

Explanatory Memorandum
Mental Health (Hospital, Guardianship, Community Treatment and Consent to Treatment) (Wales) Regulations 2008

This Explanatory Memorandum has been prepared by the Mental Health, Vulnerable Groups and Offenders Branch of the Department for Health and Social Services and is laid before the National Assembly for Wales in accordance with Standing Order 24.1

- i. **Description** – These Regulations deal with the exercise of compulsory powers in respect of persons liable to be detained in hospital, subject to guardianship, or subject to a community treatment order, under the Mental Health Act 1983. They also provide for the prescribed forms used in the exercise of certain functions under the Act and these Regulations.
- ii. **Matters of special interest to the Subordinate Legislation Committee** – None
- iii. **Legislative Background** – The Welsh Ministers have the required powers under sections 9, 17F(2), 19(1), and (4), 19A, 32(1), (2) and (3), 57(1)(b), 58A(1)(b), 64(2), 64H(2), and 134(3A)(a) and (8) of the Mental Health Act 1983. This Statutory Instrument follows the negative procedure.
- iv. **Purpose and intended effect of legislation** – These Regulations set out the procedures to be adopted, and the prescribed forms to be used, in the exercise of functions set out in the Mental Health Act 1983. The Regulations also set out requirement for providing information to patients and nearest relatives following the exercise of certain functions, for example the transfer of patients subject to detention under the Mental Health Act 1983 between hospitals.

Part 6 of the Regulations provides a procedure for nearest relatives to empower another person to perform their functions under the Act, together with restrictions on the discharge of patients by the nearest relative.

Part 8 of the Regulations prescribes certain treatments (in addition to those specified in the Mental Health Act 1983) which require particular safeguards to be applied.

Part 9 of the Regulations contains provisions regarding the correspondence of patients who are detained in hospital.
- v. **Implementation** – It is intended these Regulations should come into force on 3 November 2008. Parallel legislation is also being made to come into force in England on the same day.
- vi. **Consultation** – These Regulations were subject to consultation between 5 November 2008 and 28 January 2008, as part of a wider consultation on six statutory instruments relating to the Mental Health Act 1983.

During this period workshops, study days and consultation events were held, and support was also given to Mind Cymru to run eleven workshops with service users and carers.

25 written responses to the consultation document were received, from a variety of stakeholders, including service user representative bodies, NHS organisations, local authorities and professional bodies.

- vii. **Regulatory Impact Assessment** – A full impact assessment has not been produced for this instrument as no significant impact on the private or voluntary sector is foreseen. Also a full Regulatory Impact Assessment for the Mental Health Act 2007 was prepared by the Department of Health (June 2007).