

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 proposal, and indeed this whole consultation, is far too narrow in scope and has been forced upon the Scottish Government because of the sheer recalcitrance of its officials. It should not have taken a case to have been won at the Supreme Court before the relevant regulations were applied. The circular arguments criticised by the Supreme Court, which meant that basic principles of administrative law were ignored should not happen. The clear intention of the Scottish Parliament was that these regulations should be applied by the given date, and the Scottish Government to date has attempted to thwart this. To be so obstructive, simply to avoid allowing people who by definition pose far less risk than those in the State Hospital to apply for a reduction in the excessive security in which they are forced to live, is an abuse of power. To use an excuse that there was no evidence for a need to do this, when no attempt at evidence gathering had been made by Scottish Government officials, is doubly damning of official attitudes.

All of this is redolent of our own experience of trying to get across our arguments to the Scottish Government about the treatment of people with Autistic Spectrum Disorders within the mental health system, and the stipulation by both the Millan Committee and the McManus Review Group that

a review of the place of people with Learning Disabilities and, by implication, people with Autistic Spectrum Disorders, within the provisions of the Act should be sought at the earliest possible opportunity.

It is quite staggering that Scottish Government officials are in denial about the inclusion of people with Learning Disabilities and Autistic Spectrum Disorders (ASD) within the provisions of the Mental Health Act, whether or not they have a mental illness. Autism Rights is campaigning to bring this to an end. Our `Seven Deadly Points`, summarise why this is both discriminatory and dangerous:-

<http://www.autismrights.org.uk/drupal/node/23>

The Mental Welfare Commission's Learning Disability Census of 2010 reveals that at least 38% of men with Learning Disabilities who are being `treated` within the Scottish mental health system do not have a mental illness. People with Learning Disabilities spend, on average, more than twice as long as others within the mental health system. There are no statistics available on people who have Autistic Spectrum Disorders, even though we know several distressing cases of misdiagnosis and abuse.

We believe that the whole of the Mental Health Act should be reviewed, for the reasons laid out in our submission to the Scottish Human Rights Commission's Scottish National Action Plan on Human Rights :-

<http://scottishhumanrights.com/application/resources/documents/SNAP/ParticipationResponsesReport.pdf>

- see pages 190-220

The Scottish Human Rights Commission included a number of the arguments made by Autism Rights in their Participation Report, especially in their section on mental health:-

<http://www.scottishhumanrights.com/application/resources/documents/SNAP/SNAPParticipationReportJune2013final.pdf>

The current Mental Health Act, and the system that it supposedly regulates, is inconsistent with the European Convention on Human Rights, and this is why a petition has been lodged with the Petitions Committee of the Scottish Parliament, requesting that Scotland's Mental Health Act be made compatible with the European Convention on Human Rights:-

<http://www.scottish.parliament.uk/GettingInvolved/Petitions/mentalhealthlegislation>

Given the various ongoing international debates about psychiatric practice in western nations, it is utterly scandalous that the Scottish Government is holding to the line that there is nothing wrong with Scotland's Mental Health Act. Please see references below.

<http://www.independent.co.uk/life-style/health-and-families/health-news/psychiatric-asbos-were-an-error-says-key-advisor-8572138.html>

- 'Psychiatric Asbos' were an error says key advisor

Former champion says public safety fears led to adoption of measures that

seriously curtailed patients' freedoms
Sanchez Manning Sunday, 14 April 2013

<http://www.madinamerica.com/2013/08/long-term-antipsychotics-making-sense-of-the-evidence-in-the-light-of-the-dutch-follow-up-study/>

- Long-Term Antipsychotics:

Making Sense of the Evidence in the Light of the Dutch Follow-Up Study
Joanna Moncrieff August 13, 2013

This blog is based on material from Joanna Moncrieff's new book on antipsychotics, out in September entitled "The Bitterest Pills: the troubling story of antipsychotic drugs" (publisher Palgrave Macmillan).

<http://www.nimh.nih.gov/about/director/2013/transforming-diagnosis.shtml>

- Director's Blog: Transforming Diagnosis

By [Thomas Insel](#) on April 29, 2013

<http://www.guardian.co.uk/society/2010/sep/06/substance-abuse-mental-illness-crimes?INTCMP=SRCH>

- Substance abuse, not mental illness, causes violent crime

Study finds people with drink or drug addictions have similar rates of violent crimes whether or not they have a mental illness

Randeep Ramesh, social affairs editor guardian.co.uk, Monday 6 September 2010

<http://www.independent.co.uk/life-style/health-and-families/health-news/mentally-ill-not-more-violent-says-study-2072187.html>

- Mentally ill not more violent, says study

By Jeremy Laurance, Health Editor Tuesday, 7 September 2010

People with mental illness are no more likely to commit violent crimes than ordinary members of the public – unless they have abused drink or drugs, researchers say.

Substance abuse is the chief cause of violent crime and increases the risk equally in people with and without mental illness, researchers at the University of Oxford found.

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

Of course there is but, as said in our answer to the first question, there is a pressing need to review the whole of the Mental Health Act, instead of this persistent tinkering around the edges. However, using this an excuse not to adhere to the judgement of the Supreme Court is egregious in the extreme.

- 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

Please see other comments

- 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

Yes

- 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, but this won't happen, given the fact that Tribunals do not require evidence to be given on oath and have completely failed to support the use of Recorded Matters to date

- 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

See other comments

Any further comments

Comments

<http://www.mwcscot.org.uk/publications/visit-monitoring-reports/>

MWC Learning Disability Census 2010

Page 9, under `Diagnosis`

`For men there has been a similar increase in those with learning disabilities and mental illness from 46% in 2008 to 51% in 2010 and a decrease in those with only learning disabilities from 44% to 38%. The proportion with diagnoses including personality disorder had remained stable over time. The gender difference with a much higher percentage of men with a diagnosis of only learning disabilities may be due to the higher proportion of men with ASD on compulsory measure than women; a greater likelihood of challenging behaviour in men being anti-social behaviour and coming to the attention of criminal justice services; and more likelihood of

drug/alcohol misuse for men.`

<http://www.legislation.gov.uk/asp/2003/13/section/328>

- Mental Health (Care and Treatment) (Scotland) Act 2003

328 Meaning of "mental disorder" (1) Subject to subsection (2) below, in this Act "mental disorder" means any-

(a) mental illness;

(b) personality disorder; or

(c) learning disability,

however caused or manifested; and cognate expressions shall be construed accordingly.

<http://www.scotland.gov.uk/Publications/2009/08/07143830/0>

- Limited Review of the Mental Health (Care and Treatment) (Scotland) Act 2003: Report (McManus Review)

<http://www.scotland.gov.uk/Publications/2009/08/07143830/7>

- CHAPTER SEVEN OTHER ISSUES

`In the course of our consultation, we received extensive submissions from several bodies, especially the Mental Welfare Commission, the Royal Colleges, carers and users groups and the Tribunal service. Many of the points raised are covered in the substantive text above. However, some of the points did not fall neatly within our headings and we propose, in this chapter, to address the out-

`Learning disability and the law

Persons with learning disability complained to the Review Group about the inclusion of learning disability in the Act. We understand the Millan Committee recommended that this should be reviewed and that the then Government accepted this in its policy paper "Reviewing Mental Health Law". Now, eight years on from Millan, the Review Group feels that it is time this was done.`

<http://www.bbc.co.uk/news/10384033>

- 23 June 2010

Concerns raised over psychiatric unit admissions

Some people are being "inappropriately" admitted to Scotland's secure psychiatric units, a study has found.

`The report said in some cases violent criminals and sex offenders had been mixed with vulnerable adults, such as under-18s and people with learning difficulties.`

Scottish Parliament Written Answer to question S4W-13177 from Alison McInnes MSP -
The Scottish Government does not even collate statistics on the numbers of people who die whilst receiving compulsory `treatment` under the Mental Health Act.