

Child Rights and Wellbeing Impact Assessment (CRWIA) for the Mental Health (National Secure Adolescent Inpatient Service: Miscellaneous Amendments) (Scotland) Regulations 2023

October 2023

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Disclaimer

This **draft** document is an **initial assessment** of the impact of the Mental Health (National Secure Adolescent Inpatient Service: Miscellaneous Amendments) (Scotland) Regulations 2023 and the Scottish Government will continue to review and update this document where required during the parliamentary process. Any future iterations will reflect an increased understanding of these impacts as the amount of data and research available continues to grow.

This impact assessment should be read in conjunction with the Equality Impact Assessment.

The Mental Health (National Secure Adolescent Inpatient Service: Miscellaneous Amendments) Regulations 2023

The National Secure Adolescent Inpatient Service (NSAIS), Foxgrove, is the first medium secure mental health inpatient service for children and young people in Scotland. It is expected to open in January 2024. The NSAIS will initially have four beds. Its purpose will be to deliver high quality mental health care and treatment for children and young people aged between 12 and 17 years, who meet all of the following criteria:

- are subject to measures for compulsory care and treatment under the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”) or part VI of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”)
- have a mental disorder (as defined by section 328 of the 2003 Act)
- present a significant risk to themselves or other people
- require a medium secure level of security in order to meet their needs.

The above regulations make amendments to 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”) so that the same safety and security measures, subject to protections and safeguards, that are available in other medium secure inpatient settings can be applied where necessary in the NSAIS. Children and young people detained in the NSAIS will also have the same right of appeal against detention in conditions of excessive security as those detained in other medium secure inpatient settings.

Safety and Security

The 2005 Regulations, made in exercise of the powers in section 286(1), (2), and (3) of the 2003 Act, authorise measures, subject to conditions, to protect the safety and security of patients and others in hospital. The measures can be applied to a patient who is detained in hospital by virtue of the 2003 Act or the 1995 Act and who is a “specified person”. A patient is a specified person if:

- they are either:
 - detained in a hospital listed in regulation 2(2)(a), or
 - detained in a non-listed hospital and their responsible medical officer (“RMO”) has recorded a reasoned opinion as mentioned in regulation 2(2)(b) of the 2005 Regulations,
- the condition in regulation 2(3) is met, and
- the condition in regulation 2(4) is met.

Currently the hospitals listed in regulation 2(2)(a) are The State Hospital and the existing medium secure services. This instrument adds the NSAIS to the list of secure services in regulation 2(2)(a) of the 2005 Regulations. The consequence of

this addition is that all children and young people detained at the NSAIS will be classed as specified persons (provided also that the conditions in regulation 2(3) and (4) are met). Therefore the measures in the 2005 Regulations, summarised below, can be applied to them.

The 2005 Regulations authorise the following measures in respect of specified persons:

- the searching of patients and anything they have with them in the hospital
- taking certain types of samples of bodily fluid or tissue
- placing restrictions on the kinds of things which patients may have with them in hospital, and the removal from them of articles kept in breach of such restrictions
- placing restrictions and prohibitions on the entry and the conduct of visitors to these patients
- the surveillance of those patients and their visitors
- the searching of visitors and anything they bring with them into hospital.

Being designated as a specified person does not dictate how the measures will be applied, or that they will be carried out. Regulation 5 of the 2005 Regulations sets out the “General Conditions” on the authorisation of the measures that must be met whenever the measures are applied in a particular care setting. These include that a measure may only be applied in respect of any specified person where, in the opinion of the patient’s RMO, 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. There are also additional conditions that must be met in respect of particular measures, set out in regulations 6 to 11.

The 2005 Regulations provide for monitoring and supervision of the use of measures in respect of specified persons. This will also apply to the use of these measures in respect of patients at the NSAIS. Regulation 5 requires that where a measure is applied, the reasons for and the outcome of applying the measure shall be recorded. Regulation 12 specifies all hospitals as being required to provide statements about the implementation of the 2005 Regulations to the Scottish Ministers and the Mental Welfare Commission for Scotland (“the Commission”). Regulation 13 confers power on the Commission to make a direction which may prohibit the implementation of the measures 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 if any of regulations 4 to 11 of the 2005 Regulations has been implemented in this way.

Excessive Security Appeals

Section 268 of the 2003 Act makes provision for an application to be made to the Mental Health Tribunal for Scotland (“the Tribunal”), contesting the level of security a patient is being held under for patients detained in a “qualifying hospital”.

The right to make such an application to the Tribunal exists where the patient is subject to a compulsory treatment order, a compulsion order, a hospital direction, or a transfer for treatment direction.

We intend to add the NSAIS to the list of qualifying hospitals in regulation 4 of the 2015 Regulations. This will allow a patient detained in the NSAIS, their named person, welfare attorney, guardian, or the Commission to apply to the Tribunal for an order declaring that the patient is being detained in conditions of excessive security.

The Tribunal, if satisfied that the patient is being detained in conditions of excessive security, is able to make an order which requires the relevant Health Board to identify a suitable hospital for the patient to transfer into. A suitable hospital will be a hospital which the Board considers is a hospital in which the patient could be detained in conditions that would not involve a level of security that is excessive in the patient's case.

These changes will uphold the rights of children and young people detained in conditions of medium security and will have a positive impact on the following articles of the UNCRC 2, 3, 4, 6, 12, 18, 24, 25.

2. What aspects of the policy/measure will affect children and young people up to the age of 18?

As Foxgrove is a hospital for under 18s, the addition of Foxgrove to the 2005 and 2015 regulations will solely affect children and young people. The amendment of the 2005 Regulations means anyone detained in Foxgrove will, provided the conditions in regulation 2(3) and (4) of the 2005 Regulations are met, automatically be a specified person. That means the safety and security measures are authorised in respect of the patient and may be applied to the patient - in accordance with the conditions in regulations 5 to 11. Adding Foxgrove to these regulations is considered necessary for reasons of procedural and operational safety and security in the hospital and for the protection of patients and staff.

The amendment of the 2015 Regs means that a person detained in Foxgrove can make an application under section 268 of the 2003 Act to appeal against detention in conditions of excessive. This amendment protects the rights of children and young people.

3. Which groups of children and young people are currently or will be affected by the relevant proposal?

All persons detained at Foxgrove will be there subject to Mental Health Orders and will be considered to present a significant risk of harm to themselves or others. Therefore, the regulations will affect all patients, aged between 12 and 17 years, whose detention in Foxgrove is authorised under the 2003 Act or the 1995 Act.

Declaration

4. Is a Stage 2 Children's Rights and Wellbeing Impact Assessment required? (Tick relevant requirement)

CRWIA required No explanation required, please complete questions 5 and 6

CRWIA not required Please explain why below and contact the children's rights unit to discuss this decision crwia@gov.scot

Explanation why CRWIA is not required:

The Mental Health (National Secure Adolescent Inpatient Service: Miscellaneous Amendments) (Scotland) Regulations 2023 contain amendments to existing regulations and are a means of protective measures to safeguard vulnerable individuals and protect their rights. As these regulations do not create any new enforcement or monitoring mechanisms and simply apply the existing mechanisms to a new hospital, the National Adolescent Inpatient Service (Foxgrove), a full CRWIA is not required.

5. Sign & Date

Policy Lead Signature & Date of Sign Off: Elaine Kelley, 14 September 2023

CRWIA author, if different from policy lead, Signature & Date of Sign Off:

Deputy Director: Gavin Gray, Deputy Director, Improving Mental Health Services, 15 September 2023.

Date SGLD contacted: September 2023



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