

EXECUTIVE NOTE

THE MENTAL WELFARE COMMISSION FOR SCOTLAND (QUALIFICATIONS, TRAINING AND EXPERIENCE OF MEDICAL VISITORS) REGULATIONS 2010

SSI 2010/356

1. The above instrument was made in exercise of the powers conferred by paragraph 7C(1) of schedule 1 to, and section 326(2) of, the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”). The instrument is subject to the negative resolution procedure.

Policy Objectives

Current functions and structure of the Commission

2. Part 2 of the 2003 Act makes provision for the continuation of the Mental Welfare Commission for Scotland (“the Commission”), as a body corporate, as well as setting out its functions. The Commission’s constitution, and matters such as the arrangements for the appointment of its members (also known as Commissioners) are set out in Schedule 1 to the 2003 Act.

3. Paragraph 3 of Schedule 1 provides that the Commission is to consist of the following members, appointed by Her Majesty on the recommendation of Scottish Ministers: a member appointed to serve as convenor (the Chair); one or more members, who have such qualifications, training and experience as may be prescribed by regulations, appointed to serve as medical commissioners; and such other members as may be prescribed.

4. Currently, the main job of a Commissioner is to visit individuals who are being given care and treatment under mental health or incapacity law. However, the Commissioners also guide, develop and manage the Commission’s work, and this governance role is carried out by all the Commissioners, giving in practice a board of 20 members.

5. The board member(s) appointed as a Medical Commissioner has a specific role in relation to medical examinations of patients under section 15 of the 2003 Act. That section allows the Commission to authorise a Medical Commissioner or a member of its staff (whom also has qualifications prescribed in regulations) to carry out a private medical examination of a patient in the discharge by the Commission of any of its functions under the 2003 Act or the Adults with Incapacity (Scotland) Act 2000.

Future functions and structure of the Commission

6. The Public Services Reform (Scotland) Act 2010 made a range of amendments to Part 2 of and Schedule 1 to the 2003 Act, which will take effect from 1st April 2011. The reasons for the structural changes were to:

- update the Commission’s structure to split the existing unwieldy dual role of the Commissioners (governance as well as visiting / inspecting role) to now provide for:
 - a reduced Board to provide governance of the Commission;

- a complement of Commission staff, plus others brought in for their additional skill and expertise, to carry out Commission visiting / inspection functions, to be known collectively as “Commission Visitors”; and
- give greater transparency on the face of the 2003 Act as to how the Commission delivers its visiting and inspection functions in practice.

7. As above, the Commission’s new board will provide governance and strategic direction, whilst its new Commission Visitors will exercise the functions conferred on them under the 2003 Act (or any other Act) on behalf of the Commission. Essentially this means that the Commission’s visiting and inspection functions under the Act are conferred on the Commission Visitors, and the board members (Commissioners) will have no direct role in that regard any more. The Medical Commissioner role therefore comes to an end as of 1st April 2011, and the existing regulations in relation to the qualifications and training of the Medical Commissioner, as well as those regulating the appointment of Commission staff to otherwise carry out private medical examinations under section 15, will fall away.

8. Instead, the Commission must appoint one or more “Medical Visitors” to carry out any private medical examination of a patient in connection with the discharge of its functions under the 2003 Act or the 2000 Act. These Regulations prescribe the qualifications, training and experience required of Medical Visitors.

9. The provisions around appointments of Commission Visitors come into effect in advance of the remaining provisions to allow the Commission to appoint its new Commission Visitors ahead of 1st April 2011 so that they are in place on that date. These Regulations are similarly brought into being in advance to ensure that persons appointed by the Commission specifically as Medical Visitors must meet the qualifications etc prescribed in them.

Financial Effects

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

Primary and Community Care Directorate
Mental Health Division
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