

Explanatory Memorandum and Regulatory Impact Assessment

The Mental Health (Assessment of Former Users of Secondary Mental Health Services) (Wales) Regulations 2011

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Explanatory Memorandum to the Mental Health (Assessment of Former Users of Secondary Mental Health Services) (Wales) Regulations 2011

This Explanatory Memorandum has been prepared by the Department of 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 (Assessment of Former Users of Secondary Mental Health Services) (Wales) Regulations 2011. I am satisfied that the benefits outweigh any costs.

Lesley Griffiths AM

Minister for Health and Social Services

19 September 2011

PART 1 – EXPLANATORY MEMORANDUM

1. Description

1. The Mental Health (Assessment of Former Users of Secondary Mental Health Services) (Wales) Regulations 2011 make provision as to:
 - a. the duration of the period of time in which an adult may be eligible for assessment;
 - b. the time in which a copy of the assessment report is to be provided to an adult who has had an assessment;
 - c. a method for determining the usual residence of an adult in cases where this may be disputed; and
 - d. the transitional provisions in respect of persons (adults and those below the age of 18 when discharged who will reach the age of 18 during the relevant discharge period) discharged from secondary mental health services prior to these Regulations coming into force.

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

2. This is the first set of Regulations to be made relating to Part 3 of the Mental Health (Wales) Measure 2010 (“the Measure”).
3. These Regulations include transitional provisions, reflecting the eligibility of individuals for assessment, where their discharge from services occurred before the coming into force of Part 3 of the Measure.
4. It is proposed that these Regulations are made before the commencement of the main provisions of Part 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, and the remaining provisions of Part 3 will be commenced prior to the coming into force date of these Regulations.
5. These Regulations will come into force on 6 June 2012.

3. Legislative background

6. These Regulations may be made in exercise of powers conferred on the Welsh Ministers by sections 23(1)(b), 26(2)(b), 29(1) and 52(2) of the Mental Health (Wales) Measure 2010.

7. These Regulations are made subject to the approval of the National Assembly for Wales.

4. Purpose and intended effect of the legislation

8. The aim of Part 3 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 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.
9. 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.
10. 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.
11. This policy therefore aims to encourage safe and effective discharge, by providing adults with a mechanism to swiftly re-access services should these be required again at a later stage.
12. Where an adult makes such a request, an assessment of whether that adult stands in need of secondary mental health services must be undertaken by the relevant mental health partners (the local authority and the LHB).
13. 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 is set out in these Regulations made under this Measure, and is set at three years from the date of discharge. 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).
14. The statutory duty to provide an assessment falls on both the LHB and local authority for the area within which the adult requesting the assessment usually

resides. These Regulations provide a method for determining usual residence in cases where this may be disputed.

15. Where an assessment identifies that certain further services are required for an adult, and one of the local mental health partners would be the responsible authority in relation to any such service, that partner will decide whether the provision of that service is called for. Such services may be provided directly by the mental health partners or by the service partners making arrangements for the delivery of services by another provider. Referrals to other appropriate services (including housing and welfare services) will also be made where a partner is not the responsible service provider. A report on the outcome of the assessment must be prepared, and these Regulations require a copy of that report is provided to the assessed adult no later than 10 working days after the conclusion of the assessment.

5. Consultation

16. Details of the consultation undertaken are included in the regulatory impact assessment which has been completed for these Regulations, and is set out in Part 2 of this document.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

17. 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 Regulatory Impact Assessment.
18. The options are:
- Option 1 - Do nothing
 - Option 2 - Deliver the policy objectives through the Regulations

Option 1 – Do nothing

19. This option proposes not making the Regulations.
20. Failing to make regulations in respect of the relevant discharge period (under section 23(1)(b)) and the period of time in which a copy of the report to the assessed adult is to be provided (under section 26(2)(b)), would leave a regulatory lacuna. Further, it would mean the requirements of section 23 and 26 are not met.
21. In relation to determination of usual residence, it is possible to consider an option of not making regulations. This would mean LHBs and local authorities are left without a clear process across Wales for determining usual residence, which could lead to unacceptable variations in practice and adults unable to effectively exercise their rights to request an assessment.
22. Not making regulations would significantly undermine the operation and intention of Part 3 of the Measure.

Option 2 – Make Regulations

23. This option proposes making the Regulations. Given that these Regulations are central to the operation of Part 3 of the Measure, there are limited risks associated with making them.
24. Where risks could, possibly, arise relates to the detail of the regulations (for example, whether three years is an appropriate relevant discharge period), rather than the making of the regulations themselves.

7. Costs and benefits

Costs and benefits of Option 1 (do nothing)

25. There are potentially costs to LHBs and local authorities in not making regulations, which arise from the potential to have varying arrangements for determining usual residence. Such variation may leave organisations exposed to legal challenge, if such variations place eligible adults at disadvantage (including being unable to effectively exercise their rights under Part 3 of the Measure).
26. There are no discernable benefits in not making the Regulations.

Costs and benefits of Option 2 (make regulations)

27. It is not anticipated that any significant costs would be incurred by local authorities or LHBs from Part 3 of the Measure in respect of secondary mental health assessments. These Regulations do not create additional financial burdens.
28. 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.
29. It is possible that on occasions adults 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.
30. The benefits associated with making these Regulations are:
 - a. setting the duration of the relevant discharge period, which enables Part 3 to operate effectively;
 - b. ensuring the assessed adult receives a copy of the report of the assessment within a timely manner, which will enable them to make further decisions about their future care and treatment; and
 - c. ensuring there is a consistent and simple system of determining usual residence which applies across all of Wales.

Summary

31. **Option 2 (make regulations)** best meets the Government's objectives.

8. Consultation

32. Welsh Government officials undertook a programme of consultation on the draft regulations relating to Part 3 of the Measure. Over 90 comprehensive and detailed written responses were received from a variety of stakeholders, including service user representative bodies, NHS organisations, local authorities and professional bodies.
33. A detailed consultation response report has been published on the Welsh Government's website, but the views received and any amendments made to the regulations as a result of the consultation are summarised in the following paragraphs.

General matters

34. All consultees agreed that the regulations should be made, and a large majority were satisfied that the cost/benefit analysis contained in the RIA was appropriate.

Term of relevant discharge period

35. Opinion was divided as to whether three years was an appropriate length of time, however there was no consensus amongst consultees as to what might be a more appropriate period. On balance, therefore, the Welsh Government considers it appropriate to retain the three year relevant discharge period, but will consider the emerging evidence on the period of time between discharge and request for assessment as part of the review of the operation of Part 3 of the Measure that will take place under section 48 of the Measure.

Ending the relevant discharge period

36. The majority of respondents were content that there should be no other events or circumstances which would end the relevant discharge period. The Welsh Government has therefore not made any amendments to the regulations in this regard.

Provision of a copy of the assessment report

37. Many respondents considered that ten working days was an appropriate period, but that emphasis should be given in guidance to the fact that this was a maximum period rather than 'default' delivery timescale. Having taken account of the views expressed, the regulations will continue to specify the ten working day maximum period for provision of the assessment report.

Usual residence

38. The consultation sought views as to whether the method of dispute resolution was appropriate. A number of respondents felt that the regulation as drafted was complicated and difficult to understand. Given these concerns, the regulation has been amended with the aim of making the arrangements clearer and easier to follow in the event that such a dispute should arise.

Transitional provisions

39. Whilst a clear majority of stakeholders agreed that adults discharged from services before the commencement of the regulations should have some form of eligibility, a number felt that the arrangements set out in the regulation as drafted were overly complicated. The wording of the regulation has therefore been simplified and the periods of eligibility made more straightforward.

9 Competition assessment

40. 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

41. Section 48 of the Measure places the Welsh Ministers under a duty to the 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 3 of the Measure.
42. It is intended that the review relating to Part 3, will take account of these Regulations.
43. The report of the review must be placed before the National Assembly for Wales, in accordance with section 48(9) of the Measure.

Annex A – Contact information

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

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