

**EXPLANATORY MEMORANDUM TO
THE MENTAL HEALTH REVIEW TRIBUNAL FOR WALES (AMENDMENT)
RULES 2017**

2017 No. 1039 (L. 17)

**THE MENTAL HEALTH ACT 2007 (COMMENCEMENT NO. 12 AND
TRANSITIONAL PROVISIONS) ORDER 2017**

2017 No. 1038 (C. 95)

AND

**THE JUDICIAL APPOINTMENTS AND DISCIPLINE (AMENDMENT AND
ADDITION OF OFFICES) ORDER 2017**

2017 No. 1037

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 These three instruments:
- commence provision in the Mental Health Act 2007 which changes the terminology used in the Mental Health Act 1983 to refer to judicial offices within the Mental Health Tribunal for Wales;
 - make provision consequential to those name changes;
 - and add the President and Members of the chairmen's panel of the Special Educational Needs Tribunal for Wales to the list of offices to which the provisions about appointment and discipline of judges in Part 4 of the Constitutional Reform Act 2005 apply.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None

Other matters of interest to the House of Commons

- 3.1 As these instruments are subject to the negative procedure and have not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Section 78 of, and Schedule 2 to, the Mental Health Act 1983 (the 1983 Act) make provision about the Mental Health Tribunal for Wales. Provision in section 38 of the

Mental Health Act 2007, which has not yet been commenced, amends the terminology used in the 1983 Act to refer to judges within that tribunal, renaming the senior judge of that tribunal (currently the Chairman) as President and the lead judge of a specific tribunal panel (currently the president of that tribunal) as its chairman.

- 4.2 The Mental Health Tribunal for Wales Rules 2008 are made under section 78 of the 1983 Act and govern the practice and procedure to be followed in proceedings before the Mental Health Review Tribunal for Wales. Rule 11 makes provision for circumstances where a person may not sit as a Tribunal member, and for the approval of members qualified to serve as president of the Tribunal for the consideration of an application or reference relating to a restricted patient.
- 4.3 Schedule 14 to the Constitutional Reform Act 2005 ("the 2005 Act") lists the offices to which the provisions of Part 4 of that Act (appointment and discipline apply). Table I of Part 3 contains a reference to the Chairman (as it currently is) of the Mental Health Tribunal for Wales. There is currently no reference in that Schedule to judges of the Special Educational Needs Tribunal for Wales. Inclusion within Schedule 14 means that recommendation for appointment to the office is made by the Judicial Appointments Commission and discipline of a person in that office is carried out in accordance with the procedures set out in and under the Judicial Discipline (Prescribed Procedures) Regulations 2014.
- 4.4 The Special Educational Needs Tribunal for Wales (SENTW) is established under Section 333(1ZA) of the Education Act 1996. There is a President of the Tribunal and a panel of persons ('the chairmen's panel') who may serve as chairman of the Tribunal.

5. Extent and Territorial Application

- 5.1 The Mental Health Review Tribunal for Wales (Amendment) Rules 2017 extend to England and Wales and applies in Wales.
- 5.2 The Mental Health Act 2007 (Commencement No. 12 and Transitional Provisions) Order 2017 extends to England and Wales and applies in Wales.
- 5.3 The Judicial Appointments and Discipline (Amendment and Addition of Offices) Order 2017 extends and applies to the whole of the United Kingdom.

6. European Convention on Human Rights

- 6.1 As the three instruments are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

The Mental Health Act 2007 (Commencement No. 12 and Transitional Provisions) Order 2017

- 7.1 This instrument commences those provisions of section 38 of the Mental Health Act 2007 ("the 2007 Act") which change the terminology used in the 1983 Act to refer to positions within the Mental Health Tribunal for Wales as explained in paragraph 4.1 above.
- 7.2 The transitional provisions in articles 3 and 4 ensure that the current Chairman of the tribunal will continue to lead the tribunal as its President when the post is renamed

and also ensure that those judicial office holders currently nominated as presidents of tribunal panels hearing particular proceedings will continue as the chairman of those panels on the coming into force of the relevant provisions.

The Mental Health Review Tribunal for Wales (Amendment) Rules 2017

- 7.3 This instrument changes the references in the Mental Health Tribunal for Wales Rules 2008 (S.I.2705) to the chairman and president of the Mental Health Review Tribunal consequential on the coming into force of the provisions of the 2007 Act.
- 7.4 Rule 3 ensures that a person who is currently qualified to serve as president of a Tribunal considering the case of a restricted patient (a patient who has received a hospital order in criminal proceedings subject to restrictions on their discharge, leave and transfer between hospitals) will be approved to serve as the chairman of such a Tribunal on the coming into force of these rules.

The Judicial Appointments and Discipline (Amendment and Addition of Offices) Order 2017

- 7.5 This instrument makes 2 separate changes to Table 1 in Part 3 of Schedule 14 to the 2005 Act.
- 7.6 Firstly it makes changes consequential on the bringing into force of section 38(6) of the Mental Health Act 2007 to reflect the change of name to the most senior judge of the tribunal as referred to above. This will ensure that the newly titled President is subject to the same appointment and discipline arrangements as the Chairman of the tribunal previously was.
- 7.7 Secondly this instrument adds the President and Member of the chairmen's panel of the Special Educational Needs Tribunal for Wales to the list of appointments in that table appointment to, and discipline of holders of, these offices is carried out in accordance with Part 4 of the 2005 Act as explained in paragraph 4.2 above.
- 7.8 No consolidation is applicable to this instrument.

Consolidation

- 7.9 No consolidation is planned in relation to these instruments.

8. Consultation outcome

- 8.1 It was not considered necessary for a consultation on these matters, although the Welsh Government fully supports the changes made by the three instruments.

9. Guidance

- 9.1 None is required.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector other than those regularly associated with a new judicial appointment.
- 10.3 An Impact Assessment has not been prepared for these instruments.

11. Regulating small business

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 As the proposed amendments in relation to the Mental Health Tribunal for Wales relate to changes in terminology due to a renaming of the role, and do not include any change to the appointment, or nature, of the actual role, there is no requirement to include a monitoring and review provision.
- 12.2 The inclusion of the President and members of the Special Educational Needs Tribunal for Wales in Schedule 14 to the Constitutional Reform Act 2005 are to regularise the appointment and discipline procedures in line with those that apply for other tribunals in Wales and therefore there is no requirement to include a monitoring and review provision.

13. Contact

- 13.1 Clare Wormald at the Ministry of Justice Telephone: 0203 545 8886 or email: clare.wormald@justice.gov.uk can answer any queries regarding the instrument.