

## WELSH STATUTORY INSTRUMENTS

### 2011 No. 704

# The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011

## PART 3 **E+W**

### NATURE AND SCOPE OF THE ARRANGEMENTS FOR HANDLING CONCERNS

#### Requirement to consider concerns **E+W**

**10.** Subject to regulation 14, a responsible body must handle a concern in accordance with the arrangements for handling concerns set out in these Regulations if it is notified on or after the 1 April 2011—

- (a) in accordance with regulation 11;
- (b) by a person specified in accordance with regulation 12;
- (c) about a matter specified in regulation 13; and
- (d) within the period specified in regulation 15.

#### Commencement Information

**11** Reg. 10 in force at 1.4.2011, see [reg. 1\(2\)](#)

#### Notification of concerns **E+W**

**11.**—(1) A concern may be notified—

- (a) in writing;
- (b) electronically; or
- (c) verbally, either by telephone or in person, to any member of the staff of the responsible body, the exercise of whose functions is the subject of the concern.

(2) Subject to regulation 14(1)(f), where a concern is notified verbally, the member of staff of the responsible body to whom the concern has been notified must—

- (a) make a written record of the concern; and
- (b) provide a copy of the written record to the person who notified the concern.

#### Commencement Information

**12** Reg. 11 in force at 1.4.2011, see [reg. 1\(2\)](#)

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## Persons who may notify concerns **E+W**

12.—(1) A concern may be notified by—

- (a) a person who is receiving or has received services from a responsible body in relation to the services being received or having been received;
- (b) any person who is affected, or likely to be affected by the action, omission or decision of a responsible body the exercise of whose functions is the subject of the concern;
- (c) a non-officer member or a non-executive director of a responsible body;
- (d) a member of the staff of a responsible body; or
- (e) a partner in a responsible body.

(2) A concern may be notified by a person (in this regulation referred to as a representative) acting on behalf of a person mentioned in paragraph (1) who—

- (a) has died;
- (b) is a child;
- (c) is unable to notify the concern themselves because they lack capacity within the meaning of the Mental Capacity Act 2005(1); or
- (d) has requested the representative to act on their behalf.

(3) Where a representative notifies a concern on behalf of a child, the responsible body to which the concern has been notified—

- (a) must not consider the concern unless it is satisfied that there are reasonable grounds for the concern being notified by a representative instead of the child; and
- (b) if it is not so satisfied, must notify the representative in writing and state the reason for its decision.

(4) Where a concern is notified by a child, the responsible body must provide the child with such assistance as the child may reasonably require in order to pursue the concern.

(5) This paragraph applies where—

- (a) a representative notifies a concern on behalf of—
  - (i) a child; or
  - (ii) a person who lacks capacity within the meaning of the Mental Capacity Act 2005; and
- (b) the responsible body to which the concern has been notified is satisfied that there are reasonable grounds to conclude that the representative is not a suitable person to act as representative or is not pursuing the concern in the best interests of the person on whose behalf the concern has been notified.

(6) Where paragraph (5) applies—

- (a) save where sub-paragraph (6)(b) also applies, the concern may not be considered or further considered in accordance with arrangements made under these Regulations and the responsible body must notify the representative in writing and state the reason for the decision;
- (b) if the responsible body is satisfied that it is necessary to do so, it may continue to investigate any issue raised by the concern notified in accordance with paragraph (5), but in these circumstances it is under no obligation to provide a response in accordance with regulation 24, unless it considers that it is reasonable to do so.

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(1) 2005 c. 9.

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(7) Unless paragraph (8) applies, where a concern is notified by a member of the staff of the responsible body, the responsible body must, where its initial investigation determines that there has been moderate or severe harm or death, advise the patient to whom the concern relates, or his or her representative, of the notification of the concern and involve the patient, or his or her representative, in the investigation of the concern in accordance with Part 5.

(8) Where, in the opinion of the responsible body, it would not be in the interests of the patient to be informed of or involved in the investigation of the concern it must—

- (a) make a written record of this decision and the reasons for it; and
- (b) keep the decision under review during the investigation of concern.

(9) In these Regulations any reference to a person who notifies a concern or is seeking redress includes a reference to a representative of that person.

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**Commencement Information**

**I3** Reg. 12 in force at 1.4.2011, see [reg. 1\(2\)](#)

**Matters about which concerns may be notified** **E+W**

**13.** A concern may be notified in accordance with these Regulations to—

- (a) a Welsh NHS body about any matter connected with the exercise of its functions;
- (b) a primary care provider about the provision of services by it under a contract or arrangements with a Welsh NHS body;
- (c) an independent provider about the provision of services by it under arrangements with a Welsh NHS body; or
- (d) provided that the requirements set out in regulation 18 are met, a Local Health Board about any matter connected with the provision of services by a primary care provider under a contract or arrangements with the Local Health Board.

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**Commencement Information**

**I4** Reg. 13 in force at 1.4.2011, see [reg. 1\(2\)](#)

**Matters and concerns excluded from consideration under the arrangements** **E+W**

**14.—(1)** The following are matters and concerns which are excluded from the scope of the arrangements required under these Regulations—

- (a) a concern notified by a primary care provider which relates to the contract or arrangements under which it provides primary care services;
- (b) a concern notified by a member of staff of a responsible body about any matter relating to that person's contract of employment;
- (c) a concern which is being or has been investigated by the Public Services Ombudsman for Wales<sup>(2)</sup>;
- (d) a concern arising out of an alleged failure by a responsible body to comply with a request for information under the Freedom of Information Act 2000<sup>(3)</sup>;

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(2) A concern which is being or has been investigated in accordance with the relevant provisions of the Public Services Ombudsman (Wales) Act 2005. [2005 c. 10.](#)

(3) [2000 c. 36.](#)

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- (e) disciplinary proceedings which a responsible body is taking, or is proposing to take, as a result of, or arising from the investigation of, a concern notified in accordance with arrangements for dealing with concerns made under these Regulations;
- (f) a concern which is notified verbally, either in person, or on the telephone and is resolved to the satisfaction of the person who notified the concern not later than the next working day after the day on which the concern was notified;
- (g) a concern, the subject matter of which is the same as that of a concern that has previously been notified and resolved in accordance with sub-paragraph (f) unless the responsible body considers that it is reasonable to re-open the consideration of the concern and to undertake an investigation in accordance with Part 5;
- (h) a concern, the subject matter of which has previously been considered in accordance with arrangements made under—
  - (i) these Regulations; or
  - (ii) any relevant complaints procedure in relation to a complaint which was made before 1 April 2011;
- (i) a concern, the subject matter of which is, or becomes, the subject of civil proceedings; or
- (j) a concern the subject matter of which is, or becomes, a concern related to an individual patient treatment request.

(2) Subject to paragraph (3), where a concern or matter is a concern or matter specified in paragraph (1), and a responsible body makes a decision to that effect, the responsible body must as soon as reasonably practicable notify in writing the person who notified the concern or matter of its decision and the reason for its decision.

(3) Paragraph (2) does not apply to a matter specified in sub-paragraph (f) of paragraph (1).

(4) Where a matter specified in paragraph (1) is part of, or is connected with, another matter which is not so specified, nothing in this regulation prevents that other matter being considered as a concern notified in accordance with arrangements made under these Regulations.

#### Commencement Information

**15** Reg. 14 in force at 1.4.2011, see [reg. 1\(2\)](#)

#### Time limit for notification of concerns **E+W**

**15.**—(1) Subject to paragraph (2), a concern must be notified not later than twelve months after—

- (a) the date on which the matter which is the subject of the concern occurred; or
- (b) if later, the date on which the matter which is the subject of the concern came to the notice of the person notifying the concern.

(2) Subject to paragraph (3), the time limit in paragraph (1) will not apply if the responsible body is satisfied that—

- (a) the person notifying the concern had good reasons for not notifying the concern within that time limit; and
- (b) notwithstanding the delay, it is still possible to investigate the concern effectively and fairly.

(3) A concern may not be notified three or more years after the date on which the matter which is the subject of the concern occurred or, if later, three or more years from the date on which the matter which is the subject of the concern came to the notice of the patient.

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(4) In respect of paragraphs (1) and (2), a reference to the date on which the matter which is the subject of the concern came to the notice of the person notifying the concern is, where a patient has opted to have a representative act on his or her behalf in accordance with regulation 12(2)(d), a reference to the patient's date of knowledge and not to that of the representative who is notifying the concern on the patient's behalf.

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**Commencement Information**

**I6** Reg. 15 in force at 1.4.2011, see [reg. 1\(2\)](#)

**Withdrawal of concerns** **E+W**

**16.**—(1) A concern may be withdrawn at any time by the person who notified the concern and the withdrawal may be notified—

- (a) in writing;
- (b) electronically; or
- (c) verbally, either by telephone or in person.

(2) The responsible body must as soon as practicable write to the person who has withdrawn a concern verbally to confirm the verbal withdrawal of a concern.

(3) Where a concern has been withdrawn, a responsible body may nevertheless continue to investigate any issues raised by a concern in accordance with Part 5, should the responsible body consider that it is necessary to do so.

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**Commencement Information**

**I7** Reg. 16 in force at 1.4.2011, see [reg. 1\(2\)](#)

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- reg. 3(1) reg. 3 renumbered as reg. 3(1) by [S.I. 2023/281 reg. 2\(3\)\(a\)](#)
- reg. 3(2)(3) inserted by [S.I. 2023/281 reg. 2\(3\)\(b\)](#)
- reg. 14(1)(k) and word inserted by [S.I. 2023/281 reg. 2\(5\)\(e\)](#)
- reg. 22(7) inserted by [S.I. 2023/274 reg. 14\(5\)\(c\)](#)
- reg. 34(1)(ca)-(cc) inserted by [S.I. 2013/235 Sch. 2 para. 162\(1\)\(b\)](#)
- reg. 34(1)(ca)-(cc) inserted by [S.I. 2013/235 Sch. 2 para. 162\(2\)\(b\)](#)
- reg. 34(1)(ca) substituted by [S.I. 2022/634 reg. 52\(2\)](#)
- reg. 34(1)(ca) substituted by [S.I. 2022/634 reg. 53\(2\)](#) (Amendment to Welsh text)
- reg. 34(1)(cb) words substituted by [S.I. 2023/1071 reg. 48\(2\)](#) (Amendment to English text only)
- reg. 34(1)(cb) words substituted by [S.I. 2023/1071 reg. 49\(2\)](#) (Amendment to Welsh text only)