

Draft Regulations laid before the Scottish Parliament under section 326(4)(c) of the Mental Health (Care and Treatment) (Scotland) Act 2003 for approval by resolution of the Scottish Parliament.

DRAFT SCOTTISH STATUTORY INSTRUMENTS

2017 No.

MENTAL HEALTH

The Mental Health (Safeguards for Certain Informal Patients) (Scotland) Amendment Regulations 2017

Made - - - - 2017
Coming into force - - 30th June 2017

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 244 of the Mental Health (Care and Treatment) (Scotland) Act 2003⁽¹⁾ and all other powers enabling them to do so.

In accordance with section 326(4)(c)⁽²⁾ of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

Citation and commencement

1. These Regulations may be cited as the Mental Health (Safeguards for Certain Informal Patients) (Scotland) Amendment Regulations 2017 and come into force on 30th June 2017.

Amendment of the Mental Health (Safeguards for Certain Informal Patients) (Scotland) Regulations 2005

2.—(1) The Mental Health (Safeguards for Certain Informal Patients) (Scotland) Regulations 2005⁽³⁾ are amended as follows.

(2) In regulation 1(2) (citation, commencement and interpretation) after the definition of “medical treatment” insert—

““nutrition by artificial means” means nutrition by nasogastric feeding tube, percutaneous gastrostomy tube or intravenous route;”.

(3) In regulation 5 (urgent medical treatment)—

(a) in paragraph (1) after “(2)” insert “, (2A), (2B)”;

(1) 2003 asp 13.

(2) Section 326(4)(c) has been modified by paragraph 5 of Schedule 3 of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) and was amended by section 16(7) of the Mental Health (Scotland) Act 2015 (asp 9).

(3) S.S.I. 2005/401.

(b) in paragraph (2) for “Treatment” substitute—

“Subject to paragraph (2A), treatment”;

(c) after paragraph (2) insert—

“(2A) Treatment consisting of nutrition by artificial means may be given by the medical practitioner primarily responsible for the patient, in circumstances where the treatment is needed so urgently that it is not reasonably practicable to give the designated medical practitioner an opportunity to examine the patient and provide the certificate mentioned in paragraph (2), on the condition that—

(a) consent to treatment consisting of nutrition by artificial means has been given in advance by a person having parental responsibilities and parental rights in relation to the patient; and

(b) except where paragraph (2B) applies, before giving the treatment the medical practitioner primarily responsible for treating the patient informs the Commission⁽⁴⁾ of the decision to give the patient treatment consisting of nutrition by artificial means.

(2B) This paragraph applies where the giving of treatment consisting of nutrition by artificial means would be unduly delayed if the medical practitioner primarily responsible for treating the patient first informs the Commission of the decision to give the treatment.”

(4) In Regulation 6 (specified medical treatments) after paragraph (a) insert—

“(aa) nutrition by artificial means;”.

St Andrew’s House,
Edinburgh
Date

Name
Authorised to sign by Scottish Ministers

(4) The Commission means the Mental Welfare Commission - see sections 4 and 329 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Mental Health (Safeguards for Certain Informal Patients) (Scotland) Regulations 2005 (“the Principal Regulations”) to include provision for nutrition by artificial means. Regulation 2(2) of these Regulations inserts a definition of nutrition by artificial means into regulation 1(2) of the Principal Regulations.

For the purposes of section 244 of the Mental Health (Care and Treatment) (Scotland) Act 2003, nutrition by artificial means is specified as a type of medical treatment (regulation 2(4)). This means that it may be given to a patient only if certain conditions set out in regulations are satisfied. Those conditions are set out in regulations 2-5 of the Principal Regulations. Regulation 5 of the Principal Regulations deals with urgent medical treatment and additional amendments are made to that regulation to deal with emergency treatment which consists of nutrition by artificial means.

New conditions are introduced by these Regulations where treatment consisting of nutrition by artificial means must be given urgently and there is not enough time to consult the designated medical practitioner before the treatment is given. In those circumstances, the practitioner primarily responsible for the treatment may give the treatment provided that there is consent from the person having parental responsibilities and parental rights in relation to the patient and, the medical practitioner has told the Mental Welfare Commission first of their intention to give the treatment (regulation 2(3)(c)). The practitioner need not inform the Commission before giving the treatment if that would unduly delay it (regulation 2(3)(c)).