



## RESPONSE TO THE CONSULTATION DOCUMENT

### “Pandemic Influenza and the Mental Health Act 1983 –Department of Health, 10.09.09

The Emergency Social Services Association (ESSA) is a national association formed in 1997 and which represents 110 local Authorities Emergency Duty Teams and other Out of Hour Teams throughout the UK. In all our members cover in excess of 150 Local Authorities. The purpose of the Association is to bring together its members in order to promote the significance of Out Of Hours Social work services and further the Associations objectives. The objectives that are of relevance to this submission are

- To promote high standards of Out-of-Hours Social Work Services.
- To influence legislation and policy related to Out of Hours Social Work issues at local, regional and national level

Response:

Throughout most of England and Wales the Out of Hours provision of Approved Mental Health Professionals is via Emergency Duty Teams.

Whilst recognising the need to make contingencies for extreme situations, our view is that the proposed statutory easements of some crucial parts of the Mental Health Act legislation are undesirable and unnecessary. We would have grave concerns for the proposal to allow Section 2 and 3 Applications to proceed with only a single Medical Recommendation.

We would urge an approach that continues to stress the need to comply with normal and established practice even in difficult circumstances. There are a number of ways in which the existing legislation could be used to ease pressures in urgent situations. In particular we would suggest that in extremis there could be:

1. increased use of Section 4 MHA where there is urgent necessity (Code of Practice, England para 5.4-5.6, and Code of Practice, Wales, para 5.6-5.7). This would give additional time to find the required second recommendation for a Section 2 or the required assessors for a Section 3.
2. in cases of “Urgent necessity” it is possible for all three assessors to come from the same team. (Conflict of Interest Regulations, Code of Practice England, para 7.12, Code of Practice Wales para 3.7.)

We would not advocate either solution as ideal but feel that relying on a single recommendation for a Section 2 or 3 Application is much more undesirable and open to challenge. Some of our members have voiced a concern that even suggesting increased use of Section 4 would encourage a minority of Doctors to avoid attending cases that they would otherwise attend. Presumably, if accurate, this would also apply if the proposed Single recommendation S2 and 3 were to proceed.

With regard to the proposed easing of AMHP qualification to enable former ASW/AMHP s to be reinstated we have received no comments of support for this from our membership. Favoured methods of managing a shortage of AMHPs have been the suggestion that Local Authorities are encouraged to work in partnership with their neighbours to share existing resources in difficult times. Many of our members have written contingency plans for the Flu Pandemic in which daytime and EDT staff are committed to helping each other specifically with AMHP duties should the need arise. Unless the Pandemic becomes even more serious than anticipated we had foreseen these arrangements as likely to cover a period of emergency.

The role of the Hospital Mental Health Act Administrator was noted as not seeming to be included in these proposed contingency arrangements. Our observation would be that their role is often pivotal in day-to-day arrangements but their numbers small and hence more vulnerable to a service gap if there was sickness.

There are concerns in particular areas where the numbers of Section 12 Approved doctors are low. The Health bodies that appoint such Doctors should do what they can to encourage greater uptake. Those responsible for employing Out of Hours Doctors/ GP cover could take steps to recruit S12 Doctors or offer S12 Training for suitably qualified Doctors. The building up of a reservoir of S12 Doctors will protect our services from the possibility of not having such medical cover in the future.

We hope that the above observations are helpful and would be glad to assist further if required. It is difficult for our members to reconcile themselves with the suggestion to allow single recommendation Section 2, and most particularly Section 3 Applications and we would urge that our Legislators look again at this proposal.

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