

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.

On page 4 of the consultation document there is reference to people held in conditions of low security, in addition to medium secure facilities within specific hospitals, as meeting the eligibility criteria to be considered a 'qualifying patient'. It would seem helpful to include in regulations a need to review the circumstances of any person held in a restricted environment in order that the Supreme Court concerns were addressed. If held in levels of low security there would require to be a triggering period at which a detained person would qualify. It would be helpful if guidance could be produced that ensures the independent s22 medical practitioner report is completed **in addition to** the report provided by the RMO; the latter of which would include details of risk assessments/risk management information and views of relevant members of the multi-disciplinary team involved in the care, support and treatment of the 'qualifying patient', with respect to the appropriateness of the levels of security that the 'qualifying patient' is subject to at that time.

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 [None](#)

- 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 [None](#)

- 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?

A potentially 'qualifying patient' could become disadvantaged by being held in certain levels of security at any one time. There is a need therefore, for the RMO, MHO and Clinical Team to be mindful of issues regarding levels of security as a matter of course during their ongoing review and reassessments of individual patient circumstances as needs. There is a right of appeal outlined in Article 5, therefore, it could be argued that there is already disadvantage to some patients held in levels of low and/or medium security who do not have access to this process. The 2 year review would ideally be a formal process to consider all aspects of the person's care, treatment and support, this would clearly include the impact of the treatment environment and the level of security imposed by it.