North Lanarkshire Mental Health and Learning Disability Partnership Board (NLMHLDPB)

Mental Health (Scotland) Bill

Introduction
This Partnership Board welcomes the opportunity to comment on the proposals set out in this consultation. Generally, we accept the need to bring forward changes to improve the operation of the 2003 Act and hope that those intended will lead ultimately to be better service for people subject to the legislation. It is recognised that many proposals have been subject of earlier consultations and considerations.

Whilst, in our view, proposals within the Bill will address a number of operational difficulties within the legislation it should, perhaps, not be viewed in isolation from a quickly moving, complex legal and policy framework that surrounds the reshaping of Scotland’s health and social welfare agenda.

From a local authority perspective, the Bill proposes additional duties and responsibilities for mental health officer services. It is widely recognised that this service is already under considerable pressure across all local authorities and urgent consideration needs to be given to ensure that local authorities are appropriately resourced to meet their statutory functions across the legislative framework in which they operate.

Consultation questions:

Question 1: Do you have any comments on the proposed amendments to the Advance Statement provisions?
There is currently some confusion precisely where an Advance Statement should be lodged. This proposal, which places a duty on Health Boards to ensure Advance Statements received are placed in the person’s medical record, clarifies the existing position. We would ask that clear guidance be provided to ensure a person’s Advance Statement is always kept in a prominent position within the record so this does not become ‘lost’ amongst other documents and notes contained in a medical record.

It is noted; that people making a Statement, any individuals involved in assisting the person draw up the Statement, or a person acting as witness for the Statement, must be made aware of the notification requirement and ensure an appropriate member of the Health Board’s staff is given the finalised document. It needs to be made clear which central point within health boards the Statement should be sent.

Health Boards are also required to send copies of Advance Statements to the Mental Welfare Commission (MWC) which, in turn, is required to maintain a central register of statements that will be accessible to certain people authorised by, or acting in connection with the person who made the statement. This Board believes this centralised depository will be a useful
Question 2: Do you have any comments on the proposed amendments to the Named Person provisions?
This Board welcomes the proposals put forward which will amend the provisions for named persons. The recognition that an individual has a right not to have a named person, if that be the wish, is correct. The proposal puts the individual more in control of their situation and, as such, from this point alone is to be welcomed. The intention that the named person will, in future, need to actively consent to holding that position (and therefore have an understanding of what the role entails) is also to be welcomed. That declarations, in both cases, will need to be formally witnessed places some safeguard to each process.

We note with interest the concerns that have been expressed about the automatic entitlement of a named person to be involved in Tribunal and Court hearings. This Board shares these concerns and agree with the proposals being put forward to address them. In this respect, we note that a separate consultation on draft amending regulations will be issued later this year.

This Partnership Board agrees that mental health officers are best placed to provide the Tribunal with information that can assist it in coming to a decision under section 257 regarding the appointment of a named person by the Tribunal.

As with the issue of Advance Statements, the existence and contact details of named persons must be easily accessible to those requiring the information. Systems which allow easy access and amendment when changes take place will need to be developed.

Question 3: Do you have any comments on the proposed amendments to the medical examination and compulsory treatment order provisions?
This Partnership Board notes with interest the proposals which seek to overcome medical reporting problems when application is being made by an MHO for a Compulsory Treatment Order. With some reservation we are generally supportive of the proposal where just one AMP report will be required with comments to be made on this by the person’s GP. We are concerned that every effort should be made to keep the individual’s GP involved and believe guidance should be made available to GPs about just what is expected in their reporting. Our belief is that GPs, in conjunction with MHOs, are in a good position to comment on whether less restrictive options could satisfactorily meet the person’s needs.

The Board is also of the opinion that whilst practical difficulties can arise for patients who need to seek their own independent medical report, it is extremely important that this right is retained.
Question 4: Do you have any comments on the proposed amendments to the suspension of detention provisions?
We agree with the criticisms that have been levelled at the provisions currently in force for suspension of detention as being arbitrary, complicated and difficult to operate. The amendments proposed to simplify the requirements of suspension will, in our view, be of assistance to those who have to work with the provisions.

This Board also agrees with the proposals set out in paragraphs 18, 19 and 20 which seek to simplify suspension requirements for certain forensic cases.

Question 5: Do you have any comments on the proposed amendment requiring a MHO to submit a written report to the Mental Health Tribunal?
This Partnership Board agrees with the Scottish Government’s assertion that there be a requirement placed on MHOs to submit a report to the Tribunal in cases where the RMO makes a determination under section 86. In carrying out their responsibilities under section 85 of the legislation, MHOs already provide opinion, by way of a short written report in this Partnership Board area, to the RMO on the necessity or otherwise to extend an Order. It seems perfectly sensible that this report also be made available to the Tribunal.

Question 6: Do you have any comments on the proposed changes to the emergency, short-term and temporary steps provisions?
We agree with the proposal to amend sub-sections 36(2) and 44(2) by including a reference to section 113(5).

We also agree with the Mental Welfare Commission’s concerns that notifications given under section 37 to persons listed under sub-section 38(4) can be inappropriate as information provided is of a sensitive nature. As such, discretion should, in our view, be afforded to hospital managers as to whether notice in terms of sub-section 38(3)(b) is given to these specified persons.

In relation to notifications of Emergency Detention Certificates (EDC) having to be made to the Mental Welfare Commission, and the Commission’s view that this is unnecessary, we leave that to the MWC and SG. We would, however, wish to be reassured that the Commission will continue to monitor and collate information on the number and circumstances of EDCs taken out without MHO consent.

The intention to provide a copy of the Short Term Detention Certificate (STDC) to those people who have to be notified of the event under section 46 of the legislation seems not unreasonable given the nature of the relationships of those to be so notified.

Question 7: Do you have any comments on the proposed changes to the suspension of certain orders etc. provisions?
We agree that provisions set out in sections 43 and 56 of the legislation, should also apply to Interim Compulsory Treatment Orders (ICTOs) and Compulsion Orders (COs).
Question 8: Do you have any comments on the proposed amendments to the removal and detention of patients’ provisions?
The proposal that the MHO should notify the MWC after successfully applying for a Removal Order from the Court is in accordance with other parts of the legislation. We agree such provision should be made. The MWC should make clear as soon as reasonable what information it requires under this notification. The Commission should consider producing a specific form to enable consistent reporting across Scotland.

We agree with the proposals that would extend the time a nurse of the prescribed class could detain a patient already in hospital from 2 to 3 hours. This, in our opinion, would better enable the examination by a medical practitioner. We also agree that the detention should apply regardless of whether a doctor is immediately available or not to carry out the examination. We are of the view, however, that nurses using the power, when contacting medical personnel, should also alert the appropriate MHO service. This would allow for a more efficient response should the situation eventually lead to consideration being given to lengthier detention which would require MHO consent.

Question 9: Do you have any comments on the proposed amendments to the timescales for referrals and disposals provisions?
The provision surrounding section 213 contained in the draft Bill clarifies the reference position to the Tribunal and is, therefore, welcome.

The intention to place timescales within which the Tribunal is to hear certain applications are measures that will better meet the general principles of the legislation. Measures to be taken if the Tribunal fail to meet timescales appear reasonable.

Question 10: Do you agree with the proposed amendments to the support and services provisions? If you disagree please explain the reasons why.
In relation to those people with communication difficulties, we fully agree with the intention to include a duty of service provision to those subject of applications, or being considered for an application. As matters stand, where provision is only available to those already subject of orders, in inequitable.

This is clearly an anomaly that requires change. This Partnership Board agrees that facilities which help promote mother/child relationships should not simply be for those with a diagnosis of post-natal depression and should include all mothers who are suffering from mental disorder.

Question 11: Do you agree with the proposed amendments to the arrangements for treatment of prisoners and cross border and absconding patients provisions? If you disagree please explain the reason(s) why.
The management proposals (as set out in paragraph 43 of the consultation paper) for those subject of a Transfer for Treatment Direction (TTD) who will
require to be made subject of a civil order at the end of their sentence, are sensible arrangements to make.

The intention that Scottish Ministers will require MHOs to become involved in the transfer for treatment process is a reasonable arrangement when considering other contexts where people are to be made subject of mental health orders in other parts of the legislation where decisions are not Court or Tribunal based. We, therefore agree with the proposal.

Whilst annual figures currently indicate a relatively low number of prisoners across Scotland becoming subject of the provision, it will, nonetheless, put yet further pressure on the MHO services in which prisons are located. We assume MHO involvement will fall to the local service as being the only practical option for operating the proposed requirement.

Other intentions under this section of the consultation document involving cross border and absconding patients, appear sensible measures to take in trying to ensure the proper care and treatment of those found in these situations.

**Question 12: Do you have any comments on any of the proposed amendments relating to the “making and effect of orders” provisions?**
This Partnership Board notes the minor amendments being proposed to clarify particular elements contained in certain forensic orders. We are of the view that intentions will achieve this.

The more substantive proposal, that would allow Assessment Orders to be extended by a further 21 days as opposed to the existing 7 days, is to be welcomed. The change will allow a more reasonable timeframe in which to collate all relevant information for the Court to consider.

**Question 13: Do you have any comments on the proposed amendments relating to the “variation of certain orders” provisions?**
The proposed amendment under this section, which would allow the Court to vary an order in respect of changing hospitals for treatment purposes, is a practical step that will allow early response to any unforeseen change in the assessment process.

**Question 14: Do you agree with the proposed approach for the notification element of the VNS?**
We agree with the proposed approach as outlined in the consultation document.

**Question 15: Do you agree that victims should be prevented from making representations under the existing mental health legislation provisions once they have the right to do so under the proposed Victim Notification Scheme?**
It would appear reasonable, and indeed sensible for all concerned, to allow a victim just one route to make representations against a mentally disordered offender.
Question 16: Do you agree with the proposed approach for the representation element of a Victim Notification Scheme relating to mentally disordered offenders?
This Board agrees with the proposed approach.

Question 17: Please tell us about any potential impacts, either positive or negative, you feel any of the proposals for the Bill may have on particular groups of people, with reference to the “protected characteristics” listed above.
This Board, in viewing the proposals in a generally positive light, do not believe there are significant impacts on which to comment.

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.
As indicated in the introduction, the Bill proposes additional duties and responsibilities for local authority MHO services. The proposed changes, while welcomed in the interests of good practice in strengthening and extending safeguarding functions, will place further burden on local authorities. This ever increasing burden on MHO service’s needs, in our view, to be given urgent consideration by the Scottish Government if wider statutory obligations are to be met.

In other areas, a more efficient service should accrue savings in time for those operating the legislation.

North Lanarkshire Mental Health and Learning Disability Partnership Board
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