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## **RESPONSE TO THE AMENDMENTS TO THE 2003 MENTAL HEALTH SCOTLAND CARE AND TREATMENT ACT.**

**March 13 2014**

The following is a response from HUG derived from the following meetings

- Meeting of the Thursday think in with 10 people
- Meeting of the political crafting group with 5 people
- Extra meeting with 4 people

### **Question 1: Do you have any comments on the proposed amendments to the Advance Statement provisions?**

We are glad that advance statements will be included in patient records and with the Mental Welfare Commission. We would like there to be a continued duty to promote and publicise advance statements.

We feel that sometimes we have the capacity to make partial advance statements even when we have already been detained. We are aware that many people are detained without an advance statement and believe there should be a way of assessing if someone has some capacity to make some decisions in advance despite having impaired judgement in some areas of their lives.

### **Question 2: Do you have any comments on the proposed amendments to the named person provisions.**

Most people agreed that we should have the right to refuse to have any named person at all but some people worried that this might make some people more vulnerable to abuse or neglect if they choose to waive this right. We all agreed that a named person must agree to being a named person and given the support needed to carry out this function.

Some of us felt that although family members are often first choice as a named person that they are sometimes the cause of the problems we face in the first place.

Some of us felt that some named persons did more harm than good, either because of a lack of understanding of their role or because of the relationship

that they have with us. We feel that in some circumstances an appropriate authority should be able to prevent some people from being a named person.

We are aware that many people feel that they have no one that they can ask to be a named person this is distressing for them – we believe that there should be some way of arranging for people to be matched to a named person, maybe via an agency established for this purpose.

**Question 3: Do you have any comments on the proposed amendments to the medical examination and compulsory treatment order provisions?**

We are anxious about this proposal – we think we should always have a second opinion provided.

Some of us have a long term trusting relationship with a GP and would prefer their opinion but we worry that some GP's are likely to just reiterate the RMO's report. Ideally all second medical reports should be completed without sight of the original report.

We feel that we should always have the right to instruct an independent medical report and that this right should be offered to us as a matter of course.

**Question 4: Do you have any comments on the proposed amendments to the suspension of detention provisions?**

We didn't understand this and therefore didn't comment

**Question 5: Do you have any comments on the proposed amendment requiring a MHO to submit a written report to the Mental Health Tribunal**

We believe that an MHO should provide a written report but would refer you to our general comments on MHO's

**Question 6: Do you have any comments on the proposed changes to the emergency, short-term and temporary steps provisions?**

If a report is sent about our detention we should have a say in who would see this. If we have actively nominated a named person then this permission would be implicit. We worry about nearest relatives or default named persons being given information we do not wish them to have.

**Question 7: Do you have any comments on the proposed changes to the suspension of certain orders etc. provisions?**

We don't know

**Question 8: Do you have any comments on the proposed amendments to the removal and detention of patients provisions?**

We can see that nurses and perhaps other medical workers should have their holding power extended by an hour this would avoid the need for emergency detention and would reflect the practical reality of getting people in time

**Question 9: Do you have any comments on the proposed amendments to the timescales for referrals and disposals provisions?**

We don't know

**Question 10: Do you agree with the proposed amendments to the support and services provisions? If you disagree please explain the reason(s) why.**

We believe that people under detention should have a right to adequate support and services both in hospital and the community and think that people who are detained who are parents should have a guarantee of support.

**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.**

We don't know

**Criminal cases**

**Question 12: Do you have any comments on any of the proposed amendments relating to the "making and effect of orders" provisions?**

We don't know

**Question 13: Do you have any comments on the proposed amendments to the "variation of certain orders" provisions?**

We don't know

**Question 14: Do you agree with the proposed approach for the notification element of this VNS? If not, please explain why not and please outline what your preferred approach would be.**

We worried that this right might lead to sensationalism in the press and the local community and to vigilantism.

We felt that when a person is released from hospital that they are done so on the assumption that they are safe in the community and that they should have a right to privacy and confidentiality.

However we did accept that some family members of people who are victims of serious crimes would have a natural desire to know what had happened to the

perpetrator of the crime and would have a natural anxiety that the person may be released into the community without their knowledge.

We agree that if someone has committed a serious crime then victims should be notified and would go further by stating that when one of our members was assaulted in her home and then had the perpetrator housed next door to her after release from prison that this was unacceptable.

However we do not think this should apply to people who have committed what may be regarded as minor offenses and do worry about what would happen when people go in and out of hospital on pass during their discharge and that this may lead to anxiety and confusion for everyone.

We are keen that this provision does not lead to discrimination against people with a mental illness.

**Question 15: Do you agree that victims should be prevented from making representations under the existing mental health legislative provisions once they have the right to do so under the proposed Victim Notification Scheme? Please provide reasons for your answer.**

We don't know

***Our previous advice was that both of the above provisions should only apply to individuals with restricted status and we have not changed our view.***

**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.**

**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.**

We don't know

**We would supply the following additional comments:**

The question of detention creates unease and anxiety amongst all of us – it is a huge step to take and debate should be encouraged on its very operation at regular intervals.

The below is a summary of our views in a meeting of HUG members

### **Is Detention ever necessary?**

10 out of 12 people agreed that detention is necessary if the current criteria of the mental health act are met.

Of the two who disagreed, one person felt, from witnessing the reaction of her friends that being detained is so traumatic and leads to such alienation from society and services that it is not justified.

The other person felt that safe houses/crisis houses that are unconnected with statutory services and which offer a cooperative and respectful place for people to seek sanctuary offer the chance of recovery should be used instead of compulsion and force and that encouragement and dialogue are always far better than compulsion or coercion.

Most people felt that we need to continue to work to make detention a last resort as unrestrictive and as pleasant as it possibly can be.

Some people commented that some people who are suicidal but are not seen as mentally ill can be admitted to hospital on an emergency detention and then discharged. There was some confusion as to whether this was legal and additional confusion as to whether it was right to treat someone who is not seen as mentally ill or to discharge someone who is suicidal but not ill. Others mentioned that without a diagnosis people can be refused hospital or other forms of treatment which also had a negative effect

Everyone felt uneasy about the idea of detention and some people felt that the balance between the right to freedom and autonomy often runs counter to peoples right to treatment and safety.

We have written a report (2013) detailing the views of people across Scotland on detention. This is available on request.

### **MHO'S**

We worry that Mental Health Officers are expected to do too much and are overburdened at the moment – they are essential to the operation of the act and to ensuring we have proper safeguards we believe they need to be adequately resourced, easily available in rural areas and given similar salaries across Scotland that reflect the high level of skill they bring to the job

### **RESTRAINT**

Restraint can be deeply damaging and traumatic. We want to see this debated and ways of restraining or secluding people made as humane as possible.

We have heard of rumours that mechanical restraints being contemplated in some parts of Scotland. The thought of this alarms us considerably.

## **VIDEO LINK**

We are hearing that tribunals may be conducted by video link – this alarms us – we think this should only happen with the agreement of the patient and named person.

We can see that in very rare circumstances video consultations may be helpful and productive, especially in emergencies for a detention rather than a tribunal.

## **PARENTS AND MENTAL ILLNESS**

We worry that some parents are at greater risk of losing children if they have been detained, we believe early support could avoid both the illness and their children being removed. We would like to see increased education about the support needs of parents who are at risk of detention. We also believe fear of this prevents parents seeking help.

## **YOUNG PEOPLE AND DETENTION**

We are aware that an increasing number of young people are being detained and also hospitalised amongst adults we view this as unacceptable. We also feel that young people should be able to access appropriate services near where they live.