

## **POLICY NOTE**

### **THE MENTAL HEALTH (CONFLICT OF INTEREST) (SCOTLAND) REGULATIONS 2017**

#### **SSI 2017/174**

The above instrument was made in exercise of the powers conferred by section 291A of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”). The instrument is subject to negative procedure.

#### **Policy Objectives**

The purpose of this instrument is to specify the circumstances where it is, and is not, to be taken to be a conflict of interest in relation to certain medical examinations carried out under provisions of the 2003 Act.

The provisions within the 2003 Act are in relation to examination of for the purposes of:

- section 44(1) (short term detention in hospital);
- section 47(1) (extension of short-term detention in hospital);
- section 57(2) (mental health officer’s duty to apply for compulsory treatment order);
- section 77(2) (first mandatory review);
- section 78(2) (further mandatory reviews);
- section 139(2) (first review of compulsion order);
- section 140(2) (further review of compulsion order); and
- section 182(2) (review of compulsion order and restriction order).

The policy objective is to ensure that, subject to limited exceptions, medical examination of a patient is carried out by a medical practitioner who is independent.

The instrument sets out circumstances where there is to be considered a conflict of interest. The schedule to the instrument lists the prohibited degrees of relationship where they exist between an approved medical practitioner and the patient or exist either between the medical practitioners or between one of them and the patient. The relationships listed include immediate family members: parent, child, sister, brother, grand-parent and grandchild. Also included are family members through marriage and relationships which are similar for non-married couples.

Where a medical examination of a patient is required, it should not be carried out by a medical practitioner who is related in any way by blood, marriage or cohabitation to the patient or to another examining practitioner. Where two medical examinations are required, at least one of those is to be carried out by a practitioner who does not work in an NHS hospital where the patient is or may be detained. Alternatively, to take account of arrangements in rural settings, if one examination is undertaken by a consultant, the other examination can be carried out by another doctor in that hospital but there must be no supervisory relationship between them. Where the doctor carrying out a medical examination for a review of certain orders is employed in an independent health care service in which the patient is or will be detained, there must be a second examination by a doctor not so employed.

## **Consultation**

A public consultation took place from 7 March to 30 May 2016.

A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Scottish Government website on 12 January 2017 with ISBN 978-1-78652-727-1. It includes: the MWCS; Royal College of Psychiatrists; Scottish Association for Mental Health as well as service providers and individual members of the public.

The responses to the public consultation contributed to the development of policy on specific issues, as well as an understanding of practical implications of legislative provisions and policy decisions. The responses to policy proposals highlighted the experience of patients, organisation of services and system cost implications.

Policy officials also set up a stakeholder reference group which not only helped shape the form of the consultations but also focussed on the implementation of the Act itself. The first meeting of the group was on 18 December 2015 and further meetings took place during 2016, with a final meeting in May 2017. The reference group consists of a range of stakeholder organisations as set out on the Scottish Government mental health law webpages (for example the Mental Health Tribunal for Scotland, MWCS, professional groups, service providers, rights, advocacy and service user representation organisations) and has had a key role in providing advice and recommendations.

## **Impact Assessment**

This SSI is part of a package of SSIs to come into force on 30 June 2017. Impact assessment reports including a Privacy Impact Assessment (PIA) and Equality Impact Assessment (EQIA) are to be published in June 2017. This SSI affects only persons with a mental disorder. Mental disorder is included in the definition of the protected characteristic of disability under the Equality Act 2010. Therefore it is likely that any effects that the SSI provisions could have on service users would particularly impact the protected characteristic of disability. However, this instrument replaces existing restrictions on professionals carrying out examinations of people with mental disorder. Therefore, there is no impact on protected characteristics.

## **Financial Effects**

A Business and Regulatory Impact Assessment (BRIA) report will be published in June 2017. The impact on business will be where independent approved medical practitioners are required for medical examination of patients who are detained (or will be detained) in an independent health care service. There will be a cost in providing these additional examinations. However, the number of Scottish independent psychiatric inpatient beds, only a proportion of which will be taken up by detained patients, is low.

Scottish Government  
Population Health Directorate  
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