

CONSULTATION QUESTIONS

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

The secure psychiatric system should operate as one. Patients need to move through the system with a right of appeal at medium secure, this must also include all low secure services as a qualifying hospital. The waiting list for medium secure beds continues to be an issue, the shortage of low secure beds and the length of time it takes to settle patients back into local communities is having a huge impact on patients wanting to move through and on from all secure services.

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

Wider provision for an appeal, particularly allowing change in security levels within the same hospital setting, would be likely to have a positive impact on those individuals that are stuck in the system, however it will not change the fact that they are stuck.

- 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

Patients have a right and should continue to have that right to appeal conditions of detention or CTOs without any review considering the merits of the appeal, to place such a condition on this type of appeal could be seen to be discriminating against those individuals wishing to appeal against being held in conditions of excessive security.

- 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

The Tribunal should consider levels of security as a matter of course however this should not be the only route for a right of appeal.

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

Comments

Yes, recorded matter is just that, it does not appear to have any power behind it

- 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 All of the above should support the review system, however nothing will change unless beds are made available for patients to move on to.

Any further comments

Comments You also need to take into consideration the effect this is may be having on some patients mental health, the stress and uncertainty. Families/carers/friends, who have to support the patients through this difficult period in their loved ones life are also affected, particularly when everyone knows they are ready to move on.