



Consultation on the implementation of certain sections of the Mental Health (Scotland) Act 2015 and associated regulations (Part 2)

17th October 2016

Question 1 - Do you agree with these proposals? Please state if you have any concerns or suggestions for changes to the proposal.

Regarding a transfer from Scotland, we are concerned that the suggested 7 days for the patient to be seen by their MHO and an independent advocate may be difficult. We know that independent advocacy organisations are reporting that they have lengthy waiting lists and so in this situation they may not be able to assist a patient to know and understand their rights, consider options and make an informed decision.

We are also aware that MHO are stretched and may not be able to see patients within the stipulated 7 days.

The SIAA has expressed concerns over a number of years about the lack of independent advocacy for children and young people, within the mental health system. We believe that when a child or young person is being considered for transfer from Scotland it is imperative that they have access to independent advocacy to help them understand their rights, engage with the process and participate in decision making. Independent advocacy support for parents and carers needs to also be in place.

Regarding a transfer to Scotland, we believe that there should be a duty on the MHO to inform the patient about their right to independent advocacy, an Advance Statement and a Named Person. We believe that the MWC should visit the patient within 3 months to ensure they know and understand their rights to appeal their treatment etc.

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Question 2 - Do you agree that a right to apply to the Tribunal as set out above should be introduced? Please state if you have any concerns or suggestions for changes to the proposal. Are there any related circumstances where such a right to apply to the Tribunal should be introduced?

We believe that patients transferred to Scotland should be informed of their rights to appeal to the Tribunal, their right to access independent advocacy and other safeguards. The regulations need to identify clear timeframes for appeals.

Question 3 - Do you agree with the proposal that limited information about the transfer should be provided to any guardian or welfare attorney or equivalent where there is no named person? Do you consider it appropriate for the guardian or welfare attorney to receive all of the information listed above, or should they only receive this in part? Where there is no named person, or guardian or welfare attorney, should information be provided to the primary carer?

We agree that limited information should be provided to any guardian or welfare attorney where there isn't a Named Person. This information should also include reference to safeguards such as independent advocacy, Advance Statement, Named Person and appeals processes.

Question 4 - Do you think there should be changes made to the timescale after which a DMP should visit a patient who has transferred to Scotland to authorise the continuation of 'treatments given over a period of time'? If so, what timescale would you suggest and should this apply in all circumstances or are there specific circumstances where it should apply? Do you agree that if the DMP has visited within the first two months, a DMP visit after two months should not be required?

We believe that the DMP should visit the patient within 4 weeks after being transferred.

Question 5 – Overall, are there any further changes that you think should be made to these regulations in relation to the reception of patients into Scotland?

We believe there needs to be an overall duty to inform patients about safeguards such as independent advocacy, Advance Statements and Named Person. We reiterate our concern about the lack of independent advocacy for children and young people.

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Question 6 – Do you agree with this proposed change? Please state if you have any concerns or suggestions for changes to the proposal.

We believe that this proposal could mean that a patient does not have time to access support from independent advocacy to ensure that they fully understand their rights and what is happening.

Question 7 – Are there circumstances where the regulations should allow a cross border transfer for a patient whose detention is suspended? If so, should there be any variation to the process for other cross-border transfers? Do you consider there should be any additional information required or different safeguards?

We believe that the process for a patient transferring to other parts of the UK should be changed to allow a patient to relocate, for example to be closer to family, friends and support networks. In such circumstances the patient should have access to independent advocacy to ensure they understand and know their rights especially when they may have different or fewer rights in other parts of the UK.

Question 8 – Do you agree with these proposals? Please state if you have any concerns or suggestions for changes to the proposal. Are there any additional safeguards or alternative ways of amending the regulations that should be considered?

We agree with the proposal if the patient agrees to the process being speeded up after discussing their rights with an independent advocate. The patient should know that they have the right to change their mind and appeal against the transfer.

Question 9 – Overall, are there any further changes that you think should be made to these regulations in relation to the transfer of patients from Scotland?

As stated in our answer to Q7 we know that patients in different parts of the UK have different rights especially in relation to safeguards such as independent advocacy.

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We believe there should be a duty to ensure that a patient knows and understands the differences in services and support.

Question 10 - Do you consider that the same process should apply for reception of patients from other EU countries as does for reception of patients from elsewhere in the UK? Are there any additional safeguards that should apply? Is there any additional information that should be provided to Scottish Ministers, including in relation to possible arrangements or concerns following discharge of the patient from hospital?

We agree that the same process should apply to patients regardless of their country of origin. Such patients should be informed about independent advocacy and have access to interpreting and translation services if required.

Chapter 3 – Absconding regulations ***Absconding by patients from outwith Scotland***

Question 12 – do you agree with this proposal? Please state if you have any concerns or suggestions for changes to the proposal.

We believe that Short Term Detention Certificates should be used as they provide scrutiny and safeguards for patients.

Question 13 - Do you agree that these regulations should allow patients to be treated under section 243 of the 2003 Act? Please state if you have any concerns or suggestions for changes to the proposal.

We are concerned about this proposal, we believe that the 2003 Act provides safeguards for the patient and that legislation should be used to treat people in all circumstances.

Question 14 – Do you consider that there might be situations where it would be of benefit for a patient to receive treatment that may not fit under the criteria of section 243? If so, please describe them and any exemptions or safeguards that you would expect to be included.

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We are also concerned about this proposal and believe it infringes the rights of the patient. We believe that legislation should be used to provide treatment to people.

We do not propose to set out in the regulations any time limit for the provisions which relate to medical treatment but would propose under statutory guidance to set out best practice to deal with rare situations where a patient is in Scotland for more than a few days. This is to provide a suitable framework for practitioners and patients that will promote patient's rights and avoid unnecessary bureaucracy. For example there may be circumstances where, a patient was expected to be in Scotland for less than 72 hours and then the transport to return them is delayed by a day or two and guidance is a more suitable vehicle to manage such situations.

Question 15 – Do you agree that guidance should be set out for these circumstances? What timescales and other protections do you think would be most appropriate for the guidance?

We believe that the regulations should provide details around timescales so that patients are fully aware of their rights under the legislation.

Question 16 – Are there any circumstances where you consider that a patient who has absconded from another jurisdiction should not be returned to the original hospital or country of origin? Are there any safeguards that you consider should be part of the regulations in relation to patients who have absconded from other jurisdictions?

We believe that the Mental Health Tribunal Scotland should decide if a patient is well enough to be sent back to their hospital or country of origin. In such situations patients have a right to access independent advocacy and a lawyer.

Absconding by other patients regulations

Question 17 - Do you agree with this proposal? Please state if you have any concerns or suggestions for changes to the proposal. Should the regulations or guidance specify anything related to the process for this authorisation?

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We would like further details about this proposal and the role of the police in such situations and what training they would receive. We believe that there should be detailed regulations about this proposal.

Question 18 – Do you agree with this proposal? Please state if you have any concerns or suggestions for changes to the proposal.

We believe that the MWC should be informed if a patient absconds.

Chapter 4 – Transitional and savings provisions

Suspension of detention

Question 19 – do you agree with the proposals set out above? Please state if you have any concerns or suggestions for changes to the proposal.

We believe that there needs to be clear information provided to patients about the suspension of detention to ensure they understand the terms of their treatment.

Question 21 – do you have any views on the proposals for individual sections as set out at Annex A?

No views

Question 22 – Do you have any views about specific information that should be contained in the guidance in relation to transitional and savings provisions? Do you have any views on how best this guidance should be targeted, including to specific groups of practitioners?

No views

Chapter 5 – Impact Assessments

We are considering the impact of implementing the Act and associated secondary legislation.

An Equalities Impact Assessment (EQIA) will help us understand policy impacts on people because of their age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual

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orientation. This will allow us to identify (and mitigate) negative impacts and proactively look for opportunities to promote equality. Under the Equality Act 2010, the definition of disability includes where learning disabilities, mental health conditions or autism (which are all included in the definition of mental disorder in the 2003 Act and therefore relevant to these proposals) has a substantial and long-term adverse effect on the ability to carry out normal day-to-day activities

A Business Regulatory Impact Assessment (BRIA) will allow us to assess the likely financial costs and benefits and the associated risks of the proposals that might have an impact on the public, private or third sector.

A Children's Rights and Wellbeing Assessment (CRIA) will allow us to assess whether the proposals will advance the realisation of children's rights in Scotland and protect and promote the wellbeing of children and young people.

A Privacy Impact Assessment (PIA) will allow us to identify and address the potential privacy impacts of these proposals.

Question 23 – Do you think any of the proposals set out in this consultation will have an impact, positive and negative, on equalities as set out above and if so, what impact do you think that will be?

We are concerned that some of the proposals do not promote patient rights and these may have a detrimental impact on equalities.

Question 24 – What implications (including potential costs) will there be for business and public sector delivery organisations from these proposals?

We believe there will be an impact on Local Authorities employing Mental Health Officers to ensure there are enough in post. LA and NHS Boards have a responsibility to ensure access to independent advocacy and many organisations are operating waiting lists.

Question 25 – Do you think any of these proposals will have an impact, positive and negative, on children's rights and if so, what impact do you think that will be?

As stated previously we are concerned about the right of children and young people to access independent advocacy as we know there are significant gaps in provision. We believe there needs to be considerable investment into advocacy provision for children and young people.

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