

## 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

Broadly, we agree with the intention of these proposals. We suggest a few minor amendments. As we understand it, the Orchard clinic provides medium and low secure. Perhaps the qualifying hospital would be "those components of the Orchard Clinic, Rohallion and Rowanbank that have been designated as medium secure" as designations may change.

We agree that the qualifying patient should be one whose appeal has the support of an approved medical practitioner. We think the practitioner should possess a certificate of specialist training in forensic psychiatry.

There are situations where the patient's RMO may support an appeal against detention in conditions of excessive security. This occurs at present in the State Hospital. We think it would be wrong to exclude the support of the RMO.

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**

We would not support a repeal of S268 at this stage but we support a further review of provision of various levels of security. We consider the important factor to be the detriment to the rights and welfare of an individual through being subject to a greater level of security than is necessary for the provision of safe and effective care and treatment.

- 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**

Yes – but see below

- 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**

We think there is considerable merit in this proposal. It would reduce the need for a separate process and hearing

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

**Comments**

This could be an effective and more efficient mechanism than the various provisions in S264 to 272. The RMO would have a statutory responsibility to report to the tribunal on the non-provision of a recorded matter. There is already an agreed process between the Tribunal and the Commission on dealing with this scenario.

- 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  
Not at this stage

**Any further comments**

Comments  
We have been aware of a recent situation where there was no medium secure place available in Scotland. This was most unusual, but suggests that it may be premature to conclude that “entrapment” in medium secure units will not happen at some point.