

# **Scottish Council on Human Bioethics**

15 Morningside Road, Edinburgh EH10 4DP, SCOTLAND, UK

**Date: 29 June 2004 - Scottish Executive - Health Department**

## **Consultation Paper on the Mental Health (Care and Treatment) (Scotland) Act 2003: Code of Practice - Volume 1**

### **General Remarks:**

The Scottish Council on Human Bioethics (SCHB) is of the view that the Scottish government should ensure that it respects the following international legislation. In addition, it should ensure that the language and expressions used in these international texts are similar to those of any future Scottish legislation in order to avoid misunderstandings and confusion:

### **United nations**

#### **Declaration on the Rights of Mentally Retarded Persons<sup>1</sup>**

Adopted and proclaimed on 20 December 1971

#### **Principles for the protection of persons with mental illness and the improvement of mental health care<sup>2</sup>**

Adopted on 17 December 1991

#### **Declaration on the Rights of Disabled Persons<sup>3</sup>**

Adopted and proclaimed on 9 December 1975

### **Council of Europe**

#### **Draft Recommendation on the protection of the human rights and dignity of persons with mental disorder<sup>4</sup>**

Forthcoming

#### **Draft Protocol on Biomedical Research<sup>5</sup>**

Forthcoming

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<sup>1</sup> Declaration on the Rights of Mentally Retarded Persons: [http://193.194.138.190/html/menu3/b/m\\_mental.htm](http://193.194.138.190/html/menu3/b/m_mental.htm)

<sup>2</sup> Principles for the protection of persons with mental illness and the improvement of mental health care: <http://193.194.138.190/html/menu3/b/68.htm>

<sup>3</sup> Declaration on the Rights of Disabled Persons: <http://193.194.138.190/html/menu3/b/72.htm>

<sup>4</sup> Draft Recommendation on the protection of the human rights and dignity of persons with mental disorder: [http://www.coe.int/T/E/Legal\\_affairs/Legal\\_co-operation/Bioethics/Activities/Psychiatry\\_and\\_human\\_rights/INF\\_2004\\_5e%20psychiatrie%20projet%20rec%20&%20ER.pdf](http://www.coe.int/T/E/Legal_affairs/Legal_co-operation/Bioethics/Activities/Psychiatry_and_human_rights/INF_2004_5e%20psychiatrie%20projet%20rec%20&%20ER.pdf)

<sup>5</sup> Draft Protocol on Biomedical Research [http://www.coe.int/T/E/Legal\\_affairs/Legal\\_co-operation/Bioethics/Activities/Biomedical\\_research/CDBI-INF\(2003\)6eREV.pdf](http://www.coe.int/T/E/Legal_affairs/Legal_co-operation/Bioethics/Activities/Biomedical_research/CDBI-INF(2003)6eREV.pdf)

## **Draft consultation response on behalf of the Scottish Council on Human Bioethics:**

**Note:** Not all questions will be addressed

### **Chapter 2 - Patient Representation**

#### **Paragraph 46:**

The SCHB concurs that if a patient indicates that an advance statement should be withdrawn, all procedures related to the advance statement should be immediately interrupted until the provisions set out in section 275(3) are addressed.

#### **Paragraph 72:**

The SCHB is of the view that the witness of an advance statement should never be the person called upon to administer treatments. This may indeed create a conflict of interest.

### **Chapter 10 - Medical Treatment**

#### **Paragraph 24**

The SCHB is of the view that patients who are incapable of consenting should never be subject to neurosurgery. This is in conformity with Article 28 (Specific treatments) of the forthcoming Council of Europe Recommendation on the protection of the human rights and dignity of persons with mental disorder. Such a treatment should only be carried out if the person concerned has given free, informed and specific consent in writing. Moreover, neurosurgery should not be used in the context of a person being placed into a medical institution without his or her consent because of the difficulty of ensuring that he or she has given consent to such an intervention in those circumstances. If informed consent is given by the patient, then the treatment should be fully documented and recorded in a register.

#### **Paragraphs 27-34**

The SCHB notes that Electro-convulsive therapy treatment should be fully documented and recorded in a register.