

MENTAL HEALTH LAW IN SCOTLAND

CONSULTATION PAPER ON THE MENTAL HEALTH LAW RESEARCH PROGRAMME

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The Mental Health (Care and Treatment) (Scotland) Bill is expected to be enacted in April 2003, subject to the approval of the Scottish Parliament. This paper was prepared during Parliament's consideration of the Bill, but refers to what will happen after it becomes an Act. For simplicity, the paper refers to 'the Act' throughout.

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1. MENTAL HEALTH LAW RESEARCH PROGRAMME: QUESTIONS AND ANSWERS

What is this paper for?

The Scottish Executive is establishing a dedicated programme of research into the operation of mental health law in Scotland. In particular, the programme aims to evaluate the operation and impact of the Mental Health (Care and Treatment) (Scotland) Act, once it has come into effect.

A process of consultation is being carried out to make sure that all those with an interest (the stakeholders) have a say in the development of the research programme. This paper provides a summary of the background to the legislation and to research on mental health law, and outlines the areas of research that are likely to be part of the programme. Stakeholders are invited to contribute their views on the major issues for research, and the particular perspectives they feel should be reflected in research.

As an introduction, here are some answers to ten questions we think you, as a stakeholder, might want to ask about the research programme.

1. Why do we need a research programme on mental health law?

- People who are subject to mental health law are particularly vulnerable. The nature of mental disorder means that they may not recognise their need, or consent to treatment. In certain circumstances, it may be necessary to make decisions about compulsory treatment on their behalf. It is important to make sure that these powers are used correctly and that people who experience the measures of the law are treated with respect
- Information relating to the operation of the Mental Health (Scotland) Act 1984 has been inadequate and, until recently, sound research evidence has been lacking. This has made it difficult to tell how the law was working, and how it might be improved
- The new Act will be the product of the first major review of mental health law in Scotland in 40 years. Its provisions are wide-ranging and detailed. It is imperative that we have a clear understanding of how the Act is working once it is in place, whether it is an improvement on the 1984 Act, and whether the aims of introducing the new Act have been met

2. So is this a new programme of research?

- Yes. The Scottish Executive has committed funding for a long-term programme of research, and a post was created within the Executive for a researcher to develop and manage the programme. The research programme will continue until 2008, with an annual budget of £200,000

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3. What are the aims of the research programme?

- To provide information to support the implementation of the new Act
- To contribute baseline information to build understanding of the operation of the 1984 Act
- To evaluate the operation and impact of the new Act
- To evaluate whether the aims of introducing the new Act have been achieved, taking account of the expectations of all stakeholders

4. How broad is the scope of the research programme?

- The research programme can address any and all aspects of the operation and impact of mental health law in Scotland, before and after the new Act is implemented. Links will also be made with research relating to the Adults with Incapacity (Scotland) Act 2000, where relevant. In addition, the programme will consider interactions between the operation of mental health law and both mental health and criminal justice services

5. But surely the way the law is used may depend on much wider issues, such as whether services and support are available for people who suffer from mental ill health?

- Yes, and the research programme will be able to consider the interaction between services and the operation of the law. In addition, the Executive has set in train a comprehensive assessment of how existing mental health services, augmented by the substantial additional resources being made available, can best meet the demands of the new Act. The assessment is being carried out independently of this research programme, but there are important links between them

6. Isn't it more important that research should focus on factors that may cause mental ill health, and on how people can improve their mental health and well being?

- The importance of positive mental health is embedded in the Executive's policies across health and social justice. The Executive is also funding a long-term programme to improve the mental health and well being of people across Scotland. This is already underway and a separate programme of research will support its work. It is expected that there will be many areas in which the two programmes of research can feed into each other

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7. Why is a consultation process important for the Mental Health Law Research Programme?

- To encourage greater access to and participation in the development of the research programme
- To ensure that the planning of the programme reflects the perspectives of all stakeholders
- To ensure that a communication process is built into the development of the research programme

8. When is the consultation process and what is happening?

- The consultation process will run from the end of March, when this paper is published, until the end of June 2003
- Responses to this paper will be analysed and a further paper published to summarise the analysis
- An event will be held at the end of May to give service users, carers, service professionals, researchers and policy makers the opportunity to discuss the main issues for research. Early feedback from the responses to this paper will be included in the programme for the day

9. Will it be possible for the consultation process to influence the new Act?

- No. The consultation process relates specifically to the research programme on the implementation and operation of the Act. However, awareness of the perspectives of all stakeholders will improve the value of the research we commission. This will feed back into the refinement of guidance, earlier identification of possible problems and better information for Ministers about whether the aims of introducing the new Act are being achieved

10. Is any research already happening?

- Individual projects have been commissioned and information provided to the Mental Health Law Implementation Team as the programme has been developed (see Section 4 of this paper)
- We must not lose the opportunity to capture vital information about current services and structures, so additional strands of work will get underway before the end of the consultation exercise (see Section 4 of the paper)

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- A comprehensive assessment of mental health services in Scotland, commissioned independently of this programme, will contribute valuable baseline information (see Section 5 of the paper)
- Research commissioned by other Departments within the Scottish Executive is likely to provide useful information on aspects of the new Act (for details of work already in progress or planned see Section 5 of the paper)

What we need from you

The paper includes **nine broad questions** about aspects of the research programme we are planning. We invite you to respond to any or all of these questions and to include any other comments you may like to make. Please take note of the information given in Section 6 when preparing your response, and include a completed copy of the Respondent Information Form. (The form accompanies the paper and a copy is also reproduced as Annex 1 to the paper.) If you would like further information about the Scottish Executive Consultation Process, please see Annex 2.

We look forward to hearing from you.

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2. POLICY AND RESEARCH CONTEXT

2.1 Reforming mental health law

The new Mental Health (Care and Treatment) (Scotland) Act is the product of the first fundamental reform of mental health law in Scotland for more than 40 years. If it meets its aims, the Act will:

- promote more appropriate use of compulsory measures
- improve the treatment of patients subject to compulsory measures, without negatively affecting the provision of services for others
- promote greater respect for the human rights of patients
- increase the participation of users and carers in mental health care
- improve protection for vulnerable adults with mental disorder
- improve public safety and rehabilitation of offenders with mental disorder
- make the operation of mental health law more efficient, effective and robust

The process of reforming Scotland's mental health law began with the work of the Millan Committee, set up in 1999 to carry out a detailed review of the Mental Health (Scotland) Act 1984. The Committee used a range of methods to gather information from as many different sources as possible, and made detailed recommendations for reform in their report *New Directions*¹ in January 2001. The Committee's recommendations reflected the major changes to the context of mental health law in recent years:

- advances in patterns of treatment and care for people with mental health problems
- moves towards the greater involvement of service users and carers in all aspects of planning, treatment and care
- greater emphasis on the human rights of the individual

Importantly, the Committee also set out a series of principles which they stressed should underpin the development, implementation and operation of mental health law (Box 1, page 6).

¹ Scottish Executive (2001) *New Directions: Report on the Review of the Mental Health (Scotland) Act 1984*, Edinburgh: The Stationery Office.

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Box 1: Millan Statement of Principles

Non discrimination. People with a mental disorder should, wherever possible, retain the same rights and entitlements as those with other health needs.

Equality. All powers under the Act should be exercised without any direct or indirect discrimination on the grounds of physical disability, age, gender, sexual orientation, language, religion or national, ethnic or social origin.

Respect for Diversity. Service users should receive care, treatment and support in a manner that accords respect for their individual qualities, abilities and diverse backgrounds and properly takes into account their age, gender, sexual orientation, ethnic group and social, cultural and religious background.

Reciprocity. Where society imposes an obligation on an individual to comply with a programme of treatment and care, it should impose a parallel obligation on the health and social care authorities to provide safe and appropriate services, including ongoing care following discharge from compulsion.

Informal care. Wherever possible, care, treatment and support should be provided to people with mental disorder without recourse to compulsion.

Participation. Service users should be fully involved, to the extent permitted by their individual capacity, in all aspects of their assessment, care, treatment and support. Account should be taken of their past and present wishes, so far as they can be ascertained. Service users should be provided with all the information and support necessary to enable them to participate fully. All such information should be provided in a way which renders it most likely to be understood.

Respect for carers. Those who provide care to service users on an informal basis should receive respect for their role and experience, receive appropriate information and advice, and have their views and needs taken into account.

Least restrictive alternative. Service users should be provided with any necessary care, treatment and support both in the least invasive manner and in the least restrictive manner and environment compatible with the delivery of safe, effective care, taking account where appropriate of the safety of others.

Benefit. Any intervention under the Act should be likely to produce for the service user a benefit that cannot reasonably be achieved other than by the intervention.

Child welfare. The welfare of a child with mental disorder should be paramount in any interventions imposed on the child under the Act.

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2.2 The new Act

The Executive responded to the Millan Committee's recommendations with the Policy Statement, *Renewing Mental Health Law*,² which set out proposals for a new Mental Health Bill. The Bill was introduced in the Scottish Parliament in September 2002 and is expected to be enacted in April 2003. No target date has yet been set for the Act to be brought into effect, but this is likely to be sometime in 2004.

The new Act will introduce changes in the following areas of law concerning people with mental disorders:

- compulsory treatment
- the system for making decisions about compulsory treatment
- powers and duties of the Mental Welfare Commission
- duties of local authorities towards people with mental disorder
- arrangements for people with mental disorder within the criminal justice system
- patient representation
- safeguards for special medical treatments

A Mental Health Law Implementation Team has been set up within the Scottish Executive to prepare for the new Act. The team's work includes:

- establishment of the new tribunal system which will make decisions about compulsory treatment
- development of guidance, training arrangements and information
- development of arrangements for monitoring, assessment and research

Information on the team's work is available from the Executive's mental health law website: <http://www.scotland.gov.uk/health/mentalhealthlaw>.

2.3 Mental health policy context

These major developments in mental health law are part of the more general priority given by the Executive to mental health issues. In recent years, the Executive (working with the statutory agencies, the voluntary sector and others) has introduced and developed a number of policies and initiatives to improve the planning, delivery and accountability of mental health services.

A Framework for Mental Health Services in Scotland,³ launched in September 1997, laid out the principles and values that should inform the organisation of comprehensive mental health services. In 2000, *Our National Health*⁴

² Scottish Executive (2001) *Renewing Mental Health Law*, Edinburgh: The Stationery Office.

³ Scottish Office (1997) *A Framework for Mental Health Services in Scotland*, Edinburgh: The Stationery Office.

⁴ Scottish Executive (2000) *Our National Health: a plan for action, a plan for change*, Edinburgh: The Stationery Office.

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advanced and evolved the *Framework* agenda for change to reflect an added concentration on community based services and on attention to be paid to care responses and support for mild to moderate mental ill health. *Our National Health* also set the agenda for more effective partnerships between sectors, organisations and individuals.

*Partnership for Care*⁵ (2003) advances these objectives further, not least by the announced plans for mental health to be a client group for the Joint Future initiative (from April 2004) and the active promotion of care networks for the organisation of seamless care for users of mental health services. *Partnership for Care* also confirms steps to be taken to address a variety of workforce issues and recognises the important role for primary care in the organisation of seamless mental health care.

Mental health problems affect not only individuals, but families, communities and society as a whole. Achieving the goal of improving Scotland's health therefore means addressing not just physical health, but also the mental health and well being of people and the communities within which they live. Commitments to health improvement made in *Our National Health* saw the beginning of an ambitious National Programme aimed at improving mental health in Scotland. The National Programme, further endorsed within *Partnership for Care* aims to:

- raise awareness of mental health issues
- promote positive mental health and well being
- promote effective prevention of mental health problems
- encourage and support action for early identification, and intervention when mental health problems occur

For more details, visit the National Programme's website:

<http://www.show.scot.nhs.uk/sehd/mentalwellbeing/home.htm>

A strategy for a separate research programme around the National Programme will be published and work will begin during the coming year.

While this research programme focuses on mental health law, the interaction between the various strands of mental health policy, and relevant research associated with them, will be important to its continued development.

2.4 The need for information and research

The Millan Committee noted that statistical information about the 1984 Act was inadequate to provide detail about how well the Act was working and recommended that the Executive should look at arrangements for the collection of statistics. The Information and Statistics Division of the Common Services Agency (ISD) collects, collates and distributes a wide range of National Health Service data sets. Since 2001 ISD has been carrying out a comprehensive review and analysis of the data on national mental health it

⁵ Scottish Executive (2003) *Partnership for Care*, Edinburgh: The Stationery Office.

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assembles and processes. For more details of the Improving Mental Health Information Project, visit the website:

http://www.show.scot.nhs.uk/isd/mental_health/mhipbase.htm

The Mental Welfare Commission has a statutory duty to be informed on various matters related to the detention of people with mental disorder. As part of the provisions of the new Act, the Commission will have a new duty to collect and publish statistical information, and is developing its information technology to make better use of the information it holds. For more details of the work of the Commission, visit the website: <http://www.mwcscot.org.uk/>.

The Millan Committee also suggested that the introduction of a new Act would be an ideal opportunity to begin a programme of targeted research. This would help to show how the new law was working and whether the aims of introducing it were being met.

It is intended that the research programme that is the subject of this consultation paper should be an integral part of comprehensive arrangements for monitoring and evaluating the operation of the new Act. The implementation team is therefore working with a range of interested parties to develop a coherent strategy for monitoring, assessment and research. The strategy, which proposes the development of an assessment framework for the operation of the new Act, is expected to be published in May 2003.

2.5 The research programme

The mental health law research programme is being developed and managed by the Executive's Health and Community Care Research Team⁶.

The aims of the research programme are to:

- provide information to support the implementation of the new Act
- contribute baseline information to build understanding of the operation of the 1984 Act
- evaluate the operation and impact of the new Act
- evaluate whether the aims of introducing the new Act have been achieved, taking account of the expectations of all stakeholders

Development of the research programme began during Parliament's consideration of the Act so that information could feed into the implementation process. It was also important to collect and analyse accurate information about the operation of the 1984 Act, once work was under way to improve the quality and range of statistical data available.

⁶ The team is part of the Health Department Analytical Services Division and works with other professional colleagues to enhance the evidence base for Health Department policy. The team also works with other social research colleagues to ensure that research recognises and promotes those issues that cut across areas of community care and health policy.

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The research programme will continue until 2008, by which time the new Act will have been implemented, had the opportunity to bed down, and been the subject of evaluation. At different stages of the implementation process, different issues are likely to be relevant but, in the main, the monitoring, evaluation and dissemination of information will be an ongoing and organic process.

2.6 Introduction to the content of the research programme

Our starting point for evaluating the operation of the new Act is the Millan principles (Box 1, page 6). These principles provide a picture of an effective and fair system of mental health law and, as such, they will inform the design and analyses of all research relating to people with mental disorder and those who care for them.

The measures of the new Act will affect people in many of the professions engaging with people with mental disorder. New systems and service arrangements, and new and enhanced responsibilities for staff will all change practice. This has implications for recruitment and training, as well as for caseload and working patterns. The research programme will be looking to trace the effects of the new law on service structures and on service professionals, as well as on those who use mental health services.

We are fortunate to have a dedicated budget for research for several years as mental health law changes in Scotland. We must make sure that the money is used wisely. Mental health covers a wide range of issues and service arrangements and impinges on a spectrum of policy areas. Ideally, we would make the remit of the research programme as broad as possible to include all the factors that influence the way the law is used. The budget available will not permit us to do this, so we need to make sure that we cover the most important issues, and include the perspectives of all stakeholders. Where possible, links will be made with other programmes of research and assessment activities. (See Section 5 for examples of areas where this might happen.)

We hope that this consultation exercise will help us to set up relationships with stakeholders. A full research programme will be published after the consultation process is over and the responses have been analysed. However, this will only be the first edition: the programme will remain flexible and responsive, so we want to keep in touch with your views about the areas in which research might be helpful and the issues that should be covered. We also hope that individual people will want to be involved more closely: by providing particular perspectives to the research commissioning process, for example, or by participating in research advisory groups for individual projects.

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3. RESEARCH INCLUDED IN THE CONSULTATION PROCESS

This section of the document sets out four broad areas of change made by the new Act which are most significant in policy terms. Research will be commissioned in all these areas. Where relevant, we shall be looking to lessons that may be learnt from research into the legislative systems, structures and policies of other countries.

In each of the sections below, we provide a little background information to the area and invite your responses to broad questions relating to research. Where important research questions are already clear, we give more detail of what might be included in the research design. The areas are:

- compulsory measures: use and outcomes
- compulsory treatment: the decision making process
- people with mental disorder within the criminal justice system
- mental health law: rights, duties and powers

3.1 Compulsory measures: use and outcomes

The Act is intended to promote compulsory measures which are tailored to the individual and which reflect the Millan principles. The new Compulsory Treatment Order (CTO) will restrict compulsory measures to those necessary for the individual person, and the tribunal will consider a care plan co-ordinated by a Mental Health Officer (MHO) before making a CTO. In some cases, it will be possible for compulsory treatment to be provided in the community.

The responsible medical officer will be required to keep the needs of the person under continuing review during the period of compulsory treatment, and a process of consultation between all professionals and workers contributing towards the service user's care plan must be implemented.

We shall want research to address the following questions:

How is the CTO being used across Scotland?

This might include:

- What factors influence decisions about whether to apply for a CTO and the particular powers that are sought?
- Perspectives of all stakeholders: are the provisions of the care plan being met? Are the mechanisms for making changes to the care plan/ending or reviewing compulsory measures operating effectively? Do the ways in which the CTO is being used reflect the Millan principles?
- How is implementing the CTO impacting on community/primary care services?
- How are community based CTOs being used: why are they imposed, how do they operate in practice and how are they brought to an end?

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- Use of treatment involving special safeguards (for example, forcible feeding, drug treatments)

What are the outcomes for service users and carers?

This might include:

- Survey of people subject to CTO: perceived and real coerciveness of different forms of compulsory measure; implementation of care plan elements, views on the experience of compulsory measures
- Carers' perceptions of CTOs
- Clinical/social care outcomes for service users
- Indirect impact of the new system on informal patients

How does the CTO compare with use of compulsory measures under the 1984 Act?

This might include:

- Perspectives of service professionals, service users, carers
- Perspectives of people with experience of compulsory measures under both Acts

How are other compulsory measures being used?

This might include:

- Factors affecting the use of emergency and short-term detention certificates

Questions

1. What do you feel are the most important issues for research in relation to compulsory treatment measures?
2. Are there any particular angles or perspectives to these issues that you feel should be included in this research?

3.2 Compulsory treatment: the decision-making process

3.2.1 System

A new body, the Mental Health Tribunal, will replace the current system for considering applications for compulsory care and treatment. The role of the tribunal will be complex: it will need to consider both the new criteria for imposing compulsory treatment and the plan of care proposed for the individual. It will specify the particular measures which are authorised by a CTO and may also specify specific aspects of the patient's care and treatment which cannot be terminated without reference back to the tribunal ('recorded matters').

Hearings will involve three tribunal members, with a legally qualified chair. There will also be a medical practitioner with experience in mental health and

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a person with experience of the provision of care to persons with mental disorder or other relevant experience (as a service user, for example).

Once the tribunal system is in place, it will be important to track its operation and impact. Arrangements for routine monitoring will ensure that the necessary information is collected from every tribunal hearing. As a matter of course, research will be commissioned to investigate factors that appear to be hindering or helping the operation of the tribunal system in cities and remote communities, individual regions, within and across equalities groups (people of minority ethnic origin, for example). In addition, it is likely we shall wish to consider the following questions:

How far does the decision-making process reflect the Millan principles, across Scotland and across all equalities groups?

This might include:

- Use of advance statements in the decision-making process
- Tribunals' consideration of care plans and specification of 'recorded matters'
- Nature of participation of the service user, named person, carers in the tribunal hearing
- Role of advocacy in the tribunal system

How is the tribunal system impacting on the roles and responsibilities of service professionals?

This might include:

- Effect of application and review procedures and hearings on other responsibilities of doctors, MHOs and others
- Balance between tribunal work and other roles and responsibilities; retention rates for tribunal members
- Impact of the tribunal system on the colleagues of tribunal members

How does the system compare with the previous arrangement with the sheriff court?

This might include:

- Perceptions of all stakeholders
- Investigation of decisions and appeals

3.2.2 *Criteria for compulsory treatment*

The Tribunal will consider whether the patient meets the criteria for making a compulsory treatment order. The criteria are as follows:

- presence of mental disorder (Box 2, page 14)
- treatment is available that will benefit the patient
- without such treatment there would be a significant risk to the patient or others
- the mental disorder means that the patient's ability to make decisions about treatment is significantly impaired
- making a compulsory treatment order is necessary

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Box 2: Definition of mental disorder

In the new Act, 'mental disorder' means any mental illness, personality disorder or learning disability, 'however caused or manifested.' The Act also provides that a person is not mentally disordered by reason only of any of the following

- sexual orientation
- sexual deviancy
- transsexualism
- transvestism
- dependence on, or use of, alcohol or drugs
- behaviour that causes, or is likely to cause, harassment, alarm or distress to any other person
- acting as no prudent person would act

The criteria for compulsory treatment raise several important research questions. Examples would be:

Are the definitions of mental disorder appropriate?

This might include:

- Use of the Act for people with learning disabilities or personality disorders
- Factors affecting medical practitioners' decisions about people whose disorders are at the margins of these definitions, or who may fall within one of the excluded categories

Is the decision-making process influenced by service availability?

This might include:

- Survey of medical practitioners
- The care plan: scope, scale, how amendments and revisions are made

Capacity, awareness, insight and appreciation of information

The principle of 'participation' is intended to make sure that people who use mental health services are fully involved in all aspects of their assessment, care, treatment and support. However, involvement may only be 'to the extent permitted by their individual capacity.'

If capacity is to be measured, it is important to be able to define and measure the relevant abilities that make up the state of 'capacity'. There is scope here for interaction with research relating to Part 5 of the Adults with Incapacity (Scotland) 2000 (AWI Act). The AWI Act enables decisions to be made on behalf of adults who do not have the legal capacity to do so themselves, because of mental disorder or inability to communicate: Part 5 is concerned with provisions to safeguard the interests such adults in relation to medical treatment and research.

Research might include:

- Survey of the various stakeholders in the decision-making process

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- Service users' experience of participation

Questions

3. What do you feel are the most important issues for research in relation to the operation of the tribunal system, and the criteria by which decisions about compulsory treatment are made?
4. Are there any particular angles or perspectives to these issues that you feel should be included in this research?

3.3 People with mental disorder within the criminal justice system

The law relating to people with mental disorder who enter the criminal justice system is reformed under the Act, and we shall want to target research in this area. However, we need to be aware of research that may be planned, or is already being carried out, as part of the Executive's Crime and Criminal Justice Research Agenda (see Section 5). This is likely to influence decisions as this research programme is developed. Broadly, we'd expect research to focus on the use and impact of the available disposals, in particular:

Compulsion order

This may require the offender's detention in hospital, or provide for treatment in the community, as with the Compulsory Treatment Order.

Restriction order

Additional restrictions to the Compulsion Order may be imposed if it is felt that the offender requires additional scrutiny while going through the mental health system. The offender must be detained in hospital if a Restriction Order is added to a Compulsion Order.

Hospital Direction

The court may authorise the convicted person's admission to, and detention in, hospital. This is in addition to any sentence of imprisonment, and the convicted person returns to prison if the criteria for detention under mental health law cease to apply.

We shall want to ask how the sentencing options are being used and to examine their impact.

This might include:

- Perspectives of all stakeholders in the decision-making process
- Use and impact of the Compulsion Order: how does it compare with use of the Hospital Order under the 1984 Act?

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- Outcomes for those people given Hospital directions. This will follow on from an earlier study commissioned by the Executive.⁷

The Act substantially changes the role of Scottish Ministers in relation to restricted patients. Ministers will no longer have the power to discharge (either conditionally or absolutely) such patients: this will be the responsibility of a Mental Health Tribunal. We will want to assess the impact of these new arrangements on restricted patients and those involved in their care and treatment.

We shall also want to be sure that issues around the assessment and management of risk in mentally disordered offenders are included in plans for research. The MacLean Committee on Serious Violent and Sexual Offenders, which reported in 2000, recognised the importance of risk assessment in sentencing and managing offenders. The Committee's findings were reflected in the Criminal Justice White Paper, *Serious Violent and Sexual Offenders*,⁸ published in June 2001, which proposed the establishment of a Risk Management Authority (RMA).

The RMA will be responsible for producing strategies dealing with the assessment and minimisation of the risk posed by offenders. It will collect information, sponsor research, set standards and evaluate risk assessment tools and techniques. We shall keep in touch with the RMA's research plans to ensure that issues relating to people with mental disorder who enter the criminal justice system are covered by their work. If it seems more appropriate to include such specific issues in this programme, we shall do so.

Questions

5. What do you feel are the most important issues for research in relation to people with mental disorder in the criminal justice system?
6. Are there any particular angles or perspectives to these issues that you feel should be included in this research?

3.4 Mental health law: rights, duties and powers

In addition to the specific provisions on compulsory treatment and in relation to people with mental disorder within the criminal justice system, the new Act will establish a broad framework of rights, duties and powers in relation to the care and treatment of people with mental disorder.

⁷ Scottish Executive (2001) *Mentally Disordered Offenders and the Use of Hospital Directions and Interim Hospital Orders*, Edinburgh: The Stationery Office.

⁸ Scottish Executive (2001) *Serious Violent and Sexual Offenders*, Edinburgh: The Stationery Office.

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These rights, duties and powers will include the following:

- duties on those discharging functions under the Act to comply with the general principles of the Act
- revised and extended powers and duties for the Mental Welfare Commission
- revised and extended powers and duties for local authorities to provide services for persons with mental disorder, and duties on local authorities and NHS bodies to co-operate with each other and with voluntary organisations in doing so
- a duty on local authorities to appoint sufficient mental health officers
- duties on local authorities to inquire into possible cases of ill-treatment or neglect
- a patient's right to nominate a named person, and the named person's rights to represent the interests of the patient
- the right of patients and carers formally to request an assessment from a Health Board or local authority
- a patient's right of access to independent advocacy
- duties on to provide information to the patient
- duties to provide assistance to patients with communication difficulties
- a patient's right to make a formal advance statement, to which the Tribunal and medical practitioners have a duty to have regard
- powers of hospital managers to take action in relation to the safety and security of hospitals
- powers in relation to the removal of a person to a place of safety
- rights of patients to seek an order from the tribunal where detained without proper authority

The operation of each of these aspects of the new Act will be potential subjects for research. It may be that some of these aspects will be included in research that cuts across several of the broad areas defined in this paper. In addition, some of the rights, duties and powers have a wider application than the new Act, and may be included in the research carried out in other programmes, in which case we can make appropriate links. Priorities will be clearer once the Act comes into effect, but it would be useful to have your ideas of what these priorities should be.

Questions

7. Which aspects of the general framework of rights, duties and powers provided by the Act do you think are the most important subjects for research?
8. Should any of these aspects be the subject of research before the new Act comes into effect?

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4. RESEARCH TO BE UNDERTAKEN IN ADVANCE OF THE MAIN PROGRAMME

The consultation process will continue until the end of June 2003 and a research programme will be published in August or September. Some research is already underway, and other work needs to begin within the next few months. This section provides information about such work. Although we are unable to invite your views on all aspects of research related to mental health law in Scotland, any thoughts or comments you would like to provide will be considered and may feed into the research design for individual projects, or into future plans for research.

4.1 Research to inform implementation

Mental Health Officer Services: Structures and Supports

Research has already been commissioned to investigate models of Mental Health Officer (MHO) service provision, and to describe how they address the need to provide a responsive professional service which takes account of local circumstances and the demands of new and existing legislation, and existing departmental service structures. The research, which is being carried out by the Scottish Development Centre for Mental Health, will include the perspectives of service managers and practitioners. It will explore Local Authorities' readiness to respond to the demands on MHO services arising from those parts of the Adults with Incapacity Act which have already become operational, and will address the demands anticipated with full implementation of this legislation in April 2003. The research will also examine preparations put in place for the implementation of the new Mental Health (Care and Treatment) (Scotland) Act. A final report will be produced in July 2003 and will be widely disseminated.

Consultation on a Code of Practice

Analysis of the responses to a consultation on the Code of Practice which will set out guidance to professionals on their duties under the new Act.

The role of Medical Records Officers

Research to inform the development of arrangements for monitoring and assessment, in particular the development of statutory forms; and to inform the development of Guidance in relation to Medical Records Officers.

Training and support needs of Tribunal members

Research to inform the development of arrangements for induction and initial training for newly appointed members of the Mental Health Tribunal.

Training for those discharging functions under the new Act

Research to inform the development of training materials and courses for the main professional groups discharging functions under the new Act.

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Stakeholders' aspirations for the new Act

Research to inform the development of an assessment framework for the new Act.

4.2 Research to allow comparisons between the current and new Acts

Experiences of the Mental Health Act

Qualitative information on service users' and carers' experience of the current Act.

Information on the operation of the current Act

Research to pull together existing data to provide as complete a picture of the operation of the current Act as is possible.

Research into the operation of the current Act

Review of the literature of research on the current Act, to update findings from the review commissioned as part of the remit of the Millan Committee.

4.3 Research to promote general understanding of how mental health law is used in Scotland

Use of the Act (past and present)

Research to promote understanding of the attitudes and behaviours of the professionals and other 'gatekeepers' who determine when and how the Act is used, and the influences on those attitudes and behaviours.

Question

9. Do you feel that any vital issues have been missed from the research programme as outlined?

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5. ADDITIONAL RELEVANT RESEARCH IN PROGRESS

This section highlights research in progress, commissioned by the Executive, which is likely to influence the development of the mental health law research programme.

5.1 Review of mental health services

A comprehensive assessment of existing mental health service provision has been set in train by the Executive and is expected to report its findings in August 2003. The project will include:

- mapping existing services for people with needs for mental health services in Scotland
- identifying gaps or duplication in the provision of services
- reviewing available evidence about the organisation, management, efficiency and effectiveness of mental health services
- assessing the implications for services of the introduction of the new Act
- considering priorities for developments of services in the light of these implications

5.2 Evaluation of 'appropriate adult' schemes in Scotland

Research commissioned by the Executive's Justice Research Team is currently underway to evaluate appropriate adult schemes across Scotland. The aim of Appropriate Adult Schemes is to ensure that the rights and obligations set out in statute and in common law apply equally to all individuals who come into contact with the Criminal Justice System. The research, which is being carried out by the Department of Psychiatry at Edinburgh University, is expected to report its findings in September 2003.

5.3 Adults with Incapacity (Scotland) Act 2000

A consultancy focusing on the implementation and monitoring of, and research on, the Adults with Incapacity (Scotland) Act 2000 (AWI) has been commissioned by the Executive's Legal Studies Research Team. The research team (Alzheimer Scotland and Scottish Development Centre for Mental Health) has been contracted to undertake three distinct (but linked) phases of work over two years. These are:

- assisting with the implementation of Parts 1, 2, 3 and 6 of the AWI Act
- monitoring the implementation of the AWI Act
- identifying and undertaking research to address gaps in knowledge

These activities will be conducted in collaboration with a range of stakeholders and the researchers will make recommendations for how to

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address issues that have been identified. The project will be completed in autumn 2004.

It is also planned to research the operation of Part 4 of the AWI Act, scheduled for implementation from 1 April 2003. In order to give this particular part of the AWI Act time to bed down, we envisage research will begin sometime during 2004-05.

We are aware of other planned work that may be expected to interact with the work of the programme, although details are not yet available. Research into the implementation of Part 5 of the AWI Act, which deals with medical treatment and research, for example, will be particularly relevant.

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6. CONSULTATION ON THE MENTAL HEALTH LAW RESEARCH PROGRAMME: HOW TO RESPOND

Responding to this consultation paper

We are inviting written responses to this consultation paper by **30 June 2003**.

We should be grateful if you could clearly indicate in your response which questions or parts of the consultation paper you are responding to (using the question numbers) as this will aid our analysis of the responses received.

Your response should include a completed copy of the Respondent Information Form (included as an attachment to the letter accompanying this paper, and reproduced as Annex 1, page 23).

Please send your response, and the Respondent Information Form, to:
mhlawresearch@scotland.gsi.gov.uk

or

Angela Hallam
Health and Community Care Research Team
Scottish Executive
2nd Floor East Rear
St Andrews House
Regent Road
Edinburgh EH1 3DG

If you have any queries contact Angela Hallam on 0131 244 2813.

Access to consultation responses

We will make all responses available to the public in the Scottish Executive Library by 21 July 2003 and on the Scottish Executive consultation web pages <http://www.scotland.gov.uk/views/views.asp> by 28 July 2003, unless confidentiality is requested. All responses not marked confidential will be checked for any potentially defamatory material before being logged in the library or placed on the website.

If you have any comment about how this consultation exercise has been conducted, please send them to:

Name: Angela Hallam (details as above)

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ANNEX 1: RESPONDENT INFORMATION FORM (COPY)

Please complete the details below and attach it with your response. This will help ensure we handle your response appropriately.

1. Are you responding as:	
An individual	<input type="checkbox"/>
On behalf of a group or organisation	<input type="checkbox"/>

2. Do you agree to your response being made public (in the Scottish Executive library and/or on the Scottish Executive website)?	
Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

Where confidentiality is not requested, we will publish your full response including your name (and address, where provided).

<i>If you do not wish these personal details to be published, please tick the box on the right</i>	<input type="checkbox"/>
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3. Are you content for the Scottish Executive Health and Community Care Research Team to contact you again in the future for consultation or research purposes?	
Yes	<input type="checkbox"/>
No	<input type="checkbox"/>

Thank you for responding to this consultation paper.

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ANNEX 2: THE SCOTTISH EXECUTIVE CONSULTATION PROCESS

Consultation is an essential and important aspect of Scottish Executive working methods. Given the wide-ranging areas of work of the Scottish Executive, there are many varied types of consultation. However, in general Scottish Executive consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work. While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body. Consultation exercises may involve seeking views in a number of different ways, such as public meetings, focus groups or questionnaire exercises.

Typically, Scottish Executive consultations involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the area of consultation, and they are also placed on this web site enabling a wider audience to access the paper and submit their responses. Copies of all the responses received to consultation exercises (except those where the individual or organisation requested confidentiality) are placed in the Scottish Executive library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4552).

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented