

2005 No. 401

MENTAL HEALTH

**The Mental Health (Safeguards for Certain Informal Patients)
(Scotland) Regulations 2005**

Made - - - - - *28th July 2005*

Coming into force - - - - - *5th October 2005*

The Scottish Ministers, in exercise of the powers conferred by section 244 of the Mental Health (Care and Treatment) (Scotland) Act 2003(a), and of all other powers enabling them in that behalf, hereby make the following Regulations, a draft of which has, in accordance with section 326(4)(c) of that Act, been laid before and approved by resolution of the Scottish Parliament:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Mental Health (Safeguards for Certain Informal Patients) (Scotland) Regulations 2005 and shall come into force on 5th October 2005.

(2) In these Regulations—

“the 2003 Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003;

“designated medical practitioner” means—

- (a) a child specialist(b), where the medical practitioner primarily responsible for treating the patient is not a child specialist; or
- (b) a medical practitioner approved for the purposes of this regulation by the Commission, where the medical practitioner primarily responsible for treating the patient is a child specialist;

“medical treatment” means a type of medical treatment specified in regulation 6;

“parental responsibilities” and “parental rights” have the meanings given by sections 1(3) and 2(4) of the Children (Scotland) Act 1995(c);

“patient” shall be construed in accordance with regulation 2;

“transcranial magnetic stimulation” means the focal modulation of the activity of specific brain regions, by the administration of a changing magnetic field repeatedly, over an extended period;

“vagus nerve stimulation” means the intermittent electrical stimulation of the cervical portion of the left vagus nerve by a surgically implanted, programmable electronic device which administers electrical stimuli repeatedly, over an extended period; and

any reference to a numbered section is a reference to the section bearing that number in the Act.

(a) 2003 asp 13.

(b) “child specialist” has the meaning given in section 249 of the Mental Health (Care and Treatment) (Scotland) Act 2003 asp 13. Note also section 233(3) of that Act.

(c) 1995 c.36.

Conditions to be satisfied

2. The conditions which must be satisfied before medical treatment may be given to a patient—

- (a) who is under 16 years of age; and
- (b) in respect of whom the giving of medical treatment is not authorised by virtue of the Act or the Criminal Procedure (Scotland) Act 1995(a).

are those specified in regulations 3, 4 or 5.

Patients capable of consenting to certain medical treatment and not refusing consent

3.—(1) Subject to paragraph (3), medical treatment may be given to a patient on condition that the medical practitioner primarily responsible for treating the patient or a designated medical practitioner certifies in writing that—

- (a) the patient is capable of consenting to the treatment;
- (b) the patient consents in writing to the treatment; and
- (c) having regard to the likelihood of its alleviating, or preventing a deterioration in the patient's condition, it is in the patient's best interests that the treatment should be given.

(2) If the patient withdraws consent to the treatment (in writing or otherwise) at any time before its completion, this regulation shall then apply as if the remainder of the treatment were a separate treatment.

(3) Any certificate under paragraph (1) shall be given by a child specialist.

Patients incapable of consenting to medical treatment

4.—(1) Subject to paragraph (2), medical treatment may be given to a patient on condition that a designated medical practitioner certifies in writing that—

- (a) the patient is incapable of understanding the nature, purpose and likely effects of the medical treatment;
- (b) having regard to the likelihood of its alleviating, or preventing, a deterioration in the patient's condition, it is in the patient's best interests that the medical treatment should be given; and
- (c) a person having parental responsibilities and parental rights in respect of the patient has consented in writing to the medical treatment being given to the patient.

(2) Paragraph (1) above does not authorise the giving of medical treatment by force to a patient.

(3) If the person referred to in paragraph (1)(c) withdraws consent to the treatment (in writing or otherwise) at any time before its completion, this regulation shall then apply as if the remainder of the treatment were a separate treatment.

Urgent medical treatment

5.—(1) Where it is necessary as a matter of urgency for medical treatment to be given to such a patient for any of the purposes mentioned in paragraphs (a) to (c) of section 243(3), the treatment may, subject to subsection (4) of that section and to paragraphs (2) and (3) below, be given notwithstanding that—

- (a) the patient is incapable of understanding the nature, purpose and likely effects of the medical treatment; and
- (b) the patient resists or objects to the medical treatment.

(a) 1995 c.46.

(2) Treatment may be given on condition that a designated medical practitioner certifies in writing that—

- (a) consent has been given by a person having parental responsibilities and parental rights in respect of the patient to the medical treatment being given to the patient; and
- (b) the patient resists or objects to the medical treatment,

but it is necessary to give the medical treatment to the patient for any of the purposes mentioned in paragraph (1), and that purpose is specified in the certificate.

(3) Paragraph (1) above does not authorise the giving of medical treatment—

- (a) where the patient is not in hospital, by force to the patient; or
- (b) if the patient is capable of consenting but does not consent to the treatment.

Specified medical treatments

6. The types of medical treatment specified for the purpose of section 244 are—

- (a) electro-convulsive therapy;
- (b) transcranial magnetic stimulation; and
- (c) vagus nerve stimulation,

when given as treatment for mental disorder or in consequence of the patient having a mental disorder.

LEWIS MACDONALD

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
28th July 2005

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations specify types of medical treatment which may be given to patients under section 244 of the Mental Health (Care and Treatment) (Scotland) Act 2003, and provide that such treatment may only be given in accordance with certain safeguards.

Regulations 3, 4 and 5 prescribe the conditions which must be satisfied before medical treatment may be given to the patient.

Regulation 6 lists the types of medical treatment as electro-convulsive therapy, transcranial magnetic stimulation and vagus nerve stimulation.

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