

**NORTH LANARKSHIRE COUNCIL
REPORT**

To: SOCIAL WORK (OPERATIONS AND SERVICES) SUB COMMITTEE		Subject: MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003 APPEALS AGAINST BEING HELD IN CONDITIONS OF EXCESSIVE SECURITY.
From: DIRECTOR OF SOCIAL WORK		
Date: 5 DECEMBER 2006	Ref: EN	

1. Purpose of Report / Introduction

To advise Committee of the guidance issued by the Scottish Executive for practitioners caring for service users subject to compulsion in the State Hospital under the Mental Health (Care and Treatment) (Scotland) Act 2003.

2. Background

2.1. The Mental Health (Care and Treatment) (Scotland) Act 2003 received royal assent on 25 April 2003 and was implemented on 5 October 2005. The new Act reflects the development of community based mental health services, the greater involvement of service users and carers in decisions concerning treatment, and a greater awareness of the need to respect human rights. It contains a number of additional responsibilities for local authorities.

2.2. The main provision of the Mental Health (Care and Treatment) (Scotland) Act 2003 came into force on 5 October 2005. The provisions in Part 17 of the Act in relation to excessive security were not commenced at that time but came into effect from 1 May 2006.

3. Proposals / Considerations

3.1. These provisions currently relate only to appeals by service users in the State Hospital and only to a person who is subject to a Compulsory Treatment Order, a Compulsion Order with or without restrictions, a Transfer for Treatment Direction and a Hospital Direction. Service users cannot appeal to the Tribunal under these provisions within the first six months of the order being made.

3.2. The guidance places responsibility on the "Relevant Health Board" to identifying a suitable hospital for a person who successfully appeals against being held in conditions of excessive security. This will be the Health Board for the area in which the person resided immediately before the order or direction was made.

3.3. The Mental Health Tribunal is responsible for considering applications from service users and others in relation to appeals. An amendment to the Tribunal Rules (The Mental Health Tribunal for Scotland (Practice and Procedures) (No 2) Rules 2005 has been made in relation to those detained at the State Hospital and issued to practitioners. The amendment highlights changes in the process for submitting an application against excessive security, defining timeframes of hearings and clarify who will be notified of proceedings.

3.4. Minister have established a short life working group to:

- consult on whether these provisions should be implemented in medium and low secure hospitals;
- provide information on how such proposals might be achieved in these environments to inform any decision; and
- produce a report for ministers consideration by November 2006

3.5 A consultation paper seeking views on extending the right of appeal to individuals detained in a 'medium secure unit' or 'low secure' hospital was received by North Lanarkshire Council on 3 October 2003 and issued to partners for comment via the North Lanarkshire Mental Health Partnership Board. When the formal response is completed it will be forwarded to Committee for homologation.

3.6 North Lanarkshire Council is currently responsible for 11 restricted patients resident within the state hospital. Under the Act a Designated Mental Health Officer (DMHO) is required to complete reports for the Tribunal, attend reviews and support when discharged to alternative care settings.

3.7 North Lanarkshire Council welcomes the view that all service users detained in conditions of excessive security should have the right of appeal, however the additional duties this would place on Mental Health Officers in North Lanarkshire Council will increase significantly. It will also have an ongoing effect on their ability to provide a responsive service to those who are not formally detained under the 2003 Act.

4. Financial / Personnel / Legal / Policy Implication

4.1. The recommendations have significant financial and resource implications for NHS Lanarkshire and is a further example of additional duties placed on MHO's under the new Act.

5. Recommendation

5.1. Committee is asked to note the contents of the report

5.2. Request the Director of Social Work to provide a progress report on the outcome of the Executives short working group's report later in 2007.


Jim Dickie
Director of Social Work
31 October 2006

For further information on this report please contact Bobby Miller, Adults and Development Manager on telephone number 01698 332069 or Eileen Niblo on telephone number 01698 332211