

Consultation in relation to mental health regulations and the National Secure Adolescent Inpatient Service



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Full name or organisation's name

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We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
 No

Questionnaire

Question 1

Taking into account this overarching duty to secure the welfare of persons under 18, should the measures be authorised for Foxgrove as they stand or are there particular conditions needed specifically because the measures will apply to young people? If so, what conditions should apply to which measures?

Please give reasons for your answer.

The Faculty has concerns in respect of the regulations applying to children and young persons as they are currently proposed. We consider that the parent/s, guardian or local authority with parental rights and responsibilities requires to be engaged in the decision making in the exercise of those parental rights and responsibilities. All issues of consent, including whether a young person has capacity to consent to the use of a measure, must involve those with parental rights and responsibilities. We consider in particular that, in cases where the child can validly consent, the child's consent should be sought and the PRR holder consulted. In cases where the child cannot validly consent (either through lack of understanding or mental disorder), consent must be sought from and provided by the PRR holder. The child should be asked if they wish to express a view and if so, what that view is in relation to the particular issue.

We consider that the proposals currently provide that the Responsible Medical Officer can exercise their powers without sufficient external scrutiny or oversight of their decisions to use measures. Under the current regulations, the RMO reviews their own decision to exercise a measure in the event that a young person does not consent. On review if they decide that the measure is needed, they can proceed without the consent of the person to whom the measure is being applied. There is no provision for an independent review of the use of a particular measure. We concur with the Mental Welfare Commission in that clear protocols need to be established for young persons. We consider this is particularly important for young persons with learning disabilities who are facing the use of these measures.

We consider that all decision making in respect of the use of measures on children and young persons in Foxgrove requires to be made by RMOs who are child and adolescent specialists or, if not such a specialist, in consultation with a child and adolescent specialist. This must be reflected in the regulations.

We are concerned that there is no requirement on the RMO to make the decisions having regard to the welfare of that child/adolescent as the **paramount consideration**. Under the 2005 Regulations this is not the test and we consider that direct reference needs to be made to section 2 of the Mental Health (Care and Treatment) (Scotland) Act 2003, where it is provided that any function should be discharged in the manner that best secures the welfare of the child.

Question 2

Please use this opportunity to provide any further comments you may have on secure Inpatient services for young people and safety and security or appeals against detention in conditions of excessive security.

Please give reasons for your answer.

We consider that the restrictions and time limits for appeal are inappropriate. The provision for appeal of a decision in relation to excessive security after 6 months is too long.

The restriction on the number of appeals per year is wholly inappropriate for a child or young person.

So far as we are aware, all other Scottish legislation which relates to the welfare of the child allows for a review process on a material change of circumstances or on a three month basis and there is no limitation on the number of reviews that can take place, it being dependent on the particular circumstances of the child.

We consider that the regulations should reflect the provisions in respect of review and appeal of decisions relating to children as referred to above.

The proposed regulations applicable to Foxgrove require to be compatible with the standards laid out in the UNCRC and in particular Art 37 (b) & (d) of that Convention.