



Llywodraeth Cynulliad Cymru  
Welsh Assembly Government

# CONSULTATION RESPONSE

Welsh Assembly Government  
response to consultation on  
the draft *Mental Health Act 1983*  
*Code of Practice for Wales*

August 2008

# CONTENTS

<b>Background</b> .....	<b>3</b>
Background to the Mental Health Acts of 1983 and 2007 .....	3
Background to consultation.....	3
Developing the Code for consultation.....	3
<b>The consultation</b> .....	<b>4</b>
The consultation process .....	4
Responses received .....	5
Findings from consultation .....	5
<b>Response to consultation questions</b> .....	<b>6</b>
Structure, style and tone of the Code .....	6
Guiding principles .....	7
Welsh Assembly Government policy .....	7
Equality .....	7
Welsh language.....	8
Content of the Code.....	8
Fulfilling responsibilities and making decisions.....	9
Flowcharts and examples .....	10
Excess material .....	10
Commissioning services .....	11
<b>Specific chapters and comments</b> .....	<b>12</b>
Chapter 1: Guiding Principles.....	12
Chapter 2: Examination and admission prior to application for admission to hospital or to guardianship.....	12
Chapter 3: Conflicts of interest.....	12
Chapter 4: Places of safety and police powers .....	13
Chapter 5: Admission to hospital under Part 2 of the Act.....	14
Chapter 6: Guardianship.....	14
Chapter 7: Conveyance of patients .....	14
Chapter 8: Holding powers.....	14
Chapter 9: Receipt and scrutiny of documents .....	15
Chapter 10: Duties of hospital managers.....	15
Chapter 11: Treatment for mental disorder .....	15
Chapter 12: Appropriate medical treatment.....	16
Chapter 13: Medical treatment under the Act and second opinions.....	16
Chapter 14: Psychological treatments.....	16
Chapter 15: Supporting patients safely and therapeutically.....	17

Chapter 16: Personal searches .....	17
Chapter 17: Information for detained patients, those subject to supervised community treatment or guardianship, and nearest relatives.....	17
Chapter 18: Visiting patients in hospital.....	18
Chapter 19: The nearest relative .....	18
Chapter 20: Involvement of carers .....	18
Chapter 21: Independent mental health advocacy.....	19
Chapter 22: The Mental Health Review Tribunal .....	19
Chapter 23: Advance statements of wishes and feelings .....	20
Chapters 24 and 25: Leave of absence from hospital and Absence without leave.....	20
Chapter 26: Supervised community treatment.....	20
Chapter 27: The hospital manager's power of discharge (section 23) .....	21
Chapter 28: After-care .....	21
Chapter 29: Assessment, admission and discharge under Part 3 of the Act.....	21
Chapter 30: Children and young people under the age of 18 .....	21
Chapter 31: People with learning disabilities or autistic spectrum disorder.....	22
Chapter 32: Victims .....	22
Chapter 33: The Mental Capacity Act 2005 .....	22
<b>Further comments.....</b>	<b>23</b>
A Code of Practice for Wales .....	23
Accessibility of material.....	23
'Mental Health Act 1983 Reference Guide for Wales' .....	23
Review of the Code of Practice for Wales .....	24
<b>Annex A – List of respondents.....</b>	<b>25</b>
<b>Annex B – Consultation questions .....</b>	<b>26</b>

## **Background**

### **Background to the Mental Health Acts of 1983 and 2007**

- 1.1 The Mental Health Act 1983 sets out the legal framework underpinning the detention and treatment of patients under compulsion.
- 1.2 The Mental Health Act 2007 (the 2007 Act) gained Royal Assent on the 19th of July 2007 and amongst changes to other legislation, also made several important changes to the Mental Health Act 1983 (the 1983 Act).
- 1.3 Section 118(1) of the 1983 Act requires Welsh Ministers to prepare, and from time to time revise, a Code of Practice for the guidance of certain practitioners.

### **Background to consultation**

- 1.4 The Welsh Assembly Government, on behalf of the Welsh Ministers, undertook a programme of consultation on a draft Code of Practice for Wales (the draft Code). The consultation period ran from the 5<sup>th</sup> of November 2007 to the 28<sup>th</sup> of January 2008.
- 1.5 The Department of Health undertook a separate consultation exercise on the draft Code of Practice for England.
- 1.6 Alongside the consultation on the draft Code, there were concurrent consultation exercises which took place on:
  - The use of secondary legislation making powers in relation to the Mental Health Act 1983
  - The use of regulation-making powers under the Deprivation of Liberty Safeguards of the Mental Capacity Act 2005

### **Developing the Code for consultation**

- 1.7 Following introduction of the Mental Health Bill into Parliament in November 2006, officials in the Welsh Assembly Government began developing the policy and content for the draft Code. This took account of the changes to the Bill as it was considered by Parliament.
- 1.8 The draft policy was developed in consultation with members of the Welsh Assembly Government's Mental Health Act Implementation Reference Group. The Mental Health Act Implementation Reference Group is representative of the main mental health stakeholders in Wales.
- 1.9 In addition, particular draft chapters were developed in consultation with specific stakeholders groups. For example, the chapter titled 'People with learning disabilities and autistic spectrum disorder' was discussed with members of the Learning Disabilities Implementation Advisory Group.

## The consultation

### The consultation process

- 2.1 The consultation document asked for feedback on the draft Code of Practice for Wales.
- 2.2 Respondents were invited to consider specific questions about the draft Code and were also encouraged to make any other points relating to the draft Code they considered necessary.
- 2.3 The consultation period ran for just over twelve weeks, during which time we secured the active participation of people working in the fields of mental health and learning disability care, of service users and service user representative bodies, the third sector, the private sector, local government, police and the Mental Health Review Tribunal. In addition to encouraging written consultation responses, we also held workshops, study days and consultation days. We have continued this dialogue since the consultation closed.
- 2.4 We ran four events aimed at mental health and learning disabilities practitioners, to which a wide range of professionals from a number of sectors attended. We were delighted that a number of service users and service user representative organisations also attended these events. The events were held in:
  - Hilton Hotel, Newport (South Wales)
  - Halliwell Centre, Carmarthen
  - Angel Hotel, Cardiff
  - Talardy Hotel, St Asaph
- 2.5 We supported Mind Cymru to run eleven workshops with service users and carers, at which elements of this consultation were considered alongside the consultation on the secondary legislation for the 1983 Act. These events were held in:
  - Ty Llewellyn, a medium secure unit
  - Caswell Clinic, a medium secure unit
  - Llanarth Court Hospital (and Aderyn Ward), a medium and low secure unit
  - Whitchurch Hospital, an inpatient unit
  - Llwyn yr Groes, an inpatient unit
  - HMP Swansea, the healthcare unit
  - HMP Cardiff, the healthcare unit
  - Venue Cymru (Llandudno) – for service users and carers in North Wales
  - Media Resource Centre (Llandridnod Wells) – for service users and carers in Mid Wales
  - Ivy Bush Hotel (Carmarthen) – for service users and carers in West Wales
  - Castle Hotel (Merthyr Tydfil) – for service users and carers in South Wales
- 2.6 We also supported Learning Disability Wales to run four workshops with service users and carers, at which elements of this consultation were considered alongside the consultation on the secondary legislation for the Deprivation of Liberty Safeguards of the Mental Capacity Act 2005. These events were held in:

- Holiday Inn (Mold) – for service users and carers in Mid and North Wales
  - Court Colman Manor (Bridgend) – for service users and carers in Mid and South Wales
  - Maes Manor Hotel (Blackwood) – for service users and carers in South and East Wales
  - Cliff Hotel (Gwbert, Cardigan) – for service users and carers in West Wales
- 2.7 We estimate that officials in the Welsh Assembly Government met with around 1200 service users, carers, mental health professionals and others during the consultation period at a range of events and study days.
- 2.8 We promoted the consultation document via direct mailings to Implementation Leads within NHS Trusts, Local Health Boards and Local Social Services Authorities, the NHS Chief Executives Bulletin. The consultation documents were placed on the Welsh Assembly Government’s website.

### **Responses received**

- 2.9 Both Mind Cymru and Learning Disability Wales submitted consultation reports based on the events that they ran.
- 2.10 In addition we took responses and views from the people that we met during the consultation events and study days (as above estimated to be around 1200 people).
- 2.11 We also received just over 30 comprehensive and detailed responses from a variety of stakeholders, including service user representative bodies, NHS organisations, local authorities and professional bodies. Many of these written responses were informed by workshops organised by those bodies and organisations and as such reflected the views of a number of stakeholders. A list of these respondents is given at appendix A

### **Findings from consultation**

- 2.12 The Welsh Assembly Government’s response to this consultation and its proposals for the Mental Health Act 1983 Code of Practice for Wales are set out in the following pages.
- 2.13 This report does not address any consultation responses which were:
- comments on the 2007 Act itself, rather than the Code;
  - sought to re-introduce through the Code provisions which fell during the passage of the 2007 Act;
  - were out with the scope of the Code; or
  - referred to drafting errors that have been corrected in the copy editing process.

## Response to consultation questions

The consultation document to the draft Code asked ten specific questions (see Annex B).

### Structure, style and tone of the Code

- 3.1 The consultation to the draft Code asked for comments on the structure, style and tone of the draft Code?
- 3.2 A range of general views were received on this question, together with particular detailed points on certain paragraphs. A number of respondents considered that the draft was well structured and organised, with sections easily identified and in a logical sequence. Some felt that the document was easier to read and understand than other similar guidance.
- 3.3 However this was not universally accepted, with others commenting that the chapters should follow the “patient’s journey”; there was difficulty in finding material and a detailed index would be beneficial, as would the use of colour and clear cross referencing and further use of tables or bullet points.
- 3.4 There was concern that the tone did not necessarily reflect modern mental health services at times, and did not always place service users at the centre of decision making.
- 3.5 A number of respondents considered how the Code would be used, with many identifying it would be “dipped into” for particular practice issues rather than read “cover to cover”, and as such the drafting needed to take this into account.
- 3.6 There were concerns over some of the terminology adopted in the draft Code: there was an over-reliance on “should”, whereas “must” would be preferred given the status of the Code; inconsistency in “care plans” or “treatment plans” or similar terms; use of “patient” and “medical treatment” appearing to reflect the so-called medical model, not helped by referring to “doctors” rather than registered medical practitioners.
- 3.7 The consultation events echoed the findings from the written responses in this regard.

### *Response*

- 3.8 The Code of Practice for Wales has been substantially reviewed and restructured following consultation. The chapters have been placed into subdivisions, shown on the contents page, and the use of colour has been adopted to support this. Two appendices have been introduced, the first on key terms and phrases and the second as a summary of policies and procedures required by the Code. A detailed index has now been added.
- 3.9 The tone and focus of the Code has been reconsidered and various changes made throughout, including enhanced referencing to the guiding principles throughout.
- 3.10 In recognition of the way that Code may be used, clearer cross referencing within the individual chapters has been adopted, but the suggestion of signposting boxes or symbols has not been taken forward after careful consideration.

- 3.11 Whilst appreciating that respondents want to ensure that the Code is followed closely, the Code cannot allow what is not permitted by the legislation. As such the word “must” is only used where there is a legal requirement upon a practitioner or organisation. The Code has undergone an editing process to address inconsistency of language (such as around ‘care plans’).
- 3.12 The introduction to the Code makes clear that the term “patient” is adopted simply because this is the terminology of the 1983 Act; the Welsh Assembly Government fully accept that the term ‘service user’ is often used for people accessing services for care and treatment of their mental disorder. We recognise that some people also prefer the terms ‘survivor’, ‘client’, ‘consumer’ and ‘recipient’.

### **Guiding principles**

- 3.13 The consultation to the draft Code asked for comments on how the guiding principles in the draft Code were set out, and whether they could be improved. The responses to this question are set out in the next section, which considers the detailed responses to each individual draft chapter.

### **Welsh Assembly Government policy**

- 3.14 The consultation asked if the draft Code adequately reflected Welsh Assembly Government policy in relation to mental health and other related services.
- 3.15 The written responses to consultation indicated that in the main the draft Code did adequately reflect existing Welsh Assembly Government policy; some respondents considered that further work could be undertaken to link the Code with existing policy on Unified Assessment Process, the Care Programme Approach and risk assessment.

#### *Response*

- 3.16 The Code of Practice for Wales has improved references to Unified Assessment Process, the Care Programme Approach and risk assessment. Much of this is covered within a new chapter on care and treatment planning.

### **Equality**

- 3.17 The consultation asked if the draft Code identified all the areas in which equality is a major issue, and whether equality issues could be addressed more effectively.
- 3.18 Most respondents considered that equality was highlighted where necessary and was seen as a theme underpinning the entire Code, but some respondents also considered that further support for choice within services should be promoted as well as partnership working between service users, carers and service providers.

#### *Response*

- 3.19 During the review of the Code following consultation these matters have been further considered, and amendments made where possible.



## Welsh language

- 3.20 The consultation to the draft Code asked if issues relating to Welsh language had been adequately covered and if not, what could be done to improve this aspect of the Code.
- 3.21 This matter was not widely covered in consultation responses, but where responses were received most commentators considered that matters relating to Welsh language were clearly identified. Some respondents considered that access to services for people who wished to speak Welsh could be improved, but acknowledged this was not a matter for the Code.

### *Response*

- 3.22 The Code of Practice for Wales has been reviewed in light of the comments received on this matter.

## Content of the Code

- 3.23 The consultation asked if there were issues which should have been included in the draft Code and where this was the case respondents were asked to set out how these issues should be addressed.
- 3.24 Some respondents considered that the content of the draft Code was sufficient and no further guidance was necessary, and some that that the detail and depth of the guidance was favourable. The consultation events and the written responses to consultation were also very helpful in considering whether further guidance was needed on detailed points of the draft Code as well additional chapters or parts of chapters.
- 3.25 Where additional material was requested this included better referencing of other guidance (for example *'In Safe Hands'*); improved recognition of the specific needs of out-of-hours services and emergency duty teams; more information on alcohol and substance misuse and the impact on mental health; improved guidance on information sharing protocols (for example between police and other agencies to assist protection processes); guidance on renewal of detention; detailed extracts of the 1983 Act to be included; and finally it was not always clear who was responsible for preparing policies and this needed to be addressed.
- 3.26 There were very mixed views on whether or not further guidance was required on the assessment and treatment of personality disorders.
- 3.27 A number of respondents considered that the guidance on care and treatment planning could be improved, and that the most suitable way for this to be achieved was by way of a detailed chapter on this subject. We received a number of very helpful and clear drafting suggestions for such a chapter from a range of organisations and individuals, including service providers and service users.

### *Response*

- 3.28 The detailed comments on further requirements for specific chapters are covered below.
- 3.29 In light of the responses received the Code has been reviewed to take account of many of the requests for further information, which in some cases has resulted in

restructuring of the information to ensure increased prominence. It was apparent during, particularly, the consultation events that the structuring of the draft Code had meant that some information that was being requested was already included but perhaps not in the most obvious place.

- 3.30 Information on mental disorder, appropriate treatment, alcohol and substance misuse have been included and are located in the early chapters of the Code.
- 3.31 New chapters have been included on care and treatment planning, and also the functions of responsible clinicians and approved clinicians.

### **Fulfilling responsibilities and making decisions**

- 3.32 The consultation asked if the Code, as drafted, would optimally help professionals to fulfil their responsibilities and make decisions under the Mental Health Act. The consultation sought views on whether there were any changes necessary that would make it more useful to those using it.
- 3.33 Respondents considered that there was good recognition of the different professional disciplines working within mental health, and the different strengths and skills and knowledge that each brought. Respondents also considered that the Code would assist professionals to fulfil their responsibilities but there was also recognition that much that supports professionals fulfil their responsibilities and make decisions was out with the Code, and included multi-agency training and a service wide commitment to good practice. Partly in recognition of this a few respondents considered that greater reference should be made in the Code to workforce and training needs. Some respondents considered that the Code should give more guidance to professionals on involving patients in decision making and planning and delivering their care and treatment. A few respondents considered that the role of the care coordinator (under Care Programme Approach) was insufficiently highlighted.
- 3.34 During the consultation events a number of practitioners wanted more information on the functions of approved and responsible clinicians, and preferably in one chapter rather than located throughout the Code. Others considered that there should be a chapter on key roles towards the front of the Code.

### *Response*

- 3.35 Although the majority of respondents considered that the Code would help professionals fulfil their responsibilities under the 1983 Act, we were conscious that a number of suggested improvements had also been made that could be usefully adopted within the Code of Practice for Wales. A number of small drafting improvements have been made, partly to improve cross referencing and partly to ensure that training and support is clearly included where necessary. As previously noted a new chapter on functions of approved and responsible clinicians has now been included. The new chapter on care planning, together with improved references throughout the Code, as well as restructuring of the guiding principles chapter aims to reinforce the involvement of patients in assessment, care, treatment and service planning.
- 3.36 There is now an appendix on key terms and phrases rather than a separate chapter as was suggested.

## Flowcharts and examples

- 3.37 The consultation asked if the Code should include flowcharts of processes or examples.
- 3.38 Of those respondents who commented on this, a number felt that flowcharts would be helpful and some cited particular areas where this may be the case – for example, conflicts of interest, the role of the AMHP. Others considered that the Code was not the place for flowcharts and if these were required they should be either developed locally or issued in other guidance materials.
- 3.39 There were similar views expressed in relation to examples or case vignettes – some considered it would be helpful to set out throughout the Code how the guiding principles should be used for particular decisions. Others considered that examples were generally insufficiently detailed to be helpful, could be open to misinterpretation, or were simply unnecessary.
- 3.40 The consultation events echoed the findings from the written responses in this regard.

### *Response*

- 3.41 Flowcharts have not been included in the Code of Practice for Wales, but will, where appropriate, be included in the forthcoming *Mental Health Act 1983 Reference Guide for Wales*. Certain information within the Code has now been set out in tabular form for ease of reading. After careful consideration it has been decided that examples would not provide detailed guidance and information for practitioners, and on balance have therefore not been included.

## Excess material

- 3.42 The consultation asked if there was material in the draft Code that could be cut down, left out or more appropriately and usefully be covered in other guidance.
- 3.43 From the written responses to consultation there were a range of views on whether or not content could be removed. As can be seen above a number consider that the content is about right, or more needed to be added. Others considered that certain guidance was important and should be retained, but perhaps not in the Code itself and alternative formats for information – such as in the forthcoming *Mental Health Act 1983 Reference Guide for Wales*.
- 3.44 There were concerns from some respondents about the footnotes to case law – firstly that new cases could provide further precedent and thus rendering those references obsolete, and secondly that there was not a consistent approach to referencing case law.
- 3.45 There was some concern over the size of the document, and whether this would render it impractical for daily use, but other respondents reflected that it was important to ensure the Code was comprehensive and meaningful for practitioners and others.
- 3.46 Certain respondents noted that the Code was repetitive in places, had inconsistency in style, and sometimes explained issues in an overly complex manner.

*Response*

- 3.47 The editing process that the Code has now gone through has sought to remove repetition, enhance cross referencing and improve readability. The legal citations in the footnotes have been removed.

**Commissioning services**

- 3.48 Finally the consultation asked if there were any issues relating to those responsible for commissioning mental health services or managing the provision of services that were not adequately covered in the draft Code.
- 3.49 Whilst some respondents referred to this question in their consultation responses, most did not seek to make amendments in the Code to address their points.

*Response*

- 3.50 These points have therefore been taken forward to inform other work of the Welsh Assembly Government, including guidance for commissioning of the new independent mental health advocacy service.

## Specific chapters and comments

A number of responses, both written and from the consultation events also made specific points regarding certain chapters. These are detailed below.

### Chapter 1: Guiding Principles

- 4.1 At all of the consultation events this chapter was considered in detail, and most of the written responses also included comments on this chapter. Overall there was firm support for the inclusion of guiding principles and the importance attached to them.
- 4.2 It was apparent from a number of respondents that they believed there were four guiding principles in the draft Code (namely empowerment, equity, effectiveness and efficiency) whereas these were in fact headings under which the principles were detailed.
- 4.3 Some respondents were concerned that as the chapter was structured there was repetition, and this caused confusion rather than reinforcing the principles. There was also a variety of specific suggestions for changes to the wording of the chapter, and the principles within it, as well as suggestions for further principles.

#### *Response*

- 4.4 We have revised this chapter in light of the comments, including restructuring the chapter to improve readability and make the principles clearer and more accessible. Some of this has also been achieved through formatting of the final Code.

### Chapter 2: Examination and admission prior to application for admission to hospital or to guardianship

- 4.5 A number of written responses were received making direct comments on this chapter. There were a large number of comments and suggestions on matters of detail for this chapter, although several of the points were made by a number of respondents. Some respondents sought additional guidance on the meaning of specific criteria within the Act, as well as suggesting improvements to the way that certain criteria were explained in this chapter. From professional and representative bodies there were a number of helpful responses relating to current practice of approved social workers which needed to be considered by Local Social Services Authorities for approved mental health professionals; some of these responses identified specific paragraphs that required further attention.

#### *Response*

- 4.6 As a result of the very helpful and detailed comments made on this chapter we have revised a number of specific paragraphs. As a result of further editing we believe the readability of certain paragraphs has also improved. We have provided guidance on the definition of mental disorder, dependence on alcohol or drugs and also learning disabilities and autistic spectrum disorder.

### Chapter 3: Conflicts of interest

- 4.7 Of the written responses received on this chapter, a number of which cross referenced their response to this Code chapter with the draft Regulations concerning conflicts of

interest. Certain respondents wanted the Regulations to cover areas such as supervised community treatment (SCT), renewal of detention, court orders, etc, and then the chapter to be redrafted to reflect this. Some respondents considered that the chapter was overly discursive and may benefit from an alternative presentation or inclusion of flow charts. The independence of decision making was considered to be insufficiently emphasised.

- 4.8 Further guidance was requested by some on what is meant by “team” in respect of potential conflicts for professional reasons, whilst others considered – particularly during discussions in consultation events – that to be more prescriptive could result in significant workforce difficulties.

*Response*

- 4.9 The chapter has been restructured to help provide emphasis on decision making processes, and to follow the Regulations. Section 12A of the 1983 Act provides that the Regulations may make provision in respect of applications by approved mental health professionals and recommendations made by registered medical practitioners. Therefore although not covered by the Regulations, the guidance on SCT and potential conflicts of interest in this chapter have been retained. The chapter does not aim to repeat the content of the Regulations but to provide additional guidance and clarification.

**Chapter 4: Places of safety and police powers**

- 4.10 We received written responses on this chapter, and in addition it was discussed at a number of consultation events, including a study day with representatives of the four police forces in Wales. Respondents gave a variety of detailed comments and suggestions on specific points. Certain responses wished to see particular arrangements in respect of children and young people or those with autistic spectrum disorder; others wanted guidance on monitoring and requested a prescribed form for use by police officers in respect of section 136. Particular suggestions were made in respect to the draft guidance on inter-agency policies. Certain respondents called for the Code to specifically exclude the use of police cells as places of safety, others considered that assessment centres should be developed across Wales for section 136 assessments. There were calls for prescriptive guidance on police officer training and guidance, as well as national standards for places of safety.

*Response*

- 4.11 We have revised this chapter in light of the comments received; the Code cannot however give detailed advice to the police on matters of their training and guidance because the legislation that underpins it (namely section 118 of the 1983 Act) does not enable it to do so. However, as with the draft Code, the Code of Practice for Wales makes clear that police and other agencies should be parties to locally agreed policies regarding section 135 and section 136. There are no powers within the 1983 Act to prescribe a form for the recording of the use of section 136, however we have spoken with all police forces in Wales and are aware that all have local forms which aid record keeping and local monitoring.
- 4.12 Section 135(6) sets out what is meant by a place of safety, and this includes a police station. The Code of Practice for Wales therefore does not limit this further, but has revised the guidance on use of police cells in light of the consultation responses received.

## **Chapter 5: Admission to hospital under Part 2 of the Act**

- 4.13 Certain respondents considered that the guidance on when to use section 2 rather than section 3 (and vice versa) was legally incorrect and should be changed. Other responses suggested specific drafting improvements.

### *Response*

- 4.14 Certain revisions have been made to the chapter, but in substance the guidance remains as for consultation.

## **Chapter 6: Guardianship**

- 4.15 From the written responses received directly commenting on this chapter certain amendments were requested to provide clarification on guardianship and the forthcoming Deprivation of Liberty Safeguards. There were also calls for greater inclusion of the principles of service user involvement within this chapter.

### *Response*

- 4.16 In light of the responses received, revisions to this chapter have been made including further guidance on the relationship with the Mental Capacity Act 2005.

## **Chapter 7: Conveyance of patients**

- 4.17 This chapter was discussed at some of the consultation events, and written responses have also been received. Whilst there were a number of detailed comments on specific paragraphs within this chapter, there were also more general comments regarding the role of the police and ambulance services in conveying patients. Some respondents were concerned that the police were involved in conveyance; others felt that conveyance should only be by the police or ambulance service. Certain respondents felt that a service user should never be conveyed by car, in line with their own local policies, and the Code should set this out.

### *Response*

- 4.18 We have revised the chapter in light of the comments received, making a variety of specific changes including adding in details of conveying to or from court. We do not believe that the Code can or should give prescriptive guidance about the role of the police or ambulance service, but the guidance does set out that such matters should be discussed and agreed at a local level.

## **Chapter 8: Holding powers**

- 4.19 Some responses received were concerned with the language used in the chapter, citing unnecessary complexity, difficulty in understanding what was meant, or missing words. There were mixed views on the meaning of an informal patient for the purposes of the draft Code – some considered this helpful, others did not agree with the meaning as set out. Certain responses indicated including information which did not accord with the legislation.

### *Response*

- 4.20 The chapter has been restructured, and certain elements redrafted. The helpful comments regarding language and intention have directly influenced these changes.

Although certain responses were legally incorrect, the intent behind the requirements has been considered and adopted where suitable – for example, guidance on ensuring that patients receive information about the use and effect of section 5 has now been included.

## **Chapter 9: Receipt and scrutiny of documents**

4.21 In addition to a small number of written responses on this chapter we have also had the benefit of this chapter being considered at certain consultation events and discussions being held with members of the Mental Health Act Administrators Forum in Wales.

### *Response*

4.22 The responses received have aided the revisions made to this chapter. Some respondents wished the Code to provide for rectification of prescribed forms for supervised community treatment – these suggestions have not been adopted as the Code cannot allow what is not permitted by the legislation.

## **Chapter 10: Duties of hospital managers**

4.23 Several of the written responses as well as discussions with hospital managers and others during consultation events have revealed confusion about the meaning of “hospital managers”, and some respondents felt that the revised guidance did not assist with understanding and was not sufficiently clear when hospital managers could or could not delegate their functions. The guidance in the draft chapter on the appointment of the responsible clinician generated a number of specific and detailed comments, mainly around the choice of professionals or the examples used.

### *Response*

4.24 We have revised, and in certain places restructured, this chapter in light of the comments received. We have attempted to set out more clearly the arrangements for the exercise of the functions of the hospitals, including by way of a scheme of delegation. The guidance in respect of responsible clinicians has been revised in light of the helpful comments received, but in addition a new chapter on the functions of responsible clinicians and approved clinicians has been included in the Code of Practice for Wales.

## **Chapter 11: Treatment for mental disorder**

4.25 We received detailed written responses on this chapter were received, and a number of views were expressed during the consultation events. In addition to specific drafting suggestions, certain respondents were keen that Care Programme Approach guidance was more clearly linked to treatment. Further clarification was sought by certain respondents in respect of treatment for community patients (i.e. those discharged onto supervised community treatment).

### *Response*

4.26 The chapters on treatment for mental disorder, and on medical treatment under the Act and second opinions, have been substantially restructured and revised in order to make the guidance easier to follow. The material is now divided into three chapters: the first (chapter 16) deals with capacity, competence and consent and covers guidance for people under the age of 16 years, as well as those aged 16 or over.



Much of this information was originally in draft chapter 30 which dealt with children and young people. The second chapter (chapter 17) provides guidance on the provisions in the Act which confer, or limit, the authority to treat patients. The final chapter (chapter 18) gives guidance on second opinions under the Act.

- 4.27 A new chapter has been included in the Code on care and treatment planning (see below), which is designed to complement existing guidance on the Unified Assessment Process and the Care Programme Approach.

### **Chapter 12: Appropriate medical treatment**

- 4.28 We received some written responses on this chapter, although there were a number of comments also received on this during the consultation events. Much of the debate actually centred on the amendments to the 1983 Act made by the Mental Health Act 2007 in this area, rather than the content of the draft Code. Some respondents suggested specific drafting amendments, and others considered that elements of the draft were difficult to understand.

#### *Response*

- 4.29 Revisions to the chapter have been made in light of the comments received. The location of the chapter in the Code has also been revised, to make clear it is a matter which is part of the consideration as to whether or not the Act should be used.

### **Chapter 13: Medical treatment under the Act and second opinions**

- 4.30 As with chapter 11 above a number of detailed views were expressed during the consultation events, and some of these were repeated in the written responses received. There were concerns expressed that the complexity of the chapter limited its effectiveness, and that strong editing and revision was necessary. Some respondents expressed concerns about the use of electro-convulsive therapy (ECT) generally, rather than within the specific context of the Act or regarding the guidance in the draft Code. The quick summary boxes used in this chapter were welcomed.

#### *Response*

- 4.31 As set out above this chapter (together with other chapters relating to medical treatment under the Act) has been significantly restructured and revised. This is a complex subject area, but it is hoped that the revisions made to the final text now aid understanding.

### **Chapter 14: Psychological treatments**

- 4.32 Around six written responses were received on this chapter, and a few comments were received during the consultation responses. Overall there were mixed views on the value of this chapter – some were pleased to see its inclusion, as they considered that it demonstrated that such interventions were an important aspect of care, others considered that it could be condensed or even removed as it gave little practical guidance and potentially offered a one-sided or even critical view of care. There were also concerns that the chapter failed to deliver on expected guidance in the area of psychological interventions, but again others held a counter view that it was unrealistic for the Code to provide this.

### *Response*

- 4.33 There is no longer a chapter on psychological treatments; guidance on medical treatment and also care planning emphasise the need for psychological therapies to be considered as part of the treatment plan. Other elements of the draft chapter have been incorporated, where relevant, into other chapters of the Code.

### **Chapter 15: Supporting patients safely and therapeutically**

- 4.34 A number of written responses were received directly commenting on this chapter and various elements of the chapter were also discussed during consultation events. There was a clear concern that the title of the chapter was unclear, possibly euphemistic and potentially misleading. There were detailed and specific comments on a number of particular paragraphs within the chapter, together with more generic comments on particular areas of guidance (for example, on seclusion). The guidance on meaningful activities, comprehensive risk assessments, and post-incident review were welcomed. The language and tone of the chapter, particularly its reiteration of elements of the guiding principles in chapter 1 was welcomed by some, but others considered that this did not go far enough.

### *Response*

- 4.35 We have revised the chapter in light of the comments received. The title of the chapter has been amended. The guidance on seclusion has been updated. Some of the detailed amendments requested – for example around minimum levels of training for staff – were not considered to be matters for the Code of Practice for Wales, rather these were issues for national guidance and local policy.

### **Chapter 16: Personal searches**

- 4.36 The written responses received on this chapter were mainly concerned with specific drafting comments and suggestions.

### *Response*

- 4.37 This chapter has been revised to take account of the helpful and considered views expressed.

### **Chapter 17: Information for detained patients, those subject to supervised community treatment or guardianship, and nearest relatives**

- 4.38 This chapter was the subject of extensive discussions during the consultation events, as well as being considered in particular forums outside of the main consultation; written responses were also received. One respondent considered that this chapter should be redrafted to provide guidance on informing a wider range of people with the patient's consent, for example parents and carers who are not nearest relatives. Another respondent considered that the Code should require service users and/or their representatives to be provided with information on Protection of Vulnerable Adults (PoVA) and appropriate redress. Respondents also considered the need for children and young people to be provided with age-appropriate information. A number of respondents suggested detailed amendments relating to drafting. Finally there was a concern that the language of this chapter failed to reflect the active nature of information and rights.

### *Response*

- 4.39 We have revised this chapter in light of comments received, but continue to ensure that this chapter is directly aimed at providing information to service users subject to the provisions of the 1983 Act and their nearest relatives. The guidance in the Code of Practice for Wales emphasises the importance of ensuring a range of information is made available to service users. The title of the chapter has been amended in light of comments made during the stakeholder events.

### **Chapter 18: Visiting patients in hospital**

- 4.40 Written responses to this chapter were received, and it was also considered during some of the consultation events. The importance of patients being able to receive visitors during any inpatient treatment, as well as ensuring that visiting facilities are warm and welcoming has been strongly expressed during consultation. Respondents also indicated that the structure of the chapter could be improved and at certain points the wording could be clearer and stronger. Specific drafting amendments were suggested at various points, including ensuring that visiting by Mental Health Act Commissioners and legal representatives were supported.

### *Response*

- 4.41 Following consultation this chapter has been restructured and revised at certain points. The emphasis on the right to be visited, subject to certain exceptions, has been reiterated. Confirmation that visiting by legal representatives and others should be enabled has been included in the Code of Practice for Wales.

### **Chapter 19: The nearest relative**

- 4.42 During the consultation events with service users and carers this chapter was considered, and in addition seven written responses were received directly commenting on this draft chapter. Several respondents commented on the guidance regarding obtaining legal advice, stating that it should be more optional than indicated in the draft. There were also calls for the chapter to set out the circumstances when applications to the county court should be considered by approved mental health professionals. A number of respondents sought guidance on what the county court would consider by “otherwise not a suitable person”. Some respondents indicated, erroneously, that the draft Code indicated that a patient could choose their nearest relative and wanted more guidance on this.

### *Response*

- 4.43 We have revised this chapter in light of the comments received, particularly in respect of legal advice. Further guidance on “otherwise not a suitable person” has not been given, as this will be a matter for the court to decide in respect of the individual circumstances of the patient and the nearest relative.

### **Chapter 20: Involvement of carers**

- 4.44 Overall the inclusion of a chapter on the involvement of carers was welcomed during the consultation events, this was supported by the written responses on this chapter that have been received. There was a concern from one respondent that by having a separate chapter on the involvement of carers it could appear that such matters were considered to be an “add on”, and instead the importance of carer involvement should run through the Code. Together with suggested wording and amendments for the

chapter, several respondents considered that stronger messages regarding the involvement of carers need to be made.

*Response*

- 4.45 Although this chapter has been reviewed in light of the helpful comments received, the Code of Practice for Wales as a whole has been reviewed to ensure that the importance of the involvement of carers is included throughout.

**Chapter 21: Independent mental health advocacy**

- 4.46 A number of written responses were received on this particular chapter, which provides guidance on the new statutory advocacy provisions under the 1983 Act. This chapter and the provisions were debated at most of the consultation events. Some respondents were concerned with implementation issues of the independent mental health advocacy (IMHA) service, and others with seeking a change to those patients who would be considered 'qualifying patients' for the IMHA service. Specific comments were made regarding IMHA policies, meeting patients in private, referral protocols, identifying the responsible person, and particular phrases.

*Response*

- 4.47 The Welsh Assembly Government has issued guidance for the commissioning of IMHA services, the drafting of which took account of a number of the issues raised during the consultation on this chapter of the draft Code as well as the secondary legislation prepared on the IMHA provisions. A number of the suggested changes for the chapter were not included as these are more suitable for local engagement protocols for services, and this has been emphasised in the commissioning guidance. Certain key messages regarding the provision of the service have however been included in the revision of this chapter. In light of comments received this chapter now includes further clarity on the responsible person as well as the involvement of interpreters. References to the involvement and engagement of an IMHA have also been made throughout the Code of Practice for Wales.

**Chapter 22: The Mental Health Review Tribunal**

- 4.48 In addition to particular discussion of this chapter at the annual meeting of members of the Mental Health Review Tribunal (Wales), this chapter was also considered at a number of consultation events. We have also received seven written responses on this chapter.
- 4.49 A number of respondents felt that further guidance should be given based on the *Mental Health Review Tribunal Rules 1983*, as well as commenting on how the Mental Health Review Tribunal should conduct hearings and take evidence. Several respondents made specific drafting suggestions.

*Response*

- 4.50 The Rules for the Mental Health Review Tribunal for Wales are currently being reviewed, and a number of the issues raised during consultation on this chapter of the Code have been considered as part of that review. The chapter has also been restructured and in places redrafted to take account of the comments made.

## **Chapter 23: Advance statements of wishes and feelings**

- 4.51 Of the written responses to this chapter, one of which sought to adopt the system within Scotland for advance decisions. A second welcomed the chapter, whilst suggesting various drafting amendments, and a third sought to clarify the position of advance decisions in respect of patients detained under the 1983 Act.

### *Response*

- 4.52 The chapter has been reviewed and now includes further clarification on detained patients and advance decisions. Given that the Code cannot allow what is not permitted by the legislation, the suggestions regarding adopting the system for advance decisions in Scotland have not been taken forward. This chapter now sits within the guidance for care and treatment in hospital, immediately before the three chapters on treatment.

## **Chapters 24 and 25: Leave of absence from hospital and Absence without leave**

- 4.53 Both of these chapters were considered during some of the consultation events. The written responses mainly sought tightening of the drafting to avoid confusion.

### *Response*

- 4.54 These amendments have been accepted.

## **Chapter 26: Supervised community treatment**

- 4.55 Over a third of the written responses received commented upon this chapter, and it was considered extensively during the consultation events. Given that supervised community treatment (SCT) is a new legal provision within the 1983 Act it was perhaps unsurprising that a number of consultation responses were seeking further guidance or clarification on how SCT is meant to work, or raising issues relating to implementation and funding of community services. Some respondents also misunderstood the new provisions, or revisited concerns expressed during the passage of the Mental Health Bill.

- 4.56 On the draft chapter, respondents sought further guidance on the practicalities of operating SCT, and also sought to ensure that concerns of carers would be considered and that they would be included in consultation about the use of SCT. Some sought further guidance on the type of conditions that may be made in the community treatment order (CTO), whereas others sought additional safeguards regarding varying or suspending conditions (over that provided for in the 1983 Act). In respect of the draft guidance on recall a few respondents were concerned that the information was imprecise and confusing. Some respondents called for greater reference to the involvement of IMHAs during the making of a CTO, or the varying/suspending of conditions, and also during recall or revocation. A number of respondents, particularly during the consultation exercises, emphasised the importance of robust and inclusive care planning for SCT.

### *Response*

- 4.57 This chapter has been significantly restructured and reviewed in light of the helpful comments made during consultation. Some of the concerns raised regarding SCT were not matters for the Code, but will be instead addressed over the coming months through the implementation programme for the Mental Health Act 2007. Some of the

misunderstandings regarding the provisions have been explained in the training materials on the Mental Health Act 2007 issued by the Welsh Assembly Government.

### **Chapter 27: The hospital manager's power of discharge (section 23)**

4.58 In addition to the written responses this chapter was also considered during consultation events as well as the Mental Health Act Administrators Forum in Wales. Specific drafting amendments have been suggested, as well as one particular respondent seeking training for hospital managers on a range of issues related to the 1983 Act. A respondent also sought to change the provisions regarding legal aid for hearings before the hospital managers during consultation.

#### *Response*

4.59 Whilst emphasising the importance of ensuring that hospital managers are properly informed, experienced and trained in order to conduct their functions under the Act, the Code cannot be prescriptive about the nature, frequency and content of such training. Such matters should be considered at a local level, and be based on the individual need of the appointed hospital manager. Legal aid is not a matter which is devolved to the Welsh Ministers. Guidance on contested and uncontested hearings has been retained, following specific requests regarding its inclusion.

### **Chapter 28: After-care**

4.60 Of the written responses received commenting directly on this chapter there was a wide variety of comments and suggestions on points of detail were received. Some considered this chapter needed further restructuring to aid understanding, whilst others sought greater clarity on certain points (for example, ending after-care services).

#### *Response*

4.61 We have revised and restructured this chapter in light of comments, and have removed much of the guidance on care planning into a stand alone chapter (see below). Whilst we do not believe that the Code can be prescriptive over the circumstances in which section 117 after-care should end, we have provide a little further guidance for the purposes of clarity.

### **Chapter 29: Assessment, admission and discharge under Part 3 of the Act**

4.62 A number of written responses were received on this chapter, but most of the consultation responses occurred during the events held – particularly those which took place with service users in medium secure units and in prisons. Respondents made a variety of comments and suggestions on the detail of the chapter, with a number of points raised by several respondents.

#### *Response*

4.63 The detail of this chapter has been reviewed in response to concerns raised.

### **Chapter 30: Children and young people under the age of 18**

4.64 Some written responses were received in addition to comments made during consultation events. Whilst a number of respondents were extremely supportive of the tone and intent of the chapter, some found the amount of information and the structure rather overwhelming. One respondent considered that a flowchart for decision making

could be helpfully included, but this view was not sustained by a number of respondents during the consultation exercises. There was some concern at the use of the term “child” rather than “young person”, and a number of respondents commented on specific details, including indicating areas of apparent confusion within the drafting.

*Response*

- 4.65 We have reordered and partly rewritten this chapter, in light of the comments received, as well as removing a substantial part of the guidance on competence, capacity and treatment and placing this into the treatment chapters (see above). Further clarity has been given to the terminology used in the chapter. The use of flowcharts for this chapter has not been adopted, in line with the general approach to this for the Code (see above).

**Chapter 31: People with learning disabilities or autistic spectrum disorder**

- 4.66 This chapter was discussed at some of the consultation events (particularly those organised and run by Learning Disability Wales). There was overall support for the inclusion of such a chapter which was generally seen as helpful, well structured and informative. There were detailed drafting amendments suggested, particularly in respect of the section concerning autistic spectrum disorders. There were also a number of very helpful comments on supporting people with learning disabilities.

*Response*

- 4.67 We are very grateful to a number of expert commentators for the suggestions provided on a range of professional and technical issues in this chapter which we have revised in light of their comments. We are also grateful for the time and thoughtfulness which a number of individuals gave to us during the drafting of both the initial draft chapter and in considering the amendments which were suggested during consultation.

**Chapter 32: Victims**

- 4.68 A limited number of written responses to this draft chapter were received, only two of which supported its continued inclusion. A further respondent sought specific guidance in relation to the Mental Health Review Tribunal and victims.

*Response*

- 4.69 After careful consideration this chapter has been removed (on the basis that it provides guidance in relation to the provisions of the Domestic Violence, Crime and Victims Act 2004 rather than the Mental Health Act 1983). Instead further guidance on this matter will be issued by the Welsh Assembly Government in due course. This will take account of the helpful comments received during consultation on the draft chapter.

**Chapter 33: The Mental Capacity Act 2005**

- 4.70 Respondents sought to re-title the chapter to avoid confusion, further guidance on electro-convulsive therapy, and the interface with independent mental capacity advocates (IMCAs), as well as welcoming the draft content and the chapter itself.

*Response*

- 4.71 This chapter has been reviewed and re-titled in light of the comments made, and it has also been relocated within the order of the Code.

## Further comments

The Welsh Assembly Government welcomed comments and views on the draft Code over and above the specific consultation questions or points on particular chapters.

### A Code of Practice for Wales

- 5.1 To date there have been three Codes of Practice to the Mental Health Act 1983, all prepared prior to devolution and covering both England and Wales. This Code is therefore the first Code of Practice applicable to Wales only, and perhaps unsurprisingly this point was considered by a number of respondents to consultation and in the consultation events.
- 5.2 One written respondent was significantly against such a separate Code for Wales, and cited a lack of consistency in chapter and paragraph numbering between the draft Codes as an example of the dangers of separate Codes.
- 5.3 Whilst there were other less strongly expressed concerns about separate Codes (particularly for services working on the border of Wales with England), overall there was considerable warmth and support for a Code of Practice for Wales. A number of respondents considered that the draft Code was well written and placed service users at the heart of the document.

### Accessibility of material

- 5.4 During the consultation events, notably those which took place with service users and carers, a number of concerns were raised about the accessibility of the Code of Practice for Wales for service users and those that support them. Some respondents suggested certain chapters of the Code should be extracted into stand alone booklets, whereas others felt that “easy read” versions of the Code should be produced, or summaries.

#### *Response*

- 5.5 Having considered these views carefully, the Welsh Assembly Government will be producing a range of booklets to guide particular groups of people into the Code. These will be tailored to the intended audience, and as such different emphases will be made within the booklets to different aspects of the Code.
- 5.6 The first booklet (*Peace of Mind: A Guide to the Code of Practice for Wales for Service Users*) will be available in the autumn of 2008. Three further booklets - one for nearest relatives, another for friends, families and carers, and also one for advice workers - are planned for publication towards the end of 2008/early 2009. These booklets will be available in English and in Welsh.

### ‘Mental Health Act 1983 Reference Guide for Wales’

- 5.7 During the consultation period we were made aware of the support for the current *Mental Health Act 1983 Memorandum on Parts 1 to VI, VIII and X*<sup>1</sup>.

---

<sup>1</sup> Department of Health and Welsh Office (1998)



*Response*

- 5.8 In light of this and comments made in written responses for technical advice and guidance on the 1983 Act, the Welsh Assembly Government will shortly be producing and publishing a *Mental Health Act 1983 Reference Guide for Wales*.

**Review of the Code of Practice for Wales**

- 5.9 Many respondents to consultation wanted to ensure that the Code of Practice for Wales remained up to date in its guidance and meaningful to practitioners and others, and some considered the best way this could be achieved would be to build in an automatic review date.

*Response*

- 5.10 Section 118(1) of the 1983 Act provides that the Welsh Ministers may “*from time to time revise*” the Code of Practice. The Welsh Assembly Government will therefore keep the currency of the Code of Practice for Wales under review, so that Welsh Ministers may, if necessary, revise the Code to ensure that it continues to meet the requirements of section 118 of the 1983 Act.
-

## Annex A – List of respondents

Applied Psychologists in Healthcare Special Advisory Group (APHSAG)  
Association of Chief Police Officers in Wales (WACPO)  
BASW-Cymru  
Bridgend County Borough Mental Health Voluntary Sector Network  
Bridgend, Rhondda Cynon Taff & Merthyr Tydfil EDT  
British Psychological Society  
Caerphilly County Borough Council  
Cardiff & Vale NHS Trust  
Cardiff Local Authority  
City & County of Swansea  
College of Occupational Therapists  
CSSIW  
ESSA Cymru  
Gofal Cymru  
Hafal  
John Howard, Carmarthenshire Local Authority  
Mencap Cymru  
Mental Health Act Commission  
Mental Health Managers of Powys Local Health Board  
Mind Cymru  
National Autistic Society Cymru  
North East Wales NHS Trust, Wrexham Local Authority, Flintshire Local Authority, Wrexham Local Health Board, and Flintshire Local Health Board  
Powys Teaching Local Health Board  
Rhondda Cynon Taff ASW (daytime) service  
Royal College of Nursing  
Royal College of Psychiatry (Faculty of Psychiatry of Disability - Welsh Division)  
Dr Pauline Ruth, Gwent Healthcare NHS Trust  
South Wales Mental Health Advocacy (SWMHA)  
Swansea Local Health Board  
Swansea NHS Trust  
Thomas Rigby (on behalf of Monmouthshire Mental Health Service User Network)

## **Annex B – Consultation questions**

- (a) Do you have any comments on the structure, style and tone of the draft Code?
- (b) Do you have any comments about how the guiding principles in the draft Code are set out? Could they be improved?
- (c) Do you feel that the Code adequately reflects Welsh Assembly Government policy in relation to mental health and other related services?
- (d) Has the Code adequately identified all the areas in which equality is a major issue? Do you have any suggestions about how it could address equality issues more effectively?
- (e) Are issues relating to the Welsh Language adequately covered? If not, what needs to be done to improve this aspect of the Code?
- (f) Are there any issues that the draft Code ought to cover, but doesn't? If so, what is missing and how should it be addressed in the Code?
- (g) Will the Code, as drafted, optimally help professionals to fulfil their responsibilities and make decisions under the Mental Health Act? Are there any changes that you would recommend that would make it more useful to those using it?
- (h) Do you feel that the Code should include flowcharts of processes or examples? If so, how and where should these be used?
- (i) Is there material in the draft Code that could be cut down, left out or more appropriately and usefully be covered in other guidance?
- (j) Are there any issues relating to those responsible for commissioning mental health services or managing the provision of services that are not adequately covered?