Question 1
Do you agree with the general policy direction set by the Bill?
Response: Yes. The general policy direction set by the Bill is appropriate to the objective of helping those with a mental disorder access treatment quickly and easily.

The Millan Principles have provided an exemplary ethical underpinning of the Mental Health (Care and Treatment) (Scotland) Act 2003 and we would strongly support the view presented in the Bill that all matters regarding mental health should continue to be underpinned by these principles.

It is important that the Bill is compatible with rights under the European Convention on Human Rights. Maintaining a rights based approach that applies the principles of beneficence, participation, person-centeredness and the use of least restrictive alternatives are crucial to any changes proposed within the Bill.

Question 2
Do you have any comments on specific proposals regarding amendments to the Mental Health (Care and Treatment) Scotland Act 2003 as set out in Part 1 of the Bill?
Response: We are encouraged by the proposal to establish a register of advanced statements to be held by the Mental Welfare Commission (Section 276B). Such statements are an important part of encouraging the participation of service users in their care and treatment. We note advance statements are presently completed by a relatively small number of service users, and feel the Bill could make further provision to address this by use of the Register to facilitate an increase in the making of advance statements by service users. We recommend that an annual report be made publicly available providing national data relating to the numbers of advance statements made by service users, including reference to health board, demographic data and ongoing status with regards to the Act.

Proposed Changes:
1. Measures until application determined
   Increasing the time for applications for compulsory treatment orders from five to ten days
Response: We support the proposed changes to the timeframes for compulsory measures on the basis that these accord with the least restrictive
principle. Although this may result in extended detention for some patients who then have their detention revoked, on balance it would seem that more people are likely to benefit from the additional time this will offer to patients and their representatives to prepare for a tribunal.

2. Information where order extended
Extending a compulsory treatment order, the mental health officer should submit a written report to the Tribunal
Response: This proposed change appears to enhance the support of patients’ rights through the submission of the mental health officer’s opinion in a written report separate from the responsible medical officer.

3. Emergency detention in hospital
Subsequent detention immediately following Section 113(5) of the Act
Response: The proposed change appears to present an appropriate course of action.

4. Notification of emergency detention
Notifying the Commission
Response: The proposed change to remove section 38(3)(a) appears to streamline the process of notification and is more in line with data protection legislation.

5. Short term detention
The subsequent detention of patients already within a detention regime should be governed by that regime not another
Response: The proposed change appears to present an appropriate course of action.

6. Suspension of orders on emergency detention or short term detention
Emergency detention and short term detention while subject to compulsory treatment
Response: These changes appear to be more supportive of continuity in the care and support being offered to patients.

7. Suspension of detention for certain purposes
Seeking approval from Scottish Ministers for suspending detention
Response: While there may be some reasonable concerns regarding the removal of this additional safeguard, on balance, if current implementation regularly reflects the opinion of the responsible medical officer, then this proposed change would appear to support a more flexible and responsive approach to meeting patient needs.

8. Maximum suspension of detention measures
Suspension of detention to allow extended time out of hospital and in the community
Response: When appropriate, this proposed change appears to be more in line with the Millan Principle of least restrictive alternative.
9. Orders regarding levels of security
Being held in conditions of excessive security
Response: This proposed change appears appropriate and again appears to reflect the Millan Principles, however, is there a suggested time frame for the implementation of the aforementioned secondary legislation?

10. Removal and detention of patients
Notifying the Commission when an application for a removal order is made
Response: This proposed change provides an additional safeguard for patients and upholding their human rights.

11. Detention pending medical examination
Extension of Nurse’s Power to Detain
Response: Allowing detention pending medical examination for three hours rather than two appears an appropriate timescale, however, we acknowledge that for some patients the further loss of liberty may cause additional distress.

12. Time for appeal referral or disposal
Reduction of time in which to lodge an appeal against the decision to transfer
Response: This proposed reduction from 12 weeks to 28 days appears to still afford sufficient time for an appeal to be lodge and is more in line with the appeals process in other parts of the Act.

13. Periodical referral of cases and recording where late disposal
Shortening the length of time before a case is considered by the Tribunal
Response: This proposed change appears appropriate and emphasises the accountability of the Tribunal to act in a timeous manner.

14. Representations by named persons
The appointment of a named person
Response: We fully endorse the proposed change. If a patient decides not to nominate a named person then it seems unreasonable that the Tribunal should appoint someone against the patient’s wishes. Providing written, witnessed consent by an individual who agrees to act as a named person should help make the process more robust.

15. Advance statements
Copy kept in medical records and a central register kept by the Commission
Response: We fully support the proposed changes as a way of strengthening accountability and promoting patient participation in decisions about how their care needs are met.
16. Communication at medical examination  
Provision of assistance with communication difficulties at application for orders  
Response: This proposed change appears to be a sensible approach that demonstrates cognisance of disability awareness and the individual requirements of patients throughout the process of application for and implementation of detention orders. It supports equity in the treatment of and engagement with patients with communication difficulties.

17. Services and accommodation for mothers  
Extension of the provision of accommodation for mothers with mental health problems  
Response: Given the importance of the early years in shaping an individual’s development and well-being, this appears to be a more sensible and inclusive approach than the current position.

18. Cross-border and absconding patients  
Treatment of patients who abscond from detention in another jurisdiction  
Response: If, as would be expected, treatment is applied in line with the Millan Principles this should be seen as being in the best interests of the patient and we would be in favour of this proposed change.

19. Arrangements for treatment of prisoners  
Transfer from prison to hospital  
Response: We agree that the additional contribution of a mental health officer would appear to strengthen the process of decision making regarding the transfer of prisoners from prison to hospital.

20. Compulsory treatment of prisoners  
Convenor of a Tribunal Panel  
Response: We would support this proposed change if it helps to expedite the scheduling of such cases.

Question 3  
Do you have any comments on the provisions in Part 2 of the Bill on criminal cases?  
1. Calculating time periods  
Calculations changed to mirror time periods in criminal courts  
Response: This appears to be a sensible and rational proposal which should lessen the risk of calculation errors.

2. Extension of Assessment Order  
A further assessment period of 14 days may be granted by the court  
Response: We would agree with this proposed change if it is considered necessary to facilitate a more complete and accurate assessment. We consider the proposed 14 day extension more reasonable than the original suggestion of a 21 day extension.
3. Variation of interim compulsion order
Admission to a different hospital
Response: This appears to be a reasonable change to the current position.

Question 4
Do you have any comments to make on Part 3 of the Bill and the introduction of a victim notification scheme for mentally disordered offenders?
We are, in principle, in support of the introduction of a victim notification scheme for mentally disordered offenders due the need to consider the victim as an important stakeholder in the process of rehabilitation and treatment. However, it is important that such a scheme should acknowledge the status of the perpetrator as mentally disordered at the time of the offence and accordingly an appropriate balance needs to be struck between the rights of the victim and those of the patient.

1. Information and representation
Limited information to qualifying victims
Response: This proposed change appears to support victim’s rights by bringing offences carried out by people with mental disorders into line with other criminal offences. While the victims notification scheme implements the EU Directive on the rights and standards for victims of crime this should be interpreted alongside the data protection act. Clear and robust safeguards in relation to data protection and the vulnerability of patients are necessary to ensure the consistent and efficient implementation of this proposal.

With the extensive use of online communication and social networks how are patients to be protected from inappropriate sharing of information?
What are the views of the Information Commissioner’s Office in relation to common law on confidentiality and the Data Protection Act (1998)?

2. Right to information: offender imprisoned
Notifying victims of unescorted suspension of detention
Response: We would support this proposed change as there appears to be a sound rationale for the intention of protecting the well-being of victims while acknowledging the difficulty of balancing the rights of both the patients and the victims.

3. Right to information: compulsion order
Notifying victims of periods of detention
Response: We would support this proposed change as above in Question 4.2

4. Right to make representations
Victim’s right to make representation before decisions are taken regarding release, suspension of detention or discharge
Response: We would support this proposed change as above in Question 4.2 and concur with the view that it would be unnecessary and disproportionate to include individuals who “have often committed only minor offences.”
Question 5
Is there anything from the McManus Report that’s not been addressed in the Bill and that you consider merits inclusion in primary legislation? If so, please set out why.
Response: We feel the McManus report has significantly informed the formation of the Bill, and have no further comment in this regard.

Question 6
Do you have any other comment to make about the Bill not already covered in your answers to the questions above?
Response: There are no further comments beyond the responses to questions 1 to 5 above.

Glasgow Caledonian University School of Health and Life Sciences
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