

Response ID ANON-5R47-7S3D-K

Submitted to **A consultation for implementation of certain sections of the Mental Health Act (Scotland) 2015 and associated regulations (Part 2)**

Submitted on **2016-10-17 10:50:46**

About You

1 What is your name?

Name:

2 What is your email address?

Email:

ian.somerville@gmc-uk.org

3 Are you responding as an individual or an organisation?

Organisation

4 What is your organisation?

Organisation:

General Medical Council

5 The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response with name

6 We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

Chapter 2 - Cross-border transfer regulations

1 Do you agree with these proposals? Please state if you have any concerns or suggestions for changes to the proposal.

1:

2 Do you agree that a right to apply to the Tribunal as set out in this section should be introduced? Please state if you have any concerns or suggestions for changes to the proposal. Are there any related circumstances where such a right to apply to the Tribunal should be introduced?

2:

3 Do you agree with the proposal that limited information about the transfer should be provided to any guardian or welfare attorney or equivalent where there is no named person? Do you consider it appropriate for the guardian or welfare attorney to receive all of the information listed in this section, or should they only receive this in part? Where there is no named person, or guardian or welfare attorney, should information be provided to the primary carer?

3:

Our guidance applies to doctors so we are responding on the basis that managers at receiving hospitals may also be doctors. On the basis of our guidance, we would agree with the first and third parts of the question for patients who don't have capacity as it's important that they have access to an advocate who can represent their interests.

However, it's important to distinguish between a guardian or welfare attorney, who are appointed to this role, and a primary carer, which is an informal arrangement. The Mental Welfare Commission for Scotland define a primary carer as 'the person who gives you all or most of your care and support' and could be any of the following: a patient's husband or wife; partner; friend; relative; or neighbour (Mental Welfare Commission website, 'Rights of carers' page (<http://www.mwscot.org.uk/the-law/mental-health-act/rights-of-carers/>)).

This raises considerations about doctors sharing information with family and friends, which we outline in our Confidentiality guidance (http://www.gmc-uk.org/static/documents/content/Confidentiality_-_English_1015.pdf). In paragraph 65, we make it clear that, if a patient lacks capacity, doctors should share relevant information in accordance with the advice in paragraphs 57-62. In particular:

- Doctors may need to share personal information with a patient's relatives, friends or carers to enable the doctor to assess what would be of most benefit to a patient. But that does not mean they have a general right of access to the patient's records or to have irrelevant information about, for example, the patient's past healthcare (paragraph 62).
- Doctors must consider the views of people close to the patient on the patient's preferences, feelings, beliefs and values, and whether they consider the

proposed disclosure to be of benefit to the patient, and what the doctor and the rest of the healthcare team know about the patient's wishes, feelings, beliefs and values (paragraph 60).

• We also say that, unless they indicate otherwise, it is reasonable to assume that patients would want those closest to them to be kept informed of their general condition and prognosis (paragraph 65).

It's also unclear from the consultation document whose responsibility it is to decide who the patient's primary carer is. According to the Mental Welfare Commission for Scotland website (<http://www.mwscot.org.uk/the-law/mental-health-act/rights-of-carers/>), patients can help to decide this but if they have more than one carer, it implies that the carers must decide who the primary carer is.

Based on our understanding of this proposal, the informal nature of their arrangement with the patient means that primary carers would benefit from separate advice in the form of supporting guidance rather than within the regulation itself.

Regarding the second question on which information should be shared, our guidance recognises that information sharing should be proportionate and kept to the minimum necessary but that appropriate information sharing is essential to the efficient provision of safe effective care for patients in accordance with paragraph 6 of our Confidentiality guidance.

It is also important to note that, in line with our guidance on Consent (<http://www.mwscot.org.uk/the-law/mental-health-act/rights-of-carers/>) and Confidentiality, whilst a patient may have mental health conditions, doctors should start from the presumption that every patient has capacity to consent and, if they do, confidential information about them shouldn't generally be passed on to a family member without the patient's consent.

4 Do you think there should be changes made to the timescale after which a DMP should visit a patient who has transferred to Scotland to authorise the continuation of 'treatments given over a period of time'? If so, what timescale would you suggest and should this apply in all circumstances or are there specific circumstances where it should apply? Do you agree that if the DMP has visited within the first two months, a DMP visit after two months should not be required?

4:

We are not in a position to recommend a particular timescale, but emphasise the importance of regularly reviewing and authorising the continuation of treatments in line with our guidance. Regardless of particular sets of circumstances, the regular review and authorisation of treatments is paramount to patient safety. This is particularly the case for patients with serious mental health conditions which may put them at greater risk of harm.

5 Overall, are there any further changes that you think should be made to these regulations in relation to the reception of patients into Scotland?

5:

6 Do you agree with this proposed change? Please state if you have any concerns or suggestions for changes to the proposal.

6:

7 Are there circumstances where the regulations should allow a cross border transfer for a patient whose detention is suspended? If so, should there be any variation to the process for other cross-border transfers? Do you consider there should be any additional information required or different safeguards?

7:

8 Do you agree with these proposals? Please state if you have any concerns or suggestions for changes to the proposal. Are there any additional safeguards or alternative ways of amending the regulations that should be considered?

8:

As we understand it, the final proposal, relating to the validity of warrants for transfers to an alternative bed, aims to remove administrative barriers to ensure warrants enable transfers that respond efficiently to patients' wishes, while still meeting patients' clinical needs. On this basis, we support this final proposal. This is in line with our Duties of a doctor (http://www.gmc-uk.org/guidance/good_medical_practice/duties_of_a_doctor.asp) where we say that doctors should make the care of their patient their first concern and should listen and respond to their patients' preferences and concerns.

9 Overall, are there any further changes that you think should be made to these regulations in relation to the transfer of patients from Scotland?

9:

10 Do you consider that the same process should apply for reception of patients from other EU countries as does for reception of patients from elsewhere in the UK? Are there any additional safeguards that should apply? Is there any additional information that should be provided to Scottish Ministers, including in relation to possible arrangements or concerns following discharge of the patient from hospital?

10:

The principles within our Confidentiality guidance state that disclosures should be kept to the minimum necessary (paragraph 9d (http://www.gmc-uk.org/guidance/ethical_guidance/confidentiality_6_11_principles.asp)) so it may be necessary to consider what information Scottish ministers reasonably require to assess a transfer request in these circumstances.

11 Do you have any other comments to make about cross border transfers, either in law, guidance or in practice?

11:

Chapter 3 – Absconding regulations

12 Do you agree with this proposal? Please state if you have any concerns or suggestions for changes to the proposal.

Not Answered

12:

The intention behind this proposal seems to support a core principle within our guidance that doctors must provide a good standard of care and should promptly provide or arrange suitable treatment where necessary (paragraph 15b of Good medical practice (http://www.gmc-uk.org/guidance/good_medical_practice/apply_knowledge.asp)).

However, safeguarding arrangements are unclear. The Mental Welfare Commission for Scotland advise that short term detention certificates provide more safeguards for the individual than other routes into hospital. These include:

- The fact that short term detention can only take place if recommended by a psychiatrist and a mental health officer. A patient's named person should also be consulted.
- The hospital must appoint a psychiatrist as the patient's RMO. The patient's RMO should examine the patient, talk to them to find out their wishes, read their advance statement if they have one and decide if the patient needs treatment. The RMO must follow the safeguards outlined in Part 16 of the Mental Health Act when giving the patient treatment.
- The hospital should give the patient information about their stay in hospital and explain their rights. They should help the patient to get an independent advocate.
- The patient, or their named person, can appeal against their short term detention to the Mental Health Tribunal. (<http://www.mwscot.org.uk/the-law/mental-health-act/short-term-detention/>)

The consultation document does not specify if any of these safeguards would remain in place if this proposal goes ahead and, if not, what safeguarding arrangements would be in place for patients who require treatment and will only be in Scotland for a short time.

13 Do you agree that these regulations should allow patients to be treated under section 243 of the 2003 Act ? Please state if you have any concerns or suggestions for changes to the proposal.

Not Answered

13:

The intention behind this proposal seems to support a core principle within our guidance that doctors must provide a good standard of care and should promptly provide or arrange suitable treatment where necessary (paragraph 15b of Good medical practice (http://www.gmc-uk.org/guidance/good_medical_practice/apply_knowledge.asp)).

However, safeguarding arrangements are unclear. The Mental Welfare Commission for Scotland advise that short term detention certificates provide more safeguards for the individual than other routes into hospital. These include:

- The fact that short term detention can only take place if recommended by a psychiatrist and a mental health officer. A patient's named person should also be consulted.
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- The hospital should give the patient information about their stay in hospital and explain their rights. They should help the patient to get an independent advocate.
- The patient, or their named person, can appeal against their short term detention to the Mental Health Tribunal. (<http://www.mwscot.org.uk/the-law/mental-health-act/short-term-detention/>)

The consultation document does not specify if any of these safeguards would remain in place if this proposal goes ahead and, if not, what safeguarding arrangements would be in place for patients who require treatment and will only be in Scotland for a short time.

14 Do you consider that there might be situations where it would be of benefit for a patient to receive treatment that may not fit under the criteria of section 243? If so, please describe them and any exemptions or safeguards that you would expect to be included.

Not Answered

14:

15 Do you agree that guidance should be set out for these circumstances? What timescales and other protections do you think would be most appropriate for the guidance?

Not Answered

15:

Health practitioners, including doctors, would benefit from guidance to deal with rare situations such as those described above and to prevent misuse of the provision. We are not in a position to give an indication of timeframes.

16 Are there any circumstances where you consider that a patient who has absconded from another jurisdiction should not be returned to the original hospital or country of origin? Are there any safeguards that you consider should be part of the regulations in relation to patients who have absconded from other jurisdictions?

16:

17 Do you agree with this proposal? Please state if you have any concerns or suggestions for changes to the proposal. Should the regulations or guidance specify anything related to the process for this authorisation?

17:

18 Do you agree with this proposal? Please state if you have any concerns or suggestions for changes to the proposal.

Not Answered

18:

Chapter 4 – Transitional and savings provisions

19 Do you agree with the proposals set out? Please state if you have any concerns or suggestions for changes to the proposal.

Not Answered

19:

20 Do you agree with the general approach to savings and transitional provisions set out in this section? Please state if you have any concerns or suggestions for changes to the proposal.

Not Answered

20:

While this appears to be a pragmatic approach to managing the transition, we are not best placed to comment on the details of these arrangements. Our primary concern is that the transition plans are easy to follow for patients and doctors, and are clearly communicated to both groups in advance of the implementation of this section of the regulations. As we said in our response to Part 1 of the consultation, in our role as the medical regulatory body we have had feedback about some challenges with ensuring sufficient knowledge about and compliance with the requirements of the Act amongst doctors and others.

21 Do you have any views on the proposals for individual sections as set out at Annex A?

21:

22 We will ensure that these changes are supported by clear guidance for practitioners, service users and others in relation to transitional and savings provisions, to ensure it is clear how and when each section of the 2015 Act applies. Do you have any views about specific information that should be contained in the guidance in relation to transitional and savings provisions? Do you have any views on how best this guidance should be targeted, including to specific groups of practitioners?

22:

As we understand it, there are three key categories of medical practitioner that have a role to play in implementing these provisions: approved medical practitioners; designated medical practitioners; and responsible medical officers. We suggest that it may be most helpful to provide targeted guidance for each of them which is tailored to their roles. To ensure they are aware of their duties, it would also be helpful to work with the following bodies (amongst others) to communicate and disseminate the guidance for each group of doctors:

- Approved medical practitioners - Health Board, State Hospitals Board, Royal College of Psychiatrists
- Designated medical practitioners – Royal college of Psychiatrists, Mental Welfare Commission for Scotland
- Responsible medical officers – appropriate Royal Colleges

Chapter 5 – Impact Assessments

23 Do you think any of the proposals set out in this consultation will have an impact, positive and negative, on equalities as set out above and if so, what impact do you think that will be?

Not Answered

23:

It would appear that the expansion of the right to appeal is a broadly positive move which is likely to have a beneficial impact on patients who experience mental ill-health.

24 What implications (including potential costs) will there be for business and public sector delivery organisations from these proposals?

24:

25 Do you think any of these proposals will have an impact, positive and negative, on children's rights and if so, what impact do you think that will be?

Not Answered

25:

26 Do you think any of these proposals will have an impact, positive and negative, on privacy and if so, what impact do you think that will be?

Not Answered

26:

In our response to question 3, we raise confidentiality considerations in relation to sharing information with a primary carer. It is worth bearing in mind that there could also be wider implications for privacy and dignity.

Chapter 6 – Other aspects of implementation

27 Question 27 – Do you have any other suggestions, comments or views about the implementation of Parts 1 and 2 of the 2015 Act that were not covered by other chapters of this consultation or by the first consultation?

27: