



Llywodraeth Cymru  
Welsh Government

## **Explanatory Memorandum and Regulatory Impact Assessment**

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

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# **Explanatory Memorandum to the Mental Health (Primary Care Referrals and Eligibility to Conduct Primary Mental Health Assessments) (Wales) Regulations 2012**

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 (Primary Care Referrals and Eligibility to Conduct Primary Mental Health Assessments) (Wales) Regulations 2012. I am satisfied that the benefits outweigh any costs.

*Lesley Griffiths*

**Lesley Griffiths AM**

Minister for Health and Social Services

13 April 2012

# **PART 1 – EXPLANATORY MEMORANDUM**

## **1. Description**

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1. The Mental Health (Primary Care Referrals and Eligibility to Conduct Primary Mental Health Assessments) (Wales) Regulations 2012 (“the Regulations”) make provisions which:
  - a. enable primary care providers to refer a person who is entitled to receive primary medical services and who appears to be in need of a primary mental health assessment for such an assessment provided that the person does not fall within a category of person described in section 8(1) of the Measure; and,
  - b. set out eligibility requirements, including professional requirements, in regard to persons who may undertake primary mental health assessments under Part 1 of the Mental Health (Wales) Measure 2010 (‘the Measure’).

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

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2. This is the second set of Regulations to be made relating to Part 1 of the Measure (the first being the Mental Health (Regional Provision) (Wales) Regulations 2012)<sup>1</sup>.
3. The powers to make the Regulations are found in Parts 1, 5 and 6 of the Measure, and are subject to the affirmative procedure.

## **3. Legislative background**

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4. The Regulations may be made in exercise of powers conferred on the Welsh Ministers by sections 7(6)(a), 47(1)(a) and 47(2), and 52(2) of the Measure.
5. The Regulations are subject to the affirmative resolution procedure and must be laid before the National Assembly for Wales for approval prior to being made.

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

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### **Background**

6. Part 1 of the Measure places statutory duties on Local Health Boards and local authorities in Wales to provide local primary mental health support services in each local authority area in Wales. Local Health Boards and Local Authorities

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<sup>1</sup> Subject to the making of these Regulations by the National Assembly for Wales.

are under a duty to take all reasonable steps to agree a scheme for a local authority area (a) which defines the local primary mental health treatment that will be made available for that area; and (b) for securing the provision for that area of local primary mental health support services. It is expected that these services will operate either within, or alongside, existing GP practices.

7. Section 6 of the Measure allows GPs to refer patients for a primary mental health assessment provided the three conditions in section 6 are satisfied. GPs are able to refer patients who are registered with them to the local authority or Local Health Board for the area where the patient is usually resident for a primary mental health assessment.
8. Section 7 allows GPs to refer patients for a primary mental health assessment to the local authority or Local Health Board in the local authority area where the GP undertakes the majority of his or her activity provided that the patient falls within a category specified in regulations made by Welsh Ministers or falls within a category specified in the scheme for the local authority area. The regulation making power in section 7(6)(a) is intended to enable Welsh Ministers to specify categories of individual (in addition to registered patients who may be referred in accordance with section 6 of the Measure) whom GPs may refer for a primary mental health assessment as it is recognised that many members of vulnerable groups in society will not be registered with a GP.
9. Part 1 of the Measure requires that the following elements be delivered as part of local primary mental health support services:
  - 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 into the primary care service 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 being treatments that might improve or prevent a deterioration in the individual's mental health;
  - 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;

10. These services are aimed at individuals of all ages who are experiencing mild to moderate, or stable but severe and enduring, mental health problems.

### **The Regulations**

11. The Regulations make provisions which enable primary care providers to refer individuals who are entitled to receive primary medical services and who appear to be in need of a primary mental health assessment for a primary mental health assessment provided the individual does not fall within a category of person described in section 8(1) of the Measure.
12. Primary care provider is defined in section 51(1) of the Measure as contractors who have entered into a general medical services contract with a Local Health Board pursuant to section 42 of the National Health Service (Wales) Act 2006 (“the 2006 Act”); persons who have entered into arrangements for the provision of primary medical services with a Local Health Board under section 50 of the 2006 Act; registered medical practitioners who are employed by a Local Health Board for the purposes of section 41 of the 2006 Act and a registered medical practitioner providing services to prisoners under arrangements between the registered medical practitioner and persons running a private prison in Wales. Essentially “primary care provider” covers general practitioners who have entered into arrangements with Local Health Boards for the provision of primary medical services or who have entered into an arrangement for the provision of services with a person running a private prison in Wales. The term General Practitioner (GP) is used in this Explanatory Memorandum.
13. Separately, these Regulations also set out eligibility requirements that a person must meet in order to undertake primary mental health assessments.

### ***Primary care referrals***

14. Section 7 of the Measure enables referrals to be made by a GP to the local authority or Local Health Board in the local authority area where the GP undertakes the majority of his or her activity provided that individual falls within any category set out in Regulations made by the Welsh Ministers (or within a category of individual specified in the Scheme for the local authority area). This provision is designed to provide access to local primary mental health support services to vulnerable individuals who might not otherwise be able to access those services because they are not registered with a GP in the local authority area, or do not have a place of usual residence (for example; gypsy travellers, homeless people, students, migrant workers, prisoners).
15. Regulation 3 of the Regulations has been drafted widely. It enables a GP to refer an individual who is entitled to receive primary medical services and who appears to be in need of a primary mental health assessment for such an assessment. GPs have a very broad discretion in respect of to whom they

provide primary medical services and, in practice, GPs will have the ability to refer any person who, in their professional judgement, appears to be in need of a primary mental health assessment. This includes patients who are not registered with them or who may be registered with another GP. The only exception to this ability to refer is in respect of categories of individual who fall within the description set out in section 8(1) of the Measure. Section 7(1)(a) of the Measure provides that section 7 does not apply to individuals who fall within any of the descriptions set out in section 8(1) of the Measure.

16. Section 8(1) of the Measure applies to individuals who are liable to be detained under the provisions of the Mental Health Act 1983; who are subject to guardianship under that Act; who are community patients within the meaning given by section 17A of that Act or are receiving secondary mental health services.
17. This approach is designed to ensure that GPs are not prevented from directing individuals to the local primary mental health support service in their area on the grounds that the individual is either not registered with them as a patient, or because that individual has no place of usual residence, or usually resides in another local authority area. Rather, this Regulation will provide GPs with flexibility and discretion to refer individuals from vulnerable groups (such as asylum-seekers, homeless persons, or gypsy travellers) who might not be registered with a GP, for a primary mental health assessment by the local primary mental health support services where such an individual presents, and where the GP believes a referral is required.
18. This arrangement will also enable individuals who have not registered with a GP in a local authority area, but who may be residing in the area for some time (such as students, migrant workers, holiday makers, prisoners), including individuals who may be registered with a GP elsewhere, to be referred by a GP to the local primary mental health support service in their area for assessment where such an individual presents and where the GP believes a referral would be appropriate.

***Eligibility requirements for persons who may conduct primary mental health assessments***

19. Regulation 4 sets out certain requirements in relation to persons who may undertake primary mental health assessments within local primary mental health support services.
20. This Regulation states that only individuals registered as social workers; registered nurses with a specialism in mental health or learning disabilities; registered occupational therapists; registered practitioner psychologists or registered medical practitioners may undertake such assessments. In addition, the Regulation also requires that the local mental health partner(s) who appoint the person should be satisfied that the appointee has appropriate experience, skills or training to undertake the role. The appointing body is also required to have regard to any relevant standards set in Codes of Practice or guidance

which may be issued by the Welsh Ministers in relation to the Measure.

21. These provisions are intended to ensure that only individuals who meet the eligibility requirements set out may be appointed to undertake primary mental health assessments; this will ensure that only suitably qualified, trained and experienced staff undertake this important function.

## **5. Consultation**

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22. 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**

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23. 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.

24. The options are:

- Option 1 - Do nothing
- Option 2 - Deliver the policy objectives through the Regulations

#### **Option 1 – Do nothing**

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25. This option proposes not making the Regulations.

26. Section 6 of the Measure enables GPs to refer patients who are registered with them for primary mental health assessments. The power in regulation 7(6)(a) is intended to be used to specify additional categories of person whom a GP may refer for primary mental health assessments as it is recognised that many members of vulnerable groups may not be registered with a GP or may be registered with a GP far from where they are currently residing. Failing to make Regulations (a) in respect of referral arrangements for individuals not registered with a GP (using powers in section 7(6)(a) of the Measure) and (b) in respect of eligibility requirements for those who may undertake primary mental assessments (under section 47(1)(a) of the Measure), would leave a regulatory lacuna which would make it extremely difficult for local mental health partners (LHBs and local authorities in Wales) to meet their statutory duties under Part 1 of the Measure in both respects.

27. In relation to primary care referrals, it is possible to consider an option of not making Regulations. However, this would mean that local mental health partners are left without clear direction or guidance as to whether, or how, individuals not registered with a GP in a local authority area may access local primary mental health support services. This could lead to unacceptable variations in practice across Wales, with individuals in different areas subject to different arrangements depending on local approaches set out in Schemes.

28. In relation to primary mental health assessors, were the Welsh Ministers not to make Regulations setting eligibility requirements for assessors then local mental health partners would still be required to make arrangements to ensure that individuals referred into local primary mental health support services were assessed, but they would have no clear parameters or guidance within which to appoint staff for undertaking those assessments. This would again be likely to

lead to unacceptable variations, and potentially the appointment of individuals without appropriate qualifications, skills, training or experience to act as assessors.

29. The Welsh Ministers therefore consider that not making these Regulations would significantly undermine the operation and intention of Part 1 of the Measure.

## **Option 2 – Make Regulations**

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30. This option proposes making the Regulations.

31. Making these Regulations will ensure that local mental health partners have clear and unambiguous guidance in relation to how individuals not registered with a GP in their area may access the local primary mental health support services in their area, which will apply across all local authority areas in Wales. The regulations also provide clarity and a national approach in relation to which persons may undertake primary mental health assessments.

32. Given that these Regulations are central to the operation of Part 1 of the Measure, there are limited risks associated with making them.

33. Risks could possibly arise in relation to the detail of the Regulations (for example, whether the list of registered professionals included at schedule 1 is broad enough), rather than through the making of the Regulations themselves.

## **7. Costs and benefits**

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34. The costs associated with developing and delivering local primary mental health support services under Part 1 of the Measure are set out in the Explanatory Memorandum to the Measure<sup>2</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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35. There are potentially costs to LHBs and local authorities in *not* making Regulations which could arise from different arrangements being adopted by local mental health partners across Welsh local authority areas. The absence of clear legal requirements could result in variations of approach between areas, and in the worst case, LHBs or local authorities exposed to legal challenge, particularly if assessments were undertaken by persons subsequently deemed to have insufficient skills or experience, or if individuals were denied access to local primary mental health support services in certain areas on the grounds that they were not registered with a GP.

36. There are no discernable benefits in not making the Regulations.

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

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

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37. It is not anticipated that any additional costs beyond those set out in relation to Part 1 in the Explanatory Memorandum which accompanied the Measure would be incurred by local authorities or LHBs as a result of these Regulations. Assessments of individuals referred into local primary mental health support services will be a core component of those services, for which local mental health partners are responsible.
38. Ensuring that primary mental health assessments of individuals referred to local primary mental health support services are undertaken by suitably qualified and experienced practitioners is an integral part of the services envisaged in Part 1 of the Measure. Facilitating access to such assessments for individuals not registered with a local GP, for whatever reason, but who may appear to be in need of such an assessment is also imperative in ensuring that individuals from these often hard to reach and vulnerable groups are not disadvantaged in accessing these services.

## **Summary**

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

## **8. Consultation**

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40. The Welsh Government undertook a formal 12 week consultation exercise on the draft Mental Health (Primary Care Referrals and Eligibility to Conduct Primary Mental Health Assessments) (Wales) Regulations 2012 between November 2011 and January 2012. Officials received 52 written responses from service user organisations and mental health charities, professional bodies, Local Health Boards, local authorities, individuals and third sector organisations.
41. A detailed consultation report has been published on the Welsh Government website, but a summary of the views received is set out in the following paragraphs.
42. The Regulations were largely welcomed by respondents. Many stakeholders felt that they contained sensible proposals which would ensure timely access to services when needed, would lessen the need for crisis management services, and would help prevent vulnerable individuals from being excluded from accessing services.
43. The majority of respondents agreed that GPs should be able to refer individuals not registered with them for a primary mental health assessment by the local primary mental health support services in that area, where the GP believes that the individual appears to need such services. This was described by supporters as a sensible proposal because timely access to services could help prevent further deterioration in an individual's mental health and lessen the need for more intensive interventions such as crisis management at a later stage. Many

respondents noted that these arrangements would enable GPs to refer those who may be particularly vulnerable (such as asylum seekers or homeless individuals).

44. A majority of stakeholders also supported the proposed eligibility requirements for primary mental health assessors. There were calls from some respondents for psychological therapists and counsellors to be added to the list of those who could undertake primary mental health assessments.
45. The Welsh Government will not be adding psychological therapists and counsellors to Schedule 1 of these Regulations at this time. It will instead consider the effectiveness of arrangements relating to the undertaking of primary care assessments in the review of Part 1 of the Measure which will take place within four years of the date of commencement, and will consider adding psychological therapists and counsellors to the list at such time that there is agreement on the nature and validation of the extended skills needed in order to carry out primary mental health assessments.
46. Given that a large majority of respondents agreed with the proposed Regulations, the Welsh Government has not amended the draft Regulations post-consultation. The Regulations laid before the National Assembly are unchanged from those issued for public consultation.

## **9. Competition assessment**

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47. 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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48. 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 of the Measure.
49. It is intended that the review relating to Part 1, will take account of these Regulations.
50. 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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