

POLICY NOTE

THE CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010 (CONSEQUENTIAL PROVISIONS) ORDER 2017

SSI 2017/xxx

The above instrument was made in exercise of the powers conferred by sections 201(2)(a) and 204(1) and (2) of the Criminal Justice and Licensing (Scotland) Act 2010. The instrument is subject to affirmative procedure.

Policy Objectives

The Mental Health (Care and Treatment) (Scotland) Act 2003 includes a power for nurses, in certain circumstances and for specified purposes, to detain a person who is in hospital for treatment. The nurse's power to detain is exercised with a view to assessing whether the patient meets the criteria for the granting of an emergency or a short-term detention certificate.

The community payback order was introduced by the Criminal Justice and Licensing (Scotland) Act 2010 and replaced probation orders which were included in the Mental Health (Care and Treatment) (Scotland) Act 2003. It was important to put beyond doubt that persons in hospital for mental health treatment by virtue of a community payback order can also be detained in this way.

The amendments clarify that this power will apply where the person is in hospital by virtue of a community payback order which includes a mental health treatment requirement. The instrument will not affect the nurse's power to detain a person who is in hospital for treatment by virtue of a probation order which includes a mental health treatment requirement.

The Mental Health (Scotland) Act 2015 makes a change to the nurse's power to detain pending medical examination to simplify the period allowed to a maximum of three hours.

Impact Assessment

This SSI affects only persons with a mental disorder. Mental disorder is included in the definition of the protected characteristic of disability under the Equality Act 2010. Therefore it is likely that any effects that the SSI provisions could have on service users would particularly impact the protected characteristic of disability. However, this instrument does not extend the reach of the nurses holding power provision. Therefore, there is no impact on protected characteristics.

Financial Effects

There is no financial effect.

Scottish Government
Population Health Directorate
11 May 2017