

CONSULTATION QUESTIONS

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1. Proposals for regulations

Our first proposal for legislative change is that we bring forward regulations in the following terms:

Section 268 of the 2003 Act gives a right of appeal against levels of excessive security for qualifying patients in qualifying hospitals. We propose that a qualifying patient would be -

- an individual who is subject to an order requiring them to be detained in a hospital which operates a medium level of security; and
- who has a report from an approved medical practitioner (as defined by section 22 of the 2003 Act, who is not the patient's current RMO,) which supports the view that detention of the patient in the qualifying hospital involves the patient being subject to a level of security which is excessive in the patient's case.

A qualifying hospital would be one of the following-

- the Orchard Clinic in Edinburgh, and the regional medium secure component of Rohallion in Tayside and Rowanbank in Glasgow

Please tell us about any potential impacts, either positive or negative you feel these proposals for regulations may have.

Comments

This seems the most pragmatic and sensible way to proceed in terms of qualifying patients and hospitals essentially those in Scottish Medium Secure Units. It is my view that requiring an AMP report whilst clinically attractive puts a disproportionate obstacle in the way of patients in medium security which is not necessary for those in conditions of special security. This is in keeping with the spirit of the Act and the judgement in the RM case. There is a potentially high impact on the time of clinicians at low and medium secure levels in preparing for appeals and on the time of the CLO solicitors who will inevitably represent them. The SGMHD will also no doubt require additional resource to ensure that this is workable.

2 .Our second proposal is that we do not bring forward regulations but instead repeal section 268 at the earliest opportunity. At the same time we will consider the review undertaken by the National Forensic Network of patients detained in the high, medium and low secure estates, which we hope will clarify whether there is an issue with entrapped patients held in these settings. The outcome of this could result in changes to primary legislation in early course. To take that proposal forward we seek views on the following:

S268-003

- The current appeal provision in section 268 is restrictive and in particular does not allow for a change in security levels within the same hospital setting. Is there a need for a wider provision for an appeal against excessive levels of security?

Comments

There is no published evidence to suggest that there is a need to widen the provision. It would be necessary for the North of Scotland unit to be allowed to transfer patients from the medium secure unit to the Tayside low secure unit which is part of the same building and thus hospital. I am not persuaded that this provision should be extended beyond medium security.

- If an additional appeal provision is created, do we need to provide for a preliminary review to consider the merits of the appeal before proceeding to a full hearing?

Comments

This would be helpful and would dismiss spurious appeals which some patients put in routinely.

- Compulsory Treatment orders, compulsion and restriction orders and transfer treatment directives are currently reviewed by the Mental Health Tribunal at least once every two years. Levels of security are not necessarily discussed at these reviews. Should there be a requirement for the Tribunal to consider levels of security as a matter of course, with an accompanying right of appeal if the question of level of security has not been considered?

Comments

No this would potentially reduce the rights of the patient to two yearly appeals at medium security and thus have fewer rights than those at high security.

- Can more effective use be made of recorded matters by the Tribunal with regard to levels of security in Compulsory Treatment Order cases ?

Comments

My view is that recorded matters are rarely effective in clinical practice and as there is no provision to hold the Health Board to account they are paid little heed to. The rulings under Section 264/265 by comparison do focus minds and are effective.

- Are there other changes to the review system that you consider may help to support and develop further the effective movement of patients through the secure system?

Comments

Any further comments

At medium and potentially low secure levels the problems are different to those which the Millan committee identified (essentially a lack of beds primarily in the West of Scotland). At lower levels this is related to discharge into the community and at the moment the Health Board would be required to identify community resource rather than the local authority where the responsibility lies. I thus suggest that the law be changed to put a duty on the local authority to provide placements where this is thought necessary by the Tribunal.