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## Consultation – summary of responses

# Consultation response report in respect of the Mental Health (Assessment of Former Users of Secondary Mental Health Services) (Wales) Regulations 2011

Date of issue: September 2011



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## **Part 1 – Background**

### **Background to Part 3 of the Mental Health (Wales) Measure 2010**

1. The Mental Health (Wales) Measure (the Measure) was passed by the National Assembly for Wales in November 2010 and received Royal Approval in December 2010. The Measure makes a number of important changes to the current legislative arrangements in respect of the assessment and treatment of people with mental health problems in Wales.

2. Part 3 of the Mental Health (Wales) Measure 2010 is concerned with assessments of former users of secondary mental health services. The Measure places duties on Local Health Boards (LHBs) and local authorities to make arrangements which enable eligible individuals who have been discharged from secondary mental health services, but who subsequently believe that their mental health is deteriorating to such a point as to require specialist intervention again, to refer themselves back to those services directly, without necessarily needing to first go to their general practitioner or elsewhere for a referral.

3. It is expected that this Part of the Measure will come into force in June 2012 in Wales.

4. The Welsh Ministers have the power to make certain regulations relating to Part 3 of the Measure.

### **Background to consultation**

5. Welsh Government officials, on behalf of the Welsh Ministers, undertook a programme of consultation on the draft regulations relating to Part 3 of the Measure. The consultation period ran from 21 February to 16 May 2011.

6. Alongside the consultation on these regulations, there were concurrent consultation exercises which took place on:

- a) The use of secondary legislation making powers in relation to Part 2 of the Measure.
- b) Regulations relating to independent mental health advocacy under the Mental Health Act 1983.

### **Developing the Regulations for consultation**

7. Following introduction of the Measure into the National Assembly for Wales, officials in the Welsh Government began developing the policy and content for the draft regulations. This took account of the changes to the Measure as it was considered by the Assembly.

8. The draft policy for the regulations was developed in discussion with representatives of a number of Local Health Boards, local authorities, and third sector stakeholders in Wales.

## **Part 2 – The Consultation**

### **The consultation process**

9. The consultation document published by the Welsh Government asked for feedback on the draft Mental Health (Assessment of Former Users of Secondary Mental Health Services) (Wales) Regulations 2011, and accompanying draft Explanatory Memorandum and Regulatory Impact Assessment.

10. Respondents were invited to consider specific questions about the draft regulations and documents, and were also encouraged to make any other points relating to them that they considered necessary.

11. The consultation period ran for just over twelve weeks, during which time Welsh Government officials 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, and local government. In addition to encouraging written consultation responses, a series of workshops, study days and consultation events were held across Wales to support the exercise. Officials have continued this dialogue with stakeholders since the consultation closed.

12. We estimate that Welsh Government officials met with just over 600 service users, carers, mental health professionals and others during the consultation period at a range of events and study days. Not all of these individuals commented directly on this consultation.

13. The consultation exercise was promoted via direct mailings to contacts within the NHS and Local Social Services Authorities, the third sector and independent sector, as well as individuals who have registered to receive information relating to the Measure. The consultation documents were also published on the Welsh Government's website.

### **Responses received**

14. Responses and views on the draft regulations were taken from the individuals met during the consultation events and study days (as stated above, estimated to be just over 600 people).

15. In addition, just over 90 comprehensive and detailed written responses were received 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**

16. The Welsh Government's response to this consultation and its proposals for the regulations are set out in the following pages.

17. This report does not address any consultation responses which

- a) Commented on the Mental Health (Wales) Measure, the Mental Health Act 1983, or indeed wider issues relating to mental health care and treatment.
- b) Were out with the scope of the regulations.
- c) Referred to typographical errors that have been corrected in the final version.

## Part 3 – Response To Consultation Questions

18. The consultation document asked eight specific questions on the regulations and Explanatory Memorandum, and two more general questions (see Annex B).

### **Mental Health (Assessment of Former Users of Secondary Mental Health Services) (Wales) Regulations 2011**

19. These regulations make provision as to:

- a) The term of the relevant discharge period.
- b) The time period within which a copy of the assessment report must be provided to an assessed adult.
- c) The mechanism for determining an adult's usual residence (where this is disputed).
- d) Eligibility criteria for individuals who have been discharged from secondary mental health services prior to the commencement of the legislation.

#### **Term of the relevant discharge period**

20. The 'relevant discharge period' is the period of time during which an adult remains eligible to seek an assessment from the LHB or local authority, and starts on the date of that adult's discharge from secondary mental health services. For the purposes of consultation, the draft regulations set the period at three years<sup>1</sup>. The consultation sought views as to whether the relevant discharge period should be set at three years.

21. A number of respondents to the consultation were of the view that there should not be any relevant discharge period; in other words eligibility should be open-ended, lasting for as long as the individual may need re-assessment. In contrast, some respondents considered that the three year period should be reduced, with some considering 12 months or two years to be more appropriate.

22. Whilst stakeholder opinion was divided as to whether three years was an appropriate length of time, there was no consensus as to what might be a more appropriate period. Many respondents who agreed with the proposed three year period, felt that this was 'about right' given their own experiences of using or providing mental health services.

#### **Response**

23. On balance, it is considered appropriate to retain the three year relevant discharge period. We concur with the view of one respondent that:

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<sup>1</sup> In the case of a child (i.e. an individual below the age of 18 years) who reaches the age of 18 during the relevant discharge period, their eligibility begins on the date of their 18<sup>th</sup> birthday and ends three years after the date that individual was discharged from services.

*“In an ideal world one could argue there should be no time limits placed on this - however given the changes in eligibility criteria over the years and the resource baseline within services it is likely that many people who would have historically have received a service from secondary mental health services in the past will be catered for within primary care mental health services in the future and therefore a three year discharge period is a reasonable way forward.”*

24. However given the range of views received on this matter, the Welsh Government will consider the emerging evidence on the period of time between discharge and request for assessment as part of the review of the operation of Part 3 of the Measure that will take place under section 48 of the Measure<sup>2</sup>.

### **Ending the relevant discharge period**

25. The consultation sought views on whether there were any events or circumstances which should end the relevant discharge period, other than the expiry of the three-year period.

26. Some respondents considered the relevant discharge period should end whenever the former user of secondary mental health services wished it to. Others reiterated their earlier view that the relevant discharge period should be indefinite. A few respondents were concerned that any period of time spent in imprisonment (through the criminal justice period) should not be counted as part of the relevant discharge period. Where respondents identified events or circumstances relating to ending the relevant discharge period, these related to repeated frivolous or vexatious requests for assessment, or repeated assessments where the outcome was that no secondary mental health services were required. However, the majority of respondents did not believe that there should be any events or circumstances, other than the expiry of the three-year period, which would end the relevant discharge period

### **Response**

27. Given that the majority of respondents were content that there should be no other events or circumstances which would end the relevant discharge period, the Welsh Government has not made any amendments to the regulations in this regard.

### **Provision of a copy of the assessment report**

28. The Welsh Ministers may, by regulations, prescribe the period of time within which a copy of the assessment report must be provided to the assessed individual. For the purposes of consultation this period was set at ten working days. The

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<sup>2</sup> Section 48 places the Welsh Ministers under a duty to review the operation of the Measure for the purposes of publishing one or more reports. A report must be published within four years of the commencement of the principal provisions of Part 1, and also of Parts 2, and 3, and 4 of the Measure. A review preceding publication of a report may be commenced at any time, provided that the Welsh Ministers are satisfied that sufficient time has passed since the relevant Part or provision of the Measure has been commenced. A copy of a report must be laid before the National Assembly for Wales.

consultation sought views as to whether ten working days was an appropriate maximum period for a copy of the plan to be provided following assessment.

29. It is clear from many of the comments made in the written responses received, together with questions asked at the consultation events, that a number of respondents believed that this regulation was concerned with how long it would take for an assessment to be offered, or how long an assessment should take to be completed, rather than how soon a plan should be provided following an assessment.

30. Where respondents did comment on the maximum timescale for the provision of a copy of the report, a number were of the view that the timescale should reflect the urgency of the need for services by the assessed person. The more urgent the need for services, the quicker the report should be provided. Other respondents wished to ensure that any timescale set would not detrimentally affect the quality of the assessment report. A number of respondents gave careful consideration to what an assessment report should contain, and others also commented on practical issues around delivering assessment reports (for example to individuals living in accommodation with a shared lobby/postal delivery point).

31. A number of respondents considered that ten working days was an appropriate period, but that emphasis should be given in guidance to the fact that this was a maximum period rather than 'default' delivery timescale. Some respondents wished to see the timescale increased to 15 or 20 working days, but these were in the minority.

### **Response**

32. Taking account of the views expressed, the regulations will continue to specify the ten working day maximum period for provision of the assessment report. The Welsh Government intends to publish a Code of Practice to support the operation of Part 3 of the Measure, and a number of the very helpful issues raised regarding assessment reports (and the assessment process) will be dealt with in that Code. The Code will itself be subject to consultation prior to being laid before the National Assembly for Wales.

### **Usual residence**

33. The statutory duty to provide an assessment when requested to do so by a former user of secondary mental health services, falls on both the Local Health Board and the local authority for the area within which the individual usually resides. The draft Regulations provided a method for determining usual residence in cases where this may be disputed. The consultation sought views as to whether the method of dispute resolution was appropriate.

34. The majority of respondents to this question were satisfied that the approach set out in this regulation for establishing usual residence in such circumstances was appropriate. A number of respondents felt that the regulation as drafted was complicated and difficult to understand. This complexity may be responsible for a number of responses which related to the provision of mental health services or

assessments for homeless, itinerant, or other traditionally hard to reach groups, rather than a view on whether the regulation presented a viable approach to resolving disputes over usual residence where these might arise.

35. Amongst the views received which related directly to the regulation were suggestions that GP registration or 'ordinary residence' arrangements could be used as alternative means of establishing the responsible local authority where such disputes arose.

### **Response**

36. Given the concerns expressed by some stakeholders that regulation 5 was difficult to understand as originally drafted, the regulation has been amended with the aim of making the arrangements clearer and easier to follow in the event that such a dispute should arise. It is also the Welsh Government's intention that further guidance on resolving disputes concerning usual residence will be provide in the Code of Practice which Welsh Ministers intend to introduce to support the operation of Parts 2 and 3 of the Measure.

### **Transitional provisions**

37. Draft regulation 6 set out proposed eligibility criteria for individuals who have been discharged from secondary mental health services prior to the commencement of the legislation. For adults (including children who attain the age of 18 during the relevant period of time) who were discharged between two and five years before the coming into force of the regulations, eligibility would continue for a further year from the coming into force date of the regulations. Adults discharged from services any less than two years before the coming into force date would remain eligible to request assessment for three years from the date of their discharge. These arrangements were included to minimise any disadvantage to individuals discharged from services prior to the commencement of the regulations.

38. There were mixed responses from respondents on the proposed arrangements set out in the draft regulation. Whilst a clear majority of stakeholders agreed that adults discharged from services before the commencement of the regulations should have some form of eligibility, a number felt that the arrangements set out in the regulation as drafted were overly complicated. Some respondents contended that, as with the term of the relevant discharge period, there should be no time limit in this regard, but rather, any adult who had previously received and been discharged from secondary mental health services – irrespective of how long ago those services were delivered – should be able to request an assessment. A small number of respondents felt that no such provisions should be made for individuals discharged before the commencement date.

39. Amongst other issues raised were how individuals discharged before the coming into force of the regulations would be made aware of their entitlement, or would be able to prove when making a request that they had previously been in receipt of secondary mental health services. One respondent wished to ensure that the individual's GP was informed where such a request was made.

## **Response**

40. In view of the majority of support for the principle of retrospective eligibility for adults discharged from services prior to the commencement of this legislation, the Welsh Government has retained this regulation. However, in response to comments from stakeholders that the transitional arrangements set out in regulation 6 as introduced for consultation were overly complex, the wording of the regulation has been simplified and the periods of eligibility made more straightforward: rather than 'two tiers' of pre-commencement eligibility as was originally proposed, the regulation has been amended so that an eligible adult discharged from services within two years prior to the regulations coming into force will be eligible for entitlement for the period beginning on the date the regulations come into force and ending on the expiry of three years from that adult's date of discharge.

41. The issues raised by stakeholders in relation to individuals being informed of their entitlement, and validation of requests made by individuals discharged prior to the coming into force will be considered in the development of the Code of Practice to be made under Parts 2 and 3 of the Measure.

## **Explanatory Memorandum and Regulatory Impact Assessment**

42. The Standing Orders of the National Assembly for Wales require that an Explanatory Memorandum be laid before the Assembly to accompany Regulations; in some cases the Explanatory Memorandum must include a regulatory impact assessment (RIA). Amongst other matters an RIA will include an option appraisal, setting out the costs, benefits and risks of making the proposed legislation.

43. A draft Explanatory Memorandum (including an RIA) was prepared for the consultation, and views were sought as to whether –

- a) There was sufficient information in the Explanatory Memorandum to understand the purpose and effect of the Regulations.
- b) Respondents agreed with the preferred option in the RIA (ie Option 2, making the regulations).
- c) Respondents were content with the estimated costs/benefits regarding the implementation of the Regulations.

44. There was almost unanimous support from respondents in relation to these three questions. All but two consultees felt that the Explanatory Memorandum provided enough information for them to be able to understand the regulations; all agreed that the regulations should be made, and a large majority were satisfied that the cost/benefit analysis contained in the RIA was appropriate. As might be expected, fewer comments were received in response to these more technical questions, than in relation to the questions relating to substantive policy issues regarding the regulations. Those comments that were received related to the potential additional costs for service providers of introducing this entitlement, with concerns being expressed that existing record-keeping arrangements would need to be adapted, and that undertaking assessments and providing reports might incur

increased staffing costs, as practitioners were not currently required to deliver such arrangements.

### **Response**

45. The Explanatory Memorandum and Regulatory Impact Assessment have been amended post-consultation to reflect the revisions which have been made to the regulations in response to those issues raised by stakeholders. Information on the consultation process itself, along with a summary of the outcomes of this process has also been included in the amended RIA. The EM and RIA have also been amended to include a further item of interest for the constitutional and legislative affairs committee (namely, the commencement arrangements for the regulations), and to add further detail by way of explaining the purpose and effect of the regulations.

### **Equality Impact Assessment**

46. The Welsh Government is committed to making sure that as policies, strategies, action plans and legislation are developed, every effort is made to actively contribute to an environment that is free from discrimination. Part of this is about assessing the impact that policies and actions may have on the people of Wales, to make sure that the Welsh Government does not discriminate but takes every opportunity to promote equality and good relations.

47. As part of the consultation on these Regulations views were sought on the potential impact of the proposed legislation on:

- a) Disability.
- b) Race.
- c) Gender and gender reassignment.
- d) Age.
- e) Religion and belief and non-belief.
- f) Sexual orientation.
- g) Human Rights.

48. From April 2011, the equality impact assessment process must also consider the protected characteristics of pregnancy and maternity and civil partnerships.

49. This question generated a number of responses covering a range of issues. Importantly, however, no respondent felt that the regulations would have a negative impact in relation to any of the areas listed above.

50. Amongst the issues which were raised were calls that in undertaking assessments and producing reports under this legislation, practitioners should be mindful of any cultural, ethnic, language, sexual orientation or gender issues of those individuals being assessed. One respondent suggested that monitoring and auditing tools should be utilised to examine whether any particular identifiable groups were

under or over-represented in being accepted back into services following assessment. Two stakeholders felt it was important that gypsy travellers, or others with itinerant lifestyles, should not be disadvantaged by virtue of not having a permanent address from seeking assessment under this legislation. Another consultee emphasised the importance of ensuring that older people be given equal access to the range of treatments and therapies available, and not be discriminated against on the basis of their age. It was also felt by one respondent that as only the individual themselves may request an assessment, and not a relative, friend or carer on their behalf, this might potentially disadvantage those with disability, capacity or communication issues.

### ***Response***

51. As no respondent identified any potentially negative impact in relation to the issues of equality raised in the question, no revisions have been made to the regulations in this regard. However, the range of issues raised in relation to equality will inform the development of the Welsh Government's Code of Practice for Parts 2 and 3 of the Measure and any underpinning operational guidance which is issued to service providers.

### **Additional matters**

52. The Welsh Government welcomed comments and views on the draft Regulations over and above the specific consultation questions or points on particular aspects of the Regulations.

53. Relatively few responses were received to this question. However, as would be expected, where responses were received, a range of issues were raised by stakeholders. Amongst these were several suggestions that a timescale be introduced to provide that an assessment be undertaken within a certain time of the request being made; that an all-wales patient information leaflet be produced to help individuals understand their entitlement under these provisions; that staff training be undertaken by LHBs and local authorities to ensure that these arrangements were understood within responsible organisations; that service users should not be discharged from services before they feel that they are ready as a result of these provisions being introduced, and that service providers be provided with guidance on how they should establish whether or when an individual requesting assessment has previously received services in another LHB area or another part of the UK.

### ***Response***

54. As with the issues raised in relation to the previous question, the Welsh Government will not be making any substantive amendments to the regulations in response to these issues. Rather, each issue will be taken into account in the development of the Code of Practice and any other operational guidance introduced to support Part 3 of the Measure.

## **Annex A – List of respondents**

Abertawe Bro Morgannwg University LHB  
Age Cymru  
Jayne Anderson, Hwyl Dda Health Board  
Aneurin Bevan Health Board, Mental Health & Learning Disability Division  
Awetu  
Val Barcroft  
Steve Bartley, Ludlow Street Healthcare  
Jayne Bell, Cardiff & Vale University LHB  
Betsi Cadwaladr Community Health Council  
Blaenau Gwent County Borough Council  
Board of Community Health Councils in Wales  
Joanna Bogacz  
Dr Mark Boulter, Llanfair Surgery  
Dave Bowles  
Pam Bradley-Rushton  
Bridgend County Borough Council  
British Association and College of Occupational Therapist  
British Psychological Society  
Care Programme Approach Association, Welsh Regional Group  
Liz Carroll, Hwyl Dda LHB  
Ceredigion Social Services  
Chartered Society of Physiotherapy  
CMIG Limited  
Combat Stress  
Connect Caer Las Cymru  
Lee Cook, Cardiff & Vale University LHB  
Alan Croxford, Conwy Social Services  
Cwm Taf Health Board, Mental Health Senior Nurse Team  
Cwm Taf Health Board and Rhondda Cynon Taf Local Authority  
Dyfed Powys Police (Public Protection)  
Mike Evans, Abertawe Bro Morgannwg University LHB  
Philip Fairclough  
Laura Gallagher, Powys Association of Voluntary Organisations

Gofal  
Steve and Elizabeth Hails  
Dr Giles Harborne, Betsi Cadwaladr University LHB  
Dr Jane Harrison, Abertawe Bro Morgannwg University LHB  
Sheridan Hayward  
Healthcare Inspectorate Wales  
Andrew Hopkins, Aneurin Bevan LHB  
Linda Howlett  
Jane Jones, Betsi Cadwaladr University LHB  
Llanelli Community Mental Health Team  
Fiona McElen  
MDF The Bipolar Organisation Cymru  
Mental Health Foundation  
Alan Meudell  
Ministerial Task & Finish Group on Welsh Language and Mental Health Issues  
Monmouthshire County Council  
Vicky Mort, Hafal  
National Autistic Society Cymru  
NYAS (National Youth Advocacy Service)  
OPAG Cymru (Older Persons Advisory Group Cymru)  
Lesley Parker, Hafal  
Powys Children & Young People's Partnership (Emotional Health & Wellbeing Group)  
Powys County Council  
Powys Teaching Health Board  
Mark Priscott, Hafal  
Mind Cymru  
RCT Carers Project and Interlink  
Veryan Richards  
Royal College of Nursing Wales  
Royal College of Psychiatrists Division in Wales  
SNUG PPA (Swansea Network User Group, Partneriaeth Prifysgol Abertawe)  
SURG (Service User Recovery Forum)  
Third Sector ABMU Mental Health Forum  
Peter Thomas, South Wales Police

Rhiannon Thomas

Torfaen County Borough Council

Eric Ware

Welsh Refugee Council

Welsh Therapies Advisory Committee

Anna Weir

Anne Williams, Unllais/Involve Project

Wrexham County Borough Council (including Joint Mental Health Commissioning group with Betsi Cadwaladr University LHB)

11 respondents also submitted written evidence, but did not wish their names/contact details to be published.

## **Annex B – Consultation questions**

### **Mental Health (Assessment of Former Users of Secondary Mental Health Services) (Wales) Regulations 2011**

In relation to the draft Regulations –

- (1) Do you agree that the relevant discharge period should be set at three years, from the date the individual is discharged from secondary mental health services (Regulation 3(1))?
- (2) Are there any events or circumstances which should end the relevant discharge period, other than the expiry of the three year period?
- (3) Regulation 4 provides that a copy of an assessment report must be provided to the assessed person within 10 working days of completion of the assessment – is this an appropriate maximum period?
- (4) Is the method of establishing usual residence in cases of dispute set out in Regulation 5 appropriate?
- (5) Have all the relevant matters been identified within the transitional provisions set out in Regulation 6?

In relation to the draft Explanatory Memorandum –

- (6) Is there sufficient information in the Explanatory Memorandum to understand the purpose and effect of these Regulations?
- (7) Do you agree with the preferred option in the Regulatory Impact Assessment (option 2 – make regulations)? If not, please provide further details.
- (8) Are you content with the estimated costs/benefits regarding the implementation of these Regulations? If not, please supply evidence to support your views.

General questions –

- (9) We would welcome your views on the potential impact of the proposed legislation on:
  - i) Disability.
  - ii) Race.
  - iii) Gender and gender reassignment.
  - iv) Age.
  - v) Religion and belief and non-belief.
  - vi) Sexual orientation.
  - vii) Human Rights.

(10) We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them.

## **Annex C – Contact information**

For further information in relation to this document, please contact:

Mental Health Legislation Team  
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