

Executive Note

THE MENTAL HEALTH (USE OF TELEPHONES) (SCOTLAND) REGULATIONS 2005 SSI/2005/468

The above order is 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 284(1) of the Mental Health (Care and Treatment) (Scotland) Act 2003 makes provision for regulations to set out the circumstances in which a patient who is detained in hospital is allowed use of the telephone. These regulations set out which patients are allowed use of the telephone and how their calls might be authorised, restricted or prohibited. The regulations provide that all patients in the State Hospital may use the telephone but may have their telephone calls restricted or prohibited and that such patients may only make calls to or receive calls from approved persons. The calls of all patients in other hospitals may not be restricted unless a patient’s responsible medical officer (RMO) has within the last 6 months recorded a reason why such calls should be restricted. In all cases the patient, their named person and the Mental Welfare Commission must be informed that the patient is one to whose calls these restrictions may be applied before any restrictions are implemented. Patients not in the State Hospital may ask for a review by their RMO of the decision that their calls are subject to restriction once in each 6 month period. The RMO must inform the patient, their named person and the Mental Welfare Commission of the outcome of that review.

The Act provides that calls to and from a list of persons, such as the patient’s legal representative, independent advocate, Scottish Ministers, MSP, etc, may not be intercepted (unless such a call would otherwise be unlawful). The regulations add the Scottish Information Commissioner to the list of persons whose calls may not be intercepted.

The regulations provide for restricting or prohibiting telephone calls made to or by patients where it is judged this might cause distress or significant risk to the health, safety or welfare of the patient or the safety of others. The regulations provide for calls to be prevented or for their number, frequency or duration to be reduced. The Act gives the hospital managers power to intercept calls when enforcing these regulations. Any patient may ask for a review of any decision to withhold or restrict their telephone calls for a period of more than 7 days. On reviewing that decision the RMO may discontinue or vary the restriction or prohibition in any way considered appropriate.

The regulations require hospital managers to keep records of the restriction and prohibition on calls for a patient and to provide this information to the patient (where this would not be prejudicial to their health or treatment), their named person and the Commission.

The regulations give the Mental Welfare Commission powers to direct the managers of a hospital not to restrict a call or calls made by or to a patient or otherwise allow calls by a patient whose calls have been restricted and require the managers to comply with any such direction.

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 and the Orchard Clinic.

Financial Effects

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

Scottish Executive Health Department
17 June 2005