



# Mental Health (Wales) Measure 2010

2010 nawm 7

## PART 1

### LOCAL PRIMARY MENTAL HEALTH SUPPORT SERVICES

#### *Meaning of “local mental health partners”*

#### **1 Meaning of “local mental health partners”**

For the purposes of this Measure, the local mental health partners for a local authority area are—

- (a) the Local Health Board established under section 11 of the National Health Service (Wales) Act 2006 for an area which includes the local authority area; and
- (b) the local authority for that area.

#### **Commencement Information**

**II** [S. 1](#) in force at 8.5.2012 by [S.I. 2011/3046](#), [art. 4\(a\)](#) (with [art. 5](#))

#### *Local primary mental health support services*

#### **2 Joint schemes for the provision of local primary mental health support services**

- (1) The local mental health partners for a local authority area must take all reasonable steps to agree a scheme—
  - (a) which identifies the treatment which is to be made available for that area for the purposes of this Part (“local primary mental health treatment”); and
  - (b) for securing the provision for that area of the services, including local primary mental health treatment, described in section 5 (“local primary mental health support services”).

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- (2) If a scheme is agreed, the partners must ensure that it is recorded in writing.
- [<sup>F1</sup>(2A) A scheme may be recorded by including it within a local well-being plan published under section 39 or 44(5) of the Well-being of Future Generations (Wales) Act 2015 (anaw 2) by a public services board of which each of the partners is a member.]
- (3) A scheme must identify the extent to which each of the partners is to be responsible for providing local primary mental health support services.
- (4) A scheme may provide that–
- (a) one of the partners is to be responsible for providing all local primary mental health support services for the local authority area;
  - (b) primary mental health assessments are to be made available in respect of all or particular descriptions of the individuals described in section 8(1);
  - (c) primary mental health assessments are to be carried out in respect of particular categories of individual who would not otherwise be entitled to an assessment.
- (5) If a scheme makes provision under subsection (4)(b), it must also provide for particular descriptions of staff working in secondary mental health services to be able to refer an individual referred to in that subsection for a primary mental health assessment.
- (6) The partners may alter a scheme (including a scheme determined by the Welsh Ministers under section 4 and a scheme which has already been altered) if they agree the alterations.
- (7) If a scheme is altered under subsection (6), the partners must ensure that the alterations are recorded in writing.

#### Textual Amendments

**F1** S. 2(2A) inserted (1.4.2016) by [Well-being of Future Generations \(Wales\) Act 2015 \(anaw 2\)](#), s. 56(2), [Sch. 4 para. 29](#); S.I. 2016/86, art. 3

#### Commencement Information

**I2** S. 2 in force at 8.5.2012 by [S.I. 2011/3046](#), art. 4(b) (with art. 5)

### 3 Duty to provide local primary mental health support services

- (1) Unless section 4(1)(a) applies, the local mental health partners for a local authority area must provide local primary mental health support services in accordance with–
- (a) a scheme for their area agreed under section 2; or
  - (b) a scheme for their area determined by the Welsh Ministers under section 4.
- (2) If a scheme has been altered under section 2(6) or 4(2) the services must be provided in accordance with the altered scheme.

### 4 Failures to agree schemes

- (1) If the local mental health partners for an area cannot agree a scheme under section 2–
- (a) for so long as there is no agreement, the Local Health Board must decide what local primary mental health treatment is to be made available in the

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- local authority area in question and is responsible for providing local primary mental health support services for that area;
- (b) the Local Health Board must inform the Welsh Ministers that agreement cannot be reached;
  - (c) the Welsh Ministers may determine a scheme and, if they do, must record it in writing.
- (2) If one partner wishes to alter a scheme, but the other does not, the scheme may, upon a request being made to the Welsh Ministers by either partner, be altered by the Welsh Ministers to such extent as the Welsh Ministers think fit.
- (3) If the Welsh Ministers alter a scheme under subsection (2), they must record the alterations in writing.

#### Commencement Information

**I3** S. 4 in force at 8.5.2012 by S.I. 2011/3046, art. 4(c) (with art. 5)

## 5 Meaning of “local primary mental health support services”

- (1) Local primary mental health support services are the following—
- (a) the carrying out of primary mental health assessments in accordance with the following provisions of this Part;
  - (b) the provision for an individual, following a primary mental health assessment, of the local primary mental health treatment identified by the assessment as being treatment which might improve or prevent a deterioration in the individual's mental health;
  - (c) the making of referrals as described in section 10, following a primary mental health assessment, concerning other services the provision of which might improve or prevent a deterioration in the assessed individual's mental health;
  - (d) the provision of information, advice and other assistance to primary care providers to meet the providers' reasonable requirements for such information, advice and other assistance for the purpose of improving the services related to mental health which they provide or arrange;
  - (e) the provision for patients and their carers of information and advice about the services available to them, to meet their reasonable requirements for such information and advice.
- (2) In subsection (1)(e)—
- “carers” (“*gofalwyr*”) means members of the families of patients, and friends of patients, who are involved in their care and in the case of a patient who is a child, includes the child's local authority foster parent (within the meaning of section 22C(12) of the Children Act 1989);
- “patients” (“*cleifion*”) means individuals who have, or may have, a mental disorder;
- “services” (“*gwasanaethau*”) means—
- (a) secondary mental health services;
  - (b) community care services (not being secondary mental health services);
  - (c) services provided under Part III of the Children Act 1989 (not being secondary mental health services);

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- (d) housing or well-being services; and
- (e) education or training which may be beneficial to a patient's mental health.

**Commencement Information**

**I4** S. 5 in force at 8.5.2012 by S.I. 2011/3046, art. 4(d) (with art. 5)

*Primary mental health assessments*

**6 Duties to carry out primary mental health assessments: referrals for registered patients in primary care**

- (1) This section applies to an individual–
  - (a) who does not fall within any of the descriptions in section 8(1); and
  - (b) in respect of whom a relevant referral for the purposes of this section is made.
- (2) A primary mental health assessment must be carried out in respect of the individual in accordance with section 9.
- (3) A relevant referral for the purposes of this section means a request that an individual has a primary mental health assessment which meets the following conditions.
- (4) The first condition is that the request is made by–
  - (a) a contractor with whom a general medical services contract has been entered into under section 42 of the National Health Service (Wales) Act 2006 by–
    - (i) the Local Health Board to which the request is made, or
    - (ii) where the request is made to a local authority, the Local Health Board which is the authority's local mental health partner;
  - (b) a person with whom arrangements have been made under section 50 of that Act by–
    - (i) the Local Health Board to which the request is made, or
    - (ii) where the request is made to a local authority, the Local Health Board which is the authority's local mental health partner; or
  - (c) a registered medical practitioner employed for the purposes of section 41 of that Act by–
    - (i) the Local Health Board to which the request is made, or
    - (ii) where the request is made to a local authority, the Local Health Board which is the authority's local mental health partner.
- (5) The second condition is that the individual in respect of whom the request is made is a registered patient of the contractor, person or practitioner making the referral.
- (6) The third condition is that the request is made to a local mental health partner for the local authority area in which the individual is usually resident.
- (7) For the purposes of this section and sections 7 and 8 a request is to be treated as made by a contractor under a general medical services contract entered into under section 42 of the National Health Service (Wales) Act 2006, a person with whom arrangements have been made under section 50 of that Act, or a practitioner employed

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for the purposes of section 41 of that Act, if it is made with the contractor's, person's or practitioner's authority.

## **7 Duties to carry out primary mental health assessments: other primary care referrals**

- (1) This section applies to an individual—
  - (a) who does not fall within any of the descriptions in section 8(1); and
  - (b) in respect of whom a relevant referral for the purposes of this section is made.
- (2) A primary mental health assessment must be carried out in respect of the individual in accordance with section 9.
- (3) A relevant referral for the purposes of this section means a request that an individual has a primary mental health assessment which meets the following conditions.
- (4) The first condition is that the request is made by—
  - (a) a contractor with whom a general medical services contract has been entered into under section 42 of the National Health Service (Wales) Act 2006 by—
    - (i) the Local Health Board to which the request is made, or
    - (ii) where the request is made to a local authority, the Local Health Board which is the authority's local mental health partner;
  - (b) a person with whom arrangements have been made under section 50 of that Act by—
    - (i) the Local Health Board to which the request is made, or
    - (ii) where the request is made to a local authority, the Local Health Board which is the authority's local mental health partner;
  - (c) a registered medical practitioner employed for the purposes of section 41 of that Act by—
    - (i) the Local Health Board to which the request is made, or
    - (ii) where the request is made to a local authority, the Local Health Board which is the authority's local mental health partner; or
  - (d) a registered medical practitioner providing services to prisoners under arrangements made between the registered medical practitioner and a person responsible for the provision or running of a contracted out prison (within the meaning of section 84(4) of the Criminal Justice Act 1991) in Wales.
- (5) The second condition is that the request is made to a local mental health partner for the local authority area in which the contractor, person or practitioner carries on the majority of the contractor's, person's or practitioner's business or activities.
- (6) The third condition is that the individual in respect of whom the request is made falls within a category specified in—
  - (a) regulations made by the Welsh Ministers; or
  - (b) the scheme for that local authority area under section 2(4)(c).

### **Commencement Information**

**I5** S. 7 in force in so far as not already in force at 1.10.2012 by S.I. 2012/2411, art. 2(c)

**I6** S. 7 partly in force; s. 7 in force at 15.2.2011 in so far as it confers power to make subordinate legislation see s. 55

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## **8 Duties to carry out primary mental health assessments: secondary mental health care referrals**

- (1) This section applies to an individual who falls within any of the following descriptions—
  - (a) an individual who is liable to be detained under the Mental Health Act 1983;
  - (b) an individual who is subject to guardianship under that Act;
  - (c) an individual who is a community patient within the meaning given by section 17A of that Act;
  - (d) an individual who is receiving secondary mental health services.
- (2) A primary mental health assessment must be carried out in respect of the individual in accordance with section 9 if—
  - (a) the relevant scheme provides under section 2(4)(b) that primary mental health assessments are to be made available in respect of all or specified categories of the individuals referred to in subsection (1);
  - (b) the individual falls within the scheme's description of those individuals in respect of whom primary mental health assessments are to be made available; and
  - (c) a relevant referral for the purposes of this section is made.
- (3) A relevant referral for the purposes of this section means a request that an individual has a primary mental health assessment which meets the following conditions.
- (4) The first condition is that the request is made to a local mental health partner for the local authority area in which the individual is usually resident.
- (5) The second condition is that the request is made by a member of staff who falls within a category specified in the scheme for that local authority area under section 2(5).

## **9 Conduct of primary mental health assessments**

- (1) A primary mental health assessment is an analysis of an individual's mental health which identifies—
  - (a) the local primary mental health treatment (if any) which might improve or prevent a deterioration in the individual's mental health (any treatment so identified must be provided: see sections 3 and 5); and
  - (b) other services (if any) which might improve or prevent a deterioration in the individual's mental health.
- (2) The local mental health partners must ensure that the assessment is carried out by an individual who is eligible to carry out primary mental health assessments under regulations made under section 47.
- (3) The reference to other services in subsection (1)(b) is a reference to—
  - (a) secondary mental health services;
  - (b) services of a type that are normally provided by primary care providers;
  - (c) community care services (not being secondary mental health services);
  - (d) services provided under Part III of the Children Act 1989 (not being secondary mental health services);
  - (e) housing or well-being services; and
  - (f) education or training which may be beneficial to an individual's mental health.

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## **10 Action following a primary mental health assessment**

- (1) Where a primary mental health assessment identifies under section 9(1)(b) services which might improve, or prevent a deterioration in, an individual's mental health, the local mental health partner which carried out the assessment must—
  - (a) if the partner considers that it would be the responsible authority for providing any of the services, decide whether or not the provision of any of those services is called for; and
  - (b) if the partner considers that it would not be the responsible authority for providing any of the services, make a referral to the person whom the partner considers would be the responsible authority for providing those services.
- (2) A referral under subsection (1)(b) must inform the recipient that—
  - (a) the local mental health partner making the referral has identified services which it considers might improve, or prevent a deterioration in, the individual's mental health; and
  - (b) that the partner considers that the recipient would be the responsible authority for providing those services.
- (3) A person to whom a referral has been made must decide whether the provision of any of the services to which the referral relates is called for.
- (4) In this section “responsible authority” means the person who would be responsible for providing services if a decision were made to provide the services.
- (5) Nothing in this section requires or authorises a referral to be made to a responsible authority constituted, or acting exclusively, for an area wholly within England.

### *Amendment to Children Act 2004*

## **F2<sup>11</sup> Inclusion of schemes under this Part in Children and Young People's plans**

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### **Textual Amendments**

- F2** S. 11 repealed (1.4.2016) by [Well-being of Future Generations \(Wales\) Act 2015 \(anaw 2\), s. 56\(2\), Sch. 4 para. 30](#); S.I. 2016/86, art. 3

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