

## **Executive Note**

### **The Mental Health (Specified Persons' Correspondence) (Scotland) Regulations 2005 SSI/2005/408**

The above order is made in exercise of the powers conferred by sections 281(5)(q), 282(7) and 283(5) of the Mental Health (Care and Treatment) (Scotland) Act 2003 ("the Act"). The instrument is subject to negative resolution procedure.

#### **Policy Objectives**

Section 281 of the Mental Health (Care and Treatment) (Scotland) Act 2003 makes provision for the circumstances in which a patient's correspondence might be withheld. The Act provides that mail to and from a specific list of persons, such as the patient's legal representative, independent advocate, Scottish Ministers, MSP, may not be withheld. These regulations specify that mail sent by a specified person to the Scottish Information Commissioner and from the Commissioner to a specified person may not be withheld.

The Act makes provision in relation to hospital managers recording decisions to withhold correspondence and for the Mental Welfare Commission to review such decisions when requested to do so by the patient. These regulations require that the managers of the hospital shall also take all reasonable steps to ensure that the patient is aware how to request a review of the decision by the Mental Welfare Commission and has the opportunity to use advocacy services in relation to any application. The regulations also require the hospital managers to provide any item of correspondence withheld to the Mental Welfare Commission within 14 days of being so requested.

#### **Consultation**

Policy on these regulations was consulted on formally in a "regulations policy proposals consultation document" published in summer 2004. Further informal consultation has also taken place by the way of discussion with the Scottish Executive's Mental Health Legislation Reference Group, the Mental Welfare Commission and the State Hospital.

#### **Financial Effects**

The Order has no financial effects in the Scottish Executive or any other organisation

Scottish Executive Health Department  
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