

## Mental Health (Scotland) Act 2015, Scottish Statutory Instruments

Joint response – the Health and Social Care Alliance Scotland,  
See Me, the Scottish Independent Advocacy Alliance and the Scottish  
Recovery Network

**Are you content with the proposals in these Scottish Statutory Instruments on the Mental Health (Scotland) Act 2015 or are there issues that you would wish the Committee to raise with the Scottish Government during its scrutiny of the instruments?**

We welcome the opportunity to highlight concerns related to the newly published Scottish Statutory Instruments (SSIs) related to the Mental Health (Scotland) Act 2016. We would, however, note the Committee's short timescale and the limitations of consulting solely with organisations who have been co-opted into the Mental Health (Scotland) Act 2015 Implementation Reference group.

Collectively we are concerned that *some* elements of the proposed changes to administrative duties in isolation of the person and their rights could have unintended consequences for people who have mental health problems in Scotland. **Generally, we are concerned that the new Act does not match the wider drive towards person-centeredness in the health and social care system.** Our response lists some of our key concerns and proposes a number of questions the Committee could consider asking the Scottish Government.

### **Cross border transfer**

Consent is not mentioned in the regulations, however we are concerned that there may be some circumstances through which people have arrived in Scotland for a particular reason, e.g. that they are receiving treatment without their consent in another country. We believe that further emphasis should be placed on the empowerment of people's voices as a key part of the decision making process.

We are also concerned that there may be some circumstances in which people would be returned to a country which has standards of support for people with mental health problems that we would not recognise. Where this is in doubt, we believe that the Scottish Government has a moral obligation to ensure that the person's rights are not in danger of being undermined on their return.

- **What level of consent is required from the individual whilst making a decision related to cross-border transfer?**
- **What level of support (e.g. independent advocacy) will be made available to people from other countries to ensure that their views and concerns are**

adequately heard and represented whilst a cross border transfer is arranged?

- **What is the Scottish Government's view on returning people who have mental health problems to countries where the standards of support for people with mental health problems restrict their human rights?**

### **Leaving the European Union**

The Mental Health (Absconding) (Miscellaneous Amendments) (Scotland) Regulations 2017 make reference to allowing “medical treatment to persons from elsewhere in the UK... and other European Union (EU) member states who may have absconded and are subsequently taken into custody in Scotland.” We are concerned that on leaving the European Union, such a right would be undermined and would seek clarity from the Scottish Government on its position with regards to this matter.

- **What are the implications of the United Kingdom's decision to leave the European Union for these regulations?**
- **Can we expect further amendments to this legislation after the United Kingdom leaves the European Union?**

### **Independent Advocacy**

Throughout the development of the legislation, we have called for further reference to independence advocacy throughout these proposals as a means to safeguard the rights of people with mental health problems. In our view, independent advocacy has a significant role to play in supporting people with mental health problems

We note, however, that independent advocacy has not been further enhanced by this legislation and remains at risk of being watered down by a lack of local prioritisation and financial support. This has the potential to undermine the gains made by having included “the right of access to independent advocacy” in the 2003 Act.

- **How are independent advocates involved at pivotal points in the process (e.g. when cross border transfer is being arranged, when provision of nutrition by artificial means is being considered)**
- **What is the Scottish Government doing to further embed, promote and support the right of access to independent advocacy support across Scotland?**

**Communicating these changes**

We are keen to see more of an emphasis placed on communicating the changes outlined in the legislation more clearly to people who use support and services and third sector organisations. To date, the emphasis has been placed on delivery organisations and third sector bodies communicating the changes in the law directly with people who are currently detained or who have an advance statement or named person.

- **How does the Scottish Government intend to directly communicate these changes directly to people who use support and services?**
- **Does the Scottish Government intend to publish a plain English version of the SSIs that clarify what the changes are and how they will be put into practice?**

This response is supported by the Health and Social Care Alliance Scotland (the ALLIANCE), See Me, the Scottish Independent Advocacy Alliance (SIAA) and the Scottish Recovery Network (SRN).