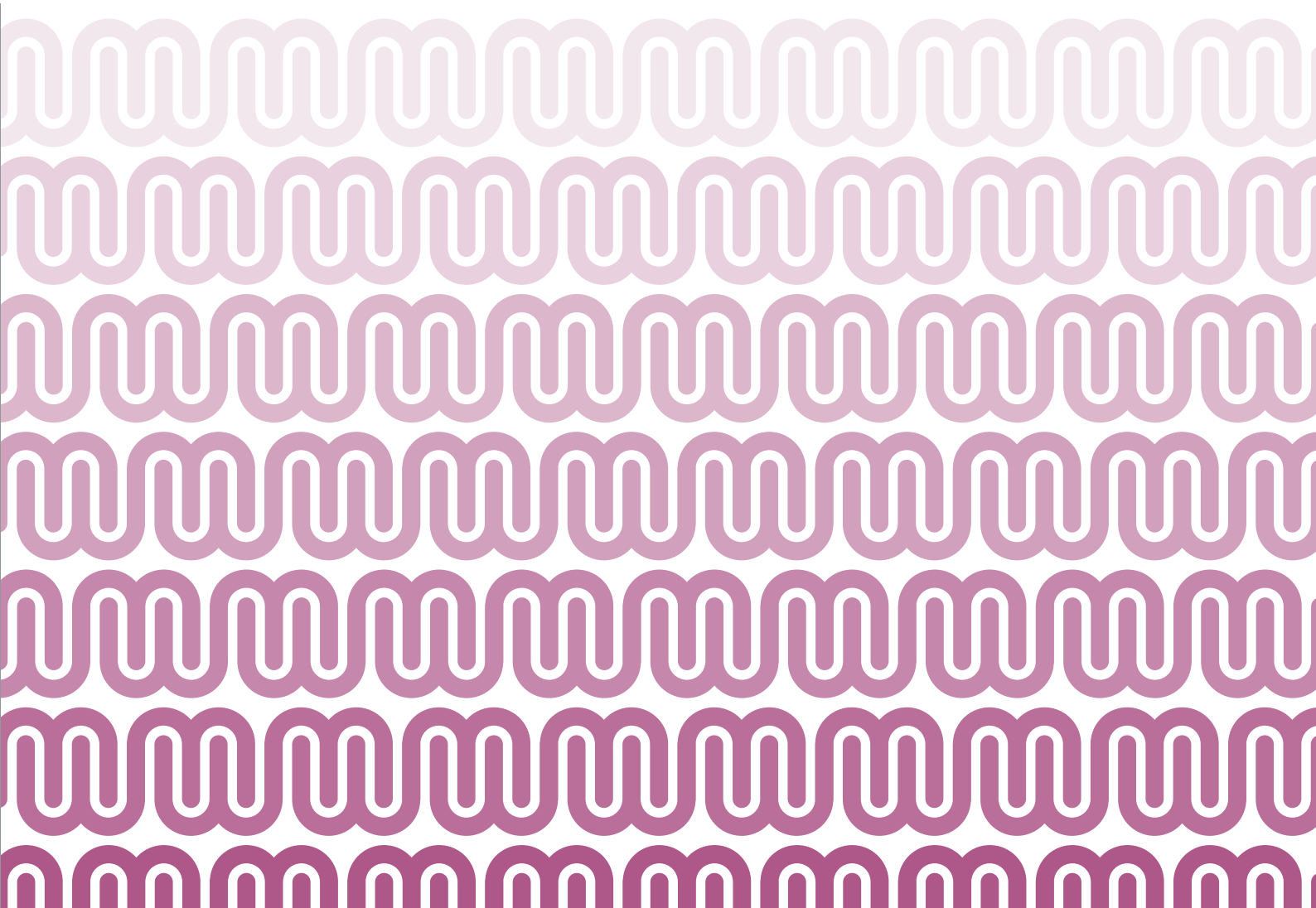
mental welfare commission for scotland

COVID-19 FAQs for practitioners (version 3, 3 April 2020)

Advice notes

April 2020



Our mission and purpose

Our Mission

To be a leading and independent voice in promoting a society where people with mental illness, learning disabilities, dementia and related conditions are treated fairly, have their rights respected, and have appropriate support to live the life of their choice.

Our Purpose

We protect and promote the human rights of people with mental illness, learning disabilities, dementia and related conditions.

Our Priorities

To achieve our mission and purpose over the next three years we have identified four strategic priorities.

- To challenge and to promote change
- Focus on the most vulnerable
- Increase our impact (in the work that we do)
- Improve our efficiency and effectiveness

Our Activity

- Influencing and empowering
- Visiting individuals
- Monitoring the law
- Investigations and casework
- Information and advice

Main changes in this update

The main changes are:

- The Coronavirus Act is now in law but not yet in force
- New Scottish emergency legislation relating to the Adults with Incapacity Act passed but not yet in force
- New advice on medical intervention and CPR for people with dementia or learning disability and people in care homes
- Scottish Government guidance on restricted patients was updated on 25 March
- Further advice on human rights
- Mental Welfare Commission and Mental Health Tribunal guidance on unsigned forms and email
- Can a guardian take an adult with incapacity home temporarily?

Contents

1. Introduction

The current pandemic is raising many questions, as practitioners face new challenges and dilemmas in a rapidly changing environment. The unprecedented circumstances and the risk to health mean that some individuals' human rights may be restricted, and it is important that any restriction is carefully considered, legal and ethical. This advice addresses a range of issues.

This advice will be updated frequently as the situation develops, and we advise that you do not print it out, but check online to ensure you have the most up-to-date advice and information.

Emergency legislation that 'relaxes' some of the current Mental Health Act (MHA) and Adults with Incapacity Act (AWI) legislation requirements has been passed by the UK and Scottish parliaments, but is not yet in operation. We will keep you updated on this over the next few weeks.

If you have any questions relating to this advice please email the Commission at enquiries@mwcscot.org.uk .

2. General principles

2.1. Human rights-based approach (updated 2 April 2020)

There will be many questions in relation to the implications of COVID-19 for individuals where there are no clear right or wrong answers. Using a human rights based approach can be helpful. In the current situation we may see a lot of "blanket policies" being introduced, particularly in residential and hospital settings.

Some human rights can be limited or restricted, as it is sometimes necessary to restrict one person's rights to ensure that the rights of another person, public safety and public health are protected. Such is the situation just now.

When considering scenarios where there are no clear right or wrong answers, you should consider if what is being proposed is:

- Reasonable
- Proportionate
- Justifiable

No human rights can be limited or restricted without good cause and certain conditions must be met if restrictions on human rights are to be justified. A restriction must not discriminate against a particular group of people and any restriction, if it is to be justified, must be necessary and proportionate. Decisions should be kept under regular review.

Proportionality means that a right can only be restricted so far as is necessary to achieve what is being sought. Consider if there is a less restrictive alternative that could have be used.

The principles of the Adults with Incapacity Act and the Mental Health Act provide a good ethical decision-making framework against which to consider any potential restriction or decision.

The Scottish Human Rights Commission has issued a briefing on the human rights implications of coronavirus emergency legislation:
http://www.scottishhumanrights.com/news/commission-flags-human-rights-implications-of-coronavirus-emergency-laws/

2.2. International advice on maintaining human rights of people deprived of their liberty during the pandemic (2 April 2020)

The UN Subcommittee on the Prevention of Torture issued advice on 25 March 2020 in relation to the pandemic and measures taken to reduce the risk to detained people and to staff. This is broad advice relating to anyone detained, including prisoners and those detained under mental health legislation.

Some key points are:

- [People detained] should enjoy the same standards of care available in the community […] without discrimination on the grounds of their legal status
- Any restrictions on existing regimes should be minimised, proportionate to the nature of the health emergency, and in accordance with law
- Respect the minimum requirements for daily outdoor exercise, whilst also taking account of the measures necessary to tackle the current pandemic
- Where visiting regimes are restricted for health-related reasons, provide sufficient compensatory alternative methods for detainees to maintain contact with families and the outside world, for example, by telephone, internet/e mail, video communication and other appropriate electronic means. Such contacts should be both facilitated and encouraged, be frequent and free.
- Make available appropriate psychological support to all detainees and staff who are affected by these measures;

https://icva.org.uk/advice-of-the-subcommittee-on-prevention-of-torture-to-states-parties-and-national-preventive-mechanisms-relating-to-the-coronavirus-pandemic-adopted-on-25th-march-2020/

On 20 March 2020, the European Committee on the Prevention of Torture (CPT) published a "statement of principles" relating to the treatment of persons deprived of their liberty in the pandemic (also available in French and Russian). The CPT's advice includes:

- WHO and clinical guidance must be implemented in all places of detention;
- Staff availability should be reinforced;
- Persons deprived of their liberty should receive information;
- People should be tested for coronavirus;
- Any necessary restrictions on contact with the outside world, including visits, should be compensated for by increased access to alternative means of communication such as telephone or web-based communications;
- If a person is isolated, meaningful human contact should be provided every day;
- Monitoring bodies should maintain access; and monitoring bodies must promote the "do no harm" principle by taking precautions.

3. Emergency legislation

3.1. Emergency powers allowing temporary changes to mental health legislation (updated 2 April 2020)

The Coronavirus Act 2020 has received royal assent. It includes emergency provisions relating to the Mental Health (Care and Treatment) Scotland Act 2003 and Criminal Procedure (Scotland) Act 1995. The Bill allows the new provisions to be put into effect by the Scottish Government, which may also suspend the provisions or put them into effect again as required. **Note that the provisions are not yet in effect at time of writing.** The Scottish Government has issued an update to clarify that at present there are no changes to the provisions of the Mental Health Act: https://www.gov.scot/publications/coronavirus-act-2020---impact-on-mental-health-legislation-update/

Schedule 9 contains temporary modifications of the Mental Health (Care and Treatment) (Scotland) Act 2003, the Criminal Procedure (Scotland) Act 1995 and related subordinate legislation, to provide measures including:

a. The modification of forms that are used in connection with the Mental Health (Care and Treatment) (Scotland) Act 2003 and Criminal Procedure (Scotland) Act 1995 or for such forms to be read as if they were so modified.

b. Extending maximum period of emergency detention to 120 hours.

c. Permitting a short term detention certificate (STDC) to be granted without the need to first consult a mental health officer in certain circumstances; and permitting a second STDC to be granted.

d. Enabling a mental health officer (MHO) to apply for a Compulsory Treatment Order (CTO) under section 63 of the 2003 Act founded on only one mental health report, provided the MHO considers that it would be impractical or involve delay to obtain two mental health reports.

e. Where a serving prisoner is found to be suffering from mental disorder and requires medical treatment, Scottish Ministers may make a transfer for treatment direction (TTD) under section 136(2) of the 2003 Act. Paragraph 6 permits that Ministers may be so satisfied on the basis of one report from an approved medical practitioner (AMP), where they consider that to obtain two reports would be impractical or involve delay.

f. Extending the limit on the length of time nurses can detain patients in hospital from 3 to 6 hours.

g. Allowing a Transfer for Treatment Direction to be made with the written report of an AMP, rather than both an AMP and another medical practitioner, where complying with two reports is impractical or would cause unnecessary delay.

h. Sections 136(3) and (6) provide that where a prisoner is to be transferred to hospital by a TTD they should be so moved within 7 days of the date the direction was made. Paragraph 8 provides that the transfer may be made as soon as practicable after that period.

i. Enabling reviews of certain orders and directions at certain specified intervals carried out by responsible medical officers (RMO) to be suspended.

j. Suspending the requirement imposed on Scottish Ministers in certain circumstances to make a reference to the Tribunal in respect of hospital directions or transfer for treatment directions.

k. Allowing that, where certain conditions are met, the RMO may administer medication to someone being treated under mental health legislation after the 2 month period laid out in the 2003 Act without the need to seek a second opinion from a designated medical practitioner (DMP) if the RMO has made a request for a DMP visit and it would cause undesirable delay to wait for the DMP's assessment.

l. Allowing a Mental Health Tribunal panel to operate with a reduced number of members where it is not practical to proceed with the required three members, as long as one of the members is a legal member or Sheriff Convener.

m. Allowing the period of extension for assessment orders to be increased at the discretion of the court, from 14 days to 12 weeks.

n. Enabling detention on the advice of just one medical practitioner (instead of the two required under the 2003 Act), if the court considers that it would be impractical in the circumstances to secure the second recommendation and the court is satisfied that the evidence of the single practitioner is sufficient.

o. Providing that the conveyance or admittance of accused or convicted persons to hospital may be achieved as soon as is practicable after the end of the prescribed time limits in the 1995 Act.

p. Allowing the Tribunal to decide a case without a hearing in the circumstance where the patient may have requested oral representations or oral evidence to be heard. In those circumstances, relevant parties could make written submissions to the Tribunal before a decision is reached.

q. Allowing medical practitioners in Scotland who are not independent (e.g. are in the same hospital, or with a supervisory relationship, or working in an independent hospital where the patient is being treated), to examine a patient for the purposes of the 2003 Act.

Act:
http://www.legislation.gov.uk/ukpga/2020/7/contents/enacted/data.htm

Explanatory note to the Bill:
https://publications.parliament.uk/pa/bills/cbill/58-01/0122/en/20122en.pdf

3.2. Potentially infectious person (3 April 2020)

The Coronavirus Act now extends public health powers that were available for England across the UK. These powers allow for a public health officer to detain someone, and to require them to stay at a suitable place, return them to that place, and keep them in isolation or quarantine as they deem necessary. They can inform a constable as needed to enforce. The Act contains necessary powers to enter premises. These are separate powers from the Public Health (Scotland) Act 2008, which was not designed for a pandemic. The emergency legislation is designed for this purpose.

If considering how to manage someone with impaired capacity who is a 'potentially infectious person', practitioners should consider what is the primary problem that presents and whether they are detainable under mental health legislation or not. If not, then contact the public health officer via the local health protection team. Where the individual is managed is for public health to determine, with input from mental health services. The legislation used will be the Coronavirus Act 2020.

If the individual is detainable under mental health legislation they would be admitted and care provided in the appropriate setting that meets their needs. Mental health services should lead on determining this with support if needed from public health and the acute hospital.

Contact details for Health Protection Teams in each Board are given on the last page (p10) of the guidance on management of patients with possible/confirmed COVID-19 in secondary care, at this link:

https://hpspubsrepo.blob.core.windows.net/hps-website/nss/2936/documents/1_covid-19-guidance-for-secondary-care.pdf

3.3. New Scottish emergency legislation relating to the Adults with Incapacity Act (2 April 2020)

The Coronavirus (Scotland) Act was passed by the Scottish Parliament on 1 April 2020. It contains emergency measures relating to the Adults with Incapacity (Scotland) Act 2000. The Act allows the new provisions to be put into effect by the Scottish Government, which may also suspend the provisions or put them into effect again as required. Note that the provisions are not yet in effect at time of writing.

The measures will:

- extend the period of time of guardianship orders for the duration the provisions are in force ('stopping the clock')
- extend the period of time for s47 Adults with Incapacity (Scotland) Act 2000 certificates for the duration the provisions are in force ('stopping the clock')
- remove the requirement of local authorities when using s13ZA of the Social Work (Scotland) Act 1968 to take into account the views of the adult and interested parties including the nearest relative, primary carer, guardian, continuing attorney or welfare attorney with relevant powers
- allow the local authority to use s13ZA when guardianships, intervention orders or powers of attorney with relevant powers have been granted or when applications are in process for guardianship orders or intervention orders.

The Commission has been in discussion with Scottish Government about the significant changes to how Section 13ZA would operate under the emergency measures. We were reassured by Government that instruction was clear that this emergency provision would be used in exceptional circumstances only, and when an authority had exhausted all other measures.

During the debate, Mike Russell, Cabinet Secretary for the Constitution, Europe and External Affairs, also confirmed that whenever this provision is used, the Mental Welfare Commission will be involved in the reporting process. This is a vital additional safeguard, which we very

much welcome. It means that the Commission will be able to monitor the use of this emergency provision across Scotland. Depending on the individual situation, we will consider whether we believe the case adheres to the new provision, whether we wish to call for further information, or whether we wish to go out and visit the person concerned at a future date.

The majority of measures in the Bill will automatically expire six months after coming into force. They may be extended for two further periods of six months, giving a maximum duration of 18 months.

The Scottish Government will provide high level guidance to assist public bodies to identify the provisions that are likely to be relevant and action they need to take.

4. Safeguards

4.1. Extending a community compulsory treatment order (CCTO) by phone if care home is in 'lockdown' (18 March 2020)

Where a care home refuses access to an RMO to carry out a review for the extension of a CCTO, due to coronavirus, the Commission advises a pragmatic approach. The RMO should ensure that the care home manager understands the role of the RMO and that they are not a visitor but have a role within the Act; discuss any concerns with named person; and discuss with the MHO. If it remains not possible to visit, the RMO should conduct a phone conversation with the patient if possible, and ensure they understand why they are not being visited.

The RMO should make a decision about whether to extend the order on the basis of these conversations, and send the report with a cover note.

The Commission's view is that RMOs are not required to do something that would put them or others at risk, but should aim to visit as soon as is practicable.

4.2. Second report for CTO application (23 March 2020)

There may be a situation where a second report is needed for a CTO application but it is not practicable for a GP or approved medical practitioner (AMP) to visit the patient due to Covid-19 infection on the ward,

The Commission's view is that the examination by the GP or AMP should take place if possible by video or phone; or alternatively, an assessment from a colleague who is available on the ward, but declaring this conflict of interest. The patient and relevant others should be informed of the issue. It is for the Tribunal to make its decision in the light of the available evidence presented.

4.3. Moving someone without 13ZA process being completed (19 March 2020)

The Commission was consulted about a situation where assessment for 13ZA to move an individual into a care home in an urgent situation due to the carer's terminal illness was partially completed. However, the MHO was self-isolating and not able to complete the assessment. Three meetings had already taken place in relation to the situation with no objections.

We advised checking whether another social worker was available. Failing this, due to the urgency of the situation and the current lack of alternatives for care provision, and given the consultation which had already happened, they could consider the move taking place in the best interests of the individual. The decision and rationale for the move should be clearly documented along with the consideration given to the principles of AWI.

Scottish Government guidance on 13ZA
https://www.sehd.scot.nhs.uk/publications/CC2007_05.pdf

Commission note on 13ZA
https://www.mwcscot.org.uk/sites/default/files/2019-07/cheshire_west_draft_guidance.pdf

4.4. Expiry of section 47 certificates giving legal authority for medical treatment - Adults with Incapacity Act easements (updated 2 April 2020)

The Commission is receiving calls regarding the expiry of s47 certificates which give legal authority for physical healthcare treatments. When it is triggered, the new Coronavirus (Scotland) Act 2020 will provide for 'stopping the clock' so that s47 certificates do not expire.

Pending such easement, our view is that treatment should be continued where it is not possible for a s47 certificate to be renewed.

4.5. Moving an individual to a care home without family agreement (updated 2 April 2020)

Until emergency measures are in place the situation has not changed. Moving an individual without capacity to a care home under 13ZA requires the agreement of the family, that the individual is not refusing, and that there is no proxy with relevant powers.

The Commission was consulted in relation to a situation where a case conference had been held and use of 13ZA was agreed, with an application for guardianship by the family to follow. However the family were not in agreement with the proposed temporary move, and arranged for a solicitor to visit the individual, who signed a power of attorney. This is challengeable due to the individual's lack of capacity. Note that the power of attorney is not effective until registered, and if there are concerns about the capacity of the granter it is important to contact the Office of the Public Guardian so that they can examine this before it is registered (see Common Concerns with Power of Attorney).

Until emergency measures under the Coronavirus (Scotland) Act 2020 are in place there is no authority for the proposed interim placement as family agreement is required for a move under 13ZA. We suggested taking legal advice from the CLO.

They should record clearly the reasons for making the decision that they go with, which should be based on individual assessment of rights and risk, especially if a move may be needed despite dissent from the family.

4.6. MHA and AWI assessments and examinations by video technology or by telephone (3 April 2020)

Both the Mental Health Act and the Adults with Incapacity Act envisage direct, in person interviews as being the expected method for medical examination.

(In normal times, our advice would include: an interview in person must be considered to be the envisaged method of examination; an interview by remote video-link must be regarded as an exceptional situation; it would be a matter for the Tribunal or Court to decide whether evidence based on a remote interview is acceptable.)

In the current COVID pandemic situation, exceptional circumstances will clearly arise more frequently. Our advice during the pandemic is as follows:

We appreciate that professionals will need to do what they can do in the circumstances. If a face to face interview cannot happen or is impracticable, an assessment/interview using videotech or over the telephone should be conducted if possible. Where a doctor is satisfied

that they have conducted a full enough assessment, and considers that the grounds are met to complete a report or issue a Certificate, they should do so. This includes EDC and STDC. They should record on the form/certificate information about how the interview/examination was conducted and any limitations of the assessment. MHO assessments and interviews might also be undertaken this way.

Clearly, for an application to the Tribunal (e.g. for a CTO) or to Court (e.g. for a welfare guardianship), the Tribunal or Court will decide whether the evidence is acceptable.

We recommend that any such interview is followed by a face-to-face interview when that is practicable.

4.7. MHO consent to STDC where they cannot access the patient and the patient refuses to speak by telephone

The Commission was asked to advise on the position if an MHO was unable to attend a ward due to health reasons in relation to coronavirus risk, it was not possible to arrange for another MHO to attend, and the patient refused phone interview.

The Commission's view is that if no other approach were possible, the MHO should document the situation. It would be for the Tribunal to decide if this was sufficient if the STDC was appealed.

If the MHO is not able to fill in the MHO DET2 page and sign it, the notes on page 4 of the DET2 form are clear that the AMP can complete that page. It is not a requirement that MHO does so.

Section 45 of the Mental Health Act requires that if it has been impractical for the MHO to interview the patient, that they record the reasons and send this to the AMP within 7 days.

5. Designated medical practitioners (DMPs)

5.1. DMPs and self-isolating patients or patients in care homes (18 March 2020)

Where a patient has symptoms and is self-isolating in line with Government advice, or a care home has concerns about possible risk of coronavirus infection, a DMP may carry out an assessment using alternative means, where face-to-face assessment is not practicable, and issue a T3.

The Commission's view is that a telephone or video conference interview which allows the DMP to consult the patient meets the requirement under s245 of the MHA for the DMP to consult the patient unless impracticable.

At present each situation should be individually considered. The Commission will ask about any risk when a DMP visit is requested, and will also check with the DMP about any issues.

5.2. Guidance to DMPs (19 March 2020)

The Commission's current guidance to DMPs is as follows.

BEFORE emergency legislation measures kick in

1. If a request or planned visit is for ECT or nasogastric then try to do this by phone if possible.
2. If an ECT/nasogastric request cannot be done by phone, consider with appropriate ward if it is still safe for you (and others) to visit OR if the visit can 'reasonably' be made safe. If a visit cannot be done because it's unsafe - don't do it. Inform RMO if you can and advise them to speak to the Commission medical team AND/OR let the Commission know that the visit isn't safe to do and it can't be done by phone.
3. If visit is planned for medication then do this by phone (until emergency measures kick in). This will require calls to the patient, RMO, named person, and other caregiver, etc., as usual. If these cannot be done then regard as not possible. Discuss with Commission medical staff as above.

AFTER emergency measures come into effect

4. Once the emergency measures kick in the same process applies for ECT and nasogastric requests as above, using whatever means can be done reasonably that is safe, such as phone or video. As the situation gets safer with time DMPs should consider face to face visits if they are safe for the patient, DMP, and others. (Reserving the right to go ahead and visit if this is absolutely necessary and can be achieved reasonably.)
5. The Commission will also aim to prioritise DMP visits for young people using phone or video-conferencing authorisation but if this is not possible then these requests will fall into the same category as point 6. (Under the emergency legislation these are not legally required in the way that the above safeguards are).
6. For all 'routine' medications requests, the Commission will take the request, and the RMO has authorisation to treat without a DMP safeguard. No visits by a DMP will be needed until the situation is safe enough to return to visits.

5.3. Clozapine monitoring when patient self-isolating (updated 25 March 2020)

We have been asked whether it could be acceptable to continue clozapine treatment but suspend routine monitoring of full blood count (usually done every 1-4 weeks), in situations where a patient is stable on clozapine, self-isolating in the community, and cannot be accessed for blood sampling. In the majority of cases this is likely to be a very short term issue – maximum 2 weeks, and any local procedures should be followed with agreement with local pharmacy services and a clinical risk assessment.

Where there are significant concerns about breaks in monitoring of under 2 weeks, or for any more extended breaks, decisions on whether or not to do this would need to be taken by the RMO on an individual basis. The RMO should consult with the relevant clozapine monitoring service. The RMO should fully take into account the patient's circumstances and health, and the risks vs benefits of continuing clozapine without full monitoring. They should provide the patient with information and discuss with them the benefits and risks as far as possible, determine their views, and take these into account.

The RMO should fully consider whether, based on the above risk assessment, it would actually be possible to undertake monitoring. This would include determining availability of Personal Protective Equipment (PPE) that would enable staff to take blood from the patient.

If clozapine is continued outwith regulatory monitoring requirements, there should be a clear documented rationale and care plan for this. We would advise the RMO to seek the opinion of a colleague such as a pharmacist, another consultant psychiatrist, or their medical manager.

For patients on a T3, the Mental Welfare Commission should be informed in writing regarding the circumstances and necessity for any break in monitoring, including mitigating arrangements. For minor breaks or extensions of under 2 weeks we would not ordinarily request a further DMP visit. If there is likelihood of more extensive breaks, a DMP opinion should be sought.

6. Restrictions

6.1. Advice on care home resident who lacks capacity and requires restrictions for self-isolation (18 March 2020)

A care home sought advice in relation to a resident with dementia who required self isolation in line with Government guidance. The resident had a welfare attorney, but family were currently not visiting. The welfare attorney and family were consulted on the measures taken. In line with guidance the resident was moved to a ground floor room, with more space and a garden view. A small stair gate was placed at the door to prevent him leaving and additional distractions placed in his room. He enjoys, folding, rummaging and going through boxes, so these have been added. Staff are interacting frequently.

The Commission's view is that in circumstances of this kind, care homes should carefully consider the benefit to the individual of any proposed restrictions and restraint measures, in line with the principles and guidance in Rights, Risks and Limits to Freedom and the new Scottish Government guidance on social care (Annex 1) Any restriction should be the minimum possible in the circumstances and should aim to minimise any distress to the individual, ensuring frequent staff interaction.

See also section 6.3 on Visitors to care homes.

6.2. Visitors to care homes (18 March 2020)

The new Scottish Government guidance on social care (Annex 1) advises reducing visitors to care homes apart from essential visits, seeking to reduce external visitors by 75%.

Where a resident has symptoms of COVID-19, Health Protection Scotland *COVID-19: Information and Guidance for Social or Community Care & Residential Settings* published 12/3/20 states that visits should be restricted to essential visitors only:

> 'Local risk assessment and practical management should be considered, ensuring a pragmatic and proportionate response, including the consideration of whether there is a requirement for visitors to wear PPE. These visitors must not visit any other care areas or facilities. A log of all visitors should be kept.'

6.3. Guidance on restricted patients (updated 25 March 2020)

The Scottish Government restricted patient team has circulated specific guidance for practitioners on restricted patients and COVID-19. Restricted patients are persons who are subject to a Compulsion Order and Restriction Order; Hospital Direction or Transfer for Treatment Direction. It is also relevant in relation to patients on remand who are subject to an assessment order, treatment order, temporary compulsion order or interim compulsion order.

The guidance sets out information in relation to restricted patients on the proposed emergency legislation. It will be updated regularly.

https://www.forensicnetwork.scot.nhs.uk/important-changes-to-procedure-for-restricted-patients/

If you have any queries about the guidance, email forensicmentalhealthpolicy@gov.scot

If you have a question about a particular restricted patient email restrictedpatient@gov.scot.

6.4. Restricting hospital visitors (25 March 2020)

The Scottish Government has asked NHS Boards to restrict hospital visiting to essential visits only. This is in light of the updated advice around reducing the risk of spreading Covid-19 and shielding vulnerable groups.

Note that the updated list of essential visits includes visits to support someone with a mental health issue such as dementia, a learning disability or autism where not being present would cause the patient to be distressed; although visitors should also consider whether a visit is essential even in these circumstances.

Anyone who is unwell and/or exhibiting symptoms of COVID-19 - a new, persistent cough and fever or high temperature - should NOT visit any patients in a hospital.

Boards must ensure that those who visit are informed of and adhere to appropriate infection prevention and control procedures as are required in this outbreak.

The Commission's view is that each situation should be individually assessed, and the need for the visit balanced against the risks. The rationale for a decision to allow or disallow a visit potentially deemed essential should be recorded and explained to the patient and the visitor.

Every effort should be made through provision of phone calls or other technology to assist patients to remain in frequent contact with family and friends.

6.5. Can guardian take adult with incapacity home temporarily from their current accommodation? (2 April 2020)

The Commission was consulted about a situation where a welfare guardian of an adult living in a supported tenancy wished to take them to the family home for a few days.

The adult receives personal care from a support provider, which was concerned about the risk this could pose in relation to coronavirus.

It is understandable that families are facing a tough time currently with self-isolating households, and lack of contact with loved ones. This will be exacerbated at occasions such as the Easter holiday weekend.

There is no concern about the quality of the care the family would provide, and their own view is that the adults are at greater risk from Covid-19 from interactions with care staff coming and going than they would be at home.

In normal circumstances guardians with relevant powers could take any action that was reasonable, proportionate, and meeting the principles of AWI. Earlier in the pandemic the Commission's view would have been that the guardians could not be prevented from bringing the adults to their own home. We would encourage the local authority guardianship supervisor to be informed and discuss with the family. However, the provider might consider that the adult could have been exposed to Covid, and pose a greater risk to staff, and ask them to self-isolate for two weeks, before resuming care provision.

However, the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020, laid before Parliament on 27 March 2020, state that no person may leave the place where they are living other than for a limited range of reasons such as to shop, for medical reasons and for daily exercise. This proposed visit does not come under any of the reasons listed and unfortunately should therefore not take place.

7. Mental Health Tribunals

7.1. Hearings to be held by teleconference (19 March 2020)

Mental Health Tribunals Scotland (MHTS) intends to hold all hearings by teleconference from Monday 23 March 2020 onwards. Specific instructions on taking part in a hearing by teleconference will be sent to those involved. MHTS has asked for support for patients by assisting them to participate in proceedings. Where the patient is in hospital and wishes to take part in their hearing, a member of the hospital staff would be expected to accompany the patient for the duration of the hearing. For patients based in the community, support for a patient could be provided by an MHO, an advocacy worker or a solicitor.

See https://www.mhtscotland.gov.uk/mhts/News/News for further information.

7.2. Applications by email (31 March 2020)

An MHTS update on 31 March says:

> Routine applications including requests for the appointment of a curator *ad litem* may be sent to MHTS by email, although we will still require enough information to determine that a patient lacks capacity to instruct a solicitor. The same applies to applications to withhold intimation of certain paperwork, including CTO applications, from patients where the risks to the patient or to others as a consequence of disclosure are significant. We will also accept motions made in the course of a case by email. As you may already be aware, a CTO1 form does not require to be signed by the MHO if it comes from a secure email address. We will extend this practice to allow other statutory forms to be sent from professional staff using a secure email address, without a signature.

See https://www.mhtscotland.gov.uk/mhts/News/News for further information.

8. Other issues

8.1. Depot for patient with COVID-19 symptoms (26 March 2020)

We are aware that some patients are concerned about what might happen if they are unwell with virus symptoms when they are due to receive their depot.

Guidance from the Royal College of Psychiatrists sets out consideration of short term alternatives such as deferring treatment for 2 weeks or switching to oral medication. However, depot should be administered if it is essential, by staff using personal protective equipment (PPE) and following Infection Protection and Control (IPC) procedures.

For detailed guidance see https://www.rcpsych.ac.uk/about-us/responding-to-covid-19/responding-to-covid-19-guidance-for-clinicians/community-and-inpatient-services-covid-19-guidance-for-clinicians

8.2. Medical intervention and CPR for people with dementia or learning disability and people in care homes (2 April 2020)

We have heard through our advice line and other contacts that many people are worried about coronavirus and whether someone having dementia, a learning disability or similar condition that may affect their capacity to make medical decisions will negatively influence medical decision making.

This is a big worry for family, friends and other carers, particularly about medical decisions to resuscitate someone in the event of a cardiac arrest (CPR) and some other health care interventions such as access to ventilators.

Clinical decisions about whether or not to attempt CPR are complex and rates of survival and recovery are much poorer for those with increased levels of frailty or other conditions.

However, dementia or a learning disability should not in themselves be a reason not to provide CPR or treatment. They should be considered as part of person-centred assessment that considers the risk and benefits of any particular treatment or intervention.

The assessment should include, where possible, the views of family or any proxy decision maker such as a welfare attorney or guardian. This will help inform the doctor when making a decision. However, family and proxy decision makers cannot insist that a doctor initiates any treatment or an intervention the doctor believes will not benefit the patient.

It is not ethically acceptable, even in these very difficult times, for there to be blanket policies that people with a particular condition or living in a particular place should not be resuscitated in the event of cardiac arrest or should not receive other specific medical interventions, such as transfer to hospital.

In relation to care homes, the most recent Scottish Government guidance states:

> 2.5 Anticipatory Care Plans (ACP) should be in place for as many residents as possible (and ideally all residents) in these settings. Clear documentation of 'What matters to me' is helpful in the event of changing circumstances. In many cases the staff in the care home settings are able to start these conversations with involvement of families. Healthcare Improvement Scotland are adapting ACP documentation to a 1-2 page summary tailored to dealing with the current situation. Do Not Resuscitate paperwork should be in place where appropriate and discussed appropriately with residents or carers.
>
> https://www.gov.scot/publications/coronavirus-covid-19-clinical-guidance-for-nursing-home-and-residential-care-residents/

Up to date advice in relation to CPR can be found at:

https://www.resus.org.uk/media/statements/resuscitation-council-uk-statements-on-covid-19-coronavirus-cpr-and-resuscitation/

8.3. Can I send an unsigned form to the Commission by email? (2 April 2020)

There may be situations where it is not possible for a form to be signed and scanned during the pandemic situation, because of practical difficulties such as lack of medical administrative support. In these circumstances the Commission will accept an emailed form without a signature, provided the email is coming from a recognised, secure email address such as a named NHS or local authority email account.

9. Information governance

9.1. Scottish Government guidance on data sharing (19 March 2020)

The Scottish Government has published new COVID-19 information governance advice in relation to data sharing:

https://www.informationgovernance.scot.nhs.uk/

https://www.ehealth.scot/resources/information-governance/

9.2. Information Commissioner guidance on data protection and COVID-19 (25 March 2019)

Data Protection and Coronavirus- what you need to know - for organisations.

Coronavirus and personal data 18 March 2020 – for the public.

Data Protection and Coronavirus - statement for health and care practitioners.

10. Other useful information (updated 2 April 2020)

The Royal College of Psychiatrists has produced information for clinicians in the community and in hospitals, which includes specific advice around different patient groups and information for patients: https://www.rcpsych.ac.uk/about-us/responding-to-covid-19

Guidance for clinicians on a range of topics including workforce, digital, patient engagement and ethical considerations is here: https://www.rcpsych.ac.uk/about-us/responding-to-covid-19/guidance-for-clinicians

Their advice re care on inpatient wards and in community services is here: https://www.rcpsych.ac.uk/about-us/responding-to-covid-19/guidance-for-clinicians/community-and-inpatient-services-covid-19-guidance-for-clinicians

NHS Education for Scotland Coronavirus (COVID-19) Learning materials for professionals:

https://www.nes.scot.nhs.uk/education-and-training/by-theme-initiative/coronavirus-(covid-19)-learning-materials-for-professionals.aspx

11. Glossary

AWI	Adults with Incapacity (Scotland) Act 2000
MHA	Mental Health (Care and Treatment) Scotland Act 2003
STDC	Short Term Detention Certificate
MHO	Mental Health Officer
CTO	Compulsory Treatment Order
TTD	Transfer For Treatment Direction
AMP	Approved Medical Practitioner
RMO	Responsible Medical Officer
DMP	Designated Medical Practitioner
CCTO	Community Compulsory Treatment Order
13ZA	Section 13ZA of the Social Work (Scotland) Act 1968
Proxy powers	Powers held under the Adults with Incapacity Act on behalf of someone unable to take their own decisions – power of attorney, guardianship or intervention order
Section 47 (s47) certificate	Certificate under the Adults with Incapacity Act which gives legal authority for physical healthcare treatments
T3	certificate for medical treatment, where a patient is incapable of consenting to treatment, completed by a designated medical practitioner
T4	Notification of urgent medical treatment given

Mental Welfare Commission for Scotland
Thistle House,
91 Haymarket Terrace,
Edinburgh,
EH12 5HE
Tel: 0131 313 8777
Fax: 0131 313 8778

Freephone: 0800 389 6809
enquiries@mwcscot.org.uk
www.mwcscot.org.uk