Members' Library Service Request Form

Date of Document	28/03/14
Originator	Christine Chambers
Originator's Ref (if any)	
Document Title	ELC Response to Consultation on Mental Health (Scotland) Bill

Please indicate if access to the document is to be "unrestricted" or "restricted", with regard to the terms of the Local Government (Access to Information) Act 1985.

Unrestricted	☒	Restricted	☐

If the document is "restricted", please state on what grounds (click on grey area for drop-down menu):

For Publication

Please indicate which committee this document should be recorded into (click on grey area for drop-down menu):

East Lothian Council

Additional information:

Authorised By	Murray Leys
Designation	Head of Adult Wellbeing
Date	

For Office Use Only:	
Library Reference	120/14
Date Received	16/06/14
Bulletin	June 14

CONSULTATION ON A MENTAL HEALTH BILL

RESPONDENT INFORMATION FORM
Please Note this form **must** be returned with your response to ensure that we handle your response appropriately

The Scottish Government
Riaghaltas na h-Alba

1. Name/Organisation
Organisation Name
East Lothian Council

Title **Mr** ☒ **Ms** ☐ **Mrs** ☐ **Miss** ☐ **Dr** ☐ **Please tick as appropriate**

Surname
Leys

Forename
Murray

2. Postal Address

East Lothian Council		
John Muir House		
Brewery Park		
Haddington		
Postcode EH41 3HA	**Phone** 01620 827577	**Email** mleys@eastlothian.gov.uk

3. Permissions - I am responding as...

Individual	/	**Group/Organisation**
☐	**Please tick as appropriate**	☑

(a)	Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)? **Please tick as appropriate** ☑ **Yes** ☐ **No**	**(c)**	The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).
(b)	Where confidentiality is not requested, we will make your responses available to the public on the following basis **Please tick ONE of the following boxes**		Are you content for your **response** to be made available? **Please tick as appropriate** ☑ **Yes** ☐ **No**

Yes, make my response, name and address all available ☑	
or	
Yes, make my response available, but not my name and address ☐	
or	
Yes, make my response and name available, but not my address ☐	

(d) 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?

Please tick as appropriate ☑ **Yes** ☐ **No**

28 March 2014

Consultation on Draft Proposals for a Mental Health (Scotland) Bill

East Lothian Joint Mental Health Planning Group

Introduction

East Lothian Joint Mental Health Planning Group welcomes the opportunity to respond to the consultation on draft proposals for a Mental Health (Scotland) Bill following on from the review of the Mental Health (Care and Treatment)(Scotland) Act 2003.

All members of the Joint Mental Health Planning Group were consulted in relation to this response. The primary responders have been the Mental Health Officers who are most familiar with this legislation and are aware of the direct impact of the amendments proposed.

Many of the proposed amendments have been received positively and are considered to work towards further ensuring best practice and more efficient implementation of the legislation.

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

Comments: At present, many service users do not complete an Advanced Statement as they feel that there is little purpose or benefit to having one. They have shared that they believe that they do not impact or influence the client's care or treatment and a sense of disillusionment has set in.

This response supports the importance of Advanced Statements and believes that the benefits of having an Advance Statement should be promoted. To help this, clear guidance about what their content might be should be available to clients and named persons. Training should be available to those who support clients complete Statements and act as witnesses. This would help make the Statements more robust, giving them more value and influence.

Where the Statement is held needs careful consideration. It needs to be accessible out of hours and by those who might have to act on the content of the Statement, for example ensuring the wellbeing of pets or children. It would help ensure best practice if the Statements were held on Social Work systems as well as medical records. Having a central register would give the Statement more 'acknowledgement'.

In principle these recommendations are supported, but we would ask that the above points are taken in to consideration.

Question 2: Do you have any comments on the proposed amendments to the Named Person provisions?

Comments: While this response supports that 'a service user should have a named person only if they wish to have one' further clarity is sought on the default position of the Named Person. The importance and benefits of having an appropriate and supportive Named Person was discussed and not to have one as a consequence of a lack of capacity or not fully understanding the implication if that additional support is not available, was concerning. The service user's rights should be

protected at all times, and part of this process is to ensure that significant others, apart from professionals, are involved in the process.

The need for a more robust system where the Named Person would be proactive in their acceptance of this role is acknowledged. However, obtaining written consent and ensuring that rights can be acted on within the time scales of a Short Term Detention Certificate when the service user's health might dictate that a Named Person is not always established until medical treatment has been effective, may not always be practical. There is also the issue of an additional task for the MHO, which is already a stretched resource.

East Lothian MHOs support that a separate consultation on draft amending regulations is required when considering Tribunal Rules and Named Persons' rights. We agree that MHOs are best placed to assist the Tribunal in the decision making about the suitability of any named person under section 257.

Question 3: Do you have any comments on the proposed amendments to the medical examination and compulsory treatment order provisions?
Comments: Concerns were raised about moving away from community involvement, which the GP often provides. There was acknowledgment that the GP may have felt 'unfamiliar' with proceedings under the Care and Treatment legislation, and were often guided by the AMP's assessment, but they could often inform the application and decision making by bringing a perspective which is influenced by a more prolonged involvement or an involvement in a community setting. Concerns that if the GPs participation is not considered necessary, then it is too easy to justify them not being involved.

While the proposal allows the patient to instruct an independent medical report, it was thought that this is unlikely to happen.

The proposed changes were not supported by East Lothian MHOs.

Consultation with RMO supported the proposed changes, believing this to be a positive development.

Question 4: Do you have any comments on the proposed amendments to the suspension of detention provisions?
Comments: The difficulties and complexities which can arise in administering suspensions under the present system were acknowledged and there was agreement that this should be simplified. However, concerns were raised about how the proposed suspension of detention provisions would be monitored and if there is a risk of individuals possibly staying on an order for longer than is absolutely necessary.

While simplification and clarity of the suspension of detention provision is sought, this should impact on the ability to ensure that the least restrictive option is being practiced.

Question 5: Do you have any comments on the proposed amendments requiring a MHO to submit a written report to the Mental Health Tribunal?
Comments: East Lothian MHOs agree that this proposal would be of benefit to the service user. While consultation has always been required, writing a report ensures that the MHO is more

accountable for their contribution. Having made the application initially, this ensures that the MHO remains involved in ongoing decision making and participates in care and treatment.

Once again the impact of this proposal in practice raised concerns about increased work load for the MHOs. MHOs are already struggling to meet their statutory responsibilities in relation to Social Circumstance Reports. This questions whether there would be capacity to provide a further additional report. If this amendment is progressed, the provision of a template with clear headings to be reported to, would help enable consistent reporting.

Question 6: Do you have any comments on the proposed changes to the emergency, short-term and temporary steps provision?
Comments: This consultation supports the proposals that sub-sections 36 (2) and 44(2) include a reference to sub-section 113(5).

East Lothian MHOs support the use of discretion to hospital managers as to whether notice in terms of sub-section 38(3)(b) is given to specified persons. How this discretion should be applied effectively, will depend on how informed the hospital manager is. The RMO or GP should share information which is pertinent to this decision making, explaining necessary sensitivities to be considered by the hospital manager in exercising this responsibility.

Through this consultation there was agreement that the service user should have a copy of the STDC, unless this is detrimental to their health. This would help inform their decision making in relation to whether or not steps would be taken to appeal against the decision. Sharing this report more widely should be considered with caution. The sharing of personal and sensitive information is often inappropriate and needs to be closely monitored. Widening the circulation of the STDC report to the POA or Guardian, and Named Person if appointed through the default position, may not always be appropriate. This information should not be circulated as a standard protocol.

With reference to point 28 and hospital managers informing the Commission that an EDC has been granted, if it serves no useful function, then repealing this provision is supported.

Question 7: Do you have any comments on the proposed changes to the suspension of certain orders etc provisions?
Comments: Agree that the proposed amendments should be implemented.

Questions 8: Do you have any comments on the proposed amendments to the removal and detention of patients' provisions?
Comments: The rights of the Mental Welfare Commission to apply under section 295 to recall a removal order or vary it was discussed as the Act states that..it is only the person subject to the removal order and "any person claiming an interest in the welfare of that person" Whether the MWC is considered to be a 'person' who fits with that criteria was discussed.

Should this proposal be taken forward, concerns were raised about whether the MHO is best placed to notify the MWC. This would put an extra person in the chain of events which might not be needed – it is suggested that the Sheriff Clerk to take on this role. This would ensure that this task is

completed with less scope for error or possible delay. Increasing demands on the MHO was also raised.

The proposal to extend the nursing holding powers from 2 to 3 hours, even if a doctor is available, is supported. The amendment would help ensure that the assessment is completed by a suitable doctor with a MHO present. This would hopefully reduce the use of Emergency Detention Certificates. Every effort should still be made to ensure that the length of time the nursing holding powers are used for, are kept to a minimum.

Question 9: Do you have any comments on the proposed amendments to the timescales for referrals and disposals provisions?
Comments: What is being proposed is agreed with, but there was discussion around whether amendment is required. Section 189 already covers narration in relation to "no reference" in the 2 year period being made. The same issue was raised in relation to section 213 and the use of section 214.

Clarity and simplification is sought.

The proposal to set timescales within which the Tribunal is to hear certain applications is supported. All MHOs consulted were able to share examples where appeals were made but not heard until nearing the end of the duration of the STDC. Setting timescales would ensure undue delay and make sure that an appeal process is not underway while an application for a CTO is being processed.

Question 10: Do you agree with the proposed amendments to the support and services provisions? If you disagree please explain the reasons why.
Comments: To extend the duty to assist patients with communication difficulties when the service user is subject to an application for an order to be made, or in respect of whom an order or directions is being considered. This is necessary to ensure that the service user has a clear understanding of processes and is aware of their rights, allowing them to act on these timeously and appropriately. This proposal was considered positively.

Amending the legislation which places a responsibility on Health Boards to provide services and accommodation for mothers with post-natal depression to mothers with a 'mental disorder' shows equity and understanding of the impact of all mental disorders in the broader sense, to new mothers. This proposal is considered positively.

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 explain the reasons why.
Comments: The removal of the restriction for the convenor of the tribunal panel to be either the tribunal president or a Sheriff was initially viewed with caution. However, the tribunal's function is clear and the expertise to execute these functions does not justify the need for the tribunal president or a Sheriff. Removing this restriction was considered practical, would not risk a diminished service and is supported.

There was some ambivalence about informing the Scottish Government when an application for a CTO is being made for someone who is on a TTD. Some considered that this was not equitable practice as the Scottish Government is not informed of any other CTO applications, while others considered it to be good practice as the service user is under criminal proceedings.

The MHO has a significant role to play throughout the Act and although the consultation document describes the MHO as being 'heavily involved in the application process for a CTO', they are the applicant and lead the process. Not consulting a MHO when considering a Transfer for Treatment Direction is not in keeping with the spirit of the Act. Asking for a MHO opinion would help protect the rights of the client and ensure an independent opinion. This is in accordance with other aspects of the Act.

The impact on MHO resources was once again raised and acknowledged.

Chapter 3 Criminal Cases

Question 12: Do you have any comments on any of the proposed amendments relating to the "making and effect of orders" provisions?
Comments: The clarification proposed is accepted as appropriate and helpful – adding 'remand' before custody clarifies that the reference does not include police custody.

The proposal to extend an Assessment Order for up to 21 days to enable fuller and more informed assessment by those best placed to carry this out, is considered appropriate. However, the impact of this extended duration of detention on the individual needs to be considered carefully with the least restrictive option always being applied.

Question 13: Do you have any comments on the proposed amendments to the "variation of certain orders" provisions?
Comments: The amendments proposed are considered to allow best practice and to be in the patient's best practice. The proposals are supported.

Chapter 4 Victims' Rights

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.
Comments: The proposed amendments were considered positively. Enabling victims of offenders within the mental health system to have the same access to information as is already available to victims of offenders not in the mental health system was considered fair and would help risk management.

Further details of how the proposals will be implemented are requested.

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.

Comments: It is important that the victim is considered fully in risk management decisions and that systems allow for this. Further clarification as to how this would implemented is sought. There are uncertainties about how the proposals would work in practice and if there would be confusion and inconsistencies with two different systems in place.

Question 16: Do you agree with the proposed approach for the representation element of a Victim Notification Scheme relating to Mentally Disordered Offenders? If not, please explain why not and please outline what your preferred approach would be.

Comment: The proposals are considered positively, acknowledging the importance of the victim's perspective and view when considering risk management

Chapter 5 Assessing Impact

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".

Comments: While most of the proposed amendments were considered positively, how some of them might impact on those who lack capacity or have learning disabilities, did raise concerns. This was particularly raised in relation to the proposed amendments around Named Persons and who should complete medical reports. .

Proposed amendments which varied timescales or practices which would allow the completion of more informed assessments, carried out by those with appropriate experience to do so, was considered positively. This would hopefully ensure that the most appropriate treatments and service provisions could be implemented at the earliest opportunity.

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.

Comments: There is already national recognition that MHOs are struggling to meet their statutory demands under the Mental Health (Care and Treatment) Act and the Adults with Incapacity legislation. Issues of an aging MHO population and problems around recruitment are also well recognised. While many of the amendments proposed here are considered positively, many of these will result in increased duties and responsibilities for the Mental Health Officers. To enable Local Authorities to meet their statutory functions, consideration needs to be given as to how this can be achieved.

Throughout this response, clarification as to how the proposed amendments would be implemented is often requested. It is hoped that the Code of Practice will address these issues and provide the necessary guidance in some quite complex areas of practice.