Finance Committee

Public Services Reform (Scotland) Bill

Submission from Mental Health Law and Practice

I am writing to express my concerns about the provisions of Part 2 of this Bill. I am a mental health lawyer and Honorary Fellow in the Law School at Edinburgh University. I have worked widely with a large number of bodies working with service users and carers and in 2007 was awarded an MBE for my services to mental health law in Scotland.

I was a member of the Millan Committee, whose review of mental health law in Scotland largely influenced the provisions of the Mental Health (Care and Treatment) Act which the Parliament passed in 2003.

My concerns about the impact of Part 2 of the Bill particularly relate its impact on the Mental Welfare Commission for Scotland.

As you know, clause 10(3) of the Bill would give Ministers powers to make constitutional changes to the scrutiny bodies established under the Bill, and to abolish or modify them without recourse to Parliament. The impact on the Mental Welfare Commission would be that the Government would be able to change its role and functions, which were set out in the 2003 Act, without further reference to the Parliament.

On behalf of the Law Society of Scotland, I attended all the Parliamentary committees and briefed MSPs while the 2003 Act was progressing through the Parliament. I was extremely impressed with the care given and the interest shown by MSPs in protecting the rights of some of our most vulnerable citizens.

The 2003 Act was not a party political issue and would never have been a vote winner for any party. Yet despite this, all parties seemed genuinely concerned and pleased that they could take their part in reforming the law. As a result, the Mental Health Act (Care and Treatment) Act is now generally regarded as a model of international good practice and the role of the Mental Welfare Commission, as enshrined in that Act, provides important guarantees that this practice will be sustained.

To remove such decisions from the Parliament, which showed such interest in these issues, would, I believe, downgrade the importance of the Commission and would undermine the guarantees of its independence from Government which are so essential if it is to do its work of protecting the human rights of vulnerable individuals without fear or favour.

I do hope the Finance Committee will give serious consideration to the implications of these provisions.

If I can give you any further information, I should be delighted to do so.

Hilary Patrick