

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

See box below for general comments on appeals

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:

- 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

See box below

- 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
None

- 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

Such a requirement would ensure that appropriate weight was given to considerations of level of security in assessing risk, and that decisions are closely tied to the risk posed.

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

Comments
None

- 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

Access to right of appeal would be expected to have beneficial effects for detained patients. There is a considerable literature regarding the effects of incarceration, and particularly long-term incarceration, on mental health and well-being. Although not all studies have proven a damaging effect of long term incarceration, many have and even those that have not note that psychological distress is more prevalent in those detained for long periods than other populations (e.g. Dettborn 2012 *Int Jn Law & Psychiatry* 35 (3) 236-9). Some studies have suggested such effects as subtypes of PTSD in those detained long term (e.g. Liem & Kunst 2013 *Int Jn Law & Psychiatry* 36 (3-4) 333-7). Right of appeal would ensure proper scrutiny and should mean that patients progress through the forensic mental health system at a pace commensurate with their risk and needs. It could also be considered that right of appeal may enhance feelings of agency for detained patients. There is evidence that an internal locus of control, associated with such feelings, is related to desistance of offending (e.g. see Farmer, Beech & Ward 2012 *Jn Interpers Violence* 27(5) 930-50).

Other work has suggested that people with severe mental illnesses who have been detained for long periods have more hostile and persecutory attributions and an external locus of control, which impacts on later adjustment (see Yang et al 2009 *Int Jn Law & Psychiatry* 32(5) 294-303).

A further consideration is that the appeal process is likely to have a beneficial impact for patients in terms of driving up standards of care and treatment. It could also be broadened to include appeals against specific restrictions rather than broad levels of security.