

HEALTH AND SOCIAL CARE ACT 2012

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – The Health Service in England

Functions relating to mental health matters

Section 43 - Independent mental health advocates

457. This section transfers from the Secretary of State to local authorities the duty to arrange independent mental health advocate (IMHA) services. IMHAs provide help and support for people subject to the 1983 Act.
458. Previously, section 130A of the 1983 Act placed a duty on the Secretary of State to make arrangements to enable qualifying patients to have access to an IMHA. Qualifying patients are defined in section 130C. They include most of those liable to be detained under the 1983 Act, all patients on supervised community treatment, all patients subject to guardianship and a few others who are being considered for certain specified treatments for a mental disorder.
459. The Secretary of State previously delegated the duty to commission IMHA services to PCTs, by means of directions under section 7 of the NHS Act. This section places the duty on local social services authorities instead. It inserts a new subsection into section 130C of the 1983 Act setting out the rules for deciding which local social services authority is responsible for which qualifying patients.
460. The section also amends Schedule 1 to the Local Authority Social Services Act 1970 to make local social services authorities' new role in respect of IMHAs a social services function for the purposes of that Act. In particular, that allows the Secretary of State to issue directions and statutory guidance to local social services authorities about the exercise of this function.
461. IMHA arrangements in Wales are a devolved matter, and in 2010 the National Assembly for Wales passed legislation amending the provisions in the 1983 Act which deal with IMHA services in Wales. In doing so, the Assembly also made some consequential amendments to the provisions as they apply in England. The changes made by this section are to sections 130A and 130C of the 1983 Act as amended by the Mental Health (Wales) Measure 2010, which received Royal Approval on 15 December 2010.