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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 464**

**MENTAL HEALTH**

**The Mental Health (Safety and Security) (Scotland) Regulations 2005**

*Made* - - - - 26th September 2005

*Coming into force* - - 5th October 2005

The Scottish Ministers, in exercise of the powers conferred by section 286(1), (2) and (3) of the Mental Health (Care and Treatment) (Scotland) Act 2003<sup>(1)</sup>, and of all other powers enabling them in that behalf, and after having consulted such persons as they considered appropriate, hereby make the following Regulations, a draft of which has, in accordance with section 326(4)(c) of that Act, been laid before and approved by resolution of the Scottish Parliament:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Mental Health (Safety and Security) (Scotland) Regulations 2005 and shall come into force on 5th October 2005.

(2) In these Regulations—

“the measures” means the measures authorised by regulation 4.

**Specified persons**

2.—(1) For the purposes of section 286(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003, a person detained in hospital by virtue of that Act or the Criminal Procedure (Scotland) Act 1995<sup>(2)</sup> is a specified person if either of the conditions specified in paragraph (2) and both of the conditions in paragraphs (3) and (4) are met.

(2) The conditions specified in this paragraph are—

- (a) the person is detained in a state hospital or the Orchard Clinic in Royal Edinburgh Hospital, Morningside Terrace, Edinburgh; or
- (b) it is less than 6 months starting with the date of recording since the person’s responsible medical officer has recorded a reasoned opinion that the person has sought to acquire or is likely to seek to acquire, any item which is likely to be prejudicial to the health or safety of any person or to the security or good order of the hospital.

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(1) 2003 asp 13; see section 329 for the definition of “regulations”.

(2) 1995 c. 46.

(3) The hospital managers have informed the person detained, unless to do so would, in the opinion of the patient's responsible medical officer, be prejudicial to the person's health or treatment, that person's named person and the Commission—

- (a) that the person detained is to be a specified person; and
- (b) where applicable to the person in question, the date of the recording of the opinion mentioned in paragraph (2)(b).

(4) The hospital managers have informed the person detained, unless to do so would, in the opinion of the patient's responsible medical officer, be prejudicial to the person's health or treatment, and that person's named person—

- (a) that, subject to the conditions mentioned in regulation 4, specified persons are subject to the measures; and
- (b) that a specified person has the right to the review mentioned in regulation 3 and the re-assessment mentioned in regulation 5(b).

### **Review of the reasoned opinion**

3.—(1) Where the responsible medical officer has recorded a reasoned opinion as mentioned in regulation 2(2)(b), the specified person shall, on request, be entitled to one review of that opinion by that officer during the period of 6 months mentioned in that regulation.

(2) On such a review, after considering any representations made by the specified person or that person's named person, the responsible medical officer shall review the opinion mentioned in regulation 2(2)(b) and decide whether or not to confirm it for the remainder of the period.

(3) The responsible medical officer shall inform the specified person who is the subject of the review, unless to do so would, in the opinion of that person's responsible medical officer, be prejudicial to the person's health or treatment, and that person's named person and the Commission of the outcome of the review.

### **Authority for measures**

4. Subject to the general conditions in regulation 5 and the particular conditions in regulations 6 to 11, the following measures are authorised—

- (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.

## **General conditions**

5. The general conditions are that—
- (a) the measures may only be applied in respect of any specified person where, in the opinion of that person’s responsible medical officer, 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;
  - (b) the responsible medical officer shall, at the request of a specified person, or that person’s visitor in any case where a measure is applied to that visitor, re-assess the risk mentioned in paragraph (a) and may as a result of such re-assessment reverse the decision to apply the measure to that person or that person’s visitor or may have the measure applied in a different way;
  - (c) where a measure is applied to any specified person, the reasons for and the outcome of applying that measure shall be recorded in that person’s medical records and a separate record shall be made by the managers of the hospital; and
  - (d) the specified person and that person’s named person shall be given notice of the entry in the medical records unless, in the case of the specified person, to do so would, in the opinion of the specified person’s responsible medical officer, be prejudicial to the specified person’s health or treatment.

## **Conditions for searching specified persons**

6.—(1) The search of specified persons and of anything they have with them as mentioned in regulation 4(a) is subject to the conditions in paragraph (2).

- (2) The conditions are that—
- (a) the specified person’s consent shall be sought for each search;
  - (b) where the specified person refuses to consent to being searched, the search may proceed if, after the re-assessment mentioned in regulation 5(b) that person’s responsible medical officer decides that the search should proceed;
  - (c) the search of a specified person shall consist of a rub-down search or a removal of clothing search; and
  - (d) the search of a specified person shall be carried out with due regard for the specified person’s dignity and privacy and, unless there are exceptional circumstances, shall be carried out by a member of staff authorised by the hospital managers to conduct such searches who is of the same sex as the person and witnessed by another member of staff who, where reasonably practicable, is of the same sex as the person.

(3) In this regulation—

“removal of clothing search” means the visual examination of the external parts of the body following the removal of the specified person’s clothing, or the visual examination of that person’s open mouth without the use of force or any instrument and shall not be construed as authorising the physical examination of the person’s orifices; and

“rub down search” means a personal search of a specified person and the contents of the person’s pockets without the removal of the person’s clothing except for a coat or jacket and can include the use of metal detectors and other non invasive detection equipment.

## **Conditions for taking of samples**

7.—(1) The taking of samples such as is mentioned in regulation 4(b) is subject to the conditions in paragraph (2).

(2) The conditions are that—

- (a) the specified person's consent to the taking of a sample shall be sought for the taking of each sample;
- (b) where the specified person refuses to consent, subject to sub paragraph (c), a sample may be taken, if after the re assessment mentioned in regulation 5(b) that person's responsible medical officer decides that the sample should be taken;
- (c) physical force shall not be used in the taking of a sample;
- (d) the specified person shall be afforded such a degree of privacy for the purposes of providing the sample as may be compatible with the need to prevent or detect any adulteration or falsification of the sample; and
- (e) the sample shall be taken by members of staff authorised by the hospital managers to take such samples.

#### **Condition for articles to be restricted**

8.—(1) The placing of restrictions on having certain kinds of things in hospital and the removal of articles mentioned in regulation 4(c) are subject to the condition in paragraph (2).

(2) The condition is that restrictions shall be placed on having any article or class of article either generally or in terms of the number of, access to or use of such article or class of article so as to minimise the impact on the freedom of the specified person compatible with the general condition in regulation 5(a).

#### **Condition for restrictions on visitors**

9.—(1) The placing of prohibitions and restrictions such as is mentioned in regulation 4(d) is subject to the condition in paragraph (2).

(2) The condition is that visits may be prohibited or restricted if the visitor refuses consent to a search such as is mentioned in regulation 4(f).

#### **Condition for searching visitors**

10.—(1) The search such as is mentioned in regulation 4(f) is subject to the conditions in paragraph (2).

(2) The conditions are that—

- (a) the search shall be a rub down search as defined in regulation 6(3);
- (b) the search shall only take place if the visitor consents to it or, in the case of a child of insufficient understanding to make an informed decision about being subject to a search, if an adult accompanying the child consents to it;
- (c) where the visitor is a child of sufficient understanding to make such an informed decision, that child may consent to the search and where such a child refuses consent, the consent of any adult on behalf of that child shall not be relied on so as to permit the search;
- (d) a child may only be searched in the presence of an adult accompanying the child and with due attention to the welfare of the child; and
- (e) the search of a visitor shall be carried out with due regard for the visitor's dignity and privacy and, unless there are exceptional circumstances, shall be carried out by a member of staff who is of the same sex as the visitor and witnessed by another member of staff who, where reasonably practicable, is of the same sex as the visitor.

### **Conditions for surveillance**

**11.**—(1) Surveillance such as is mentioned in regulation 4(e) is subject to the conditions in paragraph (2).

(2) The conditions are that—

- (a) the consent of a specified person shall be sought before any such surveillance directed at that person individually takes place;
- (b) where the specified person refuses to consent, surveillance may be carried out if, after the re assessment mentioned in regulation 5(b) that person’s responsible medical officer decides that it should be carried out; and
- (c) the surveillance of visitors shall only take place in visiting areas where a conspicuous sign gives notice of the surveillance.

### **Statements from hospital managers**

**12.**—(1) All classes of hospital are specified for the purpose of the managers of those hospitals providing—

- (a) the Scottish Ministers, on their request, with a statement describing how regulations 4 to 11—
  - (i) have been implemented in each 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 4 to 11.

(2) Such statements shall be provided to the Commission by keeping them available for inspection by the Commission at the hospital and sending them to the Commission on request.

### **Power conferred on the Commission**

**13.** Power is conferred on the Commission, by direction—

- (a) to prohibit, the implementation of regulations 4 to 11, except under the supervision of, or with the permission of the Commission for a period not exceeding 6 months in relation to a patient in respect of whom the Commission has reviewed the implementation of such regulations; and
- (b) to require the managers of a hospital in which such a patient is detained to notify the patient’s named person that any regulation has been implemented in such a way.

St Andrew’s House, Edinburgh  
26th September 2005

*LEWIS MACDONALD*  
Authorised to sign by the Scottish Ministers

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations authorise measures listed in section 286(1)(a) to (f) of the Mental Health (Care and Treatment) Act 2003 and provide for the designation of specified persons who are to be subject to the measures to protect the safety and security of themselves and others.

Regulation 2 provides that persons detained in hospital are specified persons if they are patients in a state hospital or the Orchard Clinic in Edinburgh or their responsible medical officer has reason to believe that they have tried or will try to obtain any item which could threaten health and safety or the security or good order of the hospital. The person detained must be informed of the specification and its implications, the right to a review of specification and to a re-assessment of risk when measures are imposed.

Regulation 3 provides for a review of specification at the request of the specified person.

Regulation 4 gives authority for specified persons to be subject to the following measures; searching, the taking of samples of body tissue or fluid, restriction of possessions in hospital and removal of restricted items, restrictions or prohibition of visitors and the searching of visitors and the surveillance of specified persons and their visitors. The implementation of the measures is subject to general and particular conditions.

Regulation 5 imposes general conditions on the exercise of the measures. The responsible medical officer must consider the risk to health, safety and welfare of any person or the risk to the security or good order of the hospital of not applying the measures. The specified person or visitor may ask for the re-assessment of that risk. A record must be made of the implementation of the measures.

Regulations 6 to 11 impose particular conditions on the exercise of individual measures.

Regulation 12 specifies all hospitals as being required to provide statements about the implementation of the Regulations to the Scottish Ministers and the Mental Welfare Commission for Scotland (“the Commission”). Statements must be made available to the Commission at the hospital and sent to them on request.

Regulation 13 confers power on the Commission to make a direction. Such a direction may prohibit the implementation of the regulations 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 a regulation has been implemented in this way.