measure) is a piece of law made by the Assembly. It has similar effect to an Act of Parliament.

## Overview of the Measure

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7. The Measure is divided into six Parts and two Schedules:
  - a) Part 1 – Local Primary Mental Health Support Services
  - b) Part 2 – Coordination of and Care and Treatment Planning for Secondary Mental Health Users
  - c) Part 3 – Assessments of Former Users of Secondary Mental Health Services
  - d) Part 4 – Mental Health Advocacy
  - e) Part 5 – General
  - f) Part 6 – Miscellaneous and supplemental
  - g) Schedule 1 – Consequential amendments to the Mental Health Act 1983
  - h) Schedule 2 – Repeals
8. Background information on Parts 1 to 4 is set out below.

## Part 1 – Local primary mental health support services

9. The Welsh Assembly Government recognises the crucial role that primary care plays in delivering effective mental health care and treatment. The aim of the Measure is to strengthen that role so that throughout Wales there will be local primary care mental health support services. These will be delivered by Health Boards and Local Authorities in partnership, and it is expected that these services will operate within or alongside existing GP practices.
10. The services that will be delivered 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.

## **Part 2 – Care Coordination and Care and Treatment Planning**

12. The Measure places duties on service providers (Health Boards and Local Authorities) to act in a coordinated manner to improve the effectiveness of the mental health services they provide to an individual. The Measure will require there to be a care and treatment plan for service users of all ages who have been assessed as requiring care and treatment within secondary mental health services. Each care and treatment plan will:
- a) be developed by a care coordinator in consultation with the service user and mental health service providers;
  - b) outline the expected outcomes of services, and the how those outcomes are to be achieved;
  - c) be in writing;
  - d) be kept under review and may be updated to reflect any changes in the type of care and treatment which may be required by the service user over time.

## **Part 3 – Assessments of Former Users of Secondary Mental Health Services**

13. The aim of this Part of the Measure is to 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, without necessarily needing to first go to their general practitioner or elsewhere for a referral.
14. Health Boards and Local Authorities will be required to have arrangements in place to receive self-referrals of this kind, and to undertake timely assessments.

## Part 4 – Mental Health Advocacy

15. Evidence suggests that advocacy can lead to an improved experience of mental health services for individuals, including the potential for advocacy to create choice, improve involvement in decision making, and promote access to a range of different services.
16. The Measure provides for an expanded statutory scheme of independent mental health advocacy, both for patients subject to compulsion under the Mental Health Act 1983, and for those in hospital informally (in other words, not subject to the 1983 Act).
17. The Measure achieves this by amending the relevant sections of the Mental Health Act 1983 which currently enables patients subject to the longer-term sections to receive help and support from an Independent Mental Health Advocate (or IMHA). IMHAs are not available to those patients on the shorter-term sections of the Act. The Measure will provide that many of these patients can receive IMHA support if they wish. The expansion of the independent mental health advocacy scheme in this way will ensure that the majority of individuals subject to the 1983 Act are able to receive independent help and support from an advocate if they wish to.
18. Many patients receiving care and treatment in hospital for their mental health problems are not detained under the Mental Health Act 1983, but are voluntary (or informal) patients. These patients sometimes require help from an advocate during their stay in hospital, but such services may not always be available. The Measure will create statutory duties to ensure such help and support is available for all inpatients. Such advocacy will assist inpatients in making informed decisions about their care and treatment, and support them in getting their voices heard.

## Subordinate legislation

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19. The Measure contains various provisions to make subordinate legislation, such as regulations and orders.
20. At the time of publication, the Welsh Assembly Government anticipates developing the necessary subordinate legislation in three phases (linked to the expected commencement programme for the Measure):
  - a) Phase 1 – regulations relating to Parts 2 and 3 of the Measure, and regulations relating to independent mental health advocacy under the Mental Health Act 1983;
  - b) Phase 2 – any regulations required by LHBs and Local Authorities to enable regional arrangements for Part 3 to be adopted;
  - c) Phase 3 – regulations relating to Part 1 of the Measure.
21. It is expected that consultation on all subordinate legislation relating to the Measure (excluding commencement orders) will be undertaken prior to being made. The Welsh Assembly Government will make further information on the consultation process available in due course.



To register for an email alert for further information relating to consultations on subordinate legislation for this Measure, please email [mentalhealthandvulnerablegroups@wales.gsi.gov.uk](mailto:mentalhealthandvulnerablegroups@wales.gsi.gov.uk)

## Codes of Practice

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### Codes of Practice made under the Measure

22. Section 44 of the Measure provides that the Welsh Ministers may prepare, and from time to time revise, one or more Codes of Practice in relation to the Measure.
23. At the time of publication it is anticipated that there will be a Code of Practice prepared in relation to Parts 2 and 3 of the Measure in the first instance. The timescales for preparation are set out below (see Table 2). It is not anticipated that a Code of Practice will be prepared in relation to Part 1 immediately; it may well be the case that such a Code is prepared after that Part of the Measure has been operational for a period of time.

### Mental Health Act 1983 Code of Practice for Wales

24. In 2008 the Welsh Assembly Government published the Mental Health Act 1983 Code of Practice for Wales. Given the changes to independent mental health advocacy under the 1983 Act made by this Measure, as well as the implications of the new care and treatment planning provisions (which will apply in relation to detained patients), consideration is currently being given to the need to revise the Code for the 1983 Act.
25. It is not anticipated that any new Code for the 1983 Act will be published before 2012 at the earliest.

### Mental Capacity Act 2005 Codes of Practice (various)

26. The Codes of Practice to the Mental Capacity Act<sup>3</sup> are published by the Lord Chancellor, and cover England and Wales. No changes are anticipated to these Codes as a result of the Measure.

## Timescales for implementation

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27. During the passage of the Measure through the National Assembly for Wales, the Minister for Health and Social Services set out the Government's intentions to phase implementation of the Measure. 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.

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<sup>3</sup> The Stationery Office (2007) *Mental Capacity Act 2005 Code of Practice*; The Stationery Office (2008) *Mental Capacity Act 2005 Deprivation of Liberty Safeguards, Code of Practice to supplement the main Mental Capacity Act 2005 Code of Practice*

28. The current intentions are therefore to stage implementation of the various aspects of the 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. Some provisions will be commenced in 2011, others to a later timescale. The current intentions are summarised below (in date order) –

Commencement of first phase of expanded independent mental health advocacy under the Mental Health Act 1983 (pertaining to detained patients)	October 2011
Commencement of Parts 2 and 3 of the Measure	January 2012
Commencement of second phase of expanded independent mental health advocacy under the Mental Health Act 1983 (pertaining to informal patients)	January 2012
Commencement of Part 1 of the Measure	Summer 2012

*Table 1: Expected commencement dates*

## Implementation programme

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29. It is essential that thorough preparation for successful implementation of the Measure is made and put into practice. Some of this work will take place at a national level, and will be led by the Welsh Assembly Government, but the majority of work will need to take place at a local level by LHBs and Local Authorities.

## Welsh language services

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30. Mental health services in Wales must be underpinned by the principle that the Welsh and English language should be treated on a basis of equality.
31. The Health and Social Services Directorate General of the Welsh Assembly Government is committed to ensuring that the implementation of this Measure reflects this principle. Local Health Boards and Local Authorities are required to ensure that their implementation plans reflect this commitment.

## National programme led by the Welsh Assembly Government

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32. This national programme will help to ensure that the Welsh Ministers are able to meet their responsibilities under the Measure, including the making of all the necessary subordinate legislation within the relevant timescales.
33. Key components of the national programme are –
- a) The appointment of an All-Wales Primary Care Lead, who will support the development of local primary mental health support services (under Part 1 of the Measure)<sup>4</sup>;
  - b) Publication of a National Service Model for Part 1 of the Measure, and guidance on preparing joint schemes for local primary mental health support services;
  - c) Mapping existing primary mental health services to support service reconfiguration and redesign, where relevant;
  - d) Production of guidance for Local Authorities and LHBs on developing and writing schemes for the delivery of local primary mental health support services;
  - e) A Code of Practice for Parts 2 and 3 of the Measure;
  - f) Publication of learning resources to support the successful implementation of the Care Programme Approach across Wales (which is related to Part 2 of the Measure);
  - g) Subordinate legislation relating to the Measure, as well as independent mental health advocacy under the 1983 Act;
  - h) New guidance on independent mental health advocacy under the 1983 Act for both LHBs and advocacy providers;

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<sup>4</sup> The All Wales Primary Care Lead has been appointed – Barbara Bowness who is based in NLIH and may be contacted via [Barbara.Bowness@wales.nhs.uk](mailto:Barbara.Bowness@wales.nhs.uk)

- i) Supporting the development of mental health advocacy across Wales by encouraging take up of the National Advocacy Qualification, as well as supporting the development of robust governance within the field.

34. The current anticipated high-level timetable for the next twelve months of the national programme is set out below (in date order) –

Publication of guidance relating to independent mental health advocacy (for LHBs and advocacy providers)	January/February 2011
Consultation on draft subordinate legislation relating to Parts 2 and 3 of the Measure, and independent mental health advocacy under the Mental Health Act 1983	February to May 2011
Publication of learning resources for CPA (will support implementation of Part 2 of the Measure)	Spring 2011
Publication of National Service Model (to support implementation of Part 1 of the Measure)	Spring 2011
Publication of results of mapping exercise	Summer 2011
Consultation on draft regulations for regional arrangements for Part 3 of the Measure (if required)	August to October 2011 (provisional dates)
Consultation on draft Code of Practice relating to Parts 2 and 3 of the Measure	August to October 2011 (provisional dates)
Consultation on draft subordinate legislation relating to Part 1 of the Measure	October to December 2011 (provisional dates)
Publication of guidance on the development of schemes for the provision of primary mental health support services	January 2012 (may be slightly earlier)

*Table 2: Timetable for national programme (2011)*

## Funding

35. As part of the national programme for implementation, it is anticipated that the Welsh Assembly Government will be making additional monies available to LHBs and Local Authorities. It is expected that this funding will be released in stages and will support:

- a) pre-implementation work, and will be one-off funding;
- b) delivery of the new services, and is expected to be recurrent funding.

36. LHB Chief Executives and Directors of Social Services of Local Authorities will be notified of funding releases by the Welsh Assembly Government in due course.

## Local Health Boards and Local Authorities – joint working

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37. Much of the Measure requires LHBs and Local Authorities to work together to effectively meet their duties under the legislation. It will be important that existing relationships between the two bodies for an area are effectively utilised, so as to effectively and efficiently deliver the new requirements.
38. Below are details of a number of actions that will need to be considered by LHBs and Local Authorities to prepare for the new legislative framework. This is not intended to be an exhaustive list, but rather a prompt for further consideration.

### Actions required for Part 1 of the Measure

39. Under Part 1 of the Measure, the following actions will need to be considered by the two partners –
- Preparing, and putting into writing, a joint scheme for local primary mental health support services for the area of the local authority;
  - Ensuring that the services are accommodated, and can operate within (or close to) GP settings;
  - Appointing appropriate staffing in terms of skills, experience and numbers;
  - Ensuring strong clinical and management supervision is established to support primary mental health workers;
  - Ensuring suitable clinical governance, performance management and budgetary control structures are in place to support and monitor the operation of the local primary mental health support services;
  - The scheme under Part 1 of the Measure is included in the Children and Young People’s Plan for the local authority area (see section 11 of the Measure);
  - Appropriate referral mechanisms are put in place for general practitioners, and (where applicable) practitioners in secondary mental health services, to refer individuals to the new services;
  - Ensuring that strong relationships are developed between the new services and the general practitioner services that they will be supporting;
  - Where relevant, appropriate arrangements are made for local primary mental health services to be delivered in prisons<sup>5</sup>;
  - Use is made of existing local and national<sup>6</sup> services, including those provided by the third sector or voluntary organisations, which enable effective information to be held to allow patients to be signposted to other support (as part of the local primary mental health support service);
  - Effective arrangements are put into place to support advice and information on mental health, and mental health services, being given to GPs and their staff;
  - Effective links operate between local primary mental health support services and secondary mental health services to accommodate referrals

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<sup>5</sup> The Welsh Assembly Government intends that prisoners will be eligible to be referred to local primary mental health support services, but this is subject to the appropriate subordinate legislation being made (draft legislation is expected to be consulted upon towards the end of 2011).

<sup>6</sup> For example, NHS Direct and CALL

into/from both services, to ensure that service users (of either service) are seen quickly and duplication of effort is reduced.

40. The Welsh Assembly Government recommends that local Primary Care Implementation Leads are put in place to support the work required to establish the local primary mental health support services. This work will include restructuring and refocusing existing services and/or establishing new services and will require significant partnership working between local authorities and LHBs. It is anticipated that the Welsh Assembly Government will make funding available for the equivalent of one WTE local lead per LHB area; this funding will be for a fixed term period and further details will be made available on this shortly.

### **Actions required for Part 2 of the Measure**

41. Under Part 2 of the Measure, the following actions will need to be considered by Local Health Boards and Local Authorities –

- Effective roll-out of the new learning resources for CPA, to ensure that existing and prospective care coordinators are clear about their functions both under the Measure, and under the wider CPA framework;
- Establishing and maintaining lists of eligible care coordinators<sup>7</sup>;
- Establishing and maintaining records of relevant patients (within the meaning of section 12 of the Measure), which will include patients receiving secondary mental health services secured by the LHB or Local Authority but provided by another agency/organisation (eg in an independent hospital in England);
- Ensuring systems enable the correct relevant mental health service provider to be identified in accordance with section 15 of the Measure, and then to appoint a care coordinator for a relevant patient;
- Making sure that electronic and other case record management systems are updated to meet the requirements of Part 2 of the Measure, including use of the new prescribed care and treatment plan<sup>8</sup>;
- Appropriate revisions are made to audit tools to accommodate the new provisions of Part 2 of the Measure, and associated subordinate legislation and Code of Practice;
- Effective systems are put in place to support review and revision of care plans, in line with the intended relevant subordinate legislation, and appropriate recording systems are utilised to enable compliance to be monitored.

42. Regulations will set out the actions that must be taken, and associated timescales, to 'migrate' existing arrangements for individual service users (in terms of care coordination and care and treatment planning) to meet the new requirements under the Measure. Such matters are referred to as 'transitional

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<sup>7</sup> Welsh Ministers intend to make provision (by way of regulations) about the eligibility of individuals to be appointed as care coordinators (in accordance with section 47 of the Measure).

<sup>8</sup> Welsh Ministers intend to prescribe (by way of regulations) the form and content of care and treatment plans.

provisions', and the Welsh Assembly Government will issue further advice on these in due course.

43. All LHBs in Wales have a CPA Lead, and in many cases this lead jointly supports partner Local Authorities for CPA purposes. The Welsh Assembly Government recommends LHBs and Local Authorities ensure that the CPA Leads are familiar with the new legislative requirements, and have appropriate plans in place to support practitioners within services to be ready to deliver the new care and treatment planning arrangements.

### **Actions required for Part 3 of the Measure**

44. Under Part 3 of the Measure, the following actions will need to be considered by the LHB and Local Authority partners –

- Preparing, and putting into writing, arrangements for the carrying out of assessments and the making of referrals under Part 3 of the Measure;
- Developing written information to be given to service users on their discharge from services, explaining eligibility under Part 3, and the local arrangements for accessing such assessments;
- Ensuring staff understand when service users should be provided with information about eligibility, and how to respond when such a request for assessment is made;
- Developing/amending electronic and other case record management systems so that discharge from secondary mental health services is clearly recorded (so as to assist determining future eligibility);
- Systems are established that will allow disputes regarding determination of usual residence to be effectively and quickly resolved<sup>9</sup>;
- Adapting existing referral systems within secondary mental health services, if necessary, to accommodate self-referral;
- Adapting arrangements for writing reports to service users following assessment, if necessary;
- Ensuring that information sharing arrangements with other secondary mental health services are updated to take account of need to provide/obtain information about eligibility under Part 3 when an individual (previously not known to local services) presents.

45. Regulations will set out the eligibility for self-referral for service users discharged from secondary mental health services prior to the new provisions coming into force. Such eligibility will be dealt with under so-called 'transitional provisions', and the Welsh Assembly Government will issue further advice on these in due course.

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<sup>9</sup> Welsh Ministers intend to make provision (by way of regulations) about determination of usual residence.

## Actions required for independent mental health advocacy

46. Part 4 of the Measure amends the Mental Health Act 1983, therefore under new sections 130E to 130L of the 1983 Act (and associated subordinate legislation) LHBs<sup>10</sup> should consider –

- the existing independent mental health advocacy provision, preferably as part of a more strategic review of wider mental health advocacy services in their area;
- identifying the potential numbers of qualifying informal and detained patients in their area, and where such patients are located (ie the hospitals, units and wards)<sup>11</sup>;
- ensuring sufficient provision of independent mental health advocates (IMHAs), and where applicable entering into appropriate contracts with advocacy providers for the provision of such IMHAs;
- developing robust engagement protocols for all relevant hospitals and registered establishments (including working with the relevant managers of registered establishments) where arrangements are made with advocacy providers;
- ensuring that there are suitable facilities within their own hospitals/units/wards for IMHAs to meet with qualifying patients;
- securing a programme of awareness raising for staff within their own hospitals, as well as within registered establishments, about the role and functions of IMHAs, as well as how to contact IMHAs (it is expected that delivery of such awareness raising may well be undertaken by advocacy providers, where such arrangements have been included in contracts)
- developing appropriate patient information leaflets and posters, which explain the independent mental health advocacy scheme and how to contact IMHAs.

47. Fuller information and support for LHBs on independent mental health advocacy is set out in *'Delivering the Independent Mental Health Advocacy Services in Wales: Interim Guidance for Independent Mental Health Advocacy Providers and Local Health Board Advocacy Service Planners'* (Welsh Assembly Government, January 2011).

## Regional provision

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48. Parts 1 and 3 of the Measure, in effect, create partnerships between a local authority and the LHB for both the local primary mental health support services and the arrangements for the assessments of former users of secondary mental health services, for the area of the local authority, which are limited to that area. However sections 45 and 46 of the Measure provide that the Welsh Ministers may, by regulations, modify the operation of Parts 1 and 3 respectively so that

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<sup>10</sup> Local Health Boards currently make arrangements for the provision of independent mental health advocacy services under the 1983 Act; it is intended that this will continue with the expanded advocacy schemes

<sup>11</sup> Such hospitals, units and wards will not be limited to mental health facilities; qualifying patients will be inpatients in all hospitals and registered establishments in Wales, including those providing acute healthcare or hospice provision.

schemes and arrangements can be made for an area wider than a local authority area – in effect regions.

49. In the schemes for Part 1 or arrangements for Part 3, for the 'regional' areas 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/arrangements 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 scheme or arrangements will apply.
50. 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.
51. If LHBs and Local Authorities wish to enter into 'regional' provision for either Part 1 or Part 3 of the Measure, or both Parts, it is important that the Mental Health Legislation Team is advised as soon as possible so that the appropriate legislative arrangements can be made. Contact should be made with Claire Fife ([Claire.Fife@wales.gsi.gov.uk](mailto:Claire.Fife@wales.gsi.gov.uk) or 029 2082 6988) in the first instance.

## Further information

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Further information on the Mental Health (Wales) Measure and the national implementation programme is available from:

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

Telephone: 029 2082 6988

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

Barbara Bowness, the All Wales Primary Care Lead for Part 1 of the Measure, can be contacted at:

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Innovation House  
Bridgend Road  
Llanharan CF72 9RP

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