

POLICY NOTE

THE MENTAL HEALTH (SCOTLAND) ACT 2015 (COMMENCEMENT No. 2) ORDER 2015

SSI 2015/417 (C. 54)

1. The above instrument was made in exercise of the powers conferred by section 61(2) of the Mental Health (Scotland) Act 2015. The instrument is subject to no procedure.

Policy Objectives

2. This Order brings into force section 37 of the Mental Health (Scotland) Act 2015 (“the Act”). Article 2 provides that the appointed day for the purposes of this order is 24th December 2015.

3. Section 37(1) of the Act requires Scottish Ministers to carry out a review of the arrangements for investigating the deaths of patients who, at the time of death, were either (a) detained in hospital by virtue of (i) the Mental Health (Care and Treatment) (Scotland) Act 2003, or (ii) the Criminal Procedure (Scotland) Act 1995, or (b) admitted voluntarily to hospital for the purpose of receiving treatment for a mental disorder. Section 37(2) requires that the review is carried out within 3 years of this section coming into force. Section 37(3) requires that, in carrying out the review, Scottish Ministers must consult, where practicable, the nearest relatives of patients, and such other persons as they consider appropriate. Section 37(4) requires that Scottish Ministers must (a) publish a report setting out the findings of the review, (b) lay a copy of the report before the Parliament, and (c) notify the persons consulted of the publication of the report.

Consultation

4. The requirements of section 37 of the Act were discussed during the Bill process. This Order simply brings into force those provisions. The structure and arrangements for the review will be discussed further with stakeholders before it is undertaken.

5. The Scottish Government has also taken into account developments in relation to the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill. Stage 2 of that Bill process resulted in amendments altering the circumstances in which Fatal Accident Inquiries are mandatory. The Scottish Government believes that it is more appropriate for the issues to be considered under the review required by section 37 of the Act. Commencing this provision provides clarity on the deadline by which the review must be undertaken.

Impact Assessments

6. This Order brings into force section 37 of the Act which requires a review to take place. It does not in itself result in any implications which should be considered in impact assessments. Relevant issues will be considered during the review process and in relation to any policy implementation following the review.

Financial Effects

7. This order is not expected to lead to costs or savings for business, third or public sector organisations, regulators or consumers. As a result a Business and Regulatory Impact Assessment (BRIA) is not required for this order. The costs to the Scottish Government associated with the review will be considered alongside consultation with stakeholders to consider the appropriate structure and arrangements for the review.

Scottish Government
Directorate for Population Health Improvement

December 2015