

## **Consultation on Draft Proposals for a Mental Health (Scotland) Bill**

### **ADSW Mental Health Sub Group Response:**

#### **Introduction**

The ADSW Mental Health Sub Group welcomes the opportunity to respond to the consultation on draft proposals for a Mental Health (Scotland) Bill following on from the limited review of the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Scottish Governments response to the limited review report in October 2010.

Whilst elements of the bill positively address a few existing gaps within our Mental Health Act, in some instances reflecting current good practice, it cannot be viewed in isolation from the shifting sands of an already complex legal and policy landscape in the midst of reshaping our health and social welfare agenda.

The Adult Support and Protection Act, the Mental Health Act and the Adults with Incapacity Act have all greatly extended the protective, monitoring and investigative functions of local authorities in respect of people who may be vulnerable as a result of mental disorder. All three Acts are inter-related but equally must be viewed within the context of the broader policy framework of health and social care integration, self directed support and the review of our criminal justice services to name but a few.

The Bill proposes further increases to the duties and responsibilities of our Mental Health Officer Services which equally need to be viewed in the broader context of our national MHO workforce and workload capacity. Whilst many of the proposed duties and responsibilities are welcome in the interests of good practice, strengthening and extending existing safeguarding functions, improving the quality of assessment options and outcomes for individuals with a mental disorder there is an increasing requirement to review our national MHO workforce and workload capacity to ensure that local authorities are sufficiently resourced to enable them to meet their statutory functions in these areas.

#### **Question 1: Do you have any comments on the proposed amendments to the Advance Statement provisions? Comment.**

The proposed amendments to the Advance Statement are welcomed. Consideration should be given to the potential to introduce a recommended proforma which incorporates an advisory note to the effect that it requires to be submitted within a specified timeframe following completion to be effective, will require to be reviewed annually or where there are a change of circumstances and that it revokes any preceding statement. The proforma should be signed, dated and include reference to the fact that the Health Board must forward the proforma to the Mental Welfare Commission to be added to the register.

Clarity is required on the central point within Health Boards to which the proforma should be submitted.

There remain questions around the potential need for 24 hour accessibility to the Advance Statement for those parties who require access and a few data protection considerations that will require to be addressed in the operationalisation of the register

**Question 2: Do you have any comments on the proposed amendments to the Named Person provisions? Comment**

The introduction of an opt out system is welcomed as is the named person's consent to undertaking the role. There is an assumption that issues around capacity in this area will be addressed within the Code of Practice.

The existing Named Person system works well with the above amendments and there appears to be no practical benefit to the service user from the other measures proposed which would be operationally impracticable unless consistently pre-planned which is unlikely to be achievable. Mental Welfare Commission statistical data suggests that there are approximately 3,500 Named Persons currently, the proposals contained within section 257 to involve the MHO in seeking signatures etc are not best use of the limited MHO resource.

Consideration should be given to the expansion of the proposed Advance Statement register to incorporate a Named Person Register.

The proposed Tribunal rules which will be subject to a separate consultation are welcomed in relation to mentally disordered offenders or where there may be victim considerations. There are however concerns that the proposal erodes the rights of the Named Person and this will require to be addressed within the regulations.

**Question 3: Do you have any comments on the proposed amendments to the medical examination and compulsory treatment order provisions? Comment**

There was strong rejection of these proposed amendments which undermine existing good practice across disciplines and organisations including attempts to engage General Practitioners in the process in all instances.

The proposals transfer responsibilities and costs from Health Boards and RMO's to Local Authorities and MHO's, facilitate the disengagement and detachment of General Practitioners from the process with no obvious benefits to the service user.

The transferring of responsibility for securing second medical recommendations from RMOs to MHOs on all CTO applications, (over 1100 in the period 2012/2013. Mental Welfare Commission figures) would entail a significant workload increase on an already stretched service.

The retention of the existing medical examination and compulsory treatment order provisions was overwhelmingly supported.

**Question 4: Do you have any comments on the proposed amendments to the suspension of detention provisions? Comment**

Whilst acknowledging the difficulties experienced to date with suspension of detention measures, particularly immediately following the Acts inception, the proposal to remove the 9 month restriction in any 12 month period was rejected. It was the consensus that this was a retrograde step which would replicate the issues identified with Section 18 Leave of Absence under the 1984 Act.

It was suggested that an upper limit of 6 months in any 12 month period be considered with a disregard for short periods such as one day, one overnight, one weekend in the cumulative period.

There were also a few concerns that RMOs can add more restrictive conditions during periods of Suspension of Detention than those originally approved by the Tribunal.

The Part 13 proposals were supported but would require clarification on the thresholds and it was suggested that the upper time limit of 6 months suspension of detention be equally applicable under section 224.

**Question 5: Do you have any comments on the proposed amendment requiring a MHO to submit a written report to the Mental Health Tribunal? Comment**

Whilst elements of the proposal are unquestionably good practice, there are however major workload concerns for the MHO service.

The proposed changes to section 87 would require an additional 1789 reports by MHO's each year (1789 over the period 2012/2013, Mental Welfare Commission figures). There may be considerations around whether the requirement for an MHO report is limited to extensions but not variations of the order or alternatively limited to those orders where there is likely to be a hearing ( issue related to diagnosis, MHO disagrees with the proposed action, or, where there is a revocation of the application).

The introduction of a recommended form would be of benefit in this area together with clarification around the role of the SCR, section 57c and section 59.

Within the current Act, MHOs should complete an SCR following any relevant event or a letter to advise that the completion of an SCR would serve no practical purpose. Good practice would also suggest that an SCR is completed at least annually for individuals on long term orders and that an SCR should be completed at each renewal of order for individuals who are parents. The Mental Welfare Commission annual report notes a sizeable deficit in the report submissions nationally.

There are concerns around the proposal to place further administrative duties around notification on MHOs which may sit better within the MHTS. Concerns were also expressed around thresholds for significant harm and the need to limit the information in the MHO report given the proposed circulation.

Timeous notification to MHOs from RMOs of plans to extend a CTO also require to be addressed.

Questions were raised around whether these proposals would also apply to Compulsion Orders.

**Question 6: Do you have any comments on the proposed changes to the emergency, short-term and temporary steps provisions? Comment**

Whilst these proposals were viewed as a positive development, it was felt that hospital managers would require a statement from the RMO / GP to advise of sensitivities in order to facilitate the exercising of their discretion.

Whilst there were no concerns with the notification of the granting of the order to the various parties, concern was noted around the circulation of the full papers, particularly if the default Named Person role is retained.

**Question 7: Do you have comments on the proposed changes to the suspension of certain orders etc. provision? Comment**

The proposed changes in this area were viewed positively.

**Question 8: Do you have any comments on the proposed amendments to the removal and detention of patients provisions? Comment**

The proposal to place a duty on the MHO to notify the Mental Welfare Commission when making an application for a removal order to enable the Mental Welfare Commission to consider whether it should make a section 295 recall or variation of the removal order was viewed positively.

The proposal to extend Nurses holding power from 2 to 3 hours to enable an informal patient to be detained for the purposes of enabling medical practitioner examinations irrespective of whether a doctor is immediately available or not was viewed positively.

It was noted however that Nurses should notify both the RMO and the MHO at the start of the holding power to facilitate attendance at the earliest opportunity.

**Question 9: Do you have any comments on the proposed amendments to the timescales for referrals and disposals provisions? Comment**

These proposals were viewed positively although it was felt that further guidance would be required on the definition of specified circumstances

**Question 10: Do you agree with the proposed amendments to the support and services provisions? If you disagree please explain the reason(s) why.**

**Comment**

These proposals were welcomed although it was noted that there is a lack of relevant Mental Health Act materials in other languages.

**Question 11: Do you agree with the proposed amendments to the arrangements for treatment of prisoners and cross border-and absconding patients provisions? If you disagree please explain the reason(s) why.**

**Comment**

The removal of the restriction for the convener of the tribunal panel to be either the tribunal president or to be selected from the Shrieval panel was viewed positively in relation to cost efficiencies and increased flexibility of scheduling hearings.

Whilst this was viewed as good practice, concern was noted around the notification to Scottish Ministers of the making of a CTO application to follow a TTD, although it was generally conceded that this was more related to any potential intervention in the hearing process which could be dealt with within the Code of Practice.

The proposal to involve the MHO in the process for making a decision under section 136, TTD was viewed positively. Mental Welfare Commission figures suggest that there were 45 of these orders in the last financial year.

Operationally local authorities would require to put in place arrangements for the responsible authority to respond to the request in relation to prisoners whose ordinary residence was in their area with the hosting local authority providing a backup MHO service for those instances where the relevant local authority MHO is unable to respond within the specified timeframes.

The proposal to extend cross border transfer to include patients from outwith the UK from other EU member states was welcomed but would require further guidance.

**Question 12: Do you have any comments on any of the proposed amendments relating to the "making and effect of orders" provisions? Comment**

The proposal to add the word 'remanded' before custody to ensure references to 'custody' do not include police custody was welcomed.

The proposal to bring in line the calculation of the period of detentions from day of relevant event ( MH) to the day after the relevant event in line with courts for AOs, TOs, ICOs and HDs will no doubt cause confusion for both RMOs and MHOs in its early implementation but may assist in court processes.

The proposal to extend an AO for up to 21 days following the initial 28 day period to enable better flexibility for assessment purposes rather than the current 7 days was welcomed although due to the impact on an individuals freedom should require due justification.

**Question 13: Do you have any comments on the proposed amendments to the "variation of certain orders" provisions? Comment**

The proposed amendments were welcomed.

**Question 14: Do you agree with the proposed approach for the notification element of this VNS? If not, please explain why not and please outline what your preferred approach would be. Comment**

The proposal to extend the Criminal Justice Victim Notification Scheme to the victims or their relatives of mentally disordered offenders is welcomed although will require clear guidance on definitions, entry and exit points, roles, responsibilities, boundaries, accountabilities and any inconsistencies in applicability addressed .

There are questions around whether this should be restricted to CORO patients only and particular offences of a serious nature which will require further clarity and guidance.

There are also questions around transition points from the criminal procedures elements of the Mental Health Act to the civil elements such as TTDs to CTOs and how this is dealt with for both patient and victim or their relatives.

**Question 15: Do you agree that victims should be prevented from making representations under the existing mental health legislative provisions once they have the right to do so under the proposed Victim Notification Scheme? Please provide reasons for your answer. Comment**

The proposal that victims should be prevented from making representation under the existing Mental Health legislation once they have the right to do so under the proposed Victim Notification Scheme is problematic and inconsistent for example, the RMO would notify victims when orders are being suspended but not when being revoked.

From the limited proposals noted in the bill it is difficult to fully ascertain the potential ramifications of extending the scheme but it was agreed in principle that the extension of the scheme was welcomed.

**Question 16: Do you agree with the proposed approach for the representation element of a Victim Notification Scheme relating to Mentally Disordered Offenders? If not, please explain why not and please outline what your preferred approach would be. Comment**

There was general consensus that this is both a complicated and complex area involving the balancing of the rights of the patient and the rights of the victim. It was noted that the proposal may result in those with a learning disability or lacking in capacity being treated less favourably which was of concern.

More detailed proposals and notional guidance on how the VNS may operate in practice is required to facilitate discussion in the first instance.

**Question 17: Please tell us about any potential impacts, either positive or negative, you feel any of the proposals for the Bill may have on particular groups of people, with reference to the "protected characteristics". Comments:**

It was generally agreed that the proposals were positive in most areas although there was concern that certain proposals could potentially be discriminatory to particular care groups such as those with a learning disability, those with capacity issues and mentally disordered offenders in some instances.

**Question 18: Please tell us about any potential costs or savings that may occur as a result of the proposals for the Bill, and any increase or reduction in the burden of regulation for any sector. Please be as specific as possible.**

**Comments:**

Please refer to the introduction section of this report.

The Bill proposes further increases to the duties and responsibilities of our Mental Health Officer Services which equally need to be viewed in the broader context of our national MHO workforce and workload capacity.

Whilst many of the proposed duties and responsibilities are welcome in the interests of good practice, strengthening and extending existing safeguarding functions, improving the quality of assessment options and outcomes for individuals with a mental disorder there is an increasing requirement to review our national MHO workforce and workload capacity to ensure that local authorities are sufficiently resourced to enable them to meet their statutory functions in these areas.

Notwithstanding the year on year increase in MHO workload demand, which is not matched by any increase in the existing MHO infrastructure, the additional roles and responsibilities for MHOs contained within the proposals will incur further significant costs to local authorities which needs to be considered by the Scottish Government

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