



# Mental Health (Care and Treatment) (Scotland) Act 2003

## 2003 asp 13

### PART 18

#### MISCELLANEOUS

##### *Communications, security etc.*

#### **281 Correspondence of certain persons detained in hospital**

- (1) A postal packet which is—
  - (a) addressed to any person by a specified person; and
  - (b) delivered by the specified person for dispatch,may, where subsection (2) or (3) below applies, be withheld from the relevant carrier by the managers of the hospital in which the specified person is detained.
- (2) This subsection applies if the person in question has requested that communications addressed to such person by the specified person should be withheld.
- (3) This subsection applies if—
  - (a) the postal packet is not addressed to a person mentioned in subsection (5) below; and
  - (b) the managers of the hospital consider that the postal packet is likely—
    - (i) to cause distress to the person in question or any other person who is not on the staff of the hospital; or
    - (ii) to cause danger to any person.
- (4) Any request for the purposes of subsection (2) above shall be made in writing to—
  - (a) the managers of the hospital concerned;
  - (b) the responsible medical officer; or
  - (c) the Scottish Ministers.
- (5) The persons referred to in subsection (3)(a) above are—
  - (a) any Minister of the Crown or the Scottish Ministers;

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- (b) any member of either House of Parliament or member of the Scottish Parliament, National Assembly for Wales or Northern Ireland Assembly;
  - (c) any member of the European Parliament elected for the United Kingdom;
  - (d) the Commission or any of its members;
  - (e) the Parliamentary Commissioner for Administration;
  - (f) the Scottish Public Services Ombudsman;
  - (g) a local authority;
  - (h) any judge or clerk of court;
  - (i) the Tribunal;
  - (j) the managers of the hospital in which the specified person is detained;
  - (k) a Health Board;
  - (l) a Special Health Board;
  - (m) a National Health Service trust;
  - (n) any person who, to the knowledge of the managers of the hospital in which the specified person is detained, is providing independent advocacy services to the specified person under section 259 of this Act;
  - (o) any legally qualified person instructed by the specified person to act as the specified person’s legal adviser;
  - (p) the European Court of Human Rights; and
  - (q) such other persons as may be specified in regulations.
- (6) A postal packet which—
- (a) is addressed to a specified person; and
  - (b) is not sent by or on behalf of any person mentioned in subsection (5) above,
- may be withheld from the specified person by the managers of the hospital in which the specified person is detained if, in their opinion, it is necessary to do so in the interests of the health or safety of the specified person or for the protection of any other person.
- (7) The managers of a hospital may inspect and open any postal packet for the purposes of determining—
- (a) whether it is a postal packet to which subsection (1) or (6) above applies; and
  - (b) if it is, whether it should be withheld under the subsection in question.
- (8) The power to withhold a postal packet under subsection (1) or (6) above includes power to withhold anything contained in such packet.
- (9) In this section—
- “postal packet” has the meaning given by section 125 of the Postal Services Act 2000 (c. 26);
- “relevant carrier” means—
- (a) the postal operator (as defined in that section of that Act); or
  - (b) the person other than a person mentioned in paragraph (a) above,
- who is to receive or collect the postal packet for the purpose of its being conveyed and delivered; and
- “specified person” means a person who—
- (a) is detained in a hospital; and
  - (b) meets such other conditions, or in relation to whom such other conditions are met, as may be specified in regulations.

## **282 Correspondence: supplementary**

- (1) If a postal packet or anything contained in it is withheld under subsection (1) or (6) of section 281 of this Act, the managers of the hospital shall record that fact in writing.
- (2) If a postal packet or anything contained in it is withheld under—
  - (a) subsection (1) of section 281 of this Act by virtue of subsection (3) of that section; or
  - (b) subsection (6) of that section,the managers of the hospital shall, before the expiry of the period of 7 days beginning with the withholding of the packet or anything contained in it, give notice to the Commission of the matters mentioned in subsection (3) below.
- (3) Those matters are—
  - (a) the name of the specified person;
  - (b) the nature of the postal packet or contents withheld; and
  - (c) the reason for withholding the postal packet or contents.
- (4) If a postal packet or anything contained in it is withheld under—
  - (a) subsection (1) of section 281 of this Act by virtue of subsection (3) of that section; or
  - (b) subsection (6) of that section,the managers of the hospital shall, before the expiry of the period of 7 days beginning with the withholding of the packet or anything contained in it, give notice to the persons mentioned in subsection (5) below of the fact that the postal packet or anything contained in it has been withheld and the effect of section 283 of this Act.
- (5) Those persons are—
  - (a) the specified person; and
  - (b) in a case where the packet is withheld as mentioned in paragraph (b) of subsection (4) above, the person by whom the packet was sent (if known).
- (6) The functions under section 281 of this Act and this section of the managers of a hospital shall be discharged on their behalf by a person on the staff of the hospital appointed by them for that purpose; and different persons may be so appointed to discharge different functions.
- (7) Regulations may—
  - (a) make provision with respect to the exercise of the powers conferred by section 281 of this Act;
  - (b) make provision for that section and this section to apply as if references to postal packets included references to written communications by the means specified in the regulations, with such modifications as may be so specified.
- (8) In this section—

“postal packet” has the same meaning as in section 281 of this Act; and  
“specified person” has the same meaning as in that section.

## **283 Review of decision to withhold postal packet**

- (1) This section applies where a relevant item is withheld under—

- (a) subsection (1) of section 281 of this Act by virtue of subsection (3) of that section; or
  - (b) subsection (6) of that section.
- (2) On an application—
- (a) in the case where a relevant item is withheld as mentioned in paragraph (a) of subsection (1) above, by the specified person; or
  - (b) in the case where a relevant item is withheld as mentioned in paragraph (b) of that subsection, by—
    - (i) the specified person; or
    - (ii) the person by whom the postal packet was sent,
 the Commission shall review the decision to withhold the relevant item.
- (3) Any application under subsection (2) above shall be made before the expiry of the period of 6 months beginning with the day on which the person making the application receives notice under section 282(4) of this Act.
- (4) On an application under subsection (2) above the Commission may direct that the relevant item should not be withheld; and the managers of the hospital concerned shall comply with any such direction.
- (5) Regulations may make provision with respect to the making of applications under subsection (2) above.
- (6) Regulations under subsection (5) above may in particular make provision as to the production to the Commission of relevant items.
- (7) In this section—
- “postal packet” has the same meaning as in section 281 of this Act;
  - “relevant item” means a postal packet or anything contained in it; and
  - “specified person” has the same meaning as in that section.

#### **284 Certain persons detained in hospital: use of telephones**

- (1) Regulations may make provision for or in connection with regulating the use of telephones by such persons detained in hospital as may be specified in the regulations (“specified persons”).
- (2) Provision under subsection (1) above may in particular—
- (a) confer rights on specified persons to use telephones;
  - (b) make the entitlement to, or exercise of, any such rights subject to conditions imposed by or under regulations;
  - (c) restrict, or prohibit, the use of telephones by specified persons;
  - (d) authorise the managers of a hospital to intercept, or arrange for the interception of, telephone calls—
    - (i) to specified persons; or
    - (ii) made by specified persons;
  - (e) require the managers of a hospital to make, and maintain, records of such matters as may be specified in the regulations;
  - (f) require the managers of a hospital to inform persons specified in the regulations of matters so specified;

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- (g) confer power on the Commission to give to the managers of a hospital directions as to matters of any description specified in the regulations;
  - (h) require the managers of a hospital to comply with any directions given to them by virtue of paragraph (g) above.
- (3) The conditions mentioned in subsection (2)(b) above include in particular conditions as to payment of call charges for calls made by or on behalf of specified persons.
- (4) Regulations under this section may not authorise the interception of a telephone call made by a specified person to a person mentioned in subsection (6) below unless—
- (a) the person has requested the interception of telephone calls made by the specified person to the person; or
  - (b) the telephone call is or would be unlawful for any reason other than one arising from provision made by virtue of this section.
- (5) Regulations under this section may not authorise the interception of a telephone call made to a specified person by a person mentioned in subsection (6) below unless the telephone call is or would be unlawful for any reason other than one arising from provision made by virtue of this section.
- (6) The persons referred to in subsections (4) and (5) above are—
- (a) any of the persons mentioned in paragraphs (a) to (i), (k) to (n) and (p) of section 281(5) of this Act;
  - (b) the managers of the hospital in which the specified person is detained;
  - (c) a legally qualified person instructed by the specified person to act as the specified person’s legal adviser; and
  - (d) such other person as may be specified by the regulations.
- (7) In this section “intercept”, in relation to a telephone call, includes—
- (a) listen to, record or otherwise monitor; and
  - (b) interrupt, cut short, divert or prevent from being connected.
- (8) For the purposes of this section, a telephone call is made when the telephone number of the person being called has been dialled.

## **285 Directions as to implementation of regulations under section 284(1)**

- (1) The Scottish Ministers may give to the managers of a hospital directions as to the implementation by those managers of regulations made under section 284(1) of this Act; and the managers shall comply with any such directions.
- (2) The Scottish Ministers may require the managers of a hospital to provide them with a statement setting out such information as respects the implementation of the regulations by those managers as the Scottish Ministers may specify.

## **286 Safety and security in hospitals**

- (1) Regulations may authorise—
- (a) the search of such persons detained in hospital by virtue of this Act or the 1995 Act as may be specified in the regulations and of anything they have with them in the hospital in which they are detained;
  - (b) the taking, from external parts of the body of those persons and, by means of swabbing, from the mouth of those persons, of samples of body tissue, blood

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- or other body fluid or other material, the taking hypodermically from those persons of samples of blood and the examination of those samples;
- (c) the placing of restrictions on the kinds of things which those persons may have with them in the hospitals in which they are detained and the removal from them of articles kept in breach of such restrictions;
  - (d) the placing of prohibitions and restrictions on the entry into and the conduct while in those hospitals of persons (“visitors”) visiting those persons or otherwise entering or seeking to enter those hospitals and on the kinds of things which visitors may bring with them into those hospitals;
  - (e) the surveillance, whether directly or otherwise, of those persons and visitors;
  - (f) the search of visitors and of anything they bring with them into those hospitals,
- and make that which is authorised subject to conditions specified in the regulations.
- (2) Regulations may require the managers of each hospital of such class as is or classes as are specified to provide—
- (a) the Scottish Ministers, on their request, with a statement describing how regulations made under subsection (1) above—
    - (i) have been implemented in that hospital during the period the Ministers specify in their request;
    - (ii) are being implemented there at the time of the request;
    - (iii) are proposed by those managers to be implemented there after that time;
  - (b) the Commission with statements of the incidence and circumstances of the implementation there of regulations under subsection (1) above in such ways as are specified.
- (3) Regulations may confer power on the Commission, by direction—
- (a) to prohibit the implementation of regulations under subsection (1) above in relation to a specified patient in a specified way;
  - (b) to require the managers of a hospital in which a specified patient is detained to notify a specified person that such a regulation has been implemented in relation to such a patient in such a way.
- (4) In each of subsections (2) and (3) above, “specified” means specified in the regulations made under that subsection.
- (5) The Scottish Ministers may give to the managers of a hospital directions as to the implementation by those managers of regulations made under subsection (1) above; and the managers shall comply with any such directions.
- (6) Before making regulations under this section the Scottish Ministers shall consult such persons as they consider appropriate.