Consultation on the Implementation of certain sections of the Mental Health Act (Scotland) 2015

March 2016

The Scottish Government
Riaghaltas na h-Alba

Chapter 1 – Introduction, objective and scope of consultation

Introduction

The Mental Health (Scotland) Act 2015 makes changes to the operation of the Mental Health (Care and Treatment) (Scotland) Act 2003 and to the Criminal Procedure (Scotland) Act 1995 about the treatment of mentally disordered offenders. It also creates a new victim information and representation scheme for victims of some mentally disordered offenders. Two areas of the Act have come into force so far. The first extends the right to appeal against being held in a level of excessive security to patients in medium secure units. The second requires Scottish Ministers to review the arrangements for investigating the deaths of patients in hospital for treatment for a mental disorder.

Because of the interaction between the changes in the 2015 Act, related secondary legislation, the Tribunal rules and the statutory Code of Practice, we expect the majority of the rest of Parts 1 and 2 of the Act to come into force on a single date in early 2017. This is the first of two consultations on the implementation of the 2015 Act and covers several topics, including the changes to the named person provisions and secondary legislation regarding conflict of interests at certain medical examinations.

A glossary is included at Annex A.

Objective and Scope

This consultation focuses on specific provisions of the 2015 Act related to named persons, advance statements, conflict of interest regulations and safeguards for certain informal patients regulations. The aim is to gather views on the proposals for relevant secondary legislation and transitional and savings provisions, and associated work to implement the Act. Secondary legislation may be required where an Act sets out that Ministers may make provision by regulations, order or rules. The Tribunal rules are part of secondary legislation. Transitional and savings provisions help move from the current legislation to the new legislation, for example where it would not be practical to move straight from one system to another on the day that the relevant part of the 2015 Act comes into force.

We have set out our proposals for implementing these aspects of the 2015 Act which we intend should best protect and safeguard the rights of service users and make sure that the system under the Act provides for efficient and effective treatment. There will be a further consultation on implementation of further provisions of the Act in due course.

Questions

Chapter 2 seeks your views on proposals about implementing the changes to the named person provisions and the introduction of a right of application or appeal to the Tribunal in certain circumstances where there is no named person.

Chapter 3 seeks your views on proposals for new Conflict of Interest Regulations.

Chapter 4 seeks your views on proposals to extend the scope of the Safeguards for Certain Informal Patients Regulations.

Chapter 5 covers the implementation of provisions related to advance statements. In particular it seeks your views on what the Code of Practice could recommend as best practice on the duty on Health Boards to provide information on the support available to service users about advance statements.

Chapter 6 seeks your views on the likely impact of these proposals on equalities; children's rights; business and service providers; and privacy. This will inform impact assessments for the implementation of the Act.

Not all questions will be of interest or relevant for every respondent and you are welcome to only respond to those questions or chapters in which you are interested.

Duration

The consultation will be open from 7 March to 30 May 2016.

Responding to this consultation paper

We are inviting responses to this consultation by 30 May 2016.

Please respond to this consultation online at https://consult.scotland.gov.uk/mental-health-law/mental-health-act. You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the close date.

If you are unable to respond online, please complete the Respondent Information Form (see "Handling your Response" below) and send to:

The Scottish Government
Area 3-ER, St Andrew's House
Edinburgh
EH1 3DG

Handling your response

If you respond using Citizen Space, you will be automatically directed to the Respondent Information Form at the start of the questionnaire. This will let us know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public.

If you are unable to respond via Citizen Space, please complete and return the **Respondent Information Form** as this will ensure that we treat your response appropriately. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at http://consult.scotland.gov.uk. If you use Citizen Space to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to:

The Scottish Government
Area 3-ER, St Andrews House
Edinburgh
EH1 3DG

Scottish Government consultation process

Consultation is an essential part of the policy making process. It gives us the opportunity to get your opinion and expertise on a proposed area of work.

You can find all our consultations online: http://consult.scotland.gov.uk. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (http://ideas.scotland.gov.uk)

After a consultation is closed we publish all responses where we have been given permission to do so.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Chapter 2 – Named persons

Background

Under the 2003 Act, if a patient does not choose who should be their named person, then a named person is appointed on their behalf by default, usually falling to a carer or relative. The 2015 Act removes default named person appointments in relation to adults. It also introduces a right for listed persons to initiate certain applications or appeals where the service user does not have the capacity to initiate the application or appeal themself. These provisions seek to balance protecting service users' rights to privacy and autonomy with preserving appeal rights for service users who do not have capacity to initiate an application or appeal themselves.

Sections 22-25 of the 2015 Act make the following changes to named person provisions in the 2003 Act:

- Section 22 removes the provisions of the 2003 Act that give a patient over 16 a named person by default if they have not chosen one. This means that a named person can now be nominated under section 250 but not imposed by default.
- Section 23 changes the 2003 Act so that a named person nominated under section 250 must consent in writing to taking on the role.
- Section 24 removes the power of the Mental Health Tribunal for Scotland to appoint a named person in relation to an adult and for Mental Health Officers and others to apply to the Tribunal for appointment of a named person.
- Section 24 also removes the power of the Tribunal to substitute another named person where it has removed a named person where it considers it is inappropriate for the person to act as a named person.
- Section 25 allows listed persons (carer, nearest relative, guardian or welfare attorney) to initiate certain applications/ appeals for patients over 16 who do not have a named person and who do not have capacity to initiate the appeal or application themselves.
- Section 25 also allows guardians and welfare attorneys to receive notification of certain decisions where there is no named person but not to receive the content of certain reports.

New appeal right for listed persons in operation

This consultation proposes that listed persons who make an appeal should be given the status of 'relevant person' before the Tribunal. A 'relevant person' is someone who, under the Tribunal Rules, can be given an opportunity to be heard by the Tribunal and to submit evidence to the Tribunal. It does not give automatic access to the service user's medical records or other sensitive information. This is different to being a 'party' to the Tribunal, which is the status usually given to someone who initiates an application to the Tribunal. A party to the Tribunal automatically receives copies of the papers and documents for the Tribunal hearing.

A listed person will only be able to apply or appeal to the Tribunal where the patient does not have capacity to make the application themself. This consultation proposes that an application or appeal from a listed person would therefore contain confirmation from the Responsible Medical Officer (RMO) or another Approved Medical Practitioner (AMP) that the patient does not have capacity to appeal on their own behalf, and statutory guidance will set out how this will work in practice.

Applications and appeals by listed persons would be made under the same provisions set out in the Tribunal rules for other parties, although if the patient does not have a solicitor, or the capacity to appoint one, a curator ad litem (a legal representative appointed by the Tribunal to represent the patient) should be appointed. Any limitation for current parties (for example the number of appeals that can be made in any year) would also apply to listed persons. We would welcome any views as to whether the Tribunal rules should set out any further specific rules related to applications or appeals listed persons.

Question 1 – Do you agree with the proposal that listed persons should be given the status of 'relevant person' before the Tribunal? Please state if you have any concerns or suggestions for changes to the proposal, including if there is a different or amended status that you think would be more suitable.
Question 2 - Is there anything else that you think the Tribunal rules should set out in relation to the procedural requirements for the new appeal right for listed persons? Do you agree that either the RMO or any AMP should be able to confirm whether or not the patient has capacity to appeal on their own behalf?

Transitional provisions

The 2015 Act amends certain sections of the 2003 Act, and transitional provisions will need to provide a bridge from the old system to the new system. The transitional provisions will need to set out what happens to current named persons appointed by default and at what point the right of application and appeal for listed persons comes into effect for orders and certificates.

This consultation proposes that the transitional provisions set out that the named person will continue to hold that role until the next time the patient's order is reviewed, revoked or a new order granted. At this point their role would cease. This would not apply to a named person who has been appointed under section 250 of the 2003 Act, where the named person has been appointed by a signed nomination from the patient. This consultation proposes that the transitional provisions make the same provision for named persons appointed by the Tribunal as for default named persons. Further detail of how this might work follows below.

Question 3 – Do you agree with this overall approach? Please state if you have any concerns or suggestions for changes to the proposal.

The transitional provisions will need to set out the exact point at which any default named person ceases to hold that role. A service user who has a named person by default is likely to interact with the 2003 Act in one of three ways after the coming into force date:

1. a measure authorising detention is applied for or granted (either for a patient who is currently detained under a different order or certificate, or for a patient who has previously been detained or is currently an informal patient).
2. the current order or certificate is revoked or expires and the service user is no longer subject to compulsory measures under the 1995 or 2003 Act.
3. the current order or certificate is reviewed and/or extended.

Expanding on point 3, where the 2003 Act provides for a mandatory interview with the patient, this consultation proposes that it is at this point that the default named person ceases to hold that role. This is because it provides an opportunity to discuss options with patients with capacity ahead of their next Tribunal hearing. The options will be whether they want to nominate their named person to continue in the role, nominate a different named person or to choose whether or not to allow listed persons to make applications and appeals on their behalf.

A diagram setting out an example of this process is at Annex B.

Question 4 – Do you agree with this proposal? Please state if you have any concerns or suggestions for changes to the proposal and if you have any views on how patients without capacity should best be supported at this point.

Section 23 of the 2015 Act will require named persons to agree to the role in writing. This consultation proposes that transitional provisions set out that the requirement for a named person to agree in writing to taking on the role, as set out in section 23 of the 2015 Act, only applies to those named persons nominated after the coming into force date. This is to avoid invalidating the nomination of a named person who was previously chosen by the patient and will continue in the role.

Question 5 – Do you agree with this proposal? Please state if you have any concerns or suggestions for changes to the proposal.

Section 24 of the 2015 Act removes the ability of the Tribunal to appoint a named person for a service user over the age of 16, though retains its power to remove an inappropriate named person. There is therefore the potential for a situation where:

- a service user with capacity has chosen to have a named person,
- the individual they have chosen is later removed from their role by the Tribunal,
- the service user no longer has the capacity to choose a new named person, even though they had previously wanted one.

This consultation proposes that it is generally preferable for the service user to no longer have a named person (even if they had intended to have one) rather than an individual who they may not have chosen to be appointed as their named person without their say.

Question 6 – Do you agree with this general principle, and are there any actions that should be taken or issues that should be considered in implementing this provision?

Section 25 of the 2015 Act introduces the new right of application or appeal to the Tribunal for listed persons. This consultation proposes that this is introduced in line with the phasing-out of default named persons. This would mean that where a service user interacts with the 2003 Act (for example because their order is reviewed), and ceases to have a named person, the listed person's rights would come into force. As set out earlier, this is only the case if the person does not have capacity to make an appeal or application on their own behalf. Where there is a restriction on the number of applications to the Tribunal about a certain order and time period, then the listed person would not be able to make an appeal during that period, if an appeal had already been made.

Question 7 – Do you agree with this proposal? Please state if you have any concerns or suggestions for changes to the proposal.

Section 25 of the 2015 Act also introduces a right for a guardian or welfare attorney to obtain information that certain certificates or orders have been granted or renewed (under the 2003 Act, the guardian or welfare attorney had to be informed that many orders had been granted, but not all of them). This consultation proposes that this should include orders already in existence so that this right comes in to force in all cases on a single date.

Question 8 – Do you agree with this proposal? Please state if you have any concerns or suggestions for changes to the proposal.

Supporting service users to choose the right representation

It will be important that individual service users, their carers and others are given information that supports them to choose whether it would be most appropriate for them to have a named person, a listed person in relevant circumstances or neither. This consultation proposes that the best way to do this is through clear guidance for practitioners in the Code of Practice setting out appropriate opportunities to discuss this with the service user and what information should be given. There will also be refreshed user guidance leaflets for service users and carers.

Question 9 – What do you consider the key information required?
Question 10 – How best should this information be provided to service users not currently in touch with specialist services, and should any agency or profession lead on this?
Question 11 – Is there any guidance or support needed beyond the Code of Practice and service user guidance?

Secondary legislation

The changes in the 2015 Act mean that we need to amend the Mental Health (Patient Representation) (Prescribed Persons) (Scotland) (No. 2) Regulations 2004 to remove references to section 253 of the 2003 Act. Section 253, which allowed patients to declare they did not want a specific person to be their named person, is removed by the 2015 Act. Prescribed persons are those who may witness the nomination, or revocation of the nomination, of a named person. Section 24 of the 2015 Act will also require the regulations to set out the prescribed persons for

witnessing a docket stating that the nominated person agrees to be the named person. We do not propose to change the list of prescribed persons in the 2004 regulations and propose that it should be the same list for witnessing the named person's agreement to taking on the role. Those currently listed are:

- clinical psychologists;
- medical practitioners;
- occupational therapists;
- persons employed in the provision of (or in managing the provision of) a care service;
- registered nurses;
- social workers; and
- solicitors.

Question 12 – Do you agree with the proposals concerning the list of prescribed persons? Please state if you have any concerns or suggestions for changes to the proposal.

Chapter 3 – Conflict of interest regulations

Background

The Mental Health (Conflict of Interest) (Scotland) (No 2) Regulations 2005 set out where there is taken to be a conflict of interest for certain purposes under the 2003 Act.

Short Term Detention Certificate (STDC)

For medical examinations in relation to the granting of an STDC (section 44 of the 2003 Act) or extension pending application for a CTO (section 47 of the 2003 Act), it is a conflict of interest if

i. the Approved Medical Practitioner (AMP) is related to the patient;
ii. the AMP is employed by, or contracted to provide services in or to, an independent health care service in which the patient will be detained.

In relation to ii, the examination can still take place where the approved medical practitioner not carrying out the medical examination would result in a delay which would involve serious risk to the health, safety and welfare of the patient or to the safety of other persons.

Compulsory Treatment Order (CTO)

For medical examinations in relation to the granting of a CTO (s58), it is a conflict of interest if :

i. either medical practitioner is related to the patient;
ii. the two medical practitioners are related to each other in any degree
iii. where the CTO proposes the detention in an independent health care service and either medical practitioner is employed by or contracted to provide services in or to that health care service;
iv. where the CTO authorises detention in an NHS hospital and both medical practitioners are employed or contracted to provide services in or to that hospital;

In relation to iii and iv, the examination can still take place if:

- failure to carry out a medical examination would result in delay which would involve serious risk to the health, safety and welfare of the patient or to the safety of other persons; and
- one of the medical practitioners is a consultant and the other practitioner does not work directly with or under the supervision of that consultant.

The regulations do not set out what should be taken to be a conflict of interest in relation to emergency detention certificates (EDC) given the urgent nature of these orders.

New provisions

The 2015 Act replaces the current regulation-making powers with new ones to set out where there is taken to be or not taken to be a conflict on interest in relation to medical examinations at the following sections of the 2003 Act:

- Section 36(1) – granting of an EDC
- Section 44(1) – granting of an STDC
- Section 47(1) – extension of an STDC to allow for application for a CTO
- Section 57(2) – application for a CTO
- Section 77(2) – first mandatory review of a CTO
- Section 78(2) – further mandatory reviews of a CTO
- Section 139(2) - first mandatory review of a compulsion order (CO)
- Section 140(2) – further mandatory reviews of a compulsion order
- Section 182(2) – reviews of a CORO

For sections 36, section 44 and section 47, this consultation proposes that the new regulations should mirror the existing provisions for medical examinations under these sections. This would mean that the regulations would not set out what is a conflict of interest for EDCs for the reasons mentioned above. For sections 44 and 47 the provisions would reflect what is set out in the first part of this chapter for STDCs.

Question 13 – Do you agree with this proposal? Please state if you have any concerns or suggestions for changes to the proposal.

This consultation proposes that the new regulations for section 57 should mostly mirror the existing provisions for section 58 as set out in the first part of this chapter for CTOs There would be one difference to conflict iv. Instead of reference to both practitioners being employed in or contracted to provide services to the same hospital, our policy proposal is to consider whether it would be more sensible in practice for it to be only taken to be a conflict if doctors are employed in the same management structure. For example, this could mean that at the largest hospitals, doctors in separate psychiatry departments or clinical directorates which are run separately to each other would be able to perform the second medical examination.

Question 14 – Do you agree with this proposal? Please state if you have any concerns or suggestions for changes to the proposal, including if there is a particular level of management structure, or unit of organisation that should be reflected in the regulations.

Following a review of a CTO (including a medical examination under sections 77 or 78 of the 2003 Act) the RMO must determine that the criteria for the order is still met and if the order should be extended. If the order is to be extended, then the RMO submits a record to the patient, Tribunal and other parties. If the MHO agrees with the decision then the Tribunal does not review the determination, unless the Tribunal has not reviewed the CTO for two years. This is also the case for extending a CO following a medical examination under section 140 of the 2003 Act. A decision to extend the CO after the first mandatory review after six months (following a medical examination under section 139 of the 2003 Act) will be reviewed by the Tribunal.

COROs, unlike CTOs or COs, are not time-limited and therefore the medical examination under section 182 relates to whether the criteria for the order are still met, rather than formally extending the order. COROs are subject to mandatory yearly reviews (including review by the Tribunal every two years) and after the medical examination, a report is submitted to Scottish Ministers.

This consultation proposes for medical examinations for reviews of orders (i.e. medical examinations at sections 77, 78, 139, 140 and 182) it should be taken to be a conflict of interest if:

i. the AMP is related to the patient;
ii. the AMP is employed by, or contracted to provide services in or to, an independent health care service in which the patient is currently or will be detained.

The practical impact is that it is likely that an AMP employed by the NHS will be required to conduct the medical examination for the review of an order for any patient detained in an independent health care service and take part in relevant Tribunal hearings. It is intended that this oversight will better safeguard the rights of patients detained on longer term orders, such as CTOs, in independent health care services. Mental Welfare Commission guidance on conflicts on interest in independent hospitals sets out that they consider that it is better practice for the RMO to arrange for an examination by another approved medical practitioner who is not contracted to provide services to that hospital.

Question 15 – Do you agree with this proposal? Please state if you have any concerns or suggestions for changes to the proposal.
Question 16 – Do you think it is necessary for the regulations to set out conflicts of interest for medical examinations under section 139 (first mandatory review of CO) or section 182 (review of CORO), given that there is additional scrutiny in the process for reviews under these sections and that the decision for COROs is not a decision to extend the order?
Question 17 – Taken together, are the proposals in Chapter 3 suitable for rural areas where hospitals and second doctors may be located further apart than in urban areas?

Chapter 4 – Safeguards for certain informal patients regulations

Background

Section 244 of the 2003 Act allows Ministers to make regulations to prescribe conditions that must be satisfied before types of medical treatment may be given to patients who are under 16 years of age and who are not receiving medical treatment under the 2003 Act or the Criminal Procedure (Scotland) Act 1995.

The Mental Health (Safeguards for Certain Informal Patients) (Scotland) Regulations 2005 set out a range of safeguards for three treatments: electro-convulsive therapy (ECT); vagus nerve stimulation (VNS); and transcranial magnetic stimulation (TMS). The safeguards for these treatments are:

- where the patient is capable of consenting and does consent, either the RMO or a Designated Medical Practitioner (DMP) must certify that the child has consented and that the treatment is in the child's best interests. Any such certificate must be given by a child specialist.
- where the patient is capable of consenting and does not consent to these types of treatment, then their right to refuse treatment cannot be overridden.
- where the patient is incapable of consenting, consent must be obtained from a person with parental rights and responsibilities for the child. A DMP, who is not the medical practitioner primarily responsible for the child's treatment must certify that the patient is incapable of making a decision and that the treatment is in the patient's best interests. If the patient resists the treatment, it can only be given if the DMP certifies that the patient is incapable of making a decision, that the patient resists or objects and the treatment is necessary in line with the urgent medical treatment provisions of section 243(3) of the 2003 Act.
- The purposes in section 243(3) are saving the patient's life; preventing serious deterioration in the patient's condition; alleviating serious suffering on the part of the patient; and preventing the patient from behaving violently or being a danger to themselves or others.

New provisions

This consultation proposes that the regulations be amended so that the safeguards set out for ECT and other treatments above be extended to artificial nutrition, to increase protections for patients under 16. We propose that there is one key difference in relation to urgent treatment, because artificial nutrition is often used in life-threatening situations and we want to ensure that this does not restrict the giving of life-saving treatment when there is not consent. For life-saving situations our policy is that a DMP, who is not the medical practitioner primarily responsible for the child's treatment would have to certify that the patient has not consented or is incapable of making a decision, that there is parental consent, and that the treatment is in the patient's best interests. As currently, where there is not parental consent, the RMO would have to apply for an order under the 2003 Act to treat the patient.

Question 18 – Do you agree with this proposal? Please state if you have any concerns or suggestions for changes to the proposal and whether you agree that there should be an exemption allow for treatment in all the circumstances set out in section 243 of the 2003 Act?

Chapter 5 – Advance Statements

Background

Under the 2003 Act, anyone has the right to make a written advance statement when well, which sets out how they would and would not like to be treated for mental disorder if they become unwell and their ability to make decisions about treatment becomes significantly impaired. The advance statement must be taken into account by anyone making decisions about treatment of the patient, including medical practitioners and the Mental Health Tribunal. If the treatment goes against what is included in the advance statement, this must be recorded in writing and a copy given to the patient, their named person, guardian, welfare attorney and the Mental Welfare Commission.

New provisions

The Mental Health (Scotland) Act 2015 makes two main changes about advance statements. Firstly, it introduces a requirement for Health Boards to keep a copy of any advance statement received with the patient's records and to inform the Mental Welfare Commission of the existence and location of the statement along with administrative information required to identify that it belongs to the patient. This information will be held on a register of information. Secondly, the 2015 Act requires Health Boards to publicise the support that it provides to make and withdraw an advance statement.

During the Stage 3 proceedings for the Bill, the Minister for Sport, Health Improvement and Mental Health noted that he would ask the Code of Practice Working Group to include guidance in the Code that sets out best practice for how Health Boards could work with local authorities and other organisations in their areas to produce and promote information about the support that is available to anyone in their area to make an advance statement.

This consultation invites respondents to provide suggestions as to what could be recommended as best practice to Health Boards in the Code of Practice to meet this duty, with the aim of increasing uptake of advance statements in the most efficient way. These suggestions will be relayed to the Code of Practice Working Group to help devise best practice for this duty.

Question 19 – What suggestions do you have about the most effective best practice for Health Boards to promote support available for making an advance statement?
Question 20 – Do you have any other views or suggestions on how the implementation of the 2015 Act could encourage the uptake of advance statements?

Chapter 6 – 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 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 and present 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 21 – 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?

Question 22 – What implications (including potential costs) will there be for business and public sector delivery organisations from these proposals?

Question 23 – 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?

Question 24 – Do you think any of these proposals will have an impact, positive and negative, on privacy and if so, what impact do you think that will be?

Chapter 7 – Other aspects of implementation

As set out in the introduction, this is the first of two consultations about the implementation of the Mental Health (Scotland) Act 2015.

The second consultation will include policy proposals for secondary legislation, transitional and savings provisions and Tribunal rules amendments for further sections of the 2015 Act. These topics will include cross-border transfers, treatment for absconding patients, suspension of detention, changes to timescales, and the changes to criminal cases in Part 2 of the 2015 Act.

Question 25 – Do you have any other suggestions, comments or views about the implementation of the 2015 Act that were not covered by other chapters of this consultation and which may not be covered by the second consultation?

ANNEX A

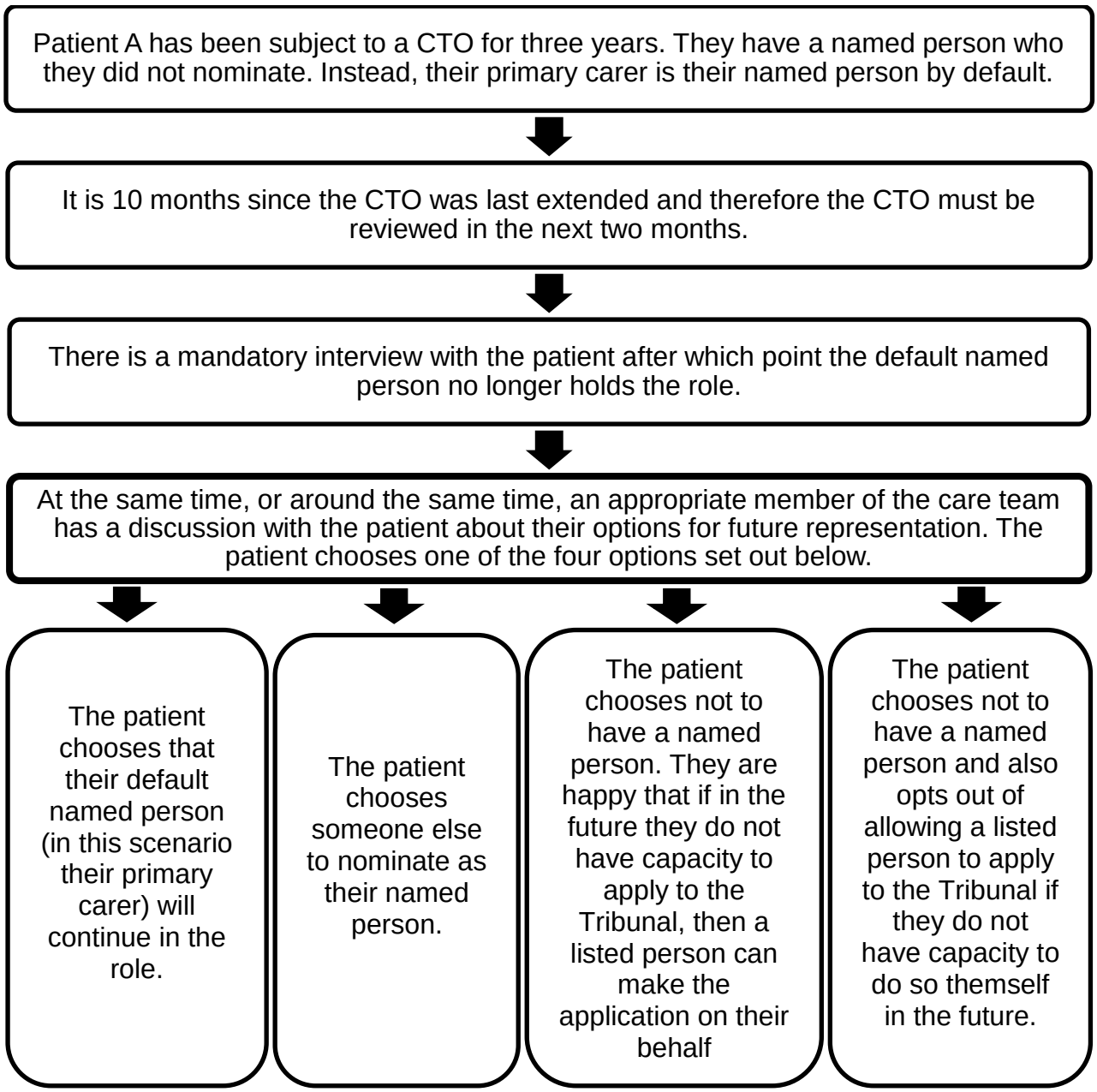
Glossary

- **Advance Statement** – A signed and witnessed document written by a person setting out their preferences for how they wish to be treated, or not treated, when they are unwell.
- **Approved Medical Practitioner (AMP)** – a medical practitioner who has been approved under section 22 of the 2003 Act by a Health Board or by the State Hospitals Board for Scotland as having specialist training experience in the diagnosis and treatment of mental disorder
- **Compulsion Order (CO)** – a final disposal made under the 1995 Act by a criminal court authorising detention and treatment in a hospital or community setting for an initial period of six months, which can be extended and then reviewed annually. Requires two medical reports and an MHO report.
- **Compulsion Order with Restriction Order (CORO)** – same as Compulsion Order but without limit of time. Reserved for the most serious and high risk offenders.
- **Compulsory Treatment Order (CTO)** – a civil equivalent to the CO. Granted by a Tribunal under the 2003 Act, authorises detention and treatment in hospital or community for an initial period of six months, which can be extended and is then reviewed annually. Requires two medical reports and an MHO report.
- **Designated Medical Practitioner (DMP) –** an independent experienced psychiatrist, appointed by the Mental Welfare Commission
- **Emergency Detention Certificate (EDC)** – an order granted by a medical practitioner which lasts for 72 hours and is used to detain a person in hospital for making urgent inquiries into their mental health.
- **Independent Advocate** – a person who helps patients express their views in relation to their care and treatment. Advocacy is provided free of charge under section 259 to all persons with a mental disorder.
- **Listed person –** a role introduced by the 2015 Act allowing the patient's carer, nearest relative, guardian or welfare attorney to initiate an appeal or application on the patient's behalf if the patient does not have a named person or the capacity to do this on their own behalf.
- **Mental Health Officer (MHO)** – a social worker with specialist training and skills in relation to mental health.
- **Mental Health Tribunal** – an independent judicial body which deals with applications for review, variation and recall for civil orders and compulsion orders, including those with restriction.
- **Mental Welfare Commission** – an independent regulatory body which provides on-going monitoring of the 2003 Act to Scottish Ministers. Provides advice to professionals and service users, and also has powers to investigate cases where there are concerns of care standards.
- **Named Person** – someone appointed to look after the patient's interests. They are entitled to receive information about the patient and in certain circumstances can make applications on their behalf.
- **Responsible Medical Officer (RMO)** – the lead medical practitioner who has overall responsibility for a patient's care and treatment.

- **Savings provision** – this saves the old law, so that it continues to apply in relation to specified cases or situations, despite the commencement of the new law.
- **Short Term Detention Certificate (STDC)** – granted by an approved medical practitioner which enables a patient to be detained in hospital for a period of 28 days for the purposes of assessment or treatment of the patient‘s mental condition.
- **Transitional provisions** – modify the new law in its application to circumstances existing when the new law comes into force.

ANNEX B

Chapter 2 – Diagram – Default named person role comes to an end



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