

**2005 No. 408**

**MENTAL HEALTH**

**The Mental Health (Specified Persons' Correspondence)  
(Scotland) Regulations 2005**

<i>Made</i> - - - -	<i>11th August 2005</i>
<i>Laid before the Scottish Parliament</i>	<i>16th August 2005</i>
<i>Coming into force</i> - -	<i>5th October 2005</i>

The Scottish Ministers, in exercise of the powers conferred by sections 281(5)(q), 282(7)(a) and 283(5) and (6) of the Mental Health (Care and Treatment) (Scotland) Act 2003(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation and commencement**

1. This Order may be cited as the Mental Health (Specified Persons' Correspondence) (Scotland) Regulations 2005 and shall come into force on 5th October 2005.

**Interpretation**

2. In these Regulations—

“the Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003; and

“specified person” has the same meaning as in section 281(9) of the Act.

**Scottish Information Commissioner**

3. For the purposes of section 281(5)(q) of the Act, the Scottish Information Commissioner is specified.

**Exercise of power to withhold postal packets**

4. Where a postal packet is withheld the managers of the hospital shall take all reasonable steps to ensure that the specified person—

- (a) is aware of the right to make an application under section 283(2) of the Act for the review of the decision to withhold the relevant item; and
- (b) has the opportunity of making use of independent advocacy services under section 259 of the Act in connection with any such application.

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

**Applications under section 283(2)**

**5.**—(1) On receipt of an application under section 283(2) of the Act, the Commission shall give notice of that application to the managers of the hospital in which the specified person is detained.

(2) The managers shall within fourteen days of receiving notice of the application produce the relevant item to the Commission.

St Andrew's House,  
Edinburgh  
11th August 2005

*LEWIS MACDONALD*  
Authorised to sign by the Scottish Ministers

## **EXPLANATORY NOTE**

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

These Regulations make provision with respect to the power under section 281 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) (“the 2003 Act”) for postal packets sent to or by detained patients to be withheld by hospital managers. The patients must be specified persons in terms of regulations made under section 281(9) of the 2003 Act.

Regulation 3 adds the Scottish Information Commissioner to the list of persons in section 281(5) of the 2003 Act from whom postal packets sent by a specified person may not be withheld and whose postal packets sent to specified persons may not be withheld.

Regulation 4 obliges hospital managers who withhold a postal packet to take all reasonable steps to make the patient aware of the right under section 283 of the 2003 Act to apply for a review of the decision to withhold the postal packet and to ensure that the patient can make use of independent advocacy services in connection with any such application.

Regulation 5 provides for the intimation to the hospital managers of an application to the Mental Welfare Commission for Scotland to review the decision to withhold a postal packet. The managers have fourteen days from receiving notice of the application in which to produce the relevant item, that is the postal packet or anything contained in it, to the Commission.

Section 281(8) of the 2003 Act provides that the power to withhold a postal packet includes the power to withhold anything contained in such a packet.

Section 281(9) of the 2003 Act provides that “postal packet” has the meaning given by section 125 of the Postal Services Act 2000 (c.26).

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