

Implementation of Certain Sections of the 2015 Mental Health Act Consultation

Social Work Scotland response

Question 1 – Do you agree with the proposal that listed persons should be given the status of ‘relevant person’ before the Tribunal? Please state if you have any concerns or suggestions for changes to the proposal, including if there is a different or amended status that you think would be more suitable.

Whilst we would agree ‘in principle’ with the underlying intentions of this section we would record our reservations that the role of the ‘listed person’ is potentially extensive. There is a possibility that the role of listed person may well apply more frequently to people with a learning disability / dementia or other cognitive impairment.

We would record our concerns that the listed persons access to information and how this equates to the rules around ‘relevant person’s’ rights to information and that there may be both benefits and disadvantages arising out of the proposals as they stand.

We have concerns about how a ‘listed person; would be ‘approved’ and how this would be assessed, process for this etc. We are concerned this could lead to delays or impact on length or number of tribunals in an already busy tribunal system.

We suggest specific rules and clear guidance is provided in relation to the a) approval of a listed person, b) access to evidence / information, c) appealing and making applications.

Question 2 – Is there anything else that you think the Tribunal rules should set out in relation to the procedural requirements for the new appeal right for listed persons? Do you agree that either the RMO or any AMP should be able to confirm whether or not the patient has capacity to appeal on their own behalf?

We would wish the tribunal rules to specify when and how the listed person gets access to the information they require in order to make any appeal.

We would agree that the confirmation of the RMO / AMP should be required to confirm the capacity of the individual to act for themselves or instruct an agent to act for them. If incapacity is confirmed the and only then should the ‘Listed Person’ have the right to lodge an appeal.

Question 3 – Do you agree with this overall approach? Please state if you have any concerns or suggestions for changes to the proposal.

We would agree with this approach.

Question 4 – Do you agree with this proposal? Please state if you have any concerns or suggestions for changes to the proposal and if you have any views on how patients without capacity should best be supported at this point.

We agree and support the proposals in this section, however would suggest that the patient's previous nomination (where made) should hold as valid or else there is potential for overly complicating this matter and creating unnecessary paperwork. The nomination should cease at the next tribunal or review of the order.

Question 5 – Do you agree with this proposal? Please state if you have any concerns or suggestions for changes to the proposal.

Agree – refer back to response to question 1 above.

We recommend clear guidance is issued about where such forms should be held and what process to follow where there is no record of any form.

Question 6 – Do you agree with this general principal, and are there any actions that should be taken or issues that should be considered in implementing this provision?

Agree

We would suggest that a 2 stage process be applied for listed person i order to make appropriate decisions on a case by case basis.

- a) Are they appropriate for the role?*
- b) What information should they have access to?*

Question 7 – Do you agree with this proposal? Please state if you have any concerns or suggestions for changes to the proposal.

Agree

Question 8 – Do you agree with this proposal? Please state if you have any concerns or suggestions for changes to the proposal.

Agree however whilst accepting the persons will seek such information from services (or at least that is what is implied) about previous / existing orders. We would suggest that clear guidance is issued which sets out how decisions to release this information are made. Assuming the patient has 'lost capacity' we would request clarity about who has the power to make decisions about the appropriateness of a specific guardian or welfare attorney to obtain information – recognising the rights and authority of such substitute decision makers.

Question 9 – What do you consider the key information required?

Revised guidance leaflets / booklets clearly explaining process / system / law for use by service users / carers information that currently is contained in 'purple guides' is good and only requires updating to reflect changes to law and processes. It would be helpful if further guidance could be considered about who is 'best placed' and able to have such a conversation with a person so that information is shared is impartial and objective. The information should be clear about the levels of information sharing associated with each role. Consider producing information on-line that is easily accessible for the general public to access.

Question 10 – How best should this information be provided to service users not currently in touch with specialist services, and should any agency or profession lead on to this?

All publications to be freely available in print format and supplied from Scottish Government at no cost to Local Authorities. As a statutory requirement exists in law to provide this then this should be a cost and resource met by centre and not as is now being passed to local authorities (via MHO services) to locally print booklets at significant costs not recoverable to the authorities.

Question 11 – Is there any guidance or support needed beyond the Code of Practice and service user guidance?

Consideration to an information website / web page for users / carers to get information or short videos on social media i.e. 'You Tube' as information.

Question 12 – Do you agree with the proposals concerning the list of prescribed persons? Please state if you have any concerns or suggestions for changes to the proposal.

Agree

Question 13 – Do you agree with this proposal? Please state if you have any concerns or suggestions for changes to the proposal.

Agree

Question 14 – Do you agree with this proposal? Please state if you have any concerns or suggestions for changes to the proposal, including if there is a particular level of management structure, or unit of organisation that should be reflected in the regulations.

Agree in principle however the impression could still be for some patients that the doctors are not independent and will have 'influence' on each other. We would suggest thought is given to very clear definitions of 'management structure' and propose that the definition is aligned to clinical psychiatric specialities i.e. CAMHS, Older Adult, Liaison etc..

Question 15 – Do you agree with this proposal? Please state if you have any concerns or suggestions for changes to the proposal.

Agree it is long overdue that a Consultant RMO from the placing HB area should be responsible for decisions and medical examinations relating to the ongoing detention of patients detained within private hospitals or clinics run by private companies or charities.

We recognise some practical difficulties around this however this should not be insurmountable

Question 16 – Do you think it is necessary for the regulations to set out conflicts of interest for medical examination under section 139 (first mandatory review of CO) or section 182 (review of CORO), given that there is additional scrutiny in the process for reviews under these sections and that the decision for COROs is not a decision to extend the order?

Agree

Question 17 – Taken together, are the proposals in Chapter 3 suitable for rural areas where hospitals and second doctors may be located further apart than in urban areas?

There may be issues for some more rural areas.

Question 18 – Do you agree with this proposal? Please state if you have any concerns or suggestions for changes to the proposal and whether you agree that there should be an exemption allow for treatment in all the circumstances set out in section 243 of the 2003 Act?

Agree – however is the provision of artificial nutrition covered by the MHA or would it be more appropriate to use the provision of the Adults with Incapacity Act 2000 as it could be seen as a physical health intervention though clearly severe eating disorders impact on an individual's mental state.

This consultation invites respondents to provide suggestions as to what could be recommended as best practice to Health Boards in the Code of Practice to meet this duty, with the aim of increasing uptake of advance statements in the most efficient way. These suggestions will be relayed to the Code of Practice Working Group to help devise best practice for this duty.

Question 19 – What suggestions do you have about the most effective best practice for Health Boards to promote support available for making an advance statement?

We would suggest that best practice is to encourage discussion (at a suitable point in the patients journey of recovery when they are well enough to engage and understand matters)and staff should be trained and equipped to facilitate such discussions using the materials provided by the Mental Welfare Commission in respect of Advanced Statements.

Question 20 – Do you have any other views or suggestions on how the implementation of the 2015 Act could encourage the uptake of advance statements?

We have no view

Question 21 – Do you think any of the proposals set out in this consultation will have an impact, positive and negative, on equalities as set out above and if so, what impact do you think that will be?

We do not think there will be any impact relating to equalities.

Question 22 – What implications (including potential costs) will there be for business and public sector delivery organisations from these proposals?

Training for Staff will be a significant costs to the public sector.

Costs associated with any publicity materials / publications (if not supplied free from Scottish Government) will be significant and ongoing. Such additional costs need to be recognised and factored into any budget settlement made to HSCP's and HB's

Question 23 – Do you think any of these proposals will have an impact, positive and negative, on children's rights and if so, what impact do you think that will be?

We have no view

Question 24 – Do you think any of these proposals will have an impact, positive and negative on privacy and if so, what impact do you think that will be?

We have no view

Question 25 – Do you have any other suggestions, comments or views about the implementation of the 2015 Act that were not covered by the other chapters of this consultation and which may not be covered by the second consultation?

None