The Law Society of Scotland’s Mental Health and Disability Committee recently considered and responded to the Health and Sport Committees call for written evidence on the Mental Health (Scotland) Bill.\(^1\)

In that response, the Society set out the range of potential costs, which may have arisen from the provisions of the draft Bill (see Appendix A). While the present Bill as introduced, does not repeat some of the draft provisions (e.g. the single mental health report for an application under section 63 of the Mental Health (Care and Treatment) (Scotland) Act 2003) there will be potential costs from the existing provisions. In addition to our earlier comments, the Society considers these to include:

**Mental Health Officers (MHOs)**

The Bill expands the duties of MHOs to include a range of additional responsibilities, which includes the provision of reports. While the Society welcomes this, these additional responsibilities will have to be considered within the context of finite resources of local authorities. The Society would be concerned if this leads to a dilution of the MHOs broader range of responsibilities. It would also be helpful to quantify the numbers of current MHOs and the number of social workers who are applying to become MHOs, to identify if there is likely to be a deficit in the future.

**The Mental Health Tribunal**

If the Tribunal is to hear applications to extend the 200 (overnight) suspensions to include a further 100 (overnight) suspensions then this may give rise to an increase in hearings. Where a patient is approaching the total of 200 suspensions - and the expiry of the order, if not extended, the RMO may consider it prudent to make an application to extend and vary the order, along with the application for a further 100 suspensions. This could give rise to multiple applications, which may reduce the potential for the Tribunal to hear two cases (different patients) in one hearing day.

**General**

The Society reiterates that it is essential that legislative changes are not resource driven where individuals’ rights are at stake. The Scottish Government’s obligations in relation to recognition and protection of the rights in the ECHR and other international treaties identifying civil and political rights are therefore emphasised. This was also fully recognised in the Millan Report, which shaped the form and content of the 2003 Act.

If you have any questions in relation to this, then please contact me direct.

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Appendix A
(Extract of Society’s response to the Health and Sport Committees call for written evidence on the Mental Health (Scotland) Bill.

Question 18: Please tell us about any potential costs or savings that may occur as a result of the proposals for the Bill, and any increase or reduction in the burden of regulation for any sector. Please be as specific as possible.

The relevant authorities must be consulted on the actual costs involved. However, the following are likely to involve resourcing considerations:

a) For local authorities as a result of the additional duties required of MHOs in connection with extending CTOs (Question 5) and being consulted in connection with proposed TTDs (Question 11).

b) For local authorities and health boards as a result of the reception and treatment of patients from other jurisdictions.

c) For the Mental Health Tribunal the additional costs that may arise from more interim hearings if more independent reports are ordered as a result of the proposals regarding medical examinations and CTOs (Question 3).

d) The possible multiple hearings identified in relation to Question 2 may also incur costs for the Tribunal, patients and other parties involved.

e) The proposed amendment to section 24 (extending provision of services for certain mothers with post-natal depression to mothers with mental disorder) will also incur costs for health boards.

It is important, however, that legislative changes must not be resource driven where individuals’ rights are at stake. The Scottish Government’s obligations in relation to recognition and protection of the rights in the ECHR and other international treaties identifying civil and political rights are therefore emphasised. This was also fully recognised in the Millan Report, which shaped the form and content of the 2003 Act.