

**DEPARTMENT OF HEALTH, SOCIAL SERVICES AND  
PUBLIC SAFETY (DHSSPSNI) RESPONSE TO  
CONSULTATION ON EMPLOYER GUIDANCE ON  
PROVISION TO DEAL WITH NUISANCE OR  
DISTURBANCE BEHAVIOUR ON HEALTH AND  
SOCIAL CARE, (HSC) PREMISES IN NORTHERN  
IRELAND (NI).**

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## **1. Introduction**

HSC staff and patients deserve to work and receive treatment in an environment which is safe and free from nuisance or disturbance behaviour. Such behaviour disrupts HSC services and diverts the attention of HSC staff from providing the highest standard of care to their patients.

The majority of people who attend HSC hospitals act in a respectful and courteous manner, but a minority create a nuisance or disturbance to HSC staff, which can sometimes lead to serious criminal offences such as assault. HSC staff that experience nuisance or disturbance can fear for their own safety at work and such behaviour can result in low staff moral and greater absenteeism.

The measures created in the Criminal Justice and Immigration Act 2008 seek to empower HSC staff to deal with this behaviour before it escalates to more serious incidents. The offence of causing a nuisance or disturbance on HSC premises and the power to remove a person reasonably suspected of committing this offence will enable HSC staff to take action as incidents occur.

Draft guidance in respect of this legislation was consulted on from 26 June 2009 to 18 September 2009. The Department has provided explanations in this document where it has not been possible to amend the guidance.

Thanks are passed to all those who took the time to respond to this consultation exercise and their constructive comments were valuable in preparing the guidance.

## 2. Background

HSC Trusts frequently experience difficulties with low-level nuisance behaviour which affects the ability of staff to deliver healthcare and causes annoyance to staff and patients alike. Examples of such behaviour include visitors making undue amounts of noise in hospital wards and waiting rooms or persistently demanding the attention of staff without any medical or legitimate reason.

Certain forms of disruptive behaviour may not constitute an offence under existing law and HSC staff currently have no power to remove persons creating nuisance from HSC premises without the assistance of the police. While there are a range of powers available to police and the criminal justice system in dealing with persons behaving in a disorderly or anti-social manner, these powers do not always provide HSC Trusts with sufficient protection from those who create nuisance on the premises.

The legislation covers 'HSC premises' and is restricted to hospitals, any buildings or other structures or vehicles associated with the hospital and the hospital ground. Whilst this may be interpreted as restrictive, it is however necessary, as the guidance suggests the utilisation of security staff to train and authorise them to remove individuals causing nuisance or disturbance. The authorised officer is required to provide provision 24/7 365 days per year. The above definition of HSC premises will enable Trusts to provide this cover.

It will not be possible to exercise the power of removal if the authorised officer considers that the person to be removed requires medical advice, treatment or care or that removal would endanger their physical or mental health. This is a safeguard on the exercise of powers under this clause to prevent the removal of those who may be vulnerable or need medical help.

This legislation is not designed to deal with violent attacks or assaults of any kind on healthcare staff. These provisions are specifically intended to deal with **low level** nuisance and disturbance behaviour in HSC premises.

### **3. The Criminal Justice and Immigration Act 2008**

The Criminal Justice and Immigration Act 2008 creates provisions intended to deal with nuisance or disturbance behaviour on HSC premises. Section 122 (Schedule 21) of the Criminal Justice and Immigration Act 2008, makes provisions for NI corresponding to the provisions for England by Section 119 - 121 of the Criminal Justice and Immigration Act 2008 (c.4) Anti-Social Behaviour, which creates an offence of causing a nuisance or disturbance on NHS premises.

Schedule 21 Paragraph 1 of the Act contains the offence of causing a nuisance or disturbance on HSC premises. A person may commit an offence if, without reasonable excuse, they cause a nuisance or disturbance to an HSC staff member on HSC premises, refuse to leave the premises without reasonable excuse and are not on the premises to seek medical advice, treatment or care. The offence applies to HSC hospital premises only and patients cannot commit the offence.

Schedule 21 Paragraph 2 of the Act provides authorised HSC staff with a power to remove a person reasonably suspected of having committed the offence in paragraph 1. A person cannot be removed if removal will endanger their physical or mental health.

Paragraph 3 of the Act permits the Department of Health Social Care and Public Safety to publish guidance regarding the power to remove in paragraph 1 of the Act.

#### **4. Consultation Process**

The consultation ran for a period of 12 weeks from 26 June 2009 until 18 September 2009. Stakeholders were asked to read and comment on the draft guidance.

In keeping with the statutory obligations of Section 75 of the Northern Ireland Act 1998 the Department has carried out an equality screening exercise and has made preliminary decisions that an equality impact assessment (EQIA) is not required. However, the Department welcomed specific comments on the equality implications of the draft guidance.

## **5. Overview of the consultation responses**

A total of 11 responses to the consultation were received back

### **Equality implications**

- Q1. Do you think the draft guidance on the provisions to deal with nuisance and disturbance behaviour likely to have an adverse impact is on any of the nine equality groups identified under Section 75 of the Northern Ireland Act 1998? If yes, please state the group or groups and provide comment on how these adverse impacts could be reduced or alleviated in the proposals
- Q2. Are you aware of any evidence, qualitative or quantitative, that the draft guidance on the provisions to deal with nuisance and disturbance behaviour may have an adverse impact on equality of opportunity or on good relations? If yes, please give details and comment on what you think should be added or removed to alleviate the adverse impact.
- Q3. Could the draft guidance on the provisions to deal with nuisance and disturbance better promote equality of opportunity or good relations? If yes, please give details as to how.

### **Consultation comments**

Of the 11 responses received two commented on Section 75 and declared no adverse impact. However, one responded suggests the restrictive application of the legislation to HSC premises may have section 75 implications as a significant number of nurses and other health care staff are excluded by the guidance.

### **Departmental Response:**

This legislation is specifically dealing with low level nuisance of disturbance on HSC premises. This behaviour is generally from individuals hanging around hospital wards and/or the grounds of the hospital or visitors demanding attention from HSC staff, (see section 2.1 Guidance document). This legislation is not intended to be used on patients or anyone seeking medical advice/attention. The purpose of the guidance is to diffuse nuisance behaviour very early on, to ensure it does not result in aggression or violence.

### **Consultation comments**

*Definition of HSC premises.*

Just over half of the respondents suggest that the above definition is too restrictive. It should be extended to include, home visits in the community, GP practices, Health Centres, Ambulance vehicles on route to HSC premises. Anywhere HSC staff are delivering care.

### **Departmental Response:**

The Department can understand the desire to extend this legislation to all settings where HSC staff are delivering a service. However, due to the requirement that an authorised officer is available 24/7 365 days per year, it would be currently unmanageable and unaffordable to have this provision in a wider setting. The role of the authorised officer will lean very heavily on existing security staff in HSC Trusts.

The Departments' Zero Tolerance Strategy Group, (ZTSG) is currently examining the NHS Security Management Service Guidance (April 2010) on the use of a warning marker on patients' care records both electronic and paper with a view to implementing it across NI. The development of this intervention will be beneficial to the community, health centres, GP practices etc. Healthcare staff will have a warning on a patient's record before a potential incident occurs, this will help protect all HSC staff. However given the current very significant funding challenges the Department may not be in a position to introduce this immediately.

### **Consultation comments**

#### *The role of authorised officer:*

A significant number of respondents suggest that the role of authorised officer is not a HSC care role, nor should HSC staff be responsible for dealing with abusive threatening behaviour. More clarity is also sought on how the authorised officer will be appointed

### **Departmental Response**

The procedure for authorising an authorised officer is not laid out in the Act, however, it is recommended that authorisation of officers is made in writing by a person at Executive level who is able to represent the trust. It is therefore recommended that the HSC trust Senior Director with responsibility for staff safety fulfils this role.

The guidance suggests the authorised officers organisational level, however, decisions as to who will fulfil this function will be made at trust level. It is also recommended that authorised officers draw on the services of security officers in HSC Trusts and authorise these members of staff to carry out the removal of a person under Schedule 21 paragraph 2 of the Act.

### **Consultation Comments**

#### *Authorised Officer Training.*

A number of respondents are concerned that the authorised officer training is sufficient to cover all aspects of the role, particularly mental health training; concern was also expressed that this role will not deplete existing staff resources.

### **Departmental Response:**

The authorised officer training requirements are clearly set out in the accompanying guidance, section 4.3. The Beeches Management Centre is responsible for rolling out the required training and they have an extensive knowledge of the HSC environment. The guidance also states that the

number of authorised officers should not be such that continuity of care is compromised.

### **Consultation comments**

*Mental Health - safe guarding vulnerable Adults.*

Respondents were generally positive on the guidance relating to the above issues; however, concern is expressed regarding, language barrier, specific illness, the ongoing availability of a mental health practitioners present in A&E departments. It has also been suggested that replacing 'reasonable excuse' with 'appropriate reason' may be more helpful in mitigating any paternalist or negative perceptions towards people with mental health problems.

### **Departmental Response**

The guidance clearly recommends section 4.3 that all staff attends mental health training, this module will highlight the importance areas for consideration in the context of this legislation. The use of the term 'reasonable excuse' is required because the existence of a mental health condition or learning disability is not in itself a 'reasonable excuse' to cause nuisance or disturbance; the condition must be responsible for the behaviour. Therefore, replacing this term with 'appropriate reason' may suggest it is.

### **Consultation comments**

*Raising Public Awareness, appropriate record keeping, monitoring use of offence.*

Respondents raised concerns around these issues.

### **Departmental Response**

The Guidance instructs Trusts how to deals with the first two issues, section 5 & 6, the Guidance also states that the Department will request information from the Trusts to monitor the effectiveness of the provisions.

## 6. List of Respondents

Health & Social Care Board	
Banbridge District Council	
Northern Health & Social Care trust	
Strabane District Council	
Northern Ireland Ambulance service	
NIACRO	
British Medical Association (NI)	
Royal College of Midwives (NI)	
Royal College of Nursing (NI)	
Antrim Borough Council	
Ballymena Borough Council	