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A Response to: Consultation to extend mental capacity legislation to the criminal justice system

Issued by: Department of Justice NI

August 2012

Introduction

- 1.1. The Women's Support Network (WSN) welcomes the opportunity to respond to this consultation issued by the Department of Justice NI.
- 1.2. The Women's Support Network (WSN), established in 1989, is a regional organisation that works across all areas of Northern Ireland. It includes in its membership community based women's centres, groups and organisations, with a concentration in disadvantaged areas. WSN is a charitable and feminist organisation, which adopts a community development approach. We provide a range of support and services to 63 community based women's centres, projects and infrastructure groups and 26 associate members drawn from across the community and voluntary sector who support women, families and communities. (see Appendix 1).
- 1.2. Our members provide a wide range of women-centred front line services across Northern Ireland, including:
 - Specialist Advice
 - Childcare and Family Support
 - Counselling, Support and Advocacy
 - Complementary Therapies
 - Training & Education
 - Health & Wellbeing Programmes
 - Personal Development & Employment Support
 - Volunteering, Leadership & Empowerment
- 1.3. WSN aims to achieve social, political and economic justice through the promotion of the autonomous organisation of women. The Network aims to strengthen the collective voice of women's groups and to promote and develop networking opportunities, to enable collective action and to impact upon policy and decision making processes. WSN provides an accessible, feminist, relevant and high quality support service and resource for its member groups. The Network is also an important information resource on issues relevant to community based women's organisations and for other infrastructure groups, nationally and internationally.
- 1.4. Over the past 30+ years, the community based women's sector has developed a range of front-line services such as childcare, support, advice, and education & training services in response to the needs they identified at a grass roots level.

Women's groups continue to meet the particular needs of women and their children living in areas considered to be some of most affected by the conflict, and recognised as some of the most disadvantaged areas across Northern Ireland today.

- 1.5. Network members are actively engaged with their local communities, cross-community initiatives and regional structures throughout Northern Ireland.

2.0 General Comments

- 2.1 The Women's Support Network is a partner in the Women's Community Support Project which is a working partnership with the Inspire Project through the Probation Board, NIACRO and the Prison Service. This unique project provides a service for women in the criminal justice system by focusing on prevention and diversion from offending. The project offers a tailor made support and intervention service to address the needs of this diverse and vulnerable group of women. It also supports them to tackle issues that trigger offending behaviour thus helping to break the cycle of offending and the risk of re-offending.
- 2.2 The Women's Support Network welcomes the Department's proposals to implement mental health law reform and to introduce capacity legislation by 2013. This is a challenging timetable and we trust that the Department will indeed move this forward as stated. It is important that this legislative framework will fill what is currently a vacuum in Northern Ireland in relation to mental capacity.
- 2.3 We would encourage the Department to ensure that the UN Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care, namely, non-discrimination; autonomy; a right to access appropriate treatment; reciprocity and due process¹ are placed at the heart of this legislation as well as the UN Convention on the Rights of Persons with Disabilities (2008) which asserts the principles of respect for inherent dignity, individual autonomy and non-discrimination and highlights the importance of 'supported decision making'.²
- 2.4 We are extremely pleased the Department has opted for a single bill which will meet the needs of all those with impaired capacity which we believe is the best way. We are also pleased that there is a commitment that those with mental disorders and learning disabilities will be treated on the same basis as any other person; this will ensure their human rights are protected and a single set of provisions that apply to all those falling within the ambit of the legislation e.g. provisions regulating the right to advocacy; advanced directives; provisions governing the appointment of a nominated person would provide clarity and consistency. We also believe the single bill will best demonstrate the commitment to challenging the stigma that is associated with those with a mental health difficulty and/or learning disability.

¹ GA Res 46/119 of 19 December 1991. See Hale, B. *The Human Rights Act and Mental Health Law: Has it Helped?* Journal of Mental Health Law, May 2007, pp. 7 - 18

² Article 3.

- 2.5 We are pleased that the Department's intention is 'that what is being developed for the general population in terms of principles and safeguards will also be applied in the criminal justice field' (Point 6, Principles and Safeguards). This will ensure that the principles and safeguards are compatible with the ECHR.³
- 2.6 The Women's Support Network has concerns over the current definition of mental disorder. There is a disproportionate number of women entering the Criminal justice System with mental health issues and there is a need to ensure that they are not disadvantaged. Within Northern Ireland it has been extremely difficult for many who have a personality disorder to access services. The Women's Community Support Project deals with women who suffer mental health issues, many of which have personality disorders. We would urge the Department to ensure that legislation supports the needs of those with personality disorder in order to access services. We are therefore seeking clarification on this point and on how this consultation will deal with those who have a dependence on alcohol and drugs. WSN would therefore ask for careful assessment and ensure that the statutory equality duty and the requirements contained with the human rights standards are upheld.
- 2.7 The Department's commitment to placing 'the right of individuals to make decisions about their own treatment, care, welfare and/or financial affairs at the centre of legislative reform' is welcome. That this right applies 'regardless of [the person's] underlying physical or mental condition' is also welcome. Respect for the principle of autonomy requires recognition that people should be free to make 'unwise' decisions.
- 2.8 WSN has concerns over the proposed 'capacity' test for children. We seek clarification as to how the new legislation will interface with the Children (NI) Order 1995. The United Nations Convention on the Rights of the Child (1989) affirms that, in all matters affecting them, children's views must be 'given due weight in accordance with the age and maturity of the child' (Article 12)⁴ and the UN Convention on the Rights of Persons with Disabilities requires 'respect for the evolving capacities of children with disabilities' (Article 3). We seek clarification as to how children's views will be heard within this process.
- 2.9 WSN has a number of reservations regarding the compulsory Community Treatment Orders (CTO). It has been argued that compulsion should not be extended to a

³ Robinson, R. & Konstam, M., *Mental Health Law Update*, LAG, November 2008

⁴ See Parker, C. *Children and Young People and the Mental Health Act 2007*, *Journal of Mental Health Law*, November 2007, 174 - 181

community setting, instead they should be treated in hospital.⁵ We therefore seek reassurances regarding the criteria for compulsory intervention and enforcement.

Conclusion

Historically, women in Northern Ireland have had extremely negative experiences within the criminal justice system, even though they commit lower level offences, are often victimised and are from poor and socio-economically deprived areas. We believe this legislation will help improve the situation for women in relation to the extension of the mental capacity for those within the criminal justice system.

WSN welcomes the opportunity to respond to this consultation document. We have offered some constructive recommendations as to how it could be improved. We are happy to further discuss this response if required.

For further information, contact:

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⁵ See Dawson, J. Community Treatment Orders: International Comparisons (2006) and Churchill, R et al, International Experiences of Using Community Treatment Orders (2007)

	MEMBERSHIP 2012 <u>Member Groups</u>
1	All Ireland Mother's Union
2	An Munia Tober (Travellers)
3	Antrim & Ballymena Women's Aid
4	Ardmonagh Women's Group
5	Ardoyne Women's Group
6	ATLAS Women's Centre
7	Al Nisa Women's Group
8	Ballybeen Women's Centre
9	Ballymurphy Women's Group
10	Belfast & Lisburn Women's Aid
11	Belvoir Women's Improvement Group
12	Carrickfergus Women's Forum
13	Carew II
14	Causeway Women's Aid
15	Chrysalis Women's Centre
16	Clan Mor Women's Group (Sure Start)
17	Derry Well Woman
18	Derry Women's Centre
19	Falls Women's Centre
20	First Steps Women's Group
21	Footprints Women's Centre
22	Foyle Women's Aid
23	Foyle Women's Information Network
24	Granaghant District Women's Group
25	Greenway Women's Centre
26	Kilcooley Women's Centre
27	Lesbian Advocacy Services Initiative
28	Lesbian Line
29	Lenadoon Women's Group
30	Ligoneil Family Centre
31	Link Women's Group
32	Manor Women's Group
33	Markets Women's Group

34	NI Women's Aid Federation
35	NI Women's European Platform
36	Fermanagh Women's Network
37	Newry & Mourne Women
38	Newtownabbey Women's Group
39	Older Women's Network NI
40	Omagh Women's Aid
41	Rape Crisis Centre
42	Rasharkin Women's Group
43	Shankill Women's Centre
44	Strabane & Lifford Women's Centre
45	Strathfoyle Women's Centre
46	The Learning Lodge
47	Voices Women's Group
48	Waterside Women's Centre
49	Windsor Women's Centre
50	Women Connect Project
51	Women into Politics
52	Women's Information Group
53	Women's News
54	Women's TEC
55	Women 2 Gather
56	Women's Resource & Development Agency
57	WISPA (Women in Sport & Physical Activity)
58	Ardcarn Women's Group
59	OIYIN Women's Group
60	Mossley Women's Institute
61	Mount Vernon Women's Group
62	Coole New Opportunities
63	North Belfast Womens Initiative & Support Project
	<u>Associate Members</u>
1.	Ballymena Community Forum
2.	CiNI
3.	Community Relations Forum
4.	East Belfast Community Partnership

5.	Employers for Childcare
6.	HIV Centre (Women's Support Group)
7.	Mencap
8.	National Women's Council of Ireland
9.	Playboard
10.	RNIB (Women's Group)
11.	Good Morning Newtownabbey
12.	Monkstown Community Association
13.	WAVE Trauma Centre
14.	WEA
15.	Parents Advice Centre
16.	Templemore Community Action Group
17.	Gingerbread
18.	Larne Community Development Project
19.	Community First Coaching
20.	Changing Faces
21.	Sands NI
22.	Women's Project Ashton Centre
23.	Women on Track
24.	Matt Talbot Women's Group
25.	Ulster People's College
26.	Council for the Homeless NI