



Mental Health Law Research: Update and Agenda 2005-2007



Mental Health Law Research:

Update and Agenda 2005-07

**Scottish Executive Social Research
2005**

Further copies of this report are available priced £5.00. Cheques should be made payable to Blackwell's Bookshop and addressed to:

Blackwell's Bookshop
53 South Bridge
Edinburgh
EH1 1YS

Telephone orders and enquiries
0131 622 8283 or
0131 622 8258

Fax orders
0131 557 8149

Email orders
business.edinburgh@blackwell.co.uk

The views expressed in this report are those of the researchers and do not necessarily represent those of the Department or Scottish Ministers.

© Crown Copyright 2005

Limited extracts from the text may be produced provided the source is acknowledged. For more extensive reproduction, please write to the Chief Researcher at Office of Chief Researcher, 4th Floor West Rear, St Andrew's House, Edinburgh EH1 3DG

CONTENTS

	Page
ACKNOWLEDGEMENTS	4
1. SUMMARY	5
1.1. What is this paper for?	5
1.2. Will the new Act help to make things better?	5
1.3. What has already happened?	6
1.4. What is going to happen next?	6
1.5. How can I get involved?	7
2. POLICY AND RESEARCH CONTEXT	8
2.1. Aims of this document	8
2.2. Mental Health Law in Scotland has changed	8
2.3. Mental Health Policy in Scotland	9
2.4. The National Programme for Improving Mental Health and Well-being	10
2.5. Service readiness for the new Act	10
2.6. Information to support Mental Health Law Policy development and implementation	11
2.7. The Mental Health Law Research Programme	12
2.8. Challenges in conducting research in the area of mental health problems	13
2.9. Addressing research challenges	14
3. WILL THE NEW ACT HELP TO MAKE THINGS BETTER?	15
3.1. What we need to know about how services worked under the 1984 Act?	15
3.2. Quantitative Baselines	15
3.3. Qualitative Baselines	16
3.4. What we already know about the impact the Act might have	16
3.5. What we will want to know as the new Act goes into operation	18
4. VIEWING CARE AND TREATMENT PATHWAYS AS A JOURNEY	19
4.1. Understanding the Process	19
4.2. Viewing care and treatment as a process or journey	19
4.3. A: Episode or Period that Leads to Compulsion	19
4.4. B: The Tribunal Process	20
4.5. C: Post-Tribunal arrangements and Compulsory Care and Treatment	22
4.6. D: Discharge from Compulsion	23
4.7. E: Periods of Stability / Non-Compulsion	23

5.	TRANSLATING RESEARCH QUESTIONS INTO RESEARCH PROJECTS	25
5.1.	The operation and impact of the Acts new provisions	25
5.2.	Cohort Study: the impact of the new Act on the lives of service users subject to compulsory measures, their carers and service professionals	26
5.3.	Joint Local Implementation Plan process	27
5.4.	Restricted patients	27
5.5.	Impact on the Roles, Relationships and Views of Service Professionals	27
5.6.	Impact on services to informal patients	28
5.7.	Economic Analysis	28
5.8.	Scottish Executive Mental Health Division Action Matrix	29
5.9.	Being responsive to changing research needs	29
6.	GETTING INVOLVED AND LINKING WITH THE WORK OF OTHERS	30
6.1.	Informal research network	30
6.2.	Ideas for Research	30
6.3.	Research Database	30
6.4.	Please take part	31
	ANNEX 1: Expression of Interest	32
	ANNEX 2: The Mental Health Division Action Matrix	34

ACKNOWLEDGEMENTS

The Mental Health Law Research Update and Agenda was developed by researchers within the Scottish Executives Health Department; Analytical Services Division. Jamie Pitcairn and Angela Hallam would like to acknowledge the input of Dr Rosemary Rushmer in drafting the initial document and would also like to thank all those who contributed to the development of this document.

1. SUMMARY

1.1. What is this paper for?

The Mental Health (Care and Treatment) (Scotland) Act 2003 (the Act) became law in October 2005. As one of a number of initiatives set in place to support the implementation of the new legislation, the Scottish Executive has established a dedicated programme of mental health law research. This programme is developed and managed by researchers in the Executive's Health Department Analytical Services Division (HD: ASD) as part of the wider range of analytical supports ASD provides across Health Department.

The programme aims to support the implementation process and evaluate the operation and impact of the Act. It will also contribute to an evidence base that will support the development of future policy in the area of mental health law in Scotland. Researchers in HD: ASD also aim to keep up to date with and (if appropriate) make a contribution to all relevant research being carried across Scotland. This will ensure that overlaps are minimised and gaps avoided. The research programme aims to act as an information resource to policy colleagues, service providers and service users.

This document has the following aims:

- To give a brief summary of mental health policy in Scotland and how the new Act, and the programme of research to support it, fit in
- To highlight some of the challenges and sensitivities involved in conducting research which relates to the experiences and expectations of people who use mental health services
- To give an update on work carried out to date to improve information about the operation and impact of mental health law in Scotland, and where the research programme fits in
- To summarise the work planned as part of the research programme to support the new legislation, and provide a detailed view of care and treatment pathways as a journey
- To let you, the stakeholder, know how you can become involved in the research programme

For more information on the policy context within which the Research Programme will be operating, please go to Page 9 .
--

1.2. Will the new Act help to make things better?

This is the key question, but a very complex one with no easy answers. In order to address it, the Scottish Executive needs to understand the views and experiences of everyone with an interest in the law. This includes service users and carers and organisations representing their interests, service providers, professional bodies, researchers and policy makers. The research programme has an important role to make sure that adequate and appropriate information is collected to allow the Executive to monitor the operation of the Act, to investigate the stories behind the

facts and figures, and to make sure that the views of all stakeholder groups are included in any assessment of how the Act is working in practice.

For greater detail on the impact that the new Act may have please go to **page 16**.

1.3. What has already happened?

The main activities of the research programme to date include the following:

- A major public consultation was carried out in 2003. Its aims were to let people know about the research programme, to give everyone with an interest in mental health law the chance to be involved in the programme's development from its earliest stages, and to contribute towards establishing the programme's remit. The analysis of responses to the consultation process was published in 2004¹
- A research literature review ¹⁶ was commissioned in 2004 and published in 2005. This drew together the published evidence on the workings of mental health law in Scotland, the wider UK and internationally. The review updated earlier work, including both civil and criminal justice issues and the perspectives of all stakeholder groups
- An analysis of responses to the consultation on the draft Code of Practice and accompanying regulations was commissioned in 2004 and published in 2005². This work contributed to the developing and refining of the Code and the regulations³

The research programme is just one part of a number of major initiatives and short pieces of work that have been carried out across Scotland to support the implementation of the Act. Details of the most important of these are given in the main body of this document.

For more information on research which was conducted in preparation for the implementation of the new Act please go to **page 17**.

1.4. What is going to happen next?

- Discussions are in progress with both the Mental Welfare Commission and the Information Services Division of NHS Scotland about how data can be linked to provide a more complete picture of the application of mental health law, while still preserving client confidentiality.
- Research will focus on the main changes the Act introduces. Routine monitoring and assessment will allow investigation of patterns and trends, but

¹ Rushmer R and Hallam A (2004) Mental Health Law Research Programme: Analysis of Responses to Consultation, Edinburgh: the Stationery Office. <http://www.scotland.gov.uk/library5/health/mhls.pdf>

² Stewart, J. ; Russell, K. and Granville, S. 2005 Mental Health (Care and Treatment Scotland) Act 2003 Consultation Report on Draft Code of Practice and Regulations Policy Proposals. Weblink: <http://www.scotland.gov.uk/Publications/2005/07/15132603/26453> Edinburgh: The Stationary Office

³ Code of Practice Weblink:

<http://www.scotland.gov.uk/Topics/Health/health/MentalHealth/mhlaw/guidance>

research can provide insight into what is actually happening behind the figures, or the experience of particular stakeholder groups

- We are looking at ways to follow service users and their carers throughout their patient journey and experience of the provisions of the Act. At each stage of this journey the perspectives of a range of stakeholder groups will need to be considered. It will also be important to examine particular stages of the journey in more detail.
- The consultation process and other work that has been carried out have given us a rich source of information about how a range of stakeholder groups view the 1984 Act and the expectations they have of the new Act. This will be streamlined into a series of briefing papers and additional raw data may be examined for further insights.

Findings from research commissioned as part of the programme will be disseminated in a number of ways. Updates on the progress of the programme and individual research projects will be reported within the Scottish Executives Mental Health Law newsletter. The research team also plan to hold a stakeholder event in Autumn 2006 to outline the progress of the research programme and encourage stakeholders to provide their perspectives on the first year of the new legislation. The event will help the Executive to prioritise research to be taken forward in 2007.

Each individual research project will produce a full report to be published. The web-based version of this document may be amended to reflect the progress of the programme.

1.5. How can I get involved?

If the research programme is to meet its aims and contribute to the development and application of mental health legislation that is fair, effective and respects the rights of the individual, it needs the support of everyone with an involvement or interest in mental health law. The Executive is particularly anxious to ensure that people who use mental health services, and those who care for them, do not feel they are being 'researched on,' but can contribute to the planning and application of the research programme and individual projects.

Please see Annex 1 for an invitation to express your interest in participating in any aspect of the research programme. It should be emphasised that this is not just a call to contractors to note interest in tendering for the research projects outlined within the document, although we hope that contractors will make contact and let us know their interests. All projects will be commissioned in line with the Scottish executives procurement protocols and an invitation to express interest in specific pieces of work will be widely advertised.

For further details on how to become involved with the Research Programme please go to Page 31 .

2. POLICY AND RESEARCH CONTEXT

2.1. Aims of this document

This document has the following aims:

- To give a brief summary of mental health policy in Scotland and how the new Act, and the programme of research to support it, fit in
- To highlight some of the challenges and sensitivities involved in conducting research which relates to the experiences and expectations of people who use mental health services
- To give an update on work carried out to date to improve information about the operation and impact of mental health law in Scotland, and how the research programme fits in
- To summarise the work planned as part of the research programme to support the new legislation, and a detailed view of care and treatment pathways as a journey
- To let you, the stakeholder, know how you can become involved in the research programme

2.2. Mental Health Law in Scotland has changed

Most sections of the Mental Health (Care and Treatment) (Scotland) Act 2003 (the new Act) became law in October 2005⁴. The new Act is the product of the first fundamental reform of mental health law in Scotland in more than forty years. The Act was developed with the cooperation and participation of all those involved in mental health care and treatment. This includes mental health service users and those who provide care and treatment for them, in a professional capacity or otherwise, as well as service planners and policy makers.

The new Act covers a wide range of issues, which can be summarised as follows:

- **Principles, roles and responsibilities:** how the Act defines the nature, duties and powers of the organisations and individuals involved in the administration of mental health law (for example, the Mental Welfare Commission) and how they should give effect to the principles of the Act
- **Compulsory powers:** how the Act sets out the circumstances in which a person with mental disorder may receive treatment and care and/or be detained on a compulsory basis, and the procedures which have to be followed
- **People with mental disorder within the criminal justice system:** what the Act says about how a person with mental disorder may be dealt with by the criminal justice system, and how that person is cared for subsequently
- **Rights and safeguards:** the additional rights the Act gives to a person with a mental disorder, and the safeguards it puts in place.

⁴ For the new Act and the Introduction to the new Act – see <http://www.scotland.gov.uk/library5/health/mhsa-00.asp> (The provisions on Excessive Security will not come in until 1st of May '06)

In the process of reviewing the 1984 Act and making recommendations for mental health law reform, the Millan Committee proposed a set of principles that have guided the development of the Act and shaped its final format. These principles and values aim to ensure that the new Act provides mental health services that are respectful, represent the least invasive or restrictive option possible, are non-discriminatory and sensitive to the needs of different service users.

2.3. Mental Health Policy in Scotland

The development and implementation of a new Mental Health Act is one part of a broad policy agenda aimed at improving the mental health of Scotland's people and ensuring that appropriate, accessible services are available to people who experience mental health problems. In recent years, the focus of policy attention within the Executive has broadened out from severe and enduring mental health problems to take greater account of improving mental health and well-being at the level of the general population, and addressing the needs of those experiencing and presenting to services with mild to moderate mental health problems. Progress in addressing the balance and location of care is continuing, with an ongoing reduction of inpatient beds and an increased focus on providing community-based services. There are now greater expectations in respect of the general health, well-being, rights and social inclusion of those with more serious mental illness, and the new Act has been built on these foundations. In summary the policy is driven by promotion, prevention, protection, care and recovery.

Within the Executive Health Department, Mental Health Division policies focus on the following areas:

Population mental health. This relates to all 5 million of us who live in Scotland. We all need to protect and support our mental health and well-being. The Executive is taking action at a population level to reduce risk factors associated with poor mental health, increase protective factors, to address the stigma and discrimination faced by people experiencing mental health problems and to promote inclusion and support recovery.

People who experience mild to moderate mental health problems. At any time, 25 per cent of us may be experiencing mental health problems which adversely affect our day to day life⁵. These problems often last for a brief period only and, in many cases, recovery occurs with little or no medical intervention. Most treatment that is provided occurs in primary care settings, particularly GP practices with additional social care provided within the community.

People who experience severe mental illness. One or two per cent of us will experience severe and often recurring mental illnesses and are likely to require periods of acute inpatient care and/or intensive community based interventions. Increasingly, people have the prospect of a full or partial social and personal recovery. Policy is aimed at improving the responsiveness and appropriateness of

⁵ World Health Organisation "The World Health Report 2001: New Understanding, New Hope" Web link: <http://www.who.int/whr/2001/en/>

the service response and supporting individuals to take control of their personal recovery journey.

People who pose a risk to themselves or others. A very few people (0.05-0.1 per cent of the population) are subject to ongoing restriction because they have been assessed as posing a risk to themselves or others. Intensive care, treatment and rehabilitation plans are geared to individual circumstances and reflect the health and safety requirements of the patient, issues in relation to victims and their families and public safety considerations.

2.4. The National Programme for Improving Mental Health and Well-being

The National Programme is an integral part of the Executive's commitment to health improvement and social justice. The vision is to help improve the mental health and well-being of people living in Scotland and the quality of life for people experiencing mental health problems. Work is carried out, nationally and locally, to raise the profile of and support action in the following key areas:

- Preventing suicide in Scotland
- Eliminating stigma and discrimination
- Raising awareness and promoting positive mental health and well-being
- Promoting and supporting recovery from mental ill health

The National Programme aims to achieve these key aims in the following priority areas:

- Infant mental health (the early years)
- The mental health of children and young people
- Mental health and well-being in employment and working life
- Mental health and well-being in later life
- Community mental health and well-being
- The ability of public services to act in support of the promotion of mental health and the prevention of mental illness.

Information on the National Programme's work can be found on the website Well on the Web (<http://wellontheweb.net>).

Section 26 of the new Mental Health Act places duties on local authorities (and their agency partners) to promote the well-being and social development of people experiencing mental illness. This broader, quality of life agenda includes a focus on community regeneration, employment and working life, education and improving access to arts, cultural and sporting and recreational facilities. Positive mental health and well-being is gaining increasing currency and links effectively into the broader Scottish policy landscape and emerging themes of confidence, citizenship, participation, engagement and cultural enrichment.

2.5. Service readiness for the new Act

The overarching document informing Scottish mental health service policy is *A Framework for Mental Health Services in Scotland*⁶, published in 1997, but which has been regularly updated since, the most recent addition drawing attention to the needs of those with a mental health problem and a sensory loss. The *Framework* sets out the principles and values that should inform the organisation of comprehensive mental health services and included general guidance to assist staff in NHS Boards, local authorities and other service agencies in developing a joint approach to the planning, commissioning and provision of services. Subsequent policy documents (*Our National Health, 2000*⁷; *Partnership for Care, 2003*⁸) reinforced the emphasis on partnership between sectors, organisations and individuals, and the promotion of care networks for people who use mental health services.

An assessment of the readiness of existing mental health service provision to deliver the arrangements required by the new Act was undertaken on behalf of the Executive, commencing in 2003. Recommendations from this exercise, *National Mental Health Services Assessment (2004)*¹⁴ and additional assessment of specialist services^{25,26} informed the Executive's Joint Local Implementation Plan process (JLIP). The JLIP process requires all NHS Boards to provide regular updates on how agencies are working together with local authorities and other local partners, towards providing the full range of services and structures necessary for the successful implementation of the new Act. The Executive also conducted a series of local visits to monitor progress and provide support during service development. New financial support continues to be provided to help the transition process. Since implementation the focus has moved to a quality, delivery and improved outcomes agenda. The implementation network will continue through this transition, and twice yearly visits to the agencies in each area set around performance review against agreed targets and timetables, will feature in the coming arrangements.

2.6. Information to support mental health law policy development and implementation

Information relating to the operation of the 1984 Act has been less than adequate in the past and, until recently, sound research evidence has been lacking. One of the recommendations made by the Millan Committee was that the Executive should look at arrangements for the collection of statistics. In recent years, there have been several major initiatives to ensure better quality of information on mental health services and the operation of mental health law.

The Information Services Division of NHS National Services Scotland (ISD) has established a programme to improve the availability of information relating to mental health services and those working to provide these services. The Improving Mental

⁶ "A Framework for Mental Health Services in Scotland" 1997, Edinburgh, Stationary Office, Weblink: http://www.show.scot.nhs.uk/publications/mental_health_services/mhs/entireframeworkdoc.pdf

⁷ Scottish Executive 2000 "Our National Health: a plan for action, a plan for change" Edinburgh Weblink: <http://www.scotland.gov.uk/Resource/Doc/1095/0014725.pdf>

⁸ Scottish Executive 2003 "Partnership for Care" Edinburgh Weblink: <http://www.scotland.gov.uk/Resource/Doc/47032/0013897.pdf>

Health Information Programme (IMHIP)⁹ are working to provide far more robust information to help with future research. The IMHIP team, in conjunction with the Executive's Health Department, Mental Health Division (SEHD:MHD), have developed an information strategy setting out their vision of the way in which information resources and systems need to be developed to enhance mental health care in Scotland over the next five years. The vision of the strategy is that the best and most up to date information should be available to enable professional staff to offer appropriate care and treatment to patients with mental health problems. The need for the best and most up to date information also applies to research and policy development. The strategy was the subject of a public consultation over summer 2005 and implementation plans are being prepared.

The Mental Welfare Commission (MWC) are also working to improve the information available about the use of mental health services and the ways in which mental health law is applied. The MWC have introduced an advanced new data recording system. The new system allows far greater access to searchable data and will allow the MWC to provide a range of statistical releases. The Commission plan to provide quarterly statistical bulletins providing ongoing monitoring information, special reports which will be provided as and when specific areas warrant additional coverage and annual reports which will provide a far greater level of detail than those developed under the previous data system.

The Commission have also appointed a researcher to work on a focused three-year programme of research which will complement that of the Executive. The main areas of focus for the MWC researcher will be monitoring care plans, the use of community based compulsory treatment orders, the use of advance statement override, the use of emergency orders and admissions of young people to hospital services which are not designed for children or adolescents. Other topics to be covered in the programme will include: researching the changing use of Guardianship under the Adults with Incapacity Act; monitoring the use of Social Circumstances Reports; and access to advocacy. The researcher will work with practitioner staff to develop reports and good practice guidance arising from the areas of completed research.

The Millan Committee suggested that the introduction of a new Act would be an ideal opportunity to begin a programme of targeted research. The effectiveness of the new Act can be assessed in a number of ways. The simple monitoring of the use of the legislation itself and the use of mental health services gives an idea of how the Act is being used, but it is the experiences of service users, carers and a range of service providers which can give a more in-depth view of how the Act is working.

2.7. The mental health law research programme

The Executive now funds a comprehensive research programme designed to support the reform of mental health law in Scotland. It is developed and managed by researchers based in the Health Department Analytical Services Division (HD:ASD) as part of a wide range of analytical supports ASD provides to policy development and implementation across Health Department. This means that the input of

⁹http://www.isdscotland.org/isd/collect2.jsp?pContentID=1354&p_applic=CCC&p_service=Content.show&

economist and statistician colleagues can be included in the development of the programme, and that we can ensure the research programme itself fits into the wider policy agenda.

The aims of this 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 into account the expectations of all stakeholders.
- Contribute to an evidence base that will inform the development of future policy in mental health law
- Maintain an overview of all mental health law research currently being conducted across Scotland, in order to minimise overlap, avoid gaps and act as an information resource to policy colleagues, service providers and service users.

2.8. Challenges in conducting research in the area of mental health problems

Many things make research into mental health issues complex, ethically sensitive and difficult to draw robust conclusions from. The research team have designed the research programme taking into account the challenges involved in conducting some of the planned work. Factors which make researching the area of mental health law particularly complicated include:

- The difficulty in defining 'good outcomes' and recovery. Different groups may define a 'good outcome' differently, for example, a psychiatrist may see a course of treatment which successfully removes a patient from compulsory care and treatment as a 'good outcome'. Whereas the patient may not agree with this and see a 'good outcome' as when they have successfully re-integrated into society and have achieved a certain quality of life.
- Many stages to service delivery, multi-professional involvement, variation in service user profiles and their needs
- Multiple stakeholders often with different concerns, needs and perspectives
- Debate and relatively thin evidence-base to say 'what works' in mental health care and treatment. No clear standard to measure practice against
- Ethical issues around accessing service users who may be unwell, their carers who are coping with increased responsibility and busy service professionals make data collection difficult and 'costly' in many ways.
- Mental health patients can have a fluctuating level of capacity which makes maintaining a consistent research relationship difficult
- Research governance issues (especially the need for ethics committee approval) can have both benefits in eliminating insensitive research projects but may also cause delay in the research process.
- Mental health services are delivered by many agencies and it depends on how well these link together to provide effective and smooth-running services.

Disseminating research evidence in order to change practice may therefore have many organisational and professional boundaries to cross.

- Data Protection Issues. Whilst it is important to protect the right of individuals to privacy this can make certain types of data difficult to collect and some research questions impossible to research and answer
- Research Overload. Scotland is not a large country; its population is small and those numbers of people who are subject to compulsion under mental health legislation will be smaller still. Likewise the number of service professionals working in mental health services is small too. There is a risk of creating research overload. It would be very undesirable to over-burden service users, their carers or service professionals with constant (and perhaps duplicated) requests for information and data collection
- Difficulties in disseminating research findings. Audiences are diverse and diffuse, many methods of dissemination have to be used to reach a wide audience in a format that they are comfortable with. Stigma and biases within the wider population can make 'scare stories' headlines news, whilst sound evidence is more difficult to disseminate. Without effective dissemination of sound evidence, practice is unlikely to change.

2.9. Addressing Research Challenges

The research programme has been designed to address the majority of challenges highlighted above. We follow the standards for good practice set out in the Research Governance Framework, and the timescales for research projects are designed to factor in the process of applying for ethics committee approval, if appropriate.

The original process of consultation was intended to include and invite the active participation of all stakeholder groups from the earliest stages of the programme's development. We hope that this will help to avoid research overload, as well as ensuring that the programme addresses the issues that are important to all stakeholders and that people will want to be involved in research that matters to them.

Responses to the consultation exercise highlighted the importance of using a range of different ways to feed back findings from research, so that everyone with an interest in the application of the Act can be included in the dissemination process. We are anxious to ensure that reliable evidence feeds straight into policy and practice development and can be seen to do so.

3. WILL THE NEW ACT HELP TO MAKE THINGS BETTER?

This is a complex question and there are no easy answers – it depends on what we mean by ‘better’ and ‘better for whom’? In order to begin to address these issues, we need as much information as possible about how the 1984 Act worked, and the experiences of all stakeholder groups, as well as the expectations they have of the new Act. Now that the new Act has been implemented, we need to know how it is operating and, once it has had the time to bed down, we will want to evaluate its effectiveness, from multiple perspectives.

The rest of this document focuses on the research programme and in particular:

- Work that has already been conducted
- Work planned to ensure that we have accurate data relating to the 1984 Act
- An early agenda for research relating to the new Act
- Information about how you, the stakeholder, can become involved

3.1. What do we need to know about how services worked under the 1984 Act?

One of the main aims of the research programme is to assess whether the new Act is working to make things better (for service users, their carers, service professionals and others). In order to do this we will need to know how the previous mental health legislation and services were working. This will allow us to measure the changes that have taken place since the new Act went into operation. This requires the establishment of baselines as markers to measure change against. The quantitative baseline will provide the facts and figures such as number and length of detentions, whereas we will look at qualitative baseline information for the story behind the figures, such as the experiences of service users detained under the 1984 Act.

We then need to ask: why do we see the figures and trends, and hear the opinions and themes identified by the pre-enactment research projects? What does it mean and what can we learn from it to help us make things better in the future? How do these facts, figures and experiences of users compare with what we see under the new Act?

3.2. Quantitative Baselines

The Mental Welfare Commission (MWC)¹⁰ and the Information Services Department of NHS Scotland (ISD)¹¹ routinely collect figures on the usage of mental health legislation and compulsory measures, and their disposal, respectively, in Scotland. Some of these figures are published in the MWC’s annual report, however systems to allow the release of more frequent and informative data are being discussed. The MWC is working with the Scottish Executive to establish these systems in a useful and sustainable way. Many of the figures that are collected will show frequency, usage and trends in how mental health legislation is being accessed. From this data we will be able to watch any changes in these post-enactment and start to ask questions about why we see these figures and what they tell us.

¹⁰ <http://www.mwcscot.org.uk/>

¹¹ <http://www.isdscotland.org/imhip>

3.3. Qualitative Baselines

Figures will tell us how many times the Act is used, where and when, but we also need to understand the human stories behind the figures. What is it like to receive mental health services, deliver them, or care for someone subject to them under the current mental health legislation? It is important to collect stakeholders' opinions, views and expectations of the previous legislation and identify what their expectations and hopes are for the new Act. Baseline information re experience and expectation has already been collected from service users and their carers²⁴, and also from some groups of service professionals.^{12, 21, 22} Once the new Act has been in place for a sufficient period of time we can assess whether or not the expectations of all stakeholders have been met.

3.4. What we already know about the impact the Act might have

We already have information and data from different sources helping us to understand what impact the new Act might have:

- *How prepared the present system is* for the introduction of the Act. Extensive reports have been produced on the availability of services and their responsiveness and present capacity, in order to help Local Authorities and NHS Boards to implement Joint Local Implementation Plans (JLIPs) in preparation for enactment of the new Act. The Service Assessment Locality report¹³ provides information on the services available for all client groups within each Health Board area. The final Service Assessment report¹⁴ offers a nationwide perspective on service readiness for the implementation of MHA 2003 and includes sections on client groups, care needs and service availability for all age groups.
- *The consultation exercise on the proposed research programme*. In Spring and Summer of 2003 the draft research programme was issued for consultation¹⁵ and an analysis of the responses to this helped the Executive identify how stakeholders want to prioritise research into mental health law reform in Scotland¹.
- *The consultation on the Code of Practice and Regulations and analysis of consultation responses*². The consultation process on the Code of Practice and the Regulations related to the new Act took place in Autumn of 2004. The draft Code of Practice and Regulations were issued for written comment and

¹² National review of Mental Health Nursing in Scotland. Weblink:
<http://www.show.scot.nhs.uk/sehd/nrmhns/>

¹³ Service Assessment Locality Report weblink:
<http://www.scotland.gov.uk/Publications/2003/12/18651/30292>

¹⁴ Grant, S. 2004 National Mental Health Services Assessment: Towards Implementation of the Mental Health (Care and Treatment)(Scotland) Act 2003 Weblink:
<http://www.scotland.gov.uk/library5/health/mnhfaf.pdf> Edinburgh: The Stationary Office

¹⁵ Scottish Executive 2003 Consultation Paper on the Mental Health Law Research Programme
Edinburgh: The Stationary Office

the responses to the consultation process helped to refine and focus the Code and Regulations in preparation for the new Act.

- *Literature Review* A comprehensive study of all available literature on Mental Health Legislation, both national and international, has been conducted¹⁶ to update the earlier review conducted in 2001¹⁷ and review of literature on mentally disordered offenders¹⁸. The review represents an evidence base into mental health law from past research, published documents and other archive material. The material covered includes research involving all stakeholder groups. It highlights recurring ideas, themes and issues that help us to focus on the areas which require close attention as the new Act goes into operation. The review provides a summary of previous research and a detailed reference list facilitating more in depth study of specific issues within mental health legislation.
- *The interface between Acts.* Research has been conducted to explore the interface between the Adults with Incapacity Act (Scotland) 2000¹⁹ (AWI) and the new Act. The research²⁰ examines the ways in which the AWI and MHA 2003 will work together, with emphasis on issues most likely to affect practitioners and regulatory bodies.
- *The impact on professional roles.* Various enquiries and reviews have taken place to look at the impact of the Act on the workload of mental health service professionals. This includes Mental Health Officers²¹ and Psychiatrists²². The impact on Medical Records Officers, Tribunal members and other medical staff is being addressed through training programmes organised by, respectively the Mental Welfare Commission, the Mental Health Tribunal for Scotland and NHS Education for Scotland. The introduction to the new Act²³ also outlines some of the special professional roles required under the new Act. The analysis of consultation responses on the Code of Practice and Regulations² highlights the views of some service professionals on the way in which the new Act will impact upon their roles.

¹⁶ Atkinson, J. M. and Patterson L. E. et al 2005 *Review of Literature Relating to Mental Health Legislation* Weblink: <http://www.scotland.gov.uk/Resource/Doc/55971/0015674.pdf> Edinburgh: The Stationary Office

¹⁷ Atkinson, J. M. and Patterson L. E. 2001 *Review of Literature Relating to Mental Health Legislation* Edinburgh: the Stationery Office. Weblink: <http://www.scotland.gov.uk/cru/kd01/purple/review00.htm>

¹⁸ McAra, L. and Georghiou, N. 1998 *A Review of the Research Literature on Community Services for Mentally Disordered Offenders*. Weblink? Edinburgh: the Stationery Office.

¹⁹ The Adults with Incapacity (Scotland) Act 2000
Weblink: <http://www.scotland.gov.uk/Topics/Justice/Civil/16360/4927>

²⁰ Gordon, J. A Comparison of the Adults with Incapacity (Scotland) Act 200 and the Mental Health (Care and Treatment) (Scotland) Act 2003 Edinburgh: The Stationary Office Weblink: <http://www.scotland.gov.uk/Resource/Doc/1097/0005078.pdf>

²¹ McCollam A McLean J Gordon J and Moodie K, 2003, Mental Health Officer Services: Structures and Supports. Scottish Development Centre for Mental Health
<http://www.scotland.gov.uk/library5/social/mhos-00.asp>

²² Atkinson, J, Brown, K, Dyer, J, Hall, D, Strachan, J. 2002 *Renewing Mental Health Law. A Scoping Exercise in Respect of the Impact on Psychiatrists Time*. Royal College of Psychiatrists, Scottish Division, Edinburgh www.scotland.gov.uk/library5/social/mhos/00.asp

²³ An Introduction to The Mental Health (Care and Treatment) (Scotland) Act 2003, Weblink: <http://www.scotland.gov.uk/Resource/Doc/47063/0013755.pdf>

- *Service User and Carer views.* Service users and their carers have been consulted on their views of the new Act and its implications for them in a number of ways. The Scottish Association for Mental Health (SAMH) conducted three consultation days for users and carers on the Act and the outcomes have been used to produce a report on the outcomes of the events.²⁴ Service users have also been given the opportunity to comment on the research programme through the consultation exercise¹⁵. The work conducted to assess local service readiness for the implementation of the Act included detailed consultation of local users, carers and user groups on the services in place and the existing gaps in service¹⁰.

All of the work which has already been conducted has been used to inform plans for the work yet to be undertaken. Financial and other support is being provided to the fledgling Voices of Experience (VOX) confederation of users interest groups. This body aims to provide a national mental health user voice to inform local, regional and national service planning and attention to all aspects of the aforementioned quality delivery and improved outcomes agenda for mental health.

3.5. What will we want to know as the new Act goes into operation?

There are several different things we will want to know now the Act is in operation. These include:

- What change is the implementation of the new Act making to the usage of mental health legislation, compulsory measures, services and why?
- Does the new Act meets its aims, objectives and the principles it is based upon, from the perspective of all stakeholders?
- How are the specific new provisions and safeguards introduced by the Act working?
- What is it like be subject to compulsion under the new Act as compared to previous legislation?
- What is it like to be involved in providing mental health services under the new Act as opposed to previous legislation?
- Can any of the ‘teething problems’ experienced as the Act comes into operation be addressed quickly by feeding research evidence back into policy-making and service provision, in order to make the transition period easier for all concerned?

These are different kinds of question, some requiring facts and figures on usage to be collected, some requiring opinions and experiences to be shared. Different research projects using different methods will be needed to collect this. Some projects may address more than one of these questions.

²⁴ SAMH *The New Mental Health Act – Have your say!* Weblink: <http://www.samh.org.uk/newmentalhealthact/pdfs/SAMHConferenceReport.pdf>

4. VIEWING CARE AND TREATMENT PATHWAYS AS A JOURNEY

4.1. Understanding the Process

Being subject to compulsory measures under the new Act and being detained for treatment is a process. It is possible to refer to this process as the 'patient's journey', it is often referred to as a 'care pathway' by service professionals. During that journey events will occur at different times, in different places and involving a mix of professionals and other stakeholders. Breaking down this process into stages helps us to understand what may be involved at each point. For people subject to long-term compulsion, we can think of these stages in a simple way (see Diagram One below). These stages will be expanded on and opened up to highlight potential areas for research.

Diagram 1: Mental Health Compulsion as a Journey

Stage	E	A	B	C	D	E
Part of the Compulsion process	Non-compulsion / stability	Episode leading to Compulsion	Tribunal Process	Care and Treatment	Discharge from Care and Treatment	Non Compulsion / stability

4.2. Viewing Care and Treatment as a process or journey

Diagram 1 above shows the process of compulsion for those who are subject to long-term compulsory care and treatment. People who are treated informally or who are subject to emergency or short-term compulsory orders will follow a slightly different route – these service users do not pass through Stage B (the Tribunal Process) as they enter care and treatment. Service users who enter care and treatment via diversion procedures from the criminal justice system may also take a slightly different route.

4.3. Episode or Period that Leads to Compulsion (Stage A)

There is not one single route that all service users follow when they begin to receive care and treatment for a mental disorder. Many factors may play a part in the different routes that people take. Often mental illness does not happen overnight, but occurs over a length of time when the service user is becoming unwell, or losing their ability to cope. People close to the ill person may notice the deterioration, but the ill person may not notice themselves. Sometimes this stage may end in a 'critical incident' – a sudden event that finally 'forces' help to be sought. Alternatively, the ill person or their carer may seek help and start off the process.

Areas for further investigation

The process of reception into compulsory care is not well researched and we would like to know more about this area. Some interesting questions are:

- What are the incidents that persuade users, their carers, or others involved that help must now be sought and mental health legislation invoked.
- Who is involved at this stage – what are the routes into compulsion and their linkages?
- What is the role of self-referral services or crisis intervention services?
- Do different routes into compulsion lead to different outcomes for the service user?
- Do certain routes into care and treatment avoid the need for compulsion and lead to better outcomes? Comparing areas with high and low use of compulsion?
- What information is available at the point where compulsion is sought and how is it used?
- What happens to those who narrowly avoid compulsory care and treatment? How do those involved decide who is and who is not going to be helped by a compulsory order?
- What are the typical profiles of those detained?
- How are new safeguards and provision for specific user groups working (mental disordered offenders in the criminal justice system, mother and their babies, children and young people ²⁵, ethnic minorities, people with learning disabilities and older people ²⁶)?
- Is there a move away from Emergency Detentions to Short-Term Detentions as the new Act directs? Regional variations, trends, factors?

4.4. The Tribunal Process (Stage B)

The Tribunal is a new part in the process of compulsion. It makes decisions regarding the granting and review of compulsory measures. It replaces the 'old' system of appearance in the Sheriff Courts.

The Act makes many new provisions which are designed to give greater safeguards to the welfare of the service user. The new Act makes it clear who will sit on the Tribunal, and who may attend. It also specifies the documentation that stakeholders will receive and how much notice they should be given. The Act also allows the service user to have a pre-prepared advance statement and allows them to choose who will support them as named person at the Tribunal if they so wish.

²⁵ The Mental Health of Children and Young People: A Framework for Promotion, Prevention and Care Web Link: <http://www.scotland.gov.uk/Resource/Doc/77843/0018686.pdf>

²⁶ Better Outcomes for Older People: Framework for Joint Services Web Link: <http://www.scotland.gov.uk/Resource/Doc/1244/0011892.pdf>

Advance Statement

This is a written statement, drawn up and signed when the person is well, which sets out how the patient would prefer to be treated (or not treated) if they were to become ill in the future. It must be witnessed and dated. The Tribunal and any medical practitioner treating the person must have regard to an advance statement. If the wishes set out in an advance statement have not been followed the medical practitioner must record their reasons in the patients medical records and send a written record to the patient, their named person and to the Mental Welfare Commission giving the reasons for this.

Named Person

This is someone who will look after the person's interests if he or she has to be treated under the Act. It can be the patients carer, spouse, nearest relative, another mental health service user or anyone else they would like to choose and who agrees to act, so long as that person continues to be capable of taking on this role. If you have to be treated under the Act any person involved in your care must take account of the views of your named person, unless it is unreasonable or not practicable to do so.

Independent Advocate

Under the Act anyone with a mental disorder has the right of access to independent advocacy services . An independent advocate is able to give support and help to enable a person to express their own views about their care and treatment.

Care Planning

The Act now requires that a proposed care plan must be submitted as part of an application for compulsion to the Tribunal. The Tribunal will approve compulsory measures based on this proposed care plan. The care plan is based upon the reports prepared by the mental health officer (MHO) and two medical practitioners and reflects their assessments of the patient and his/her need for care and treatment. The RMO then takes the proposed care plan and amends it in relation to the agreements reached within the Tribunal hearing. If elements of the care plan are not being provided the Tribunal may be asked to review the patient's case and the compulsory measures in place.

Areas for further investigation

We will be interested in finding out how the new provisions are working from the perspective of all involved.

- Are the duration, frequency, location and conduct of Tribunal hearings acceptable to all concerned?
- What is the uptake and usage in practice of the new provisions and safeguards?
- What are the roles / impact of the different professionals involved?
- Who attends Tribunals and how well are they able to participate?

- Are there occasions when the new safeguards are not followed (advance statements, proposed care plans, etc.)? Reasons? Impact?
- What information is available to the Tribunal members and what is its quality – how is this information used to make decisions?
- What is the decision making process within the Tribunals? Where does the influence sit? Legal Chair, Approved Medical Practitioner?
- Regional differences and trends in Tribunal decision-making, factors, trends.
- What are the full financial and opportunity costs of the Tribunal system?

4.5. Post Tribunal Arrangements and Compulsory Care and Treatment (Stage C)

At this stage the period of compulsion begins. This may be in a hospital or in the community. The advent of Community Based Compulsory Treatment Orders increase the options available to the Tribunal. The Tribunal process may also be included in this stage, as a patient may appeal against their compulsory care and treatment or a review of that compulsion may be seen as appropriate by the patients named person or advocate.

What we need to understand more about

We need to understand how the different compulsory orders are working. Some questions are:

- How are new safeguards and provision for specific user groups working (mothers and their babies, children and young people, ethnic minorities, people with learning disabilities, mentally disordered offenders in the criminal justice system)?
- What is the impact and outcome of community vs. hospital-based orders on all involved?
- Is community based care and treatment ‘better’ than hospital care and treatment? If so for whom?
- Duration of compulsion: reasons and factors.
- What factors influence the transfer between different compulsory orders.
- How does the care plan provision operate in practice?

4.6. Discharge from Compulsion (Stage D)

Discharge from compulsory care implies a move towards stability for the service user. It marks an important transition in the lives of service users, carers and professional roles and service providers.

What we need to understand more about

This is the end of one phase of 'care and treatment' but perhaps the beginning of another.

- Average length of compulsion. Profile and factors involved.
- What factors influence the decision to discharge a person from compulsory care?
- How does this impact on all involved?
- What helps and hinders the transition process? Availability and linkages between services
- What non-compulsory services do users discharged from compulsion go to? What integrated care pathways are there in place to ensure care and treatment on discharge?
- What are the relative outcomes for patients discharged through; reaching the end of the period of compulsory care and treatment or those discharged through successful appeal to the Tribunal? Do these groups have the same access to post-compulsion care and support?

4.7. Periods of Stability / Non-Compulsion (Stage E)

In this phase service users are either well enough to no longer need care and treatment or they are able and willing to comply with treatment informally. The Act introduces two new safeguards, the duty on local authorities to inquire into the well-being of those with a mental disorder and the duty to provide ongoing care for those who have (or have had) a mental illness. Section 26 of the Act places increased responsibility onto local authorities to provide services designed to promote the well-being and social development of people who have or have had a mental disorder but are not in hospital. These services are to include social, cultural and recreational opportunities, training for those over school age and assistance in seeking and maintaining employment.

What we need to understand more about

It is at this stage that figures collected routinely on the use of mental health law may stop counting individual service users (unless they are in hospital even though not detained), this makes it more difficult to define what happens to these vulnerable people or to draw conclusions about the overall welfare of people with a mental

disorder in Scotland via gross statistical figures. Addressing these 'gaps' in our knowledge is a diverse area to explore, but will allow us to understand what is happening to people when they are not always in direct contact with mental health services.

- What is the uptake and usage of the new safeguards / provisions?
- How well do mental health services reach people who are not subject to compulsion?
- Can periods of non-compulsion be equated to periods of 'well-being' and 'stability' for service users?
- What social interventions and support make a difference to service users, their carers and professionals in preventing deterioration of their mental illness, improving their well-being and assisting in recovery.

5. TRANSLATING QUESTIONS INTO RESEARCH PROJECTS

The ongoing development of much of the research programme will hinge on information reaching the Executive in answer to questions posed in the previous section. However, we already know that some of the questions provide the basis for major research projects, and plans are being drawn up to address these. This section gives early details of plans.

5.1. The Operation and impact of the Act's new provisions

The comprehensive review of literature on mental health legislation and the analysis of responses to the consultation on the research programme, provided the Executive with a good starting point for planning research. The literature review gives an all-encompassing overview of research conducted in the field of mental health legislation, highlighting important themes and gaps in best practice information. Responses to the consultation on the research programme highlight the practical issues that service users and providers will face on a daily basis whilst living and working under the new Act. We can be confident that gaps in the evidence base and perceived needs for information from research have been highlighted from the full spectrum of perspectives.

It is important that the workings of the new provisions of the Act are explored. For this reason it will be necessary to look at patterns, themes and trends emerging in the use of the new provisions. For example: we will need to see how Tribunals are working across Scotland. To understand this in terms of Diagram One, we should try to compare the experience of as many people at Stage B (the Tribunal Process Stage) as possible (or ensure that we consider a representative sample of people). These studies are likely to concentrate specifically on the new provisions and safeguards that the Act introduces, including:

- The operation of Tribunals: roles, decision-making, attendance, participation. The financial and opportunity costs of the Tribunals will also be considered.
- The factors involved in the uptake, usage, adherence to, impact of and outcomes from: Care Plans; Advocacy Services; Advance Statements; Named Person and other safeguards and new provisions
- The impact of the Act on specific user groups²⁷ (mothers and their babies, children and young people, ethnic minorities, people with learning disabilities, people with a mental disorder in the Criminal Justice System,)
- The impact of the new Act on the use of associated legislation such as the Adults with Incapacity Act (Scotland) 2000¹⁹

Initial monitoring information on the operation of the various aspects of the new legislative framework will indicate areas where research may contribute useful insights.

²⁷ The Scottish Executive is working with the Scottish Advisory Committees on Drug and Alcohol Misuse (SACDM and SACAM) agreed in 2002 to explore how best to address the needs of people with co-occurring substance misuse (including alcohol) and mental health problems. Improvements in ways to provide services for such people are recommended in a joint working group report, "*Mind the Gaps*" See <http://www.scotland.gov.uk/library5/health/mtgd-00.asp>

5.2. Cohort Study: the impact of the new Act on the lives of services users subject to compulsory measures, their carers and service professionals

The stages in the journey, A-E (See Diagram 1), may be experienced as acceptable or not, respectful or not. Some things may help along the journey, other things may hinder the process. The intention is to commission a cohort study to capture these journeys in their entirety for a group of service users and their carers, in order to understand what the whole experience of being subject to compulsion under the new Act is like. The cohort study will take place over an extended length of time. Data will be in-depth case studies, holistic in nature and sensitive to the perspective of the participating service users. This will help us to understand how all of the parts of the process mix and work together to deliver a service to the people involved and how this service is received.

The cohort study will aim to explore the experiences of service users, their carers and service professionals, identifying the aspects of the new legislation which are seen both positively and negatively by each of these stakeholder groups. The study will also aim to assess the extent to which the new provisions are seen to meet the Millan Committee principles from the perspective of service users and other stakeholders.

5.3. Joint Local Implementation Plan Process

Changes to mental health legislation require sufficient service availability to make the change effective in practice. As noted earlier in this document, the Executive has worked to ensure full local service readiness for the implementation of the new Act through a process called the Joint Local Implementation Plan (JLIP). The JLIP process was informed by the National Mental Health Services Assessment (2004)¹⁴ and the Service Assessment Locality Reports¹³, and involved all of the agencies in each area working together on implementation and to update the Executive on their progress toward providing the full range of services required for the new Act.

The arrangements are moving forward to build on the relationships and processes established locally and with the Scottish Executive. The names are changing to Joint Local delivery Coordinators and networks, there will still be an exchange of information with the Scottish Executive and local visits will feature again as the transitions become established and the focus shifts to quality, delivery and improved outcomes.

Although the process has been co-ordinated centrally, the way in which the process has worked may vary in different NHS Board areas and the experiences of the JLIP co-ordinators may also vary. It is important that the process undergoes evaluation, and the views and experiences of co-ordinators and other members of the local JLIP committees will be sought as part of a broad evaluation process. The aim of the research will be to assess the effectiveness of the JLIP process in achieving its aims. Feedback from members of the JLIP teams will be used to highlight aspects of the process which could be amended or reconsidered for any future service development.

5.4. Restricted patients

There is currently little research evidence on outcomes for restricted patients in Scotland. Research is required into a range of issues, such as the views of service users subject to restriction, and service providers, and factors such as risk-management, in regard to discharge into the community of restricted patients.

Research may be commissioned to assess the outcomes for restricted patients with specific focus on levels of recidivism and social care factors which may improve outcomes. The routes that discharged restricted patients have into community care facilities will also be addressed and the outcomes for patients restricted due to a co-morbid substance misuse problem will be explored. The impact of the transfer of the decision-making powers for release from the Minister to the mental health tribunal will also be examined. The research will be required to make recommendations for how service and policy development may facilitate an improvement in outcomes among restricted patients.

5.5. Impact on the Roles, Relationships and Views of Service Professionals

The Act changes the duties, roles and working relationships amongst and between service professionals who operate to bring about mental health services. The outcomes of these changes for a range of professionals (including workload and training issues) and their views on how the new Act is working are important considerations for the Executive. The relationships between service professionals and their clients may also change as a result of the new Act – this too, needs to be investigated. There have been a number of scoping exercises conducted to assess the impact the new Act will have on service professionals. These raise a number of issues which are of interest to the research programme. For example:

Psychiatrists²²

- Requirement for significant increase in Psychiatrists numbers
- Concerns over opportunity costs such as reduced outpatient clinic time, increased waiting times for outpatients and fewer patients being seen

Mental Health Officers²¹

- Local authorities face a challenge in developing MHO services which have the capacity to prepare and support individual MHO practitioners in their new statutory functions
- Capacity is not only a question of staffing numbers; it is also about the structures, supervision arrangements, advice, practical support and quality of working relationships with peers and others

Although their professional bodies have not conducted a specific scoping review to assess the impact of the new Act on their members, the research programme will still be keen to assess the way in which the Act impacts upon other professions including GPs, Nurses¹² and the varying members of community mental health teams.

5.6. Impact on Services to Informal Patients

If Stage B (the Tribunal Process) is removed from Diagram One then we can see that informal patients will journey through the remaining stages as they receive care and treatment for their mental disorder. People who are subject to Emergency or Short-Term Compulsory Orders will also follow the same route but miss out the tribunal stage. These people will meet the same busy professionals as patients subject to compulsion and may draw upon many of the same provisions and services. The impact of the new Act in focusing attention on patients who are subject to compulsion may impact on the services for informal patients, but section 1(3)(g) of the new Act states that it should not detract from them. We will want to know how things are changing for informal patients.

In their responses to the consultation on the research programme, many service users and service providers noted concern about the impact the new Act may have on the provision of services to those patients with mental health problems who are not subject to compulsion under the new Act. Research will be commissioned to assess the care pathways experienced by both formal and informal patients. This will include consideration of the pressures the Act imposes on service professionals to complete its requirements and whether this has an effect, and what effect, on services for informal patients.

5.7. Economic Analysis

Whilst the Act works on the basis that least restrictive opportunities for care and treatment are most respectful of the civil liberties and rights of the individual service user. In order to be sure that best use is made of available resources we will want to explore the costs of the services delivered under the new Act. It will be necessary to compare the cost and full resource implications of the different types of compulsory orders and how this lines up with the service availability and measurable outcomes for the patient.

5.8. Scottish Executive Mental Health Division action matrix

The responses to the original consultation on the research programme provided valuable information to help the Executive structure a research agenda to meet the needs of a wide range of stakeholder groups. However many of the issues raised by respondents went beyond the remit of the research programme. It was important to let people know how their questions and concerns would be addressed, so researchers, policy colleagues and other key stakeholders drew up an action matrix to map the questions against various forms of activity, to let people know how their questions would be addressed by the Executive. At the time the analysis of responses was published (February 2004) the Code of Practice for the Act was not available and training programmes for those discharging functions under the Act were still being planned. People had many questions which should now have been answered. However, we felt the action matrix was a useful device to keep stakeholders informed about where responsibility for addressing particular questions lies, and have reproduced it as Annex 2 to this document, having updated it following discussion with relevant stakeholders.

5.9. Being Responsive to changing research needs

Although this document lists a number of research plans, we need to build a degree of flexibility into the programme as it develops and the new Act beds down. As practitioners respond to their new duties and the new ways of working, as service users and their carers experience the new provisions and other stakeholders engage with the new systems introduced by the Act, 'things' are likely to take time to 'settle down'. This period of transition may raise issues, concerns and questions that we need to add to the research programme. These may well be questions that it is not possible to see now, but that will only emerge as the whole structure of the Act comes into place. In addition, ongoing monitoring and assessment and the investigation of trends in mental health law usage may highlight further areas for research. The deliberate decision to allow the research programme to be 'open' will give the research programme the opportunity to respond flexibly and sensitively to changing circumstances and research findings emerging elsewhere in Scotland.

6. GETTING INVOLVED AND LINKING WITH THE WORK OF OTHERS

The range of topics for possible research is vast and the research budget for this programme of research is limited. It is, and will continue to be, important for researchers in HD:ASD to link in with relevant research being commissioned or carried out by other social research teams across the Executive and Chief Scientist Office, and across Scotland. In this way we can help to minimise duplication of effort and ensure that gaps in the evidence base are being addressed. We can also offer research advice and support, if appropriate, as well as putting researchers in touch with others who may be involved in similar work. However, in order to do this, we need you, the stakeholder, to keep in touch with us. This section indicates a range of ways in which you can be involved in the ongoing development of the research programme.

6.1. Informal Research Network

An informal research network is being developed to bring together (physically or electronically) a range of stakeholder groups in order to strengthen HD:ASD's links with other Executive departments, mental health organisations, academic departments, NHS Boards, local authorities, service professional groups. We welcome ideas for the development of this network. The network will also maintain contact with the Mental Health Clinical Research Network co-ordinated in Scotland by the Executives Chief Scientists Office.

6.2. Ideas for research

The Executive always welcomes ideas for future research from any interested person(s). If your idea is decided to be a priority area for research, the Executive may wish to allocate funds to this. Researchers in HD:ASD will draw up a project specification and invite expressions of interest in tendering for the research. A number of contractors will then be selected to tender for the work, so you will be submitting a proposal in competition with others. For this reason we advise you not to spend time developing your idea into a full proposal at this early stage.

However, you should note that all research has to be commissioned in line with the Executive's procurement procedures. This will almost certainly involve a competitive tendering process, so you are advised not to submit your idea for research as a fully developed research proposal.

6.3. Research database

There are many other ways in which you can contribute. We are setting up a confidential research database and want to hear from researchers who would like to be considered as contractors for individual projects. We also want to include a range of stakeholders in individual project advisory groups and particularly want to include service users and carers. In addition, we are interested in what you are able to tell us, either about research relating to mental health law that you are involved in, or about your particular experiences of the operation of the Act.

The research to be undertaken involves the direct experiences of a range of people with serious mental health problems, and the people who care for them on an informal basis. We acknowledge that research can seem intrusive and we are also aware that the same people may be approached and asked to participate in research again and again. The database will hold the details of users and carers who have let us know they are willing to be involved in research projects commissioned by the Executive. The database will allow us to avoid research overload for individuals, as well as enabling users and carers to make an informed decision about their involvement in advance of any request to participate.

6.4. Please take part

Without the good-will, enthusiasm and expertise of service users, carers, a range of professionals and researchers, we shall be unable to tell whether the aims of introducing the new Act have been achieved. We need your help and participation throughout the research programme.

Please see Annex 1 for a formal invitation to express interest in participating in the research programme.

If you have an interest in being involved in any capacity, please contact Jamie Pitcairn at the address below or by e-mail to: Jamie.Pitcairn@scotland.gsi.gov.uk

In your letter or e-mail message it would be helpful if you could outline your interests in mental health law issues and how you feel you could contribute to the mental health law research programme.

**Jamie Pitcairn
Analytical Services Division
Scottish Executive Health Department
3WR
St Andrew's House
Regent Road
Edinburgh
EH1 3DG**

ANNEX 1

MENTAL HEALTH LAW RESEARCH PROGRAMME

Expression of interest

Full contact details for individual/organisation (name, postal address, telephone number and e-mail)

How would you like to be involved in the research programme? (Please tick all that apply)

Research contractor

Involvement in project advisory groups, commenting on specifications, final reports

Participation in Informal Research Network

As a research participant

Specific area(s) of interest

Experience, including any relevant recent work (please continue on separate sheet if necessary)

Please send completed forms to:

Jamie Pitcairn
Analytical Services Division
Scottish Executive Health Department
3WR
St Andrew's House
Regent Road
Edinburgh
EH1 3DG
E-mail: Jamie.Pitcairn@scotland.gsi.gov.uk

ANNEX 2: The Mental Health Division Action Matrix

The Action Matrix identifies those issues that fall under the remit of the research programme itself and those issues that will be addressed by other means.

ISSUE	Action to Address Issue			
	MONITORING & ASSESSMENT	THE 2003 ACT/regulations and/or guidance	RESEARCH PROGRAMME	TRAINING PROGRAMME
How many CTOs are sought and how many are granted?	X			
To whom, when and why are compulsory measures applied? (includes measures of ethnicity etc.)	X			
What is the duration of the orders?	X			
What is the balance in the numbers of hospital-based vs. community based CTOs granted?	X			
How often is the 72 hour order (emergency compulsion) used compared to the 28 day order (short-term compulsion)?	X			
How often and when does non compliance with a community CTO lead to Hospital compulsion?	X	X		
Are there any geographical variations in these figures?	X			
What happens if MHO disagrees with CTO being sought?		X		X
Should carers be / Are carers consulted when a CTO is sought or granted?	X	X	X	
Can carers refuse to care for a patient under a community CTO?		X		
What is the definition of a carer?		X		
What is the effect of community CTOs on family members? What is their capacity to cope? What support is available?			X	
Are services for informal patients affected by the need to provide compulsory services?			X	
Are community CTOs enforceable in practice in the community?		X	X	

ISSUE	Action to Address Issue			
	MONITORING & ASSESSMENT	THE 2003 ACT/regulations and/or guidance	RESEARCH PROGRAMME	TRAINING PROGRAMME
What is the impact of compulsory measures on the civil liberties?			X	
What are the outcomes for those subject to compulsory measures?	X		X	
Will there be training for the primary care team?				X
Where can more information on the interface with other pieces of legislation be found? ^{11,28}				X
Where will practitioners be able to find out information on which statute to apply?				X
Where will tribunals be held?		X		
How often will tribunals be held?		X		
What will the membership of tribunals be?		X		
Who will be informed of a tribunal hearing?		X		
What is the length of notice of a tribunal hearing?		X		
Who can attend a tribunal (carers, extended family, CPNs etc?)		X		
Who must attend a tribunal?		X		
What are the procedures for review, recall and transfer?		X		
In what circumstances will a full hearing be held?		X		
What are the overall direct and indirect costs of running the tribunal services?	X		X	
Who will meet the costs of tribunal services? How will members claim?		X		

²⁸ The Adults with Incapacity (Scotland) Act 2000; The Vulnerable Witnesses Act; Criminal Procedures (Scotland) Act 1995 (and its research programme); Children's (Scotland) Act 1995. For a full list see: Schedule 5: Repeals and Revocations Part 1. The Mental Health (Care and Treatment Act) (Scotland) 2003 The Scottish Executive: pp257-273.

ISSUE	Action to Address Issue			
	MONITORING & ASSESSMENT	THE 2003 Act /regulations and/or guidance	RESEARCH PROGRAMME	TRAINING PROGRAMME
What are the procedures for tribunals for restricted patients?		X		X
What should the actual decision-making process be between the tribunal members (consensus vs. majority voting vs. casting vote of the chair etc)?		X		
In practice are decisions made by one or two influential tribunal members?	X			
Are all tribunal members (and those who should attend the tribunal) available in emergencies?		X		
How will tribunals operate in rural areas where population numbers are low and geographical distances high?		X		
Where will guidance be given about the independence of tribunal members?		X		X
How will tribunal members be recruited, trained, supported and retained?		X		X
What are the practicalities involved if a service user wishes to be a tribunal member?		X		X
Does the tribunal process affect the relationships of those involved?			X	
Are tribunals less stigmatising and adversarial than the Sheriffs courts? Are they more informal, and participatory?			X	
Are tribunals better attended than Sheriffs Courts were?	X		X	
Will legal aid be available when needed or will it cause delay?		X		

ISSUE	Action to Address Issue			
	MONITORING & ASSESSMENT	THE 2003 Act/ regulations &/or guidance	RESEARCH PROGRAMME	TRAINING PROGRAMME
What is uptake of advocacy services? (how many, where, when, by whom) (includes measures of ethnicity etc.)	X			
Are advocacy services consistent across areas? Are there any geographical variations in these figures?	X			
Are advocacy services 'fit for purpose' (cost effectiveness, responsive, timely)	X			
How will advocates be recruited, trained, supported and retained?	X			
How will advocates be reimbursed?		X		
Will advocacy services be informed in emergencies (by whom etc)		X		
Should advocacy be available before the tribunal to allow preparation, relationship building etc?		X		X
Will legal aid be available when needed or will it cause delay?		X		
What is the uptake of the named person provision? (includes measures of ethnicity etc.)	X			
Are there any geographical variations in these figures?	X			
How is a named person selected, does this have to be approved?		X		
How is the named person identified and called when needed?		X		
What if the person does not want to act as a named person?		X		
What if the named person does not act in patient's interests?		X		

ISSUE	Action to Address Issue			
	MONITORING & ASSESSMENT	THE 2003 Act/ regulations &/or guidance	RESEARCH PROGRAMME	TRAINING PROGRAMME
What is the uptake of the right to produce an AS. (includes measures of ethnicity etc.)	X			
Will ASs be adhered to? When, where, and how often will they be over-ruled?	X			
What are the reasons and factors involved in the use of ASs?			X	
What are the reasons and factors involved in over-ruling ASs?	X		X	
What are the outcomes when ASs are over-ruled? Need long-term perspective			X	
What can be done to overcome low user confidence/awareness of ASs?		X	X	
How will ASs be made?		X		
How will ASs be stored, and accessed when needed?		X		
How do ASs work when patients enter compulsion for the first time?		X		
Are care plans restricted by the availability of local services?	X		X	
What is the impact of the lack of medium secure accommodation?			X	
Does the production of a care plan make delay for the tribunal system		X		
How might issues of inter-professional conflict (caused by care plans) be dealt with?				X
How does the care plan overlap with the present system	X			
If there is a change in need, does another tribunal have to be called to alter the CTO?		X		

ISSUE	Action to Address Issue			
	MONITORING & ASSESSMENT	THE 2003 ACT & regulations and/or guidance	RESEARCH PROGRAMME	TRAINING PROGRAMME
How are professional roles changing?		X	X	
What is the impact of the changes roles on all involved?			X	
What will help service professionals to be ready for the changes in their duties (aware / trained)?		X		X
What are the service professionals views of their new role - what is working, what isn't?			X	
What can be done to address service professional recruitment and retention problems?	X			
Will staff shortages lead to gaps in service provision?	X			
What is the impact of education, training, employment, adequate housing and social support on recovery and periods of stability?			X	
How do we measure the impact of social care? (with sensitivity to ethnicity, age, gender etc)			X	
What is the patient's journey into compulsion: route, significant factors, presenting illness, event? Are there any patterns and trends or a typical profile?	X		X	
Are crisis services available? What would the impact of a crisis service be? Could crisis services be effective as empowering, preventative, proactive interventions?	X			
What is the Role for voluntary agency service provision?				X

ISSUE	Action to Address Issue			
	MONITORING & ASSESSMENT	THE 2003 ACT & regulations and/or guidance	RESEARCH PROGRAMME	TRAINING PROGRAMME
How many entrapped patients exist? (includes measures of ethnicity etc.)	X			
How effective are the diversion procedures?	X		X	
How many appeals are there against excessive security (numbers & trends)?	X			
What is the recidivism rate for people with a mental disorder within the criminal justice system?	X		X	
What are the issues in addressing the needs of patients with co-morbidity?	X			
How effective are the services for people with co-morbidity problems?	X		X	
What is the impact of the lack of medium secure facilities?			X	
How effective are various treatments?			X	
How are the training needs of all legal, police, service professionals and others being identified and met?				X
How adequate are prison facilities to provide care and treatment?	X			
What will help all stakeholders to become aware of the changes and their new rights?		X	X	
How can all stakeholders be kept-up-to-date on current research projects, findings, and action being taken?			X	
What is the changing role of the Mental Welfare Commission? Who will monitor this?		X		

ISSN 0950 2254
ISBN 0 7559 2480 7
Price £5.00

www.scotland.gov.uk/socialresearch

The text pages of this document are produced from
100% Elemental Chlorine-Free material.
The paper carries the Nordic Ecolabel for low emissions
during production, and is 100% recyclable.

Astron B44287 12/05

ISBN 0-7559-2840-7



9 780755 928408