

Executive Note

THE MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003: (TRANSITIONAL AND SAVINGS PROVISIONS) ORDER 2005 S.S.I. 2005/452

The above instrument was made in exercise of the powers conferred by section 332 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”). The instrument is subject to negative resolution procedure.

Policy Objectives

The above instrument provides that orders made under the Mental Health (Scotland) Act 1984 (“the 1984 Act”) and the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) will be converted to orders under the Mental Health (Care and Treatment) (Scotland) Act 2003, on implementation of the 2003 Act. This will enable patients to benefit from the new Act’s additional safeguards immediately.

The transitional provisions apply to patients subject to civil and criminal justice proceedings. Patients who are detained in hospital under section 18 of the 1984 Act will, immediately on commencement, be deemed to be subject to a compulsory treatment order (CTO) authorising detention and treatment under section 64(4)(a) of the 2003 Act. Similarly, patients subject to short-term orders (section 26) will be deemed to be on a short-term detention certificate under Part 6 of the 2003 Act.

Any emergency or very short-lived orders which are still live at midnight on 4 October will be allowed to run until their expiry date under the terms of the 1984 Act. This includes an emergency recommendation under section 24 and 25 (1) of the 1984 Act.

The order also make provision for treatment authorised to be given over a specified period of time, leave of absence, transfers (including cross-border transfers), absconding, reviews, appeals and discharge and for community care orders (CCOs). These will ensure that time is allowed to change over to the new regime.

Any court proceedings under the 1984 Act which are on-going with respect to the old regime on 4 October will be allowed to conclude under the terms of the 1984 Act. (This will include court proceedings with respect to any applications under section 18 or appeals which have been submitted to the court before 5 October including those where a hearing has not yet been held.)

Patients on a community care order (sections 35A to 35K) will be deemed to be on a community CTO or a community compulsion order (CO). Where the deemed CTO or CO results from a Community Care Order (CCO) it will not authorise detention in hospital but will authorise those conditions which were in place as a result of the CCO.

Provision is also being made for the appointment of an RMO and MHO for each existing patient. MHO duties, such as preparing a social circumstance report, should be carried out ‘as soon as reasonably practicable’ The RMO must ensure that a section 76 Care Plan is

prepared and inserted into the patient's records as soon as is reasonably practicable after the commencement date and until this is done any existing treatment plan will be considered to be the patient's care plan.

The transitional provisions for patients whose route into the mental health system was by way of criminal justice proceedings essentially mirror those for patients subject to civil detention proceedings as detailed on the previous page. For example, patients who are detained in hospital under a hospital order will immediately on the commencement of the 2003 Act be deemed to be subject to a compulsion order. Similar provisions have been made with respect to patients who are subject to restriction orders, hospital directions and transfer directions.

Any criminal justice court proceedings which are ongoing on 4th October 2005 will be allowed to conclude to the end of that particular stage of the criminal justice process in terms of the "old" legislation. Where the court makes a final disposal the patient is deemed on admission to hospital to be subject to the new legislation.

Transitional provisions are made for these patients with respect to treatment, leave of absence, transfers, absconding, reviews, appeals and discharge.

Transitional provisions are made to appoint a responsible medical officer and a mental health officer for these patients.

Consultation

Policy on this instrument has been consulted on informally throughout development with the Mental Welfare Commission, the Mental Health Tribunal and the Mental Health legislation Group.

Financial Effects

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

Scottish Executive Health Department
13th September 2005