

## 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.

We believe that although this proposal provides a welcome increase in scrutiny of potential over security, it does not go far enough, offering only a second medical opinion as a safeguard. We also believe that patients held in low secure settings (at hospitals other than the proposed 'qualifying hospitals') should be protected by the same rights of appeal against excessive security.

We are mindful of research suggesting that those from some ethnic minority groups are over represented within certain diagnostic categories and particularly within secure hospital settings and believe that additional scrutiny, not just of the fact of detention, but also the degree of security would be a positive move.

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?

We believe that there is need for wider appeals against excessive security.

- 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?

We are concerned about the potential increase in workload for the Tribunal service and for the staff who provide representations and so would welcome any moves to reduce bureaucracy. However, we are not yet persuaded that adding a further process into what is an already complicated and daunting process for patients is necessarily the best way forward. We would be interested to hear more detail on this proposal however.

- 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?

Yes.

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

It is likely that some situations where people are held in excessive security are caused by lack of available alternative placements or by other delays due internal processes (for example, the completion of reports or assessments.) We believe that recorded matters might provide a useful way of highlighting the obstacles to patients progressing through the system and holding individuals to account and to timescale.

- 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?

Should the issue of excessive security should be more integral to the CPA (Care Programme Approach) process. CPA is intended to help people with mental health problems to experience well planned, progressive care and in our opinion this should include supporting decisions about the use of secure hospital accommodation.

**Any further comments**

Comments