

To: SOCIAL WORK (OPERATIONS AND SERVICES) SUB COMMITTEE	Subject: SCOTTISH EXECUTIVE POLICY STATEMENT – RENEWING MENTAL HEALTH LAW
From: DIRECTOR OF SOCIAL WORK	
Date: 6 th DEC 2001	Ref: EMCS/LMCK

1. PURPOSE OF REPORT / INTRODUCTION

- 1.1. This report advises Committee of a Scottish Executive policy statement on proposed new Mental Health legislation which sets out proposals to better protect patients' rights while enabling professionals to carry out their responsibilities to people with mental disorder effectively and compassionately.

2. BACKGROUND

- 2.1 In February 1999 the Health Minister set up a Committee under the chairmanship of Bruce Millan, to review the Mental Health (Scotland) Act 1984. The Committee consulted on and issued a report entitled "New Directions - Report on the Review of the Mental Health (Scotland) Act 1984." Many of the recommendations in this report have been adopted by the Executive and will be incorporated in a new Mental Health Bill, to be brought forward to the Scottish Parliament early next year.
- 2.2 Because of the extensive consultation carried out on the report of the Millan Committee, the Executive are not formally consulting further on this document.

3. PROPOSALS / CONSIDERATIONS

- 3.1 The document sets out Scottish Executive policy on the following:
- Underlying principles** which provide a clear context for the interpretation of the legislation; any intervention under the Act should take account of the principles of benefit, minimal intervention, and taking account of the wishes and feelings of the adult concerned.
 - Whom the Act covers.** It continues to cover mental disorder and learning disability; the same criteria for compulsory detention is now applied to personality disorder, unlike the 1984 Act.
 - Grounds for compulsory intervention.** Although the length of compulsory detention will remain the same, it will be introduced in a more flexible form which will offer community based interventions as opposed to compulsory hospital care. This will be compatible with the principle of 'the least restrictive alternative' and offer improved protection under the Human Rights Act. Community Care orders will be abolished.

- d) **Mental Health Tribunals.** Millan recommended that a new judicial body be established. The Tribunal will be required to consider not only the new criteria for detention but ensure that the principles of the new Act have been upheld. They will also be responsible for ensuring that the Plan of Care submitted meets the person's individual needs. Even more importantly the Tribunals aim to provide a forum where the patient and their carers have an opportunity to be heard.
- e) **Special safeguards for particular treatments.** There are increased requirements for second and independent opinions in respect of specified treatments such as neuro-surgery.
- f) **Users and carers.** The new Act places responsibilities on local authorities and NHS Boards to consider providing advocacy. It also gives the patient the right to identify a 'Named Person' to represent them as opposed to their 'Nearest Relative'.
- g) **The Mental Welfare Commission** will continue to play a key part in safeguarding the welfare of people with mental disorder as well as promote the principles of the Act.
- h) **Mentally disordered offenders.** A more thorough assessment prior to court appearance seeks to address anomalies in the system.
- i) **High risk patients.** Scottish Ministers will continue to oversee the management of patients made subject to restriction orders. However the Mental Health (Public Safety and Appeals (Scotland) Act 1999) continues to balance the rights of the individual while taking into consideration public safety.
- j) **Making the Act work.** A code of practice will be drafted to provide practical guidance and advice on the principles of the Act. Research will assist in evaluating if there is an improvement in service delivery and if service users rights have improved.
- k) **Mental Health Officers.** Although there will be a need for all professionals to have comprehensive training in operating the new Act, the policy statement outlines the extended and significant role of Mental Health Officers. These responsibilities include:
 - Giving consent for emergency and long term detentions.
 - Developing the plan of care for long term compulsion, often alongside a Social Circumstances Report.
 - Co-ordinating the application for long-term compulsion.
 - Preparing reports when long-term compulsions are being renewed and when mental health disposals are considered in criminal cases.
 - Identifying the primary carer, if relevant for appointment as a named person.
 - Being consulted by responsible medical officers prior to discharge from long-term compulsion or discharge on leave.

3.2 The policy statement reinforces that the Mental Health Officer continues to be a qualified and designated social worker. This is important given the extensive training which a qualified social worker requires to undertake to fulfil the requirements of the Mental Health Officer role. The role of relatives and nearest relatives in compulsory admissions to hospital is to be limited, again, giving a clearer significance to Mental Health Officer input.

3.3 There are 32 Mental Health Officers in North Lanarkshire but some are now in management posts and only 20 are actively operating in this capacity, 4 of whom are part-time. It is an intensive and expensive training programme lasting 55 days and there are issues for the authority about the use and deployment of trained staff. 5 are scheduled to go on training next year. New legislation will have major implications for the Council in this area of activity and will be the subject of a further report to Committee.

4. FINANCIAL / PERSONNEL / LEGAL / POLICY IMPLICATIONS

4.1. Nil at this stage, though it is likely that there will be significant resource implications in the future. A copy of this document has been placed in the Members' Library.

5. RECOMMENDATIONS

5.1 Committee is asked to:

- (i) request the Director of Social Work to provide further reports to Committee regarding implications of new legislation for the Council; and
- (ii) otherwise note the contents of the report.



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26 November 2001

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