



The British  
Psychological Society

**The Mental Health (Care and  
Treatment) (Scotland) Act 2003  
Consultation in relation to section  
268 appeals against conditions of  
excessive security**

British Psychological Society response to  
the Scottish Government consultation

October 2013

## **About the Society**

The British Psychological Society, incorporated by Royal Charter, is the learned and professional body for psychologists in the United Kingdom. We are a registered charity with a total membership of just over 50,000.

Under its Royal Charter, the objective of the British Psychological Society is "to promote the advancement and diffusion of the knowledge of psychology pure and applied and especially to promote the efficiency and usefulness of members by setting up a high standard of professional education and knowledge". We are committed to providing and disseminating evidence-based expertise and advice, engaging with policy and decision makers, and promoting the highest standards in learning and teaching, professional practice and research.

The British Psychological Society is an examining body granting certificates and diplomas in specialist areas of professional applied psychology.

## **Publication and Queries**

We are content for our response, as well as our name and address, to be made public. We are also content for the Scottish Government to contact us in the future in relation to this consultation response. Please direct all queries to:-

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## **About this Response**

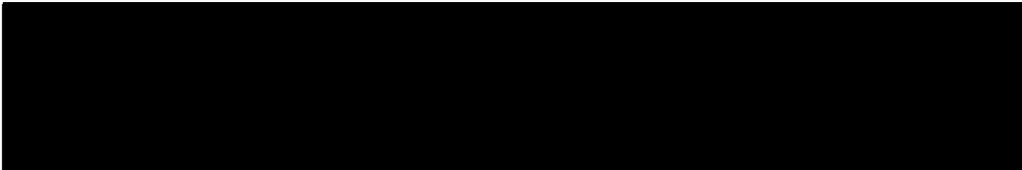
**This response was lead on behalf of the British Psychological Society by:**

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### **With contributions from:**

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We hope you find our comments useful.



**David J Murphy CPsychol**  
*Chair, Professional Practice Board*

(pp)  
**Dr Sue Northrop CPsychol AFBPsS**  
*Scottish Branch*

## 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:

The Society believes that this proposal would have a beneficial impact on patients. In the first instance, the appeal system is an important driver for better care and treatment. For example, provision of suitable low secure accommodation; improved treatment and rehabilitation to enhance patient flow. Secondly, the results of many studies point to the potential psychological harm that long term incarceration can cause and implementing the proposal would help to ensure that patients' move on to conditions of lower security and ultimately to the community when they are ready. Finally, the ability to appeal against excessive security is likely to foster a greater sense of personal control. It is known that offenders who feel as if they have control over their situation do better in offending behaviour treatment. Such an 'internal locus of control' is also associated with reduced rates of depression.

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:

The Society supports the wider provision for appeal and believes that this should extend beyond designated levels of security. Restrictions on liberty should be closely matched to risk but this is not assured by detaining someone in a particular environment. For example, a person in a medium secure unit might not be granted the freedoms that could be expected there. Provision for appeal by patients detained in all levels of security, against more specific restrictions on freedom such as, access to the community, would promote a fairer approach. It would also be likely to lead to more rigorous assessments of risk to assist decision-making. However, we acknowledge that risk management strategies need to be responsive to short-term changes in risk and so could not be easily be scrutinised by the Tribunal under current arrangements due to the logistics of organising hearings. Alternative solutions for independent scrutiny might have to be considered.

- 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:

The Society has no comment to make.

- 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 Society believes that this would help to ensure that restrictions on freedom are closely matched to risk.

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

Comments:

The Society has no comment to make.

- 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:**

The Society has no comment to make.

**Any further comments**

**Comments**

The Society has no further comments to make.