

Executive Note

The Mental Health (Safety and Security) (Scotland) Regulations 2005 S.S.I. 2005/464

The above regulations are made in exercise of the powers conferred by section 286(1), (2) and (3) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the Act”). The instrument is subject to affirmative resolution procedure.

Policy Objectives

Section 286 of the Mental Health (Care and Treatment) (Scotland) Act 2003 makes provision for the regulations to set out which patients may be subject to safety and security measures and to set out the circumstances under which these measures may be carried out.

The regulations provide that all patients in the State Hospital and the Orchard Clinic are specified persons and may be liable to be subject to these measures. The regulations also provide that for patients detained in other hospitals a patient’s responsible medical practitioner may record a reason why the patient should be subject to these measures. In all instances, the patient (unless to do so would be harmful to the patient’s health), their named person and the Mental Welfare Commission must be informed that the patient is liable to these measures before they may be applied. Where the RMO has recorded such a reason the patient has a right to request a review of the decision. The patient, their named person and the Mental Welfare Commission must be informed of the outcome of the review.

The regulations set out the conditions under which the measures authorised in relation to safety and security in hospitals may be carried out. These measures are the searching of patients and any items they may have with them in the hospital, taking samples of blood, etc, placing restrictions on the kinds of things which patients may have with them in hospital, placing restrictions and prohibitions on the entry and the conduct of visitors to these patients, the surveillance of those patients and their visitors, and the search of visitors and anything they bring with them.

Any measure may only be applied in respect of a patient where the patient’s RMO is of the view that not to do so would pose a significant risk to the health, safety or welfare of any person in the hospital or the good order of the hospital. Any patient may ask for a review of any decision to take any action authorised. On reviewing that decision the RMO may discontinue or vary the restriction in any way considered appropriate.

The regulations require the managers of all hospitals in which patients are detained to maintain records of how often and why the regulations have been implemented in that hospital and to have these available for inspection by the Mental Welfare Commission and to provide copies to them when so requested. Regulations provide the Commission with the power, after reviewing the implementation of the regulations in respect of any patient, to prohibit their implementation for a period of up to 6 months except under the supervision or with the permission of the Commission.

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 Mental Welfare Commission, the Orchard Clinic and the State Hospital.

Financial Effects

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

Scottish Executive Health Department
20 June 2005