Executive Note

The Mental Health (Definition of Specified Person: Correspondence) (Scotland) Regulations 2005 S.S.I. 2005/466

The above regulations are made in exercise of the powers conferred by section 281(9)(b) of the Mental Health (Care and Treatment) (Scotland) Act 2003 ("the Act"). The instrument is subject to affirmative resolution procedure.

Policy Objectives

Section 281 of the Mental Health (Care and Treatment) (Scotland) Act 2003 makes provision for the circumstances in which a patient's correspondence might be withheld. The Act allows mail sent by a patient or to a patient to be intercepted in certain circumstances, namely where the mail is likely to cause distress or danger to anyone or it is necessary to do so in relation to the patient's health and safety or for the protection of other persons. These regulations provide that all patients in the State Hospital may potentially have their mail intercepted. For patients in other hospitals the interception of mail may only take place where the patient's RMO has recorded reasons why a patient's mail should be intercepted. The Act provides that mail to and from specific persons such as the patient's legal representative, independent advocate, Scottish Ministers, MSP, etc, may not be withheld.

Section 282 makes provision in relation to the actions to be taken when mail is withheld. The hospital managers must record in writing the occasions when a patient's mail is withheld and inform the Mental Welfare Commission. Section 283 of the Act makes provision in relation to the Mental Welfare Commission reviewing a decision to withhold mail on application by the patient to them.

Consultation

Policy on these regulations was consulted on formally in a "regulations policy proposals consultation document" published in summer 2004. Further informal consultation has also taken place by the way of discussion with the Scottish Executive's Mental Health Legislation Reference Group, the Mental Welfare Commission and the State Hospital.

Financial Effects

The Order has no financial effects in the Scottish Executive or any other organisation.

Scottish Executive Health Department
14 June 2005