

Mental Health Act Consultation

Easy Read Version

March 2016

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Chapter 1 - Introduction

This is a consultation about the Mental Health (Scotland) Act 2015.

The Scottish Government wants to make some changes to the laws which say how mentally ill patients are treated. Some of these laws have already been changed, but we want to ask people some questions before we make more changes.

In this consultation, we will tell you about the changes we want to make, and ask for your views about them. This is the first of two consultations. There will be another one at a later date.

We want to make sure that the law protects the rights of service users and makes sure they are treated properly.

Responding to this consultation paper

We would like your answers to the questions in this consultation by 30 May 2016.

Please respond to this consultation online at
<https://consult.scotland.gov.uk/mental-health-law/mental-health-act>.

If you are unable to respond online, please complete the Respondent Information Form and send to:

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

Chapter 2 – Named Persons

Some patients need someone else to make decisions about their health and wellbeing for them. This is called a Named Person.

The law says that if a patient who is over 16 does not pick a Named Person, one will be chosen for them. This is usually a relative or carer. The law is changing so that the patient will not have a named person unless they choose one.

If the patient is too unwell, they may not be able to make an appeal to ask the Mental Health Tribunal to look at their case if they think the Tribunal should look at a decision. The new law will let a relative or carer ask the Tribunal instead. This person would be called the 'listed person'.

We think the law should say that the 'listed person' should be able to be heard by the Tribunal but they shouldn't see the patient's medical reports or listen to the doctors and others talking about the case and sit at the whole hearing. This is called being a 'relevant person'

This would only happen if the patient was not able to speak for themselves at the Tribunal, or to make the appeal themselves. A doctor would have to agree that the patient does not have the ability to speak for themselves.

Question 1 - Do you agree that relatives and carers should be a 'relevant person' at the Tribunal and not get to see the reports or listen to the whole hearing? Please tell us if you have any different suggestions.

Question 2 - Is there anything else that you think the Tribunal rules should say about the new appeal right for listed persons? Do you agree that any doctor should be able to say whether or not the patient can appeal on their own or should it just be the patient's responsible doctor?

Transition

We need to decide what happens to people who are already Named Persons once the new law comes in. We suggest that that person should stay as the Named Person until the patient's case is looked at again.

This would only happen if the Named Person was not picked by the patient themselves.

Question 3 - Do you agree with this? Please tell us if you have any different suggestions.

When the patient's case is looked at again, the patient will be asked if they want the Named Person to go on making decisions about their health and wellbeing, or if they want to choose someone else. The law says that when the patient's case is being looked at again, either their responsible doctor or their mental health officer must interview the patient. We think this is the best time for the patient to decide whether they still want to have a Named Person. If not, this is when the Named Person would stop being the Named Person.

Question 4 - Do you agree with this? Please tell us if you have any different suggestions and if you have any views on how patients who can't speak for themselves should be supported at this point.

The new law will say that Named Persons have to agree to the role in writing. We suggest that Named Persons who have already been chosen by the patient will not have to agree in writing, but can continue being Named Persons.

Question 5 - Do you agree with this? Please tell us if you have any different suggestions.

The new law says the Tribunal cannot choose a Named Person for a service user over the age of 16, but it can remove a Named Person who is not appropriate.

This could mean that a patient chose a Named Person who is later removed by the Tribunal, after the patient can no longer have their say.

We think it is better for the service user to no longer have a Named Person than to have one they didn't choose for themselves.

Question 6 - Do you agree with this? Please tell us if you have any different suggestions.

We think that the new law should say that the 'listed person' would not be able to appeal to the Tribunal to look at the patient's case until the named person steps down. As we described above, this would be when it is time for the patient's case to be looked at again.

This would only happen if the patient is not able to make an appeal or application on their own.

Question 7 - Do you agree with this? Please tell us if you have any different suggestions.

The law says that a guardian or welfare attorney should be given information about new certificates or orders to do with the patient. We suggest that this should include orders already in place, so that this right comes in to force in all cases at the same time.

Question 8 - Do you agree with this? Please tell us if you have any different suggestions.

Supporting service users to choose the right representation

It will be important that service users, their carers and others are given information that helps them choose whether it would be better for them to have a named person, a listed person or neither.

We think the best way to do this is through clear guidance for staff, saying when to discuss this with the service user and what information should be given. There will also be new information leaflets for service users and carers.

Question 9 - What do you think is the most important information to give?

Question 10 – What’s the best way to give information to service users not already in touch with specialist services, and should any one agency or profession be in charge of this?

Question 11 - Is there any guidance or support needed for staff beyond the Code of Practice and service user guidance?

The law has a list of people who can witness the nomination or removal of a named person. These are called ‘prescribed persons’. We think the list in the new law should stay the same. The people on the list are:

- clinical psychologists
- medical practitioners
- occupational therapists
- care service workers
- registered nurses
- social workers
- solicitors

Question 12 - Do you agree that the list should stay the same? Please tell us if you have any different suggestions.

Chapter 3 - Conflict of Interest Regulations

A conflict of interest is when a professional involved in a case might have a personal reason for making a decision. This could mean their decision is not best for the patient.

At the moment, the law is about the examination by a doctor before an order or certificate is created for the first time. The law says that the doctor doing the examination to look at whether the patient needs to be detained in hospital can't be related to the patient, or work for the health care service or hospital where the patient will be kept, if it is a private hospital. This doesn't apply if it is an emergency detention certificate.

We suggest that we should keep these rules in place.

Question 13 - Do you agree with this? Please tell us if you have any different suggestions.

For some orders, the law says that two doctors have to agree that the patient should be detained. The law says there is a conflict of interest if both practitioners work for the same healthcare service or hospital. We think it would be better to say there was only a conflict of interest if both practitioners worked in the same department in the hospital.

Question 14 - Do you agree with this? Please tell us if you have any different suggestions.

The new law also says that there can be rules when there is a medical examination for a decision to keep the patient in hospital for longer, and not just for when the order is created the first time.

Mental Welfare Commission guidance on conflicts of interest say they think it is better for the responsible doctor to arrange for a medical examination by another doctor who does not work for the hospital where the patient is kept, if this is a private hospital. We think this should be the law

Question 15 - Do you agree with this? Please tell us if you have any different suggestions.

Question 16 - For two of these orders, the doctor's recommendation to make the order longer has to be looked at by other people as well. Do you think the rules about conflicts of interest are needed here too?

Question 17 – Are the proposals in Chapter 3 suitable for areas in the countryside where hospitals and second doctors may be further apart than in towns and cities?

Chapter 4 – Safeguards for certain informal patients regulations

The law sets out safeguards for some treatments that may be given to patients who are under 16 years of age.

If the patient is not able to give consent, consent must be given by a person with parental rights and responsibilities for the child. A Designated Medical Practitioner (DMP) who is not the medical practitioner primarily responsible for the child's treatment must certify that the patient is not able to make 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 not able to make a decision, that the patient resists or objects and the treatment is needed.

The treatment must only be given if it will:

- save the patient's life
- stop the patient's condition from getting much worse
- stop serious suffering on the part of the patient
- stop the patient from behaving violently or being a danger to themselves or others.

At the moment, these safeguards do not cover artificial nutrition. We want to change this. Artificial nutrition is when food is not given through the mouth in the normal way, but through tubes or other ways.

Artificial nutrition is often used in life-threatening situations and we want to make sure that this does not stop life-saving treatment being given when there is not consent.

Question 18 - Do you agree with this? Please tell us if you have any different suggestions.

Chapter 5 – Advance Statements

The law says that anyone has the right to make a written advance statement when they are well. This sets out how they would and would not like to be treated for mental illness if they become unwell and are not able to make decisions about their treatment anymore.

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 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.

We want to make two main changes about advance statements:

- Health Boards should keep a copy of any advance statement in the patient's medical records and to tell the Mental Welfare Commission about the statement. This information will be held on a register of information.
- Health Boards should tell the public about the support they give to make and withdraw an advance statement

Question 19 - What suggestions do you have about the best way for Health Boards to tell people about making an advance statement?

Question 20 - Do you have any other views or suggestions on how the law could encourage people to make advance statements?

Chapter 6 – Impact Assessments

We are thinking about the ways the changes to the law will affect people.

An equality assessment will help us understand how people will be affected because of their age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

We will also assess how much money the changes will cost or save, any other effects on businesses and organisations such as hospitals or councils, and if children’s rights or people’s privacy will be affected.

Question 21 - Do you think any of the plans set out in this consultation will have an impact for good or bad on equalities as set out above and if so, what impact do you think that will be?

Question 22 - What impact (including potential costs) will there be for businesses and other organisations from these proposals?

Question 23 - Do you think any of these proposals will have an impact for good or bad 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 for good or bad on privacy and if so, what impact do you think that will be?

Chapter 7 – Other aspects of implementation

This is the first of two consultations about the implementation of the Mental Health (Scotland) Act 2015.

Question 25 - Do you have any other suggestions, comments or views about anything that was not covered in this consultation and which may not be covered by the second consultation?



Please fill in the questionnaire and give us your answers by **30 May 2016**.



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This publication is available at www.gov.scot

Any enquiries regarding this publication should be sent to us at
The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

ISBN: 978-1-78652-100-2 (web only)

Published by The Scottish Government, March 2016

Produced for The Scottish Government by APS Group Scotland, 21 Tennant Street, Edinburgh EH6 5NA
PPDAS67202 (03/16)

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