

## **POLICY NOTE**

### **THE MENTAL HEALTH (PATIENT REPRESENTATION) (PRESCRIBED PERSONS) (SCOTLAND) REGULATIONS 2017**

**SSI 2017/175**

The above instrument was made in exercise of the powers conferred by section 250 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”). The instrument is subject to negative procedure.

#### **Policy Objectives**

The Mental Health (Patient Representation)(Prescribed Persons) (Scotland) (No. 2) Regulations 2004 sets out the prescribed classes of person who can witness a nomination or revocation of a nomination of a named person under the 2003 Act.

This instrument revokes and replaces the existing regulations to take into account changes made by the Mental Health (Scotland) Act 2015 (“the 2015 Act”).

Firstly, the 2015 Act requires a person nominated as named person to agree in writing to take on the role and for this agreement to be witnessed by a prescribed person. The 2015 Act also allows a patient to make a declaration (and withdraw such a declaration) precluding their nearest relative or carer from initiating certain applications or appeals on their behalf if they have no named person and they are incapable of doing so on their own behalf; the 2015 Act introduces this ability for the nearest relative or carer. Any such declaration or withdrawal must be witnessed by a prescribed person.

Unlike the 2004 regulations, this instrument does not prescribe classes of persons who can witness a declaration by the patient that a person should not be the patient’s named person, as this section is repealed by the 2015 Act.

The instrument also adds independent advocates, speech and language therapists, physiotherapists, arts therapists and dietitians to the list of prescribed persons. This will allow a wider range of practitioners who might work with the patient and be supporting them in their decision about representation to witness the documents described.

#### **Consultation**

Consultation on these regulations was included within Part 1 of the consultation on implementation of certain sections of the Mental Health (Scotland) Act 2015 and associated regulations, which was open between 7 March and 30 May 2016.

The vast majority of respondents agreed with the proposal to extend the existing list of prescribed persons to those who can witness agreement to being a named person. In addition, suggestion was made to add independent advocates, and all allied professionals to the list of prescribed persons. The regulations therefore extends the list of prescribed persons to independent advocates, along with those allied professionals not previously listed who work with mental health service users - speech and language therapists, physiotherapists, arts therapists and dietitians.

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.

### **Impact Assessments**

This SSI is part of a package of SSI 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. These rules affect 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 have on service users will particularly impact the protected characteristic of disability. The effects of this SSI will not have an adverse impact on this protected characteristic.

### **Financial Effects**

A Business and Regulatory Impact Assessment (BRIA) report will be published in June 2017. The circumstances in which a prescribed person must witness a document were set out by the 2015 Act. This instrument will also have the effect that a small number of additional classes of persons will be able to witness certain documents and the financial impact of this is expected to be small.

Scottish Government  
Population Health Directorate

25 May 2017