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Health, Social Care and Sport Committee

The Mental Health (National Secure Adolescent Inpatient Service: Miscellaneous Amendments) (Scotland) Regulations 2023 [draft]



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Health, Social Care and Sport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for NHS Recovery, Health and Social Care and matters relating to drugs and alcohol policy.

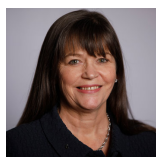


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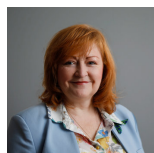
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Introduction

1. This report sets out the Health, Social Care and Sport Committee's consideration of a Scottish Statutory Instrument (SSI) at its meeting on 7 November 2023. The minutes of the meeting have been published on the Committee's webpages. The Official Report of the meeting will be published on the Committee's webpages in due course.

The Mental Health (National Secure Adolescent Inpatient Service: Miscellaneous Amendments) (Scotland) Regulations 2023 [draft]

2. The Mental Health (National Secure Adolescent Inpatient Service: Miscellaneous Amendments) (Scotland) Regulations 2023 [draft] were laid on 19 September 2023. The instrument is subject to the affirmative procedure (Rule 10.6).
3. The policy note states that the purpose of the instrument is to—
 - ” amend the Mental Health (Safety and Security) (Scotland) Regulations 2005 in order to add the National Secure Adolescent Inpatient Service (NSAIS), Foxgrove, to the list of secure mental health services in regulation 2(2)(a) of the those Regulations.
4. The policy note further states that the instrument also—
 - ” adds the NSAIS, Foxgrove to the list of qualifying hospitals in regulation 4 of the Mental Health (Detention in Conditions of Excessive Security) (Scotland) Regulations 2015.

Delegated Powers and Law Reform Committee Consideration

5. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 3 October 2023 and draws the instrument to the attention of the Parliament in its [report](#), published on 4 October 2023.
6. The Committee draws the instrument to the attention of the Parliament on the general reporting ground, in that the title of the instrument is not in line with standard drafting practice.
7. The Committee also draws its correspondence with the Scottish Government to the attention of the Health, Social Care and Sport Committee, for its information, in relation to the additional material provided by the Scottish Government in its response to the Committee's first question.

Health, Social Care and Sport Committee consideration

8. It is for the Health, Social Care and Sport Committee to recommend to the Parliament whether the Regulations should be approved.
9. The Minister for Mental Wellbeing and Social Care ("the Minister") lodged motion [S6M-10534](#) proposing that the Committee recommends approval of the Regulations.
10. The Committee took evidence from the Minister, and Scottish Government officials, at its meeting on [7 November 2023](#).
11. In an opening statement, the Minister set out the purpose and objective of the instrument. In particular, the Minister highlighted that adding the NSAIS to these Regulations will ensure that the service is able to implement a range of safety and security measures to support the therapeutic environment, and ensure the safety and security of children and young people as well as staff and visitors. The Minister further set out that the measures will only be applied when necessary, and they will be applied in proportional way that is sensitive to the developmental stage of the child or young person.
12. The Committee considered the following issues in relation to the instrument.
13. Under section section 286(6) of the the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#) ("the 2003 Act"), the Scottish Ministers are required to consult before making regulations under this section. The policy note states that the Scottish Ministers have consulted with such persons as they considered appropriate about the proposed amendment of the [Mental Health \(Safety and Security\) \(Scotland\) Regulations 2005](#) ("the 2005 Regulations") and the [Mental Health \(Detention in Conditions of Excessive Security\) \(Scotland\) Regulations 2015](#) ("the 2015 Regulations").
14. The policy note states that a short targeted consultation was undertaken between 28 September 2022 and 12 October 2022 and total of nine responses were received from individuals and organisations. On request from the Committee the [Scottish Government published the consultation responses](#). However, only eight responses of the nine received had been uploaded to the Citizen Space platform with the Clinical Director at Foxgrove not giving permission to publish their consultation response. In its submission, the [Children and Young People's Commissioner Scotland](#) stated that it "was not included in the original distribution of this consultation and, as a result, our response has had to be formulated in a very short timescale and should be understood on that basis".
15. The Committee asked if the consultation for the regulations was sufficient and if the Scottish Government had undertaken consultation with children and young people on these regulations. The Minister explained the Scottish Government had consulted with key bodies charged with upholding human rights of children in Scotland and officials had met separately with respondents to capture and address key concerns. Scottish Government officials indicated respondents said they were satisfied in follow-up consultation.

16. The Minister also intimated that a panel of children and young people provided input to inform the development of the National Secure Adolescent Inpatient Service (NSAIS) and consultation was undertaken with children and young people with lived experience.
17. The Committee raised concerns from respondents to the Scottish Government's consultation around human rights protections, and raised associated concerns that a full Child Rights and Wellbeing Impact Assessment (CRWIA) was not deemed necessary for the instrument. The Minister reiterated the position reflected in the [Equality Impact Assessment](#) for the instrument and the [pre-screening questionnaire for a CRWIA](#), that the regulations do not create any new enforcement or monitoring mechanisms and as such a full CRWIA was not required. The Minister noted that the legislation has been drafted to reflect "Getting it right for every child" (GIRFEC) principles and the eight wellbeing indicators (SHANARRI) to uphold rights of children and young people, setting out that the purpose of the instrument is to ensure safeguards around procedures relating to safety and security.
18. The Committee asked how this legislation would impact on the European Convention on Human Rights (ECHR) and the UN Convention on the Rights of the Child (UNCRC) as these relate to the right to family life and to support for legal agency. The Minister confirmed that the legislation is compliant with the ECHR and the UNCRC and highlighting the importance of the right to family life, set out steps taken to provide for the child's welfare and rights and maintain access to family and friends outside the unit. Scottish Government officials provided further detail on the NHS Scotland Child and Adolescent Mental Health Services (CAMHS) in relation to family life and outlined the role of the named person in terms of access to legal agency.
19. Regarding the right to appeal, the Committee raised concerns about lack of appeal rights, and the limited powers of the Mental Welfare Commission to modify their operation as highlighted by the Scottish Mental Health Law Review. The Committee asked what steps are being taken to address these concerns particularly in relation to the way in which they apply to children and young people. The Minister set out the types of interventions as part of the medium secure mental health inpatient service for children and young people in Scotland, noting these were not brief interventions or short term patients. On this basis, the Scottish Government therefore considered timescales for appeals to be appropriate.
20. Scottish Government officials noted that all patients in the NSAIS will have access to independent advocacy and, through that, a mechanism to discuss their views and have them taken into consideration. Scottish Government officials further noted that safeguards are in place to allow for appeal against detention or excessive security, and at each stage legal representation can be sought by the young person. Young people are also able to contact the Mental Welfare Commission directly, as well as ask for reviews of measures in place, indicating that in practice any measure will be reviewed more frequently than the regulations may indicate. Officials further stated that a rights respecting approach is taken, with care planning undertaken daily and reviewed weekly by the wider team, in discussion with family and Mental Health Officers.
21. The Committee noted that the [Secure Care Standards and Pathway Scotland](#) set out what all children and young people should expect across the continuum of intensive supports and services, and asked how the legislation would intersect with

- these standards. The Minister confirmed that the NSAIS will operate in accordance with the standards. The Minister further confirmed that this legislation is seen as a step forward to the aims of The Promise on care system reform.
22. The Committee asked what the Scottish Government was doing to address stakeholder concerns around operational issues, such as ensuring the unit will be fully and appropriately staffed, and in relation to mobile phone policy. The Committee further asked whether the NSAIS required direct oversight of operational mobilisation, given it is a new service, to have more confidence that concerns raised by stakeholders are addressed. The Minister explained that the NSAIS will be on the Ayrshire Central Hospital campus in North Ayrshire and that the Minister is confident there is sufficient oversight that NHS Ayrshire and Arran can recruit and train staff to the relevant level. Scottish Government officials also confirmed that they have met with stakeholders and had detailed discussions to provide reassurance to them that appropriate training and recruitment processes are in place.
23. In relation to technology and mobile phone policy, the Minister noted that there would be access to a telephone in the unit to maintain contact with family and friends, and that access to mobile phones would be taken on a case-by-case basis as part of individual care plans.
24. Following the evidence session, the Minister moved motion S6M-10534—That the Health, Social Care and Sport Committee recommends that The Mental Health (National Secure Adolescent Inpatient Service: Miscellaneous Amendments) (Scotland) Regulations 2023 [draft] be approved.
25. During the formal debate on the instrument, the Minister committed to carry out a full CRWIA and to provide the Committee with further written updates on the operational roll-out of the facility by NHS Ayrshire and Arran.
26. The motion was agreed to by division: For 6, Against 4, Abstentions 0. (For 6 (Clare Haughey MSP, Emma Harper MSP, Gillian Mackay MSP, Ivan McKee MSP, David Torrance MSP, Evelyn Tweed MSP), Against 4 (Sandesh Gulhane MSP, Carol Mochan MSP, Paul Sweeney MSP and Tess White MSP), Abstentions 0).
27. The Health, Social Care and Sport Committee recommends to the Scottish Parliament that the Mental Health (National Secure Adolescent Inpatient Service: Miscellaneous Amendments) (Scotland) Regulations 2023 [draft] be approved.

