

**2005 No. 466**

**MENTAL HEALTH**

**The Mental Health (Definition of Specified Person:  
Correspondence) (Scotland) Regulations 2005**

*Made* - - - - - *26th September 2005*

*Coming into force* - - - - - *5th October 2005*

The Scottish Ministers, in exercise of the powers conferred by section 281(9)(b) of the Mental Health (Care and Treatment) (Scotland) Act 2003<sup>(a)</sup>, and of all other powers enabling them in that behalf, 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 (Definition of Specified Person: Correspondence) (Scotland) Regulations 2005 and shall come into force on 5th October 2005.

(2) In these Regulations “patient” means a person detained in a hospital.

**Specified persons**

**2.**—(1) The conditions specified for the purposes of section 281(9)(b) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (definition of specified person) are either of the conditions specified in paragraph (2) and the conditions specified in paragraphs (3) and (4).

(2) The conditions specified in this paragraph are either—

- (a) the patient is detained in a state hospital; or
- (b) the responsible medical officer has within the last 6 months, starting with the date of recording, recorded a reasoned opinion that there is a likelihood that—
  - (i) postal packets sent by the patient may cause distress to the addressee or any other person who is not on the staff of the hospital, or danger to any person; or
  - (ii) receipt of postal packets addressed to the patient may not be in the interests of the health or safety of the patient or may cause danger to any other person.

(3) The condition specified is that hospital managers have informed the patient, the patient’s named person and the Commission—

- (a) that the patient is to be a specified person; and
- (b) where applicable to the patient in question, the date when the opinion mentioned in paragraph (2)(b) was recorded.

(4) The condition specified is that hospital managers have informed the patient and the patient’s named person that postal packets addressed to a specified person may be withheld

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

from the specified person and that postal packets delivered by a specified person for dispatch may be withheld from the relevant carrier.

*LEWIS MACDONALD*

Authorised to sign by the Scottish Ministers

St Andrew's House,  
Edinburgh  
26th September 2005

## EXPLANATORY NOTE

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

Section 281 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) provides that a postal packet sent to or by a specified person may in certain circumstances be withheld by the managers of the hospital. Section 281(9) defines a specified person as meaning a person who—

- (a) is detained in a hospital; and
- (b) meets such other conditions, or in relation to whom such other conditions are met, as may be specified in regulations.

These Regulations specify those conditions. They provide that three conditions must be met. The first in regulation 2(2) is that either the patient is detained in a state hospital or the responsible medical officer has recorded an opinion, giving reasons, to the effect that a postal packet sent by the patient might cause distress to the addressee or any other person, or cause danger to any person, or that a postal packet received by the patient might not be in the interests of the health and safety of the patient or might be a danger to any other person. In the case of a patient who is not in a state hospital, the patient can only be specified for the period of six months from the recording of such an opinion.

The second in regulation 2(3) is that the patient, the patient's named person and the Mental Welfare Commission for Scotland must have been informed that the patient is to be a specified person and the date of the recording of the opinion, if applicable.

The third in regulation 2(4) is that the patient and the patient's named person must have been informed that postal packets may be withheld.

Section 281(8) provides that the power to withhold a postal packet includes the power to withhold anything contained in such a packet.

Section 281(9) provides that "postal packet" has the meaning given by section 125 of the Postal Services Act 2000 (c.26) and that "relevant carrier" means the postal operator as defined in that section of that Act or the person, other than such a postal operator, who is to receive or collect the postal packet for the purpose of its being conveyed and delivered.

The definition of specified person in section 281 also applies for the purposes of sections 282 (correspondence: supplementary) and 283 (review of decision to withhold postal packet).

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