

Duncan McNeil
Convener, Health and Sport Committee
The Scottish Parliament
Edinburgh
EH99 1SP



24 April 2015

Dear Mr McNeil

In the Committee's Stage 1 Report, the Committee recommended that the Scottish Government, provide a proposed timetable for bringing forward regulations on orders regarding level of security. The Scottish Government also said that it would provide a draft of the proposed regulations during the passage of the Bill.

I therefore have pleasure in providing the Committee with draft proposed amendments to the Bill, draft regulations and a draft timetable for their introduction for the Committee's information. We will continue to discuss the proposals around orders regarding level of security with key stakeholders, but given the interest in this area it is prudent for us to be clear about the Government's intentions now. In light of these continuing discussions the drafts remain subject to some change.

Draft Proposed Amendments

The Government intends to bring forward amendments to the Bill at Stage 2 that:

- Requires a supportive report prepared by an approved medical practitioner to accompany an application for an appeal.
- Makes it clear that the test that the Tribunal must apply when considering excessive security appeals is set out in regulations and clarifies the regulation making powers.

Draft Regulations

The draft regulations specify Scotland's three medium-secure units as qualifying hospitals. It is the Government's intention for patients in the medium-secure units to have a right of appeal against being held in conditions of excessive security. This delivers the recommendation of the Millan Committee and fulfils the intention behind the excessive security provisions outwith the state hospital in the 2003 Act.



The draft regulations also set out a test under which the Tribunal must determine whether a patient is being subject to a level of security that is excessive.


These provisions are set out in regulations, because the nature of the secure estate in Scotland is such that resources need to adapt to the changing needs of patients quickly. The flexibility of regulations rather than primary legislation is needed to ensure the legislative framework can adapt to the changes in the secure estate.

It is the Government's intention to lay final draft regulations before Parliament for scrutiny through the affirmative procedures as soon as possible after Royal Assent. I look forward to more detailed discussions on the regulations at that time.

Draft timetable

Also attached is a draft timetable for the introduction of the right of appeal against being held in conditions of excessive security. We intend to introduce the right of appeal to medium secure patients as soon as possible after the Bill is enacted. This is, of course, subject to parliamentary approval.

I hope the Committee find this information helpful. I would also like to thank the committee for the work it has undertaken in scrutinising the Mental Health (Scotland) Bill thus far, and I look forward to engaging with the committee at Stage 2 of the Bill process.

A handwritten signature in black ink, appearing to read 'Jamie Hepburn', with a long horizontal flourish extending to the right.

JAMIE HEPBURN

Copy to Nigel Don, Convener of Delegated Powers and Law Reform Committee