PUBLIC SECTOR REFORM (SCOTLAND) BILL: MENTAL WELFARE COMMISSION

1. On 13 February I announced that provisions in respect of the Mental Welfare Commission for Scotland would not be included within the Public Services Reform (Scotland) Bill at introduction to allow for further discussion with the Commission and other stakeholders. Following those discussions I published a consultation paper which sought views on the future functions of the Commission and its governance. The consultation period ended on 25 September and more than 50 responses were received from statutory bodies, service users, professional bodies, academics and individuals.

Functions of Mental Welfare Commission for Scotland

2. There was overwhelming support for the proposition that the Commission should remain a separate independent body, with a primary focus on the protection of rights for those subject to the mental health legislation. This protective function was regarded as different from the improvement and scrutiny roles proposed for the new health and social care bodies.

3. However, it was also recognised that it was important that the system as a whole operates effectively for the improvement of mental health services and that Health Improvement Scotland and SCSWIS would have important work to do in that regard. Two particular issues arising from the consultation are of note. The view was expressed that there should be clearer standards for mental health services against which scrutiny and improvement organisations might discharge their functions and against which organisations might consider their own performance. Secondly, it was suggested that there was a need for greater clarity about how support would be offered to organisations to enable them to change where the MWC had identified deficiencies. In each case I would propose administrative rather than legislative action to enable the various organisations to develop solutions collaboratively.
4. Our policy proposals for legislation are as follows:

- The Mental Welfare Commission will be retained as an independent body with functions which are primarily about the protection of the rights of individuals who are subject to the mental health legislation (in line with our public commitment on 13 February);

- The current duties on the Mental Welfare Commission in respect of scrutiny and improvement will be more narrowly drawn to focus on legal and ethical practice only not general service improvement (which will continue to be the responsibility of NHS QIS, SWIA and the Care Commission and the new successor bodies); this reflects the current practice and activities of the Commission;

- The Mental Welfare Commission will be under a duty to give advice to people who request it in respect of the matters dealt with under its functions (mirroring the duty on HIS and SCSWIS); this maintains the advice function which the Commission currently offers to patients and practitioners through a telephone helpline;

- The Mental Welfare Commission will be under a duty to raise matters of concern with HIS and SCSWIS, as appropriate; and

- HIS and SCSWIS are to be subject to a duty to consult with the Mental Welfare Commission in respect of advice or guidance they may offer which is related to legal and ethical practice in delivering mental health services.

Governance of the Mental Welfare Commission for Scotland

5. The governance structure for the Commission was considered as part of a quinquennial review in 2007. That review found that the structure did not offer an appropriate framework for governance with the combination of board and visiting functions being held by each Commissioner. The review reported that:

"The Full Commission/Board has 23 members consisting of Executives and Part-time Commissioners. This is not conducive to effective governance and there has been consistent feedback from interviewees that the Full Commission/Board functions more as a forum for discussion rather than a decision making body, both because of its size and the mix of attendees. There is also a potential issue in respect of a lack of objectivity or conflict of interest as all Full Commission/Board members currently have responsibilities for delivery of services."

6. It is our intention that in the future a Board should be established for the Commission composed of Commissioners appointed under the public appointments process. Board members would continue to be appointed on the basis of their expertise and knowledge of mental health, including through service delivery or through having been in receipt of mental health services. In addition, the Commission would itself identify and appoint service users, carers, professionals and others with knowledge and experience of mental health services to work with the staff of the Commission in visiting and undertaking investigations. Service users would be involved in this selection process.
7. This proposal for the future governance of the Commission has the support of the Commission itself and has been developed following consultation with its stakeholders. The Commission remains committed to working with a wide range of partners in developing priorities and ways of working to promote legal and ethical practice in service delivery for those with mental illness and learning disabilities.

8. We are working to develop provisions to give effect to this intention for the consideration of the Parliament, but this work is unlikely to be completed by the conclusion of Stage 1 of the Bill.

9. It is our objective that overall the changes be revenue neutral.

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