

Mental Health (Scotland) Act 2015, Scottish Statutory Instruments

Carers Trust Scotland

Are you content with the proposals in these Scottish Statutory Instruments on the Mental Health (Scotland) Act 2015 or are there issues that you would wish the Committee to raise with the Scottish Government during its scrutiny of the instruments?

Carers Trust Scotland welcomes the opportunity to comment on the newly published Scottish Statutory Instruments (SSIs) related to the Mental Health (Scotland) Act 2016.

We have some concerns which may impact onto role and support for carers of people experiencing mental health problems. We will only be responding on any impact onto carers, leaving other organisations, who support people experiencing mental health issues, to raise concerns relating to patients.

Safeguards for Certain Informal Patients

Carers Trust Scotland welcomes the additional safeguard for consenting to treatment for certain patients (under 16), but would issue caution on the likelihood that this could pose a disruption to family relationships. Parents (or those who have parental responsibilities) will require information to enable their understanding of what it means to provide consent to give nutrition by artificial means. Very often this is asked for when a situation has deteriorated to such an extent that life is at threat, and we recognise the important safeguard of asking for parental consent at this time. However, we also recognise the conflict which parent/carers may face at such time and would ask the Committee to look into the issue of what would happen if parental consent was withheld; would that decision need to wait for the Designated Medical Practitioner, and can this be overridden if there is imminent danger to life?

Cross Border Transfer

We note that it remains the position not to inform the carer or nearest relative if patient objects to that.

“The carer or nearest relative will not be notified under amended regulation 28 of the 2008 regulations if the patient objects. Consultation responses generally agreed that this would protect the patient’s right to autonomy and privacy.”

Whilst we agree that this could preserve the right of the patient to autonomy and privacy, we remain concerned that carers, who in many cases will be left to provide much of the informal support to such patients, are being marginalised out of having their views heard. We would have expected this issue to be strengthened by an emphasis on seeking the views of carers, one of the principles underpinning the Act.

This seems to be the only part of the Regulations in which the patient can object, and there is no mention anywhere else concerning consent of the patient. We are

concerned that this could leave vulnerable people without a voice; a voice which could be safeguarded by carer input.

Carers Trust Scotland believes that the named person/carers should be provided with information about the new legal framework and what their rights are in terms of appeals.

We also believe that unpaid carers should be provided with clear information about their possible role as a listed person.

We are also concerned about the return of the patient to countries where mental health services are not delivered in a similar way to Scotland, therefore support may not be as readily available, and that support would also include family and carer support.

Carers Trust Scotland ask the Committee to draw to the attention of Scottish Ministers the issue of clarifying how the principle of carer participation in the legal process can be ensured so that the voice of carers can be heard.

Leaving the EU

Carers Trust Scotland note that The Mental Health (Absconding) (Miscellaneous Amendments) (Scotland) Regulations 2017 makes reference of permitting UK and EU nationals to receive treatment. We would urge the Committee to seek clarity from Scottish Ministers what will happen to this Regulation after the UK leaves the EU.

Communicating Changes to Carers

We remain concerned overall about how carers will be made aware of the provisions outlined in the amendments and ask the Committee to question Scottish Ministers about provision of information around rights of named person, and role of carers and nearest relatives where patient is unable to make a choice about named person.

We would also ask Committee to question Scottish Ministers about how parents, and those with parental responsibilities, are provided with sufficient information and support to enable the informed giving of consent for artificial nutrition as specified by Mental Health (Safeguards for Certain Informal Patients) Amendment Regulations 2017.

Carers Trust Scotland urges that consideration is given to how information is presented for carers in a way which is not overly legalistic or frightening. Ensuring the rights of service users and carers are safeguarded requires sharing of information about legislative changes and we remain concerned that this does not get forgotten about in the pursuit of issuing updated legislation and regulations.