



Llywodraeth Cynulliad Cymru  
Welsh Assembly Government

# **CONSULTATION RESPONSE**

Welsh Assembly Government response to  
consultation on the draft regulations relating  
to Deprivation of Liberty Safeguards of  
the Mental Capacity Act 2005

February 2009

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## Background

### Background to the Deprivation of Liberty Safeguards to the Mental Capacity Act 2005

- 1.1 The Mental Capacity Act 2005 (the 2005 Act) provides a statutory framework for people who lack capacity to make decisions for themselves, or who have capacity and want to make preparations for a time when they may lack capacity in the future. It sets out who can take decisions, in which situations, and how they should go about this.
- 1.2 The Mental Health Act 2007 gained Royal Assent in July 2007 and amongst changes to other legislation, also introduced the Deprivation of Liberty Safeguards into the 2005 Act. These safeguards were introduced to prevent breaches of the European Convention on Human Rights (ECHR), such as the one identified by the judgement of the European Court of Human Rights (ECtHR) in the case of *HL v United Kingdom*. In its judgement the ECtHR held that the admission of HL to Bournemouth Hospital constituted a deprivation of liberty and, further, that:
  - the deprivation of liberty had not been in accordance with ‘a procedure prescribed by law’ and was, therefore, a breach of Article 5(1) of the ECHR, and
  - there had been a contravention of Article 5(4) of the ECHR because HL had no means of applying quickly to a court to see if the deprivation of liberty was lawful.
- 1.3 To prevent similar breaches the Deprivation of Liberty Safeguards have been introduced to provide safeguards for people who lack capacity specifically to consent to treatment or care in either a hospital or care home that, in their own best interests, can only be provided in circumstances that amount to a deprivation of liberty, and where detention under the Mental Health Act 1983 is not appropriate for the person at that time.
- 1.4 The new safeguards come into force on 1 April 2009 in England and in Wales.
- 1.5 The Welsh Ministers are required to make certain regulations in respect of the safeguards.

### Background to consultation

- 1.6 The Welsh Assembly Government, on behalf of the Welsh Ministers, undertook a programme of consultation on two sets of Regulations made in respect of the Safeguards. The consultation period ran from the 5<sup>th</sup> of November 2007 to the 28<sup>th</sup> of January 2008.
- 1.7 Alongside the consultation on these regulations, 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 draft Mental Health Act 1983 Code of Practice for Wales

### Developing the Regulations for consultation

- 1.8 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 Regulations. This took account of the changes to the Bill as it was considered by Parliament.

- 1.9 The draft policy for the regulations 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.

## The consultation

### The consultation process

- 2.1 The consultation document asked for feedback on the two sets of draft Regulations:
- Mental Capacity (Deprivation of Liberty: Assessments, Standard Authorisations and Disputes about Residence) (Wales) Regulations 2008 – herein referred to as the Authorisation Regulations
  - Mental Capacity (Deprivation of Liberty: Appointment of Relevant Person’s Representative) (Wales) Regulations 2008 – herein referred to as the Representative Regulations.
- 2.2 Respondents were invited to consider specific questions about the draft regulations and were also encouraged to make any other points relating to them that 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, and local government. 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 two specific events on the Deprivation of Liberty Safeguards aimed at mental health and learning disabilities practitioners, to which a wide range of professionals from a number of sectors attended. The events were held in:
- Millennium Stadium, Cardiff
  - Venue Cymru, Llandudno
- 2.5 We also ran four events on the three consultations that were running simultaneously. 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
- 2.6 We supported Learning Disability Wales to run four workshops with service users and carers, at which the Deprivation of Liberty Safeguards of the Mental Capacity Act 2005 were specifically considered. 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 also supported Mind Cymru to run fifteen workshops with service users and carers, on the full consultation documents, although these events tended not to look at these Regulations in any detail.
- 2.8 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. Not all of these commented directly on this consultation.
- 2.9 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**

- 2.10 Learning Disability Wales submitted a consultation report based on the events that they ran. 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 20 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 regulations are set out in the following pages.
- 2.13 This report does not address any consultation responses which were:
- comments on the Mental Capacity Act 2005, the safeguards themselves or indeed wider issues relating to the Mental Health Act 2007;
  - out with the scope of the regulations; or
  - referred to drafting errors that have been corrected in the final version.

## Response to consultation questions

The consultation document asked fifteen specific questions on the regulations and three more general questions (see Annex B).

### **Mental Capacity (Deprivation of Liberty: Assessments, Standard Authorisations and Disputes about Residence) (Wales) Regulations 2008**

- 3.1 These regulations concern application to the supervisory body for a deprivation of liberty authorisation and the process of assessment as to whether the criteria are met for an authorisation to be granted. They also cover how disputes should be handled about the identification of the supervisory body in respect of people in care homes. The Assessment Regulations are made by the Welsh Ministers but subject to approval by the National Assembly for Wales.

### **Eligibility requirements for assessors**

- 3.2 The consultation to the Assessment Regulations asked for comments on the general eligibility requirements for assessors.
- 3.3 All of the written responses supported the general eligibility requirements, and the consultation events echoed the findings from the written responses in this regard. Some respondents considered that there should be CRB checks completed in respect of assessors.
- 3.4 A number of the written responses sought to ensure that guidance be given by the Welsh Assembly Government on suitable training for assessors, and possibly also a competency framework (particularly in respect of the best interests assessor).

### *Response*

- 3.5 This Regulation has been amended to remove ambiguities regarding training, and to include provision for the supervisory body to be satisfied that relevant CRB checks have been made in respect of assessors (with the exception of the age assessor).
- 3.6 Significant consideration has been given to the training of assessors, particularly the best interests assessor and mental health assessor. In discussions with prospective supervisory bodies and indeed certain potential assessors, a range of training options became apparent with a number of supervisory bodies having differing views on what training would be required. It has therefore been decided not to specify such matters in the regulations at this time, and to leave the matter to local determination. Since this decision was shared with supervisory bodies, the majority have made their own training arrangements which are best suited for their own needs and requirements. Discussions have also been held with the monitoring bodies of the Safeguards, Healthcare Inspectorate Wales (HIW) and the Care and Social Services Inspectorate Wales (CSSIW). Both expect to consider staff training and knowledge as part of their monitoring work.

### **Professional qualifications and experience required for the mental health, best interests and mental capacity assessors**

- 3.7 The consultation asked if the professional qualifications and experience of certain assessors was supported, and if not what changes were proposed.



- 3.8 In respect of best interests assessors the majority of respondents supported the proposed professions in view. There were a few calls for speech and language therapists to be included (mainly during a couple of the consultation events), but most of the respondents wished to see approved mental health professionals (within the meaning of the Mental Health Act 1983) included.
- 3.9 In respect of mental health assessors some respondents wished clinical psychologists to be included, some wanted approved clinicians (within the meaning of the Mental Health Act 1983) to be included, and some felt the assessment should be undertaken by the care co-ordinator (within the meaning of the Care Programme Approach).
- 3.10 In respect of mental capacity assessors less comments were received, but those that were made supported the position set out in the draft regulations.

### *Response*

- 3.11 In relation to the best interests assessor, an approved mental health professional (AMHP) has been added to the list of eligible persons. Although AMHP is not itself a profession, only certain professionals may be approved as an AMHP<sup>1</sup>. These are the same professionals already in view for the best interests assessment. It is appropriate therefore for AMHPs to be added to the list.
- 3.12 In relation to the mental health assessor, corrections have been made to the drafting errors of draft regulation 4(1)(b). On the balance of responses received it was decided not to open this assessment out to professions other than doctors at this time.
- 3.13 In relation to the mental capacity assessor the position within the draft regulation has been maintained, but the requirements have been extended so that the arrangement also applies in respect of eligibility assessors. This reflects a number of comments made during the consultation events that this assessment should be restricted to certain key professionals. Most commentators felt that this assessment would be done by either the mental health or the best interests assessor, and as such should be limited to them.

### **Availability of mental health, best interests and mental capacity assessors**

- 3.14 Given the types of groups that these assessors would be drawn from, the consultation asked if respondents had views about availability and sufficient numbers of assessors.
- 3.15 There were some general concerns about availability of certain professionals, sometimes linked to possible fee payments for assessments and at others related to the widening of the professional roles under the Mental Health Act 1983 (as a result of amendments made to that legislation by the Mental Health Act 2007 which came into force in November 2008). Other respondents considered that the flexibilities afforded by the range of professionals in view would ensure that supervisory bodies were able to find arrangements that suited local need.
- 3.16 Some respondents pointed to local shortages of section 12 doctors and raised concerns that the mental health assessment should not be limited to such doctors, but should maintain the position of the draft regulations (ie as to allow other doctors to undertake the assessment).

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<sup>1</sup> See *Mental Health (Approval of Persons to be Approved Mental Health Professionals) (Wales) Regulations 2008*

### *Response*

- 3.17 No amendments were required to the regulations as a result of the consultation responses received. Consideration was given to the issues raised as part of the preparation of guidance for supervisory bodies published by the Welsh Assembly Government (February 2009).

### **Exclusions as to who can/cannot be an assessor**

- 3.18 In respect of individual assessments exclusions have been set as to who can be an assessor, the consultation asked if these were supported.
- 3.19 Most respondents were satisfied with the general exception provisions, and indeed welcomed them.
- 3.20 Significant discussion (and indeed concern) arose in relation to the position established in draft regulation 8(2) that the best interests assessor could not be employed by the supervisory body where they were also the managing authority. The concerns centred on the practical consequences of this, such as in practice this will make local authorities reliant on the goodwill of neighbouring authorities to provide assessors, or for Powys LHB the geographical spread of the LHB meant that most assessors would not have any connection with the relevant person, but could not act. Others were concerned about implications for joint health and social care funded posts.

### *Response*

- 3.21 In light of the responses received, and consideration of future structures within the NHS in Wales, the provision outlined above in relation to draft regulation 8(2) has been removed. The exclusion of a person involved in or making decisions about the care or treatment of the relevant person, has been retained. This position (prior to finalisation) was discussed with a number of supervisory bodies, practitioners and members of the CSSIW. All felt that this was a very welcome position, and one which would help to ensure assessments were undertaken in a speedy manner. Guidance on separation of functions within supervisory bodies (where they are also the managing authority) has been included in the guidance for supervisory bodies published by the Welsh Assembly Government (February 2009).
- 3.22 The definition of relative and financial interest adopted in the final version of the regulations reflects other legislation and the definitions used in the Representative Regulations (see below).

### **Broader issues for supervisory bodies in identifying assessors**

- 3.23 The consultation asked for any broader issues to be highlighted relating to assessors.
- 3.24 Certain consultation responses focused on the more practical aspects of approval, including whether there should be a centralised register of assessors from which supervisory bodies could select.
- 3.25 Other respondents considered that the undertaking of assessments should be an optional aspect of a person's work, rather than a required element. Some consultees indicated that they would see the workload of assessors being as to a level of a whole time equivalent post.

### *Response*

- 3.26 The matters raised did not need to be included within the Regulations, but the issues were taken forward and considered in the guidance for supervisory bodies published by the Welsh Assembly Government (February 2009).

### **Timeframes for completion of assessments**

- 3.27 The regulations set out the timescales for completion of the relevant assessments, and the consultation asked if these were appropriate and practicable.
- 3.28 Most respondents (both at the consultation events and in written responses) felt that the timescales for assessments were about right. Whilst a few wanted shorter times, a similar small number wanted longer timescales. On balance the position established for consultation has been retained.
- 3.29 Transitional provisions for April 2009 in respect of assessments have been included in the final version.

### **Information to be included in requests from managing authorities**

- 3.30 The aim of draft regulation 12 is to promote the quality and the timeliness of the assessment process by ensuring that the supervisory body has the necessary information to appoint the right assessors and that the assessors have the information that they need to carry out the assessment. The consultation therefore asked if the proposed information met this aim, and whether any changes were necessary.
- 3.31 Most respondents (both at the consultation events and in written responses) felt that the information requirements were about right. Some suggested minor drafting improvements which have been included.
- 3.32 A number of respondents (particularly during the consultation events) pointed to the importance of standard 'application forms', which has been addressed in the guidance for managing authorities published by the Welsh Assembly Government (February 2009).

### **Disputes about ordinary residence**

- 3.33 The consultation sought views regarding the proposed arrangements in respect of disputes about ordinary residence in relation to local authorities.
- 3.34 The majority of respondents considered that the proposals would work well in practice, and welcomed the importance of making a speedy decision in relation to the authorisation over and above resolution of the dispute. A couple of respondents noted that there were no provisions, as drafted, for recovery of costs.
- 3.35 Some respondents felt that any emerging issues relating to the operation of these provisions should be kept under review (perhaps by CSSIW), and used to inform any necessary guidance by the Welsh Assembly Government.

### *Response*

- 3.36 Provision for recharging has now been included, and minor technical improvements to drafting have been made.

### **Allocation of funding**

- 3.37 The consultation asked for any views relating to the allocation of funding and the assessment workload.
- 3.38 A number of very helpful issues were raised in respect of funding allocations, including around the administration functions as well as the completion of assessments. Some respondents wished to see funding based on the approach taken in the Regulatory Impact Assessment (RIA) which accompanied the Mental Health Bill.
- 3.39 Views were also expressed about the accuracy of the RIA and whether funding formulations should be reviewed after the first year of operation in cases numbers of assessments and authorisations were significantly higher than anticipated.

#### *Response*

- 3.40 These responses were taken into account in the funding arrangements made for 2009/10 (notified to Chief Executives of LHBs and Directors of Social Services in December 2008). This funding allocation letter notes that use of the safeguards will be monitored during the initial year, to inform future funding levels. This has been welcomed by supervisory bodies.

### **Mental Capacity (Deprivation of Liberty: Appointment of Relevant Person's Representative) (Wales) Regulations 2008**

- 3.41 When a standard authorisation for the deprivation of liberty is granted, a representative will be appointed to maintain contact with and to support and represent the relevant person for the duration of the authorisation. These regulations concern the selection and appointment of such representatives, as well as including directions to Local Health Boards to exercise supervisory functions. The Representative Regulations are made by the Welsh Ministers but subject to annulment by the National Assembly for Wales.

### **Local Health Boards as the supervisory body**

- 3.42 The consultation asked for views about directing LHBs to exercise the supervisory functions for hospitals.
- 3.43 All those who responded to this question considered that directing LHBs in this way was an appropriate and sensible approach to take.

#### *Response*

- 3.44 Apart from technical drafting amendments to aid clarity of understanding this aspect of Regulation 3 has been retained.

### **Powys teaching Local Health Board as the supervisory body where Health Commission Wales commission care or treatment in a hospital in England**

- 3.45 The consultation asked for views about directing Powys tLHB to exercise the supervisory functions in these specific cases.

- 3.46 Most of those who responded to this question, and significantly Powys tLHB were opposed to this arrangement. Where alternative suggestions were given, the majority favoured using the LHB where the relevant person was 'usually resident'.

*Response*

- 3.47 Regulation 3 has been amended so that where the Welsh Ministers (Health Commission Wales in effect) commissions relevant care or treatment of a person in a hospital in England, the supervisory body will be the LHB for the area in which that person is usually resident.

**Eligibility criteria for representatives**

- 3.48 The consultation to the Representative Regulations asked for comments on the general eligibility requirements for representatives.

- 3.49 All written responses received were supportive of these criteria. A few raised questions about the relationship of this Regulation with the Safeguarding Vulnerable Groups legislation, and others were concerned that there appeared to be no competencies, skills or training requirements set out. The findings from the consultation events echoed the written submissions.

*Response*

- 3.50 Some minor drafting amendments made but the substantive position of this regulation has been maintained.
- 3.51 The role of the representative will also be a 'regulated activity' for the purposes of the Safeguarding Vulnerable Groups Act 2006, and as such the supervisory body must ensure compliance with this legislation in respect of representatives. This information has been included in guidance for supervisory bodies published by the Welsh Assembly Government (February 2009).

**Definition of "close relative"**

- 3.52 The consultation to the Representative Regulations asked for comments on the definition of 'close relative' in respect of representatives.
- 3.53 All respondents supported the definition of close relative, and this has been retained. It has been redrafted to bring it into line with other legislation, but the net effect is maintained.

**Appointment of representatives**

- 3.54 Views were sought on the appointment procedure for representatives.
- 3.55 The majority of written respondents, as well as those at the consultation events, supported the appointment process. A few respondents felt that there should be a hierarchical list (similar to that of identifying the nearest relative under the Mental Health Act 1983), but providing for the relevant person and certain others to override this if they had the capacity to do so.

*Response*

- 3.56 The appointment provisions have remained relatively as consulted upon, with the exception of the selection by the supervisory body. This regulation now includes a requirement for a representative acting in a professional capacity to have satisfied the relevant CRB checks. This is in response to safeguarding adults legislation, and comments made during the consultation events. The regulation now also clarifies what is meant by acting in a professional capacity.
- 3.57 The regulations now provide that the actual appointment must be in writing, to ensure parity with the provisions of Schedule A1 to the Mental Capacity Act 2005.
- 3.58 Information on the processes associated with appointment has been included in the guidance for supervisory bodies published by the Welsh Assembly Government (February 2009).

### **Circumstances of termination of appointment of representatives**

- 3.59 Views were sought on the grounds for terminating the appointment of a representative.
- 3.60 Generally the grounds for termination were supported by respondents, although particularly at the consultation events concerns were raised that the representative may not act in the best interests of the relevant person.

#### *Response*

- 3.61 The grounds for termination have been expanded in line with the responses received, now includes that an appointment may be terminated if the supervisory body is satisfied that the representative is not acting in the best interests of the relevant person.
- 3.62 One respondent noted that whilst in agreement with the grounds for termination it was not clear how the 'performance' of the representative would be monitored and suggested that the managing authority should draw any concerns to the attention of the supervisory body.
- 3.63 Whilst this was a feature of the draft regulations (see 16), in the final form this regulation has been strengthened to ensure that the managing authority may also raise issues of concern relating to the representative not acting in the best interests of the relevant person.
- 3.64 The provisions relating to the termination of appointment also make clear that notices must be given to the relevant person and others. This brings this arrangement into line with the appointment requirements as well as other notification processes within the Safeguards.

### **Point of note**

- 3.65 These Regulations have been used as a suitable vehicle to amend the Mental Capacity Act 2005 (Independent Mental Capacity Advocates) (Wales) Regulations 2007 in relation to ensuring that LHBs are responsible for making arrangements for such advocates to be available in relation to the Safeguards.

## **Additional matters**

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

### **Significant areas of impact**

- 5.1 A number of respondents (both at the consultation events and in written submissions) called for standardisation of documentation to assist with the processes of the Safeguards. Examples were given to support the need for suitable documentation, such as around the appointment and termination of representatives. Guidance for managing authorities and supervisory bodies, including the provision of suggested standard forms and letters has been published by the Welsh Assembly Government (February 2009).
- 5.2 One of the written respondents noted the importance of monitoring whether the use of urgent authorisations becomes a default position, and responding accordingly. This view has been passed on to the monitoring bodies for these Safeguards, Healthcare Inspectorate Wales (HIW) and the Care and Social Services Inspectorate Wales (CSSIW) so that they may consider this matter as part of the monitoring role.

### **Additional evidence**

- 5.3 Some respondents called for accessible information on the safeguards to be made available for certain key individuals, including the relevant person and their representative. The Welsh Assembly Government is seeking to develop a range of suitable leaflets in the spring of 2009.

### **Changes necessary for a positive impact on equality or reduction of burdens**

- 5.4 One written response considered that when the Safeguards had been in operation for a period of time, a review of the appointment processes in respect of representatives should be undertaken. This may establish certain common eligibility criteria used by best interests assessors and supervisory bodies, which could lead to guidance on this being issued by the Welsh Assembly Government. This view has been passed on to HIW and CSSIW so that they may consider this matter as part of the monitoring role.
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## **Annex A – List of respondents**

Applied Psychologists in Healthcare Special Advisory Group (APHSAG)  
British Psychological Society  
Cardiff & Vale NHS Trust  
Cardiff Local Authority  
Carmarthenshire County Council  
City & County of Swansea  
College of Occupational Therapists  
CSSIW  
Eiriol and 3 Counties  
Gofal Cymru  
Hafal  
John Howard, Carmarthenshire Local Authority  
Learning Disability Implementation Advisory Group  
Learning Disability Wales  
Mencap Cymru  
North East Wales NHS Trust, Wrexham Local Authority, Flintshire Local Authority,  
Wrexham Local Health Board, and Flintshire Local Health Board  
Pembrokeshire & Derwen NHS Trust  
Powys teaching Local Health Board  
Powys Voice  
Royal College of Nursing  
Royal College of Psychiatry (Facility of Psychiatry of Disability - Welsh Division)  
Swansea Local Health Board  
Swansea NHS Trust



## Annex B – Consultation questions

### **Mental Capacity (Deprivation of Liberty: Assessments, Standard Authorisations and Disputes about Residence) (Wales) Regulations 2008**

- (a) Regulation 3: Do you support the general eligibility requirements for assessors? If not what changes would you propose? These eligibility requirements need to be read in the light of paragraph 129(2) of schedule A1 to the Mental Capacity Act 2005, which requires the supervisory body to select an assessor who is both eligible to carry out that assessment and suitable to carry out the assessment having regard to the type of assessment and the person to be assessed.
- (b) Regulations 4, 5 and 6: Do you support the professional qualifications and experience required for mental health, best interests and mental capacity assessors? If not, what changes would you propose?
- (c) Regulations 4, 5 and 6: Given the types of groups assessors would be expected to be drawn from, do you have any views about the availability of individuals in sufficient numbers to carry out these assessments?
- (d) Regulations 7 and 8: Do you support the exclusions as to who can and cannot be an assessor? If not, what changes would you propose?
- (e) Regulations 7 and 8: Given these exclusions, and any others you wish to propose, what are your views on whether there are broader issues for supervisory bodies in identifying suitable assessors?
- (f) Regulations 9 and 10: Are the time-frames in regulations 9 and 10 appropriate and practicable given the nature and type of assessments to be carried out? If not, what changes would you propose?
- (g) Regulation 12: Does this regulation cover all the information reasonably expected to be provided in a request form? The aim of regulation 12 is to promote both the quality and the timeliness of the assessment process by ensuring that the supervisory body has the necessary information to appoint the right assessors and that the assessors have the information that they need to carry out the assessment. Do you agree with the proposed information to be provided with an application? Would you suggest any changes?
- (h) Regulations 13, 14 and 15: These regulations cover what should happen if the local authority that receives an authorisation disputes that it should be the supervisory body. The aim of the regulations is to ensure that this does not delay the assessment process. Do you consider that the arrangements in these regulations will work in practice? If not, what changes would you propose?
- (i) Allocation of funding: it is the Welsh Assembly Government's intention, as far as possible, that the assessors chosen to carry out the assessments will be based in the same vicinity as the relevant person. This will mean in some cases that a supervisory body uses assessors from another area, rather than sending assessors to travel to the place where the person is receiving care. Therefore, the assessment workload will need to be reflected in the allocation of funding. We are currently considering how the allocations should be made and would welcome views on the formula to be used.

## **Mental Capacity (Deprivation of Liberty: Appointment of Relevant Person's Representative) (Wales) Regulations 2008**

- (a) Regulation 3: Do you support the directions to Local Health Boards that they will exercise the supervisory functions for hospitals (private or NHS) in their area, and similarly for hospitals in England where the Local Health Board has commissioned the care or treatment? If not, what changes would you propose?
- (b) Regulation 3: Do you support the directions to Powys Local Health Board that it will exercise the supervisory functions where Health Commission Wales, on behalf of Welsh Ministers, has commissioned care or treatment in a hospital (private or NHS) in England. If not, what changes would you propose?
- (c) Regulation 6: Do you support the eligibility criteria of a person for appointment as the relevant person's representative? If not, what changes would you propose?
- (d) Regulation 6: Do you support the definition of "close relative" for the purpose of these regulations? If not, what changes would you propose?
- (e) Regulations 8 to 13: Do you support the requirements for appointing the representative in these regulations, when read in conjunction with the guidance in Chapter 4 of the draft Addendum to the Mental Capacity Act 2005 Code of Practice? If not what changes would you propose?
- (f) Regulation 14: Do you support the circumstances in regulation 14 for terminating the appointment of a representative?

### **Additional matters**

- (a) Has the Welsh Assembly Government covered all of the significant areas of impact of the deprivation of liberty safeguards?
- (b) Do you have additional evidence to submit?
- (c) Would you propose changes which would have a positive impact on equality or which would reduce burdens?