

Executive Note

The Mental Health (Safeguards for Certain Informal Patients) (Scotland) Regulations 2005 SSI/2005/401

The above instrument was made in exercise of the powers conferred by section 244 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the Act”). The instrument is subject to affirmative resolution procedure.

Policy Objectives

Section 244 of the Act provides that regulations may prescribe conditions that must be satisfied before types of medical treatment may be given to patients who are under 16 years of age and who are not receiving medical treatment by virtue of the 2003 Act or the Criminal Procedure (Scotland) Act 1995.

The purpose of the instrument is to specify that the types of medical treatment known as “electro-convulsive therapy” (ECT), “vagus nerve stimulation (VNS)” and “transcranial magnetic stimulation (TMS)” when given as treatment for mental disorder will be subject to safeguards in line with those offered to formal child patients under section 237 and its associated regulations under the Act.

VNS is a fairly major procedure carried out under general anaesthetic and although invasive to some extent, does not involve the destruction of brain tissue. TMS is not an invasive procedure and involves placing a hand-held coil against the scalp which induces a fluctuating magnetic field across the patient’s brain. However, there is as yet no reliable evidence base on its effectiveness. For these reasons, these types of medical treatment when given as treatment for mental disorder are to be subject to the same authorisation conditions and safeguards as ECT.

Where a child patient is capable of consenting and does consent to these types of medical treatment the regulations provide that certification must be given that the consent has been given and that the treatment is in the patient’s best interests, having regard to the likelihood of the treatment alleviating or preventing deterioration in the patient’s condition. Certification must be given by either the medical practitioner primarily responsible for treating the child or a Designated Medical Practitioner (DMP) under section 233 of the Act. Either the medical practitioner or DMP must be a child specialist.

Where a child patient is capable of consenting and does not consent to these types of treatment, then their right to refuse treatment cannot be overridden.

Where a child is incapable of consenting, consent must be obtained from a person with parental rights and responsibilities for the child. A DMP, who is not the medical practitioner primarily responsible for the child’s treatment must certify that the patient is incapable of making a decision and that the treatment is in the patient’s best interests having regard to the likelihood of the treatment alleviating or preventing deterioration in the patient’s condition.

If a child who is incapable of consent resists or objects to the treatment, and parental consent to treatment has been granted, treatment can only be given if the DMP, who is not the medical practitioner primarily responsible for the child’s treatment, certifies that the patient is

incapable of making a decision, that the patient resists or objects and the treatment is necessary in line with the urgent medical treatment provisions of section 243(3).

Consultation

Policy on this instrument was consulted on formally in a “regulations policy proposals consultation document” published in summer 2004. Further consultation has also taken place by way of discussion with the Mental Welfare Commission, the Scottish Executive’s Mental Health Legislation Reference Group, and the Executive’s psychiatric adviser.

Financial Effects

The instrument has no financial effects on the Scottish Executive or any other organisation.

Scottish Executive Health Department
May 2005