

Title of policy/ practice/ strategy/ legislation etc.	The Mental Health (National Secure Adolescent Inpatient Service: Miscellaneous Amendments) (Scotland) Regulations 2023	
Minister	Minister for Social Care, Mental Wellbeing and Sport, Maree Todd MSP	
Lead official	Elaine Kelley	
Officials involved in the EQIA	name	team
	Elaine Kelley, Chloe Duffus, Donna Munro, Ruth Christie	Children and Young People's Mental Health Team
Directorate: Division: Team	Directorate for Mental Health, Mental Health Division, Children, Young People, Families and Relationships	
Is this new policy or revision to an existing policy?	Revision of existing legislation	

Screening

Policy Aim

What is the aim of the policy, and its desired outcomes?

We are required to include the National Secure Adolescent Inpatient Service (“**Foxgrove**”) in the Mental Health (Safety and Security) (Scotland) Regulations 2005 (“**the 2005 Regulations**”) and the Mental Health (Detention in Conditions of Excessive Security) (Scotland) Regulations 2015 (“**the 2015 Regulations**”). This will allow for certain safety and security measures to be applied to patients detained in Foxgrove and will also provide patients with the right to contest the level of security under which they are detained.

The 2015 Regulations specify which hospitals are “qualifying hospitals” for the purpose of excessive security applications to the Mental Health Tribunal under

section 268 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“**the 2003 Act**”). This SSI adds Foxgrove to the list of qualifying hospitals and is needed to ensure parity across medium secure units by ensuring children and young people detained in Foxgrove have the right to appeal conditions of excessive security. This is a key part of Section 2 of the 2003 Act whereby a patient should receive care, treatment and support and takes into consideration their age.

The 2005 Regulations authorise measures, subject to conditions, to protect the safety and security of patients and others in hospital.

The 2005 Regulations authorise—

- (a) the search of specified persons 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 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.

The measures can be applied to a patient who is detained in hospital by virtue of the 2003 Act or the Criminal Procedure (Scotland) Act 1995 (“**the 1995 Act**”) and who is a “specified person”. The effect of this SSI is that, provided the conditions in regulation 2(3) and (4) of the 2005 Regulations are met, all children and young people detained in Foxgrove will be classed as ‘specified persons’. Being designated as a ‘specified person’ does not dictate how the measures will be applied or that they will all be applied, only that they can be applied should the patient’s responsible medical officer be of the view (following assessment) that to not apply a measure, would pose a significant risk to the health, safety and welfare of any persons in the hospital or the security or good order of the hospital.

Who will it affect?

All persons detained at Foxgrove will be there subject to compulsory care and treatment under the 2003 Act or the 1995 Act. Therefore, the regulations will affect all patients, aged between 12 and 17 years, whose detention in Foxgrove is authorised under the 2003 or 1995 Acts.

What might prevent the desired outcomes being achieved?

Outcomes would not be achieved if Parliament did not approve the Regulations.

Stage 1: Framing

Results of framing exercise

Mental Health Bill Equality Impact Assessment

The policy note for the Mental Health (Detention in Conditions of Excessive Security) (Scotland) Regulations 2015 (SSI 2015/364)¹ confirmed that the Equality Impact Assessment for the Mental Health (Scotland) Bill included provisions related to excessive security, including the regulation making power for these regulations, which was published on the 24 June 2015². The Equality Impact Assessment for the 2015 Regulations relied on the assessment for the Bill. This assessment found that as service users with a longer term mental disorder are included within the protected characteristic of disability under the Equality Act 2010, it is therefore likely that any effects that the Bill provisions have on service users (including changes to excessive security) will particularly impact the protected characteristic of disability. The assessment found that, with certain exceptions, none of the provisions in the Mental Health Bill (including those related to excessive security) specifically related to the other protected characteristics. For characteristics relating to gender, age and race, there was some evidence that certain groups are represented in relation to certain aspects of mental health legislation disproportionately to their representation in the population as a whole. No statistics were found on this in relation to religion or belief, sexual orientation or gender identity.

Consultation

A short targeted consultation was undertaken between 28 September 2022 and 12 October 2022. The consultation gave stakeholders an opportunity to provide their views on adding the NSAIS to the list of hospitals in which these regulations can be applied or whether additional conditions on the measures should be applied to children and young people in a medium secure service. A total of nine responses were received from individuals and organisations.

¹ [The Mental Health \(Detention in Conditions of Excessive Security\) \(Scotland\) Regulations 2015 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

² [Equality Impact Assessment – Results: Mental Health \(Scotland\) Bill \(www.gov.scot\)](http://www.gov.scot)

In addition to the consultation, officials also arranged meetings with these stakeholders in order to seek further information on the responses.

Main issues and key themes from the consultation responses

The key themes of the consultation and discussions included:

- The operational measures relating to safety and security and how they will be applied in the context of Foxgrove.
- The issue of children and young people consenting and having capacity to consent to and fully comprehend the measures.
- The practical implications of situations where the measures are applied and consent is not granted by the child or young person.
- Parental rights and the role they have in making decisions on the young person's care and treatment.
- Applying the least restrictive practice possible and the appeals process with regards to the measures.
- Standards on the care of children was referenced throughout the consultation, particularly with regards to "The Promise" and Secure Care Standards as a basis.
- Some stakeholders were accepting of the measures being applied to the new service. The justification for this was that the measures being applied would allow for the effective management and care of those who are at risk to themselves or others.
- On excessive security appeals, there was broad support from stakeholders on the regulations being extended to patients in Foxgrove.
- Concerns were raised regarding care pathways for young people detained in Foxgrove and the possibility of Cross Border Transfers due to there being no low secure adolescent mental health provision in Scotland.
- Although a successful appeal would mean the individual may have to transfer to another jurisdiction (such as England) for care and treatment, this should not impact on their right to appeal conditions of excessive security.

Other issues resulting from the consultation

- Access to technology and the ability to communicate with friends and family was also referenced, as was the need for a review/update of the 2005 Regulations in light of advances in technology.
- Wider legislative reform, with reference to recommendations from the Scott Review, were also mentioned by some stakeholders. Comments focused on taking forward certain recommendations with the development of the new unit.
- The need for age appropriate child advocacy was highlighted by the majority of respondents.

- The need for clear guidance outlining the measures being imposed, restrictions, rights of appeal on the measures and how to initiate such an appeal. Respondents noted it should be easy to read and child friendly.

Extent/Level of EQIA required

Recommendations and Conclusion

The 2005 Regulations set out conditions on the application of the safety and security measures in particular instances. Being designated as a specified person does not dictate how the measures will be applied, or that they will be carried out. Regulation 5 of the 2005 Regulations sets out the “General Conditions” on the authorisation of the measures that must be met whenever the measures are applied in a particular care setting. These include that a measure may only be applied in respect of any specified person where, in the opinion of the patient’s RMO, not to apply them would pose a significant risk to the health, safety or welfare of any person in the hospital or the security or good order of the hospital. There are also additional conditions that must be met in respect of particular measures, set out in regulations 6 to 11.

The 2005 Regulations also provide for monitoring and supervision of the use of measures in respect of specified persons. This will also apply to the use of these measures in respect of patients at the NSAIS. Regulation 5 requires that where a measure is applied, the reasons for and the outcome of applying the measure shall be recorded. Regulation 12 specifies all hospitals as being required to provide statements about the implementation of the 2005 Regulations to the Scottish Ministers and the Mental Welfare Commission for Scotland (“the Commission”). Regulation 13 confers power on the Commission to make a direction which may prohibit the implementation of the measures in respect of certain patients for a period of up to 6 months unless implemented under the supervision of or with the permission of the Commission. The type of patient who can be the subject of a direction is one in respect of whom the Commission has reviewed the implementation of the regulations. The Commission may also direct that the patient’s named person has to be notified that any of regulations 4 to 11 of the 2005 Regulations has been implemented in this way.

More broadly, the Mental Welfare Commission produces regular equality monitoring reports of the 2003 Act and changes brought in to the Act will be monitored as part of that work.

Anyone with a duty under the 2003 Act must have regard to the Statutory Code of Practice³ that was revised as part of the implementation of the Mental Health Bill which sets out best practice in relation to carrying out functions under the Act. The Code should therefore promote the protection of rights and interests of service users under the Act. The same principle should apply to any other

³ [Table of Contents - Mental Health \(care and treatment\) \(Scotland\) Act 2003: Code of Practice Volume 1 - gov.scot \(www.gov.scot\)](#)

associated guidance which derives from the 2003 Act, this Bill or related secondary legislation.

As these regulations do not create any new enforcement or monitoring mechanisms and simply apply the existing mechanisms to Foxgrove, a reasonably “light touch” assessment is required.

With regards to applying the measures to children, as described above the principles of the 2003 Act apply to all its sections and their associated regulations. Therefore the principles of least restriction and of patient participation are of particular importance in the implementation of these regulations.

Ensuring the service is able to implement the safety and security measures to all in the NSAIS helps facilitate a secure and effective care environment for both patients and those involved in their care and for the security and good order of the hospital. The measures will be applied when necessary, and they will be proportionate to the potential risk.

Stage 2: Data and evidence gathering, involvement and consultation

Include here the results of your evidence gathering (including framing exercise), including qualitative and quantitative data and the source of that information, whether national statistics, surveys or consultations with relevant equality groups.

Characteristic	Evidence gathered and Strength/quality of evidence	Source	Data gaps identified and action taken
AGE	<p>1) Children and young people may not have a clear understanding of the regulations and how they will apply to them.</p> <p>2) Will there be opportunities for all children to access advocacy services within Foxgrove? Additionally, there will be a need to ensure that information and procedures are explained in a manner conducive with the developmental stage and capacity of the child. Will Foxgrove have dedicated speech, language and communication specialists? In keeping with the Promise, UNCRC, legislation and policy, there should be recognition within the policy of the vulnerability of children who will receive the Foxgrove service and a statement about how their best interests, rights, needs and wishes will be upheld.</p>	Consultation responses	<p>As described above, there are safeguards to ensure that the safety and security measures are applied consistently with patients' rights. These include the conditions on the application of the safety and security measures in the 2005 Regulations.</p> <p>Secure Care: Pathway and Standards⁴ should underpin the measures applied within Foxgrove due to the nature of the service that is being provided to children under the age of 18 years old. This will be in keeping with what children should expect from other secure environments designed to meet their health and wellbeing needs in a safe and secure setting. Standards 19 and 20 relate specifically to children and young people being searched, and are therefore particularly relevant.</p>

⁴ [Secure care: pathway and standards - gov.scot \(www.gov.scot\)](http://www.gov.scot/pathway-and-standards)

Standard 19: I am only ever searched when this is justifiable and necessary to keep me and others safe. It is based on my individual circumstances at that time. The level of search is proportionate and least intrusive as possible.

Standard 20: If I have to be searched, I am treated with respect, dignity and compassion at all times. I understand my rights, the reasons for a search and how it will happen. My views are taken into account and I am given choice on how this might happen.

Within Foxgrove, children and young people will have access to age appropriate advocacy services. This will support effective communication and listening to the child's views around any legislation with appropriate guidance and access to legal representation. There will also be a dedicated Speech and Language Therapist. Foxgrove will use their trauma informed approach in all aspects of care, treatment and risk management.

<p>DISABILITY (including physical/ sensory problems, learning difficulties, communication needs; cognitive impairment)</p>	<p>1) Children under 18 have different levels of need and maturity and require appropriate age and developmental stage supports. Children in conflict with the law often have speech, language and communication difficulties preventing them from fully comprehending conversations and particularly formal processes.</p>	<p>Consultation response</p>	<p>The purpose of Foxgrove is to ensure equal access to care and treatment for children with mental disabilities who requires conditions of security. The service is developed with the understanding that a proportion of young people who access the service will have physical, sensory and learning disabilities, 3 larger special care bedrooms, accessible bathrooms and wheelchair access to external areas have been developed.</p>
<p>SEX</p>	<p>No information is available on the sex of people likely to be affected by the amendment.</p>		<p>The regulations will benefit all groups and are not specifically relevant to this characteristic.</p>
<p>PREGNANCY AND MATERNITY</p>	<p>No information is available on the pregnancy and maternity status of people likely to be affected by the amendment.</p>		<p>The regulations will benefit all groups and are not specifically relevant to this characteristic.</p>
<p>GENDER REASSIGNMENT</p>	<p>No information is available on the gender reassignment status of people likely to be affected by the SSI.</p>		<p>The regulations will benefit all groups and are not specifically relevant to this characteristic.</p>
<p>SEXUAL ORIENTATION</p>	<p>No information is available on the sexual orientation of people likely to be affected by the SSI.</p>		<p>The regulations will benefit all groups and are not specifically relevant to this characteristic.</p>

<p>RACE</p>	<p>The Mental Welfare Commission published the Racial Inequality and Mental Health Services in Scotland report in September 2021. They found that most of the detentions in Scotland over the last 10 years were of white Scottish people (83.9%), which is similar to the general population according to the last (2011) Census (82.5%). Compared to the general population, a slightly higher proportion of detentions were for 'white other' (4.9% compared to their 4% representation in the general population) or black people, 1.5% of whom were detained, compared to their 1% representation in the general population.</p>	<p>Racial-Inequality-Scotland Report Sep2021.pdf (mwcscot.org.uk)</p>	<p>The regulations will benefit all groups and are not specifically relevant to this characteristic.</p>
<p>RELIGION OR BELIEF</p>	<p>No information is available on the religion or belief of people likely to be affected by the SSI.</p>		<p>The regulations will benefit all groups and are not specifically relevant to this characteristic.</p>
<p>MARRIAGE AND CIVIL PARTNERSHIP (the Scottish Government does not require assessment against this protected characteristic unless the policy or practice relates to work, for example HR policies and practices - refer to Definitions of Protected</p>			<p>Assessment not required.</p>

Characteristics
document for details)

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Stage 3: Assessing the impacts and identifying opportunities to promote equality

Having considered the data and evidence you have gathered, this section requires you to consider the potential impacts – negative and positive – that your policy might have on each of the protected characteristics. It is important to remember the duty is also a positive one – that we must explore whether the policy offers the opportunity to promote equality and/or foster good relations.

Do you think that the policy impacts on people because of their age?

Age	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation	X			The amendment of the 2015 Regulations means that children and young people detained in Foxgrove will be entitled to make an application to the Mental Health Tribunal for Scotland under section 268 of the 2003 Act (detention in conditions of excessive security application). This means that Foxgrove is treated similarly to the other medium secure services, and that children and young people detained in Foxgrove have the same entitlement as people detained in adult medium secure services.
Advancing equality of opportunity	X			The amendment of the 2005 Regs ensures that necessary safety and security measures are available in Foxgrove to manage risk, recognising that it is a medium secure environment. As described above, there are safeguards and conditions on the application of the measures. Not to amend the 2015 and 2005 regulations as described above would deny entitlement to apply to the Tribunal on grounds of excessive security, and may also place the patient and others at risk if necessary safety and security measures were not available to manage risk.
Promoting good relations among and between different age groups	X			Individuals may be vulnerable because they are less able at times to safeguard their own interests and we should be promoting consistency across the age range. These may

					be the same individuals who transfer over to the adult medium secure services and will feel more reassured that they are aware of the safeguarding measures in place to ensure the safety of them and others and off course of their rights around these measures.
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Do you think that the policy impacts disabled people?

Disability	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination, harassment and victimisation	X			The Regulations will ensure equal access to care and treatment for children with mental disabilities who requires conditions of medium security.
Advancing equality of opportunity	X			The Regulations will ensure equal access to care and treatment for children with mental disabilities who requires conditions of medium security.
Promoting good relations among and between disabled and non-disabled people	X			The Regulations will ensure equal access to care and treatment for children with mental disabilities who requires conditions of medium security.

Do you think that the policy impacts on men and women in different ways?

Sex	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	

Advancing equality of opportunity				X	
Promoting good relations between men and women				X	

Do you think that the policy impacts on women because of pregnancy and maternity?

Pregnancy and Maternity	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	
Advancing equality of opportunity			X	
Promoting good relations			X	

Do you think your policy impacts on people proposing to undergo, undergoing, or who have undergone a process for the purpose of reassigning their sex? (NB: the Equality Act 2010 uses the term ‘transsexual people’ but ‘trans people’ is more commonly used)

Gender reassignment	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	
Advancing equality of opportunity			X	

Promoting good relations			X	
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Do you think that the policy impacts on people because of their sexual orientation?

Sexual orientation	Positive	Negative	None	Reasons for your decision
			X	
Advancing equality of opportunity			X	
Promoting good relations			X	

Do you think the policy impacts on people on the grounds of their race?

Race	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	
Advancing equality of opportunity			X	
Promoting good race relations			X	

Do you think the policy impacts on people because of their religion or belief?

Religion or belief	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	
Advancing equality of opportunity			X	
Promoting good relations			X	

Do you think the policy impacts on people because of their marriage or civil partnership?

Marriage and Civil Partnership ⁵	Positive	Negative	None	Reasons for your decision
Eliminating unlawful discrimination			X	

⁵ In respect of this protected characteristic, a body subject to the Public Sector Equality Duty (which includes Scottish Government) only needs to comply with the first need of the duty (to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010) and only in relation to work. This is because the parts of the Act covering services and public functions, premises, education etc. do not apply to that protected characteristic. Equality Impact Assessment within the Scottish Government does not require assessment against the protected characteristic of Marriage and Civil Partnership unless the policy or practice relates to work, for example HR policies and practices.

Stage 4: Decision making and monitoring

Identifying and establishing any required mitigating action

Have positive or negative impacts been identified for any of the equality groups?	Positive impacts have been identified for children and young people and those with disabilities.
Is the policy directly or indirectly discriminatory under the Equality Act 2010 ⁶ ?	No
If the policy is indirectly discriminatory, how is it justified under the relevant legislation?	N/A
If not justified, what mitigating action will be undertaken?	N/A

Describing how Equality Impact analysis has shaped the policy making process

Officials have carefully considered the Equality Impact Analysis alongside consultation responses from stakeholders, particularly around the issue of age. In our view, there is no reasonable justification as to why young people admitted to the National Secure Adolescent Inpatient Service (NSAIS) should not be provided the right to appeal conditions of excessive security. In keeping with Section 2 principles of the 2003 Act, children and young people should be afforded the same right as others detained in the same level of security setting. Ensuring the service is able to implement the safety and security measures to all in the NSAIS helps facilitate a secure and effective care environment for both patients and those involved in their care and for the security and good order of the hospital. The measures will be applied when necessary, and they will be proportionate to the potential risk. There are safeguards on the application of the measures each time they are used. These include the general

⁶ See EQIA – Setting the Scene for further information on the legislation.

conditions on the use of the measures, set out in regulation 5, as well as the specific conditions set out in the remainder of the 2005 Regulations. And section 2 of the 2003 Act on the welfare of the child applies to all its sections and their associated regulations. Therefore the welfare of the child, and the principles of least restriction and of patient participation are of particular importance in the implementation of these regulations and should mitigate against any adverse impacts on children and young people as a result of their age.

Monitoring and Review

NHS Ayrshire and Arran will monitor the application of these regulations and the NSAIS admissions. Officials will work with NHS Ayrshire and Arran to ensure appropriate monitoring of the protected characteristics of patients with a view to ensuring there are no adverse impacts or disproportionate admissions of particular groups, although it should be noted that with only 4 beds, it may take some time for patterns to be established. The Mental Welfare Commission also has an interest in monitoring application of the regulations, and Ministers can request to see information about these are being applied. Specifically, the Regulations require hospital managers to maintain records of how often and why the regulations have been implemented. Scottish Ministers also have the right to request a statement from the managers of a qualifying hospital on how the measures and the general conditions:

- Have been implemented in a hospital during a period specified by the request from Ministers.
- Are being implemented at the time of the request.
- How the hospital managers propose to implement the measures after the timeframe specified by Ministers in their request.

In addition, these records are to be made available for inspection by the Mental Welfare Commission (MWC), and copies provided to them when requested. Regulations provide the MWC with the power, after reviewing the implementation of the regulations in respect of any patient, to prohibit their implementation for a period of up to 6 months except under the supervision or with the permission of the MWC.

Stage 5 - Authorisation of EQIA

Please confirm that:

- ◆ This Equality Impact Assessment has informed the development of this policy:

Yes No

- ◆ Opportunities to promote equality in respect of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation have been considered, i.e.:

- Eliminating unlawful discrimination, harassment, victimisation;
- Removing or minimising any barriers and/or disadvantages;
- Taking steps which assist with promoting equality and meeting people's different needs;
- Encouraging participation (e.g. in public life)
- Fostering good relations, tackling prejudice and promoting understanding.

Yes No

- ◆ If the Marriage and Civil Partnership protected characteristic applies to this policy, the Equality Impact Assessment has also assessed against the duty to eliminate unlawful discrimination, harassment and victimisation in respect of this protected characteristic:

Yes No Not applicable

Declaration

I am satisfied with the Equality Impact Assessment that has been undertaken for The Mental Health (National Secure Adolescent Inpatient Service: Miscellaneous Amendments) (Scotland) Regulations 2023

and give my authorisation for the results of this assessment to be published on the Scottish Government's website.

Name: Gavin Gray

Position: Deputy Director, Improving Mental Health Services

Authorisation date: 15/09/23