North Ayrshire Health and Social Care Partnership

Mental Health (Scotland) Bill

General Points
North Ayrshire Health and Social Care Partnership welcomes the opportunity to respond to the consultation on the Mental Health (Scotland) Bill and we support the general policy direction set by the Bill.

The Bill proposes further increases to the existing duties and responsibilities of our local Mental Health Officer service which needs to be viewed in the broader context of the national MHO workforce and workload capacity. Whilst many of the proposed duties and responsibilities further promote good practice by strengthening and extending existing safeguarding functions, improving the quality of assessment options and outcomes for individuals with a mental disorder, there is an increasingly critical requirement to review national and local MHO workforces and workload capacity to ensure that local authorities are sufficiently resourced to enable them to meet their statutory functions in these areas. Without such a review, delivery of the proposals will be threatened.

Comments on Part 1
Advance Statements
We welcome the proposed amendments to the Advance Statement. We believe that there are some practical issues that would be worthwhile addressing at this point. We would ask that you consider developing a standard format for the Advance Statement and clarify exactly where within NHS Boards the form should be submitted and stored. The form could usefully include advice that it needs to be submitted within a specified timeframe to be effective and will require to be reviewed annually or where there are a change of circumstances. We would ask that you address the need (potentially) for 24 hour accessibility to the Advance Statement for those parties who might require to view it (RMOs, nursing staff and MHOs for example). We support the introduction of an opt-out system. We also support the introduction of the named person’s consent to undertaking the role of supporting someone to complete an Advance Statement. We would also suggest that issues around the person’s capacity to complete an Advance Statement are addressed within the Code of Practice.

Suspension of Detention Section 127
Whilst we acknowledge the difficulties experienced to date with suspension of detention measures, particularly immediately following the Act’s inception, we do not agree with the proposal in Section 9 to remove the 9 month restriction in any 12 month period. We believe that this is not a positive step in relation to the principles of the Act and it may in fact replicate the issues identified with Section 18 Leave of Absence under the 1984 Act. We would suggest that you consider an upper limit of 6 months in any 12 month period, incorporating instead a disregard for short periods (for example, one overnight, one weekend etc.) in the total period. We have a concern that RMOs are
potentially able to add more restrictive conditions during periods of Suspension of Detention than those originally approved by the Tribunal.

Proposed Section 87A
We acknowledge that the proposals to amend section 87 are good practice, however, we have major concerns about the impact of the additional workload for our MHO service. The proposed changes to section 87 would require a large number of additional MHO reports in North Ayrshire which we would currently find prohibitive for our small service. We would suggest that you consider whether the requirement for an MHO report is limited to extensions but not variations of the order or alternatively limited to those orders where there is likely to be a hearing (for example, where any issue related to diagnosis is raised or the MHO disagrees with the proposed action etc.). The need for the MHO report needs to be proportionate to the issues surrounding the order. We believe that the introduction of a recommended form for the MHO report would be of benefit in this area together with clarification around the role of the SCR, Section 57c and Section 59. We have concerns around the proposal to place further administrative duties around notification on MHOs which may sit better within the MHTS. We would seek clarification from you as to whether these proposals would also apply to Compulsion Orders.

Notifications
We support the notification of the granting of a CTO to the various parties, but have concerns around the circulation of the full papers, particularly if the default Named Person role is retained. We fully support the proposal to place a duty on the MHO to notify the Mental Welfare Commission when making an application for a Removal Order to enable the Mental Welfare Commission to consider whether it should make a Section 295 recall or variation of the Removal Order.

Nurses Holding Powers
We support the proposal to extend nurses holding power from 2 to 3 hours to enable an informal patient to be detained for the purposes of enabling medical practitioner examinations irrespective of whether a doctor is immediately available or not.
We would note that nurses should notify both the RMO and the MHO at the start of the holding power to facilitate attendance at the earliest opportunity and request that this is built into the Bill or statutory code of practice.

Transfer for Treatment Direction
We support the proposal to involve the MHO in the process for making a decision under Section 136, TTD. Operationally we will need to put arrangements in place to respond to these requests in relation to prisoners whose ordinary residence is in North Ayrshire with the hosting local authority providing a backup MHO service for those instances where our MHO service is unable to respond within the specified timeframes. Further guidance on this would be welcome. We also support the proposal to extend cross border transfer to include patients from outwith the UK from other EU member states but again we would request further guidance.
Comments on Part 2
We have no additional comments on the provisions in Part 2 of the Bill on criminal cases.

Comments on Part 3
We welcome the proposal to extend the Criminal Justice Victim Notification Scheme to the victims or their relatives of mentally disordered offenders although would request clear guidance on how to consistently apply the scheme. In particular, we have remaining questions about whether notification should be restricted to CORO patients only and particular offences of a serious nature and request further clarity and guidance. We would highlight that the proposal that victims should be prevented from making representation under the existing Mental Health legislation once they have the right to do so under the proposed Victim Notification Scheme is problematic and inconsistent for example, the RMO would notify victims when orders are being suspended but not when being revoked. We acknowledge that this is both a complicated and complex area involving the balancing of the rights of the patient and the rights of the victim. We would note that the proposal may result in those with a learning disability or lacking in capacity being treated less favourably and would be concerned about this – we would recommend close monitoring and evaluation of the scheme in order to address this potential source of discrimination. Overall we would request more detailed proposals and draft guidance on how the scheme could operate in practice in order to facilitate national and local discussion in the first instance. This guidance should also cross reference the management of this requirement under MAPPA when relevant.

General Comments on the Bill
Whilst we welcome many of the proposed new duties and responsibilities in the interests of good practice (and being consistent within the principles of the Act) we would highlight that there is an increasingly urgent requirement to review the national and local MHO workforce. The Bill proposes further increases to the duties and responsibilities of our MHO service which needs to be viewed in the broader context of the MHO workforce and workload capacity. Notwithstanding the year on year increase in MHO workload demand, which is not matched by any increase in the existing MHO infrastructure, the additional roles and responsibilities for MHOs/RMO’s contained within the proposals will incur further costs to the North Ayrshire Health and Social Care Partnership and requires to be further considered and addressed by the Scottish Government.

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