POLICY NOTE

THE MENTAL HEALTH (SAFEGUARDS FOR CERTAIN INFORMAL PATIENTS) (SCOTLAND) AMENDMENT REGULATIONS 2017

SSI 2017/xxx

The above instrument was made in exercise of the powers conferred by section 244 of the Mental Health (Care and Treatment) (Scotland) Act 2003. The instrument is subject to affirmative procedure.

Policy Objectives

Section 244 of the 2003 Act allows Ministers to make regulations to prescribe conditions that must be satisfied before types of medical treatment may be given to patients who are under 16 years of age and who are not receiving medical treatment under the 2003 Act or the Criminal Procedure (Scotland) Act 1995. Such patients are part of a group known as "informal patients".

The Mental Health (Safeguards for Certain Informal Patients) (Scotland) Regulations 2005 set out a range of safeguards for three treatments: electro-convulsive therapy (ECT); vagus nerve stimulation (VNS); and transcranial magnetic stimulation (TMS).

This instrument will amend regulations so that the safeguards set out for ECT and other treatments above be extended to nutrition by artificial means, to increase protections for patients under 16.

In addition, the regulations will allow emergency treatment to proceed with the consent of those with parental rights and responsibilities in conjunction with the medical practitioner who is treating the patient. The Mental Welfare Commission for Scotland ("MWCS") must be informed of the decisions taken before the treatment is given unless the emergency is so great that there is no time for this additional step, in which case it can proceed providing the consent of the person with parental rights and responsibilities has been given.

Consultation

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

There was general support for the proposal in the consultation to extend these regulations and safeguards to nutrition by artificial means. In addition, specific practical points were raised regarding urgent treatment, because nutrition by artificial means is used in life-threatening situations. This resulted in specific provisions regarding occasions when the child is incapable of giving consent and the person with parental rights and responsibilities consents to treatment but there is not time to wait for a designated medical practitioner (an independent doctor appointed by the MWCS) to attend. Section 233 of the Mental Health (Care and Treatment)(Scotland) Act 2003 sets out detail about designated medical practitioners.

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 Assessments

This SSI is part of a package of SSI to come into force on 30 June 2017. Impact assessments including a Privacy Impact Assessment (PIA), Equality Impact Assessment (EQIA); Child Rights and Wellbeing Impact Assessment (CRWIA) are to be concluded on the policy and will be provided with the second tranche of SSIs at the end of May 2017. This SSI affects only persons under 16 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 provisions will also impact the protected characteristic of age. However, the provisions introduce additional safeguards to children's rights and welfare by making clear the steps that are to be taken when administering nutrition by artificial means.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) is to be concluded and will be provided with the second tranche of SSIs at the end of May 2017. The impact of this policy on business is that additional visits by a designated medical practitioner will be required. Costs for these visits are met by the MWCS budget and they support the policy.

Scottish Government
Population Health Directorate

11 May 2017