



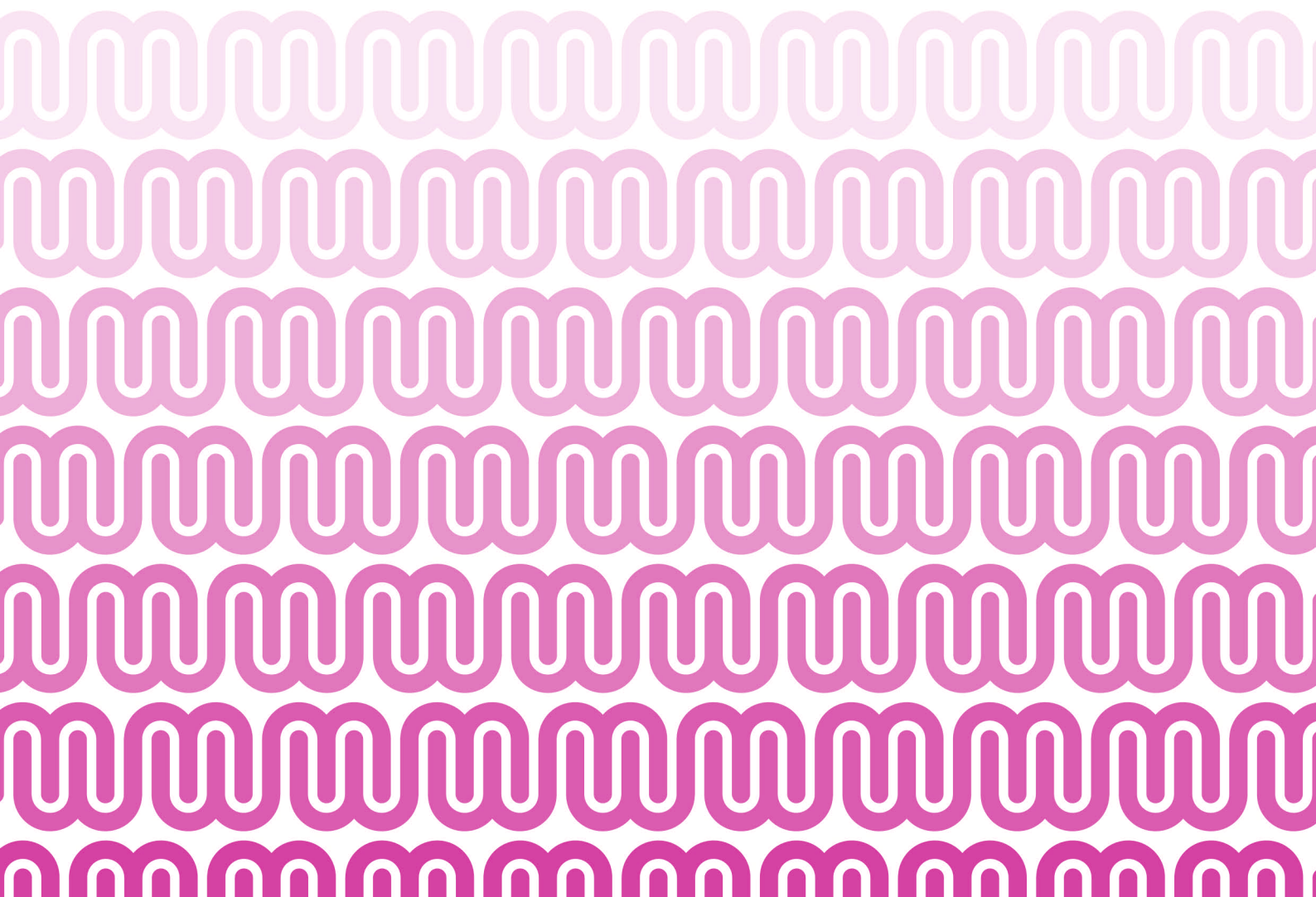
**mental welfare**  
commission for scotland

# Specified persons

Good practice guide

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May 2025



# 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

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## Why did we produce this guidance?

The Commission has found that the understanding and interpretation of sections 281 to 286 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Mental Health Act), which allow restrictions to be placed on people who are detained in hospital, varies widely with professionals and across services.

The Mental Health Act introduced the concept of 'specified persons' in respect of authorising restrictions on an individual's correspondence, use of telephones, and in relation to safety and security in hospitals. This means that where the responsible medical officer (RMO) is considering applying such restrictions, the patient concerned must be designated as a specified person before:

- restricting or withholding correspondence;
- restricting or preventing the use of telephones; and/or
- taking other measures to ensure safety and security in hospitals (for example, searching patients and their belongings, taking samples, searching their visitors, restricting access to personal items, and carrying out surveillance during visits).

Although these sections of the Mental Health Act are covered by the Code of Practice (Chapter 12 Vol 1), our monitoring duties, telephone advice line, and visiting programme have indicated that hospital-based practitioners remain unclear on certain aspects of the use of specified persons. We have drafted this guidance to help ensure that the operation of specified persons regulations is consistent with the law and its principles.

## Background to specified persons

Sections 281 to 286 of the Mental Health Act, and their associated regulations provide the framework in which restrictions can be placed on people who are detained in hospital. The following are the relevant Scottish Statutory Instruments (SSI) which contain the regulations:

- Sections 281-283: Correspondence (postal packets, not email) **SSI 466**
- Section 284: Use of Telephones **SSI 468**
- Section 286: Safety and Security in Hospitals **SSI 464**

### High secure facilities (the State Hospital)

All patients in the State Hospital are automatically designated as specified persons in respect of all restrictions.

### Medium secure facilities

For patients who are in designated medium secure facilities, (currently The Orchard Clinic, Rohallion, and Rowanbank), all are automatically specified persons in respect of the Mental Health Act section 286: Safety and Security. Patients in these settings need to be individually specified by the RMO (together with a reasoned opinion) for any other restrictions that are required.

### Other wards

There are a number of low secure facilities and intensive psychiatric care units (IPCUs) where there are environmental restrictions. However, practice in these facilities is that for all detained patients, as is the case in any other inpatient facility, they have to be **individually specified** (with a reasoned opinion) if the RMO considers that restrictions on their correspondence (s281-3) or in the use of the telephone (s284), or if they consider that the provisions of the regulations attached to s286, safety and security, are necessary.

In general, making a detained patient a specified person allows for the specific restrictions required to be in place for a period of up to six months. The exception to this is in relation to access to telephones; this is discussed further on in the guidance.

Use of specified persons regulations should not be seen as a routine aspect of care and treatment for the majority of people who are detained in hospital. They should be used only in those circumstances which are beyond the scope of normal care and treatment. They are not a substitute for appropriately implemented ward or hospital policies which are applicable to all patients whether detained or not.

Furthermore, restrictions of this kind applied to voluntary patients would amount to a breach of their human rights. It is, therefore, reasonable and appropriate for all

hospitals to have, as standard, their own policies in relation to the management of alcohol and substance misuse, for example, to help ensure the health, safety and welfare of patients, staff, and visitors.

This does not mean that such policies should be overly restrictive, but that they should be in place in the same way as, for example, policies in relation to the locking of doors. Information about these policies should be clearly displayed where appropriate, and available to all patients in the hospital or ward.

Examples of when and where the use of specified persons regulations would or would not be appropriate are contained throughout this guidance.

## **Restrictions in a community setting**

For anyone requiring to have restrictions of this kind applied in a community setting, and who lack capacity in this respect, consideration should be given to applying through the court to appoint a welfare guardian under the Adults with Incapacity (Scotland) Act 2000 (AWI Act). The Sheriff has authority to grant appropriate powers of a restrictive nature, where necessary, and anyone opposed to this is able to make representations at the hearing.

Where a patient already has a welfare guardianship order with restrictive powers and is detained in hospital for treatment of mental disorder under the Mental Health Act, specified persons is still the appropriate authority to authorise restrictions as it can be appealed by the patient or named person with greater ease rather than going back to court.

In addition, for those who have had their hospital-based order suspended, restrictions as a specified person can no longer be applied whilst they are living in the community.

## **Designating someone as a specified person**

Our advice in this section applies to all people **detained in any hospital**.

Detained patients should be able to:

- freely correspond by letter with whomever they like
- be able to contact people by telephone
- not be subject to searches of themselves or their belongings, or have restrictions placed on their visitors (other than when these may be applied to inpatient facilities either due to the level of security of the environment, where there is a local policy in place e.g. protected mealtimes, or where a risk assessment/risk management plan has been put in place) regardless of their status.

The regulations state that, where the RMO considers that it is necessary to put restrictions in place for a particular patient, they must first designate the patient as a 'specified person'. Until that step is taken, restrictions are not authorised.

The RMO, ideally after consultation with other members of the multidisciplinary team, would start with a date of recording and record a reasoned opinion that would be authorised for up to the six months. The precise wording in the regulations varies depending on the nature of the restrictions. This action, together with notification to the patient, the patient's named person, and the Mental Welfare Commission; legally constitutes the designation of a patient as a specified person.

It should be remembered that the principles of the Mental Health Act apply to all its sections and their associated regulations. Therefore, the principles of least restriction and of patient participation are of particular importance in the implementation of these regulations.

The regulations are not intended to be applied in a blanket manner. Designation as a specified person is automatic in some settings; however, designation does not automatically imply that the regulations should be implemented.

## **The European Convention on Human Rights**

Care should be taken, moreover, to ensure there is no unnecessary breach of an individual's human rights. Any interventions provided by staff must comply with the European Convention on Human Rights (ECHR), especially:

- Article 2 (right to life),
- Article 3 (right to be free from torture and other inhuman or degrading treatment),
- Article 5 (right to liberty and security), and
- Article 8 (right to respect for private and family life).

## **The reasoned opinion**

In order to make a **reasoned** opinion, the RMO needs to be in possession of a significant amount of information about the patient and to have interviewed them at least once. RMOs should be clear that their reasoned opinion can be supported by additional sources of information such as nursing notes, incident reports, and social circumstances reports as well as previous information of direct relevance to the restrictions proposed. More detailed guidance is provided below.

Use of the specified persons regulations should not result in restrictions for all patients. Each ward or service should have their own policies in respect of general safety and security (including a search policy) and also in respect of use of telephones and other communication technology. These are part of a general duty of care towards all patients and should promote the safe and effective running of the



ward, patient autonomy, and a recovery focus. These policies will be applicable to all patients not just those subject to detention.

### **Who has to be notified?**

In addition to the RMO's reasoned opinion, the managers of the hospital are required to formally notify the person specified, their named person, and the Commission. There is an exemption to notifying the person specified, if the RMO considers that doing so would be prejudicial to the person's mental health or treatment.

Hospital managers are required to inform the person that has been specified, and their named person, that they are entitled to one review of the reasoned opinion in any six-month period. The patient can request a review by the RMO once during any six-month period. The outcome of any review must be communicated to the person concerned, to their named person, and the Commission.

Due to this being quite a complex issue, notification to the specified persons should always be in writing. Other than in cases where to do so is deemed to be detrimental to the person's mental health, the written information should include any restrictions applied, timescales involved, and right of appeal.

The Mental Welfare Commission does not have the power to review the specification of an individual patient but can prohibit the implementation of the regulations where we believe they are inconsistent with the principles of the Mental Health Act (ss 283-286 Mental Health Act).

## Use of telephones

People who are in hospital should be able to keep contact with friends and family throughout their stay, and should, if appropriate, be able to carry on with their lives in as usual a manner as possible. This should be facilitated by easy access to a telephone. The use of telephones by persons detained in hospital is covered by s284 of the Mental Health Act.

Where restrictions are deemed necessary, and where these cannot be implemented with the agreement of the person concerned, then the RMO has to have recorded a reasoned opinion which supports the restrictions imposed. The reasoned opinion has to have been made in the six months prior to implementation of the restrictions.

The RMO has to determine that “a telephone call made to or by the person detained may cause distress to the person detained or to any other person **who is not on the staff of the hospital**, or a significant risk to the health, safety or welfare of the person detained or the safety of others”.

Note that the criteria in relation to people other than the detained patient are limited to their “distress” or “safety”.

### How long do the restrictions last?

Where the RMO considers that the patient’s use of the telephone generally is likely to cause distress, or constitute a risk, they can be prohibited from using the telephone for a period of up to three months. A less broad restriction, limiting the frequency, duration or the range of people who can be called, can also be put in place.

The maximum length of time the restriction can be in place is three months.

Regulations are in place to clarify this and can be found at:

Scottish Statutory Instrument 2005 No. 468

The Mental Health (Use of Telephones) (Scotland) Regulations 2005

### Intercepting calls

In addition to restricting or prohibiting the use of the telephone, there are powers to intercept incoming and outgoing calls in certain circumstances. These are:

- where the person who is the recipient of the call has requested the calls be intercepted; or
- where the call is or would be unlawful for any reason, other than contravening the restrictions which may be in place as a result of being a specified person; or
- in the case of calls to a specified person, it is or would be unlawful for any reason, other than contravening the restrictions which may already be in place.

Therefore, when a patient is a specified person in respect of use of telephones, the RMO can prohibit their use of the phone, restrict the duration, frequency and/or range

of people to whom calls can be made or from whom they can be received. Any landline calls which fall within the restrictions placed on any individual specified person can be intercepted in order to ensure that the restrictions are complied with.

It may be more difficult to restrict calls being made to the specified person if these are to their mobile phone; in some cases, this may lead to discussion about the phone being removed from their possession.

A number of people and organisations are exempt from inclusion in the restrictions. These are set out in [Appendix 2](#).

## Mobile phones

Clearly, access to a telephone to maintain contact with friends and family is an important matter for many patients in hospital. Most people now use mobile phones for this. The Commission is often asked whether the use of mobile phones is covered by the regulations.

We have been in contact with officials at the Scottish Government and we are agreed that the position is:

- The regulations on the use of telephones **also** applies to the use of mobile telephones. It is therefore possible to use s284 and associated regulations to intervene, in the use of a mobile phone. We interpret this as applying to text messages as well as telephone calls.
- While these regulations apply to the **use** of mobile phones, they do not give hospital staff the authority to **confiscate** a mobile phone. The mobile phone is the property of the patient, not the hospital. If it is thought necessary to confiscate a person's mobile phone, this should be done under safety and security regulations.

We are nevertheless in support of policies prohibiting those using mobile phones with a camera capability from taking photographs or videos, as these can have significant implications for individual privacy. This should not be seen as a 'back door' means of banning mobile phones for the purpose of restricting or prohibiting telephone calls. Although the availability of mobile phones that do not have a camera is limited, some hospitals and wards have purchased a number of 'basic' mobile phones for use by patients and we commend this approach. Others have a single mobile phone which will accept all types of SIM card and can be used on request. The main issue is access to a means of communication, just as with landlines, which should only be restricted or denied in circumstances that comply with the regulations.

## Case examples

**Question:** We have a patient who tends to monopolise the patients' telephone to phone his partner and children. Other patients have complained that they cannot use the phone when they want to. Do we have to make him a specified person to restrict his calls?

**Answer:** No. In the first instance this should be dealt with as any other aspect of the individual's care and treatment would be; by discussion, negotiation, and agreement. Remember, the RMO has to be able to justify specification on the basis of a risk to the health, safety, or welfare of the person or the safety of others.

**Question:** Mrs J is hypomanic at present. She is using her mobile phone to make numerous phone calls to her solicitor instructing them to make purchases of property on her behalf. Can we use the "telephone restrictions" to prevent this as it is clearly detrimental to her health and welfare?

**Answer:** Yes. The regulations cover telephone calls made by whatever means. Restriction, or prohibition of phone calls can be put in place. You should also explore other means of ensuring that the solicitor does not act on Mrs J's financial instructions whilst she is unwell. Policies which require that mobile phones are handed into staff for safekeeping may assist in the enforcement of any agreed restrictions with Mrs J's agreement but cannot be used as a means of removing her mobile phone without her consent. If this is required, it must be authorised by the provisions of the safety and security regulations. This guidance does not apply to circumstances where Mrs J may wish to contact her solicitor/legal advisor with regard to her compulsory treatment.

## Requests for review of the restrictions

The specified person can request a review of the particular restrictions or prohibitions regarding use of telephones once every three months. In addition, if calls to or from an identified person are prohibited for a continuous period of seven days, then the specified person is permitted to request a review on one occasion during each period of seven days in respect of this one prohibition.

The specified person can also ask the Commission to review the restrictions, and we may, after this review, issue directions to the hospital managers in respect of:

- the restrictions on their use of the telephone; or
- the period of time for which the restrictions are in force.

Although there is no time limit stated in the regulations in respect of the request to us, we would not normally carry out a review on a more frequent basis than that set out for RMOs. In the case of restrictions on use of telephones, this would be three months.

## **Mobile phones and associated risks**

There can be certain circumstances where access to, and the use of mobile phones may have to be limited, should it be considered that it puts at risk the safety of the patient or others. This could mean risk of safety in terms of physical or mental health. It could also mean risk of safety from financial or self-harm. If the mobile phone is used to purchase items out with the patient's means, with the patient's permission, the ability to spend by phone could be disabled. If this is not possible, consideration should be given to removing the phone to a safe place or into the custody of a family member.

There is a duty of care to all patients to safeguard their financial security during periods when they have become acutely unwell. Therefore, if the patient is subject to detention, they should be made a specified person under s286 and appropriate action taken following a risk assessment, formulation of a management plan, and completion of a reasoned opinion. The use of other devices for example, tablets, notebooks, or laptops may also need to be reviewed in a similar manner if financial security is assessed as being at risk.

## Correspondence

In general, detained patients should not have their mail intercepted or withheld. Sections 281 to 283 of the Mental Health Act make provision for the managers of a hospital to withhold the mail of patients who are specified persons in certain circumstances. These are:

- where a person has asked hospital managers to withhold mail addressed to them from a detained patient. This request must be made in writing.
- where the RMO has determined that there is “a likelihood that:
  - (i) postal packets sent by the patient may cause distress to the addressee or to any other person who is not on the staff of the hospital, or a 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, a reasoned opinion to this effect should be recorded and the person made a specified person.”

The duration of a reasoned opinion for correspondence is six months. However, the RMO is expected to keep the necessity for designating the person as ‘specified’ under review during this time.

Section 281(5) of the Mental Health Act lists those individuals and organisations that are excluded from the restrictions. This list can be found in [Appendix 2](#).

### What is meant by a postal packet?

A postal packet is defined by the Postal Services Act 2000 and therefore excludes any form of mail not sent or delivered by the Post Office or other registered carriers. Therefore, correspondence by internal mail does not fall within the scope of specified persons. Any issues arising from use of internal mail requires to be resolved with reference to local hospital policies.

### Withholding and inspecting postal packets

The effect of these parts of the Act are that hospital managers are able to inspect and open any postal packet, either addressed to, or sent from a specified person to determine whether it should be withheld on any of the above grounds. In practice, this responsibility is often devolved to nursing staff on the ward.

The reasoned opinion should be very clear about the grounds for inspecting and opening mail, particularly in those circumstances where all mail from or to an individual patient is subject to scrutiny. Note the Mental Health Act states “inspect and open” so that an initial check should be made that there is suspicion the parcel may contain something potentially harmful prior to opening. It does not say “open and inspect”.

Where mail is withheld, hospital managers are required to notify the Commission within seven days of the reasons for withholding the item and the nature of the contents. They must also notify the patient (in the case of mail sent to the patient, the person who sent the item must also be informed) and must ensure that the person is aware of their right to apply to the Commission to have the decision to withhold the item overturned.

Hospital managers are therefore required to retain a withheld item of mail and to produce it, if requested by us, within 14 days of a request for a review.

Further clarification can be found at:

Scottish Statutory Instrument 2005 No. 408  
The Mental Health (Specified Persons' Correspondence) (Scotland)  
Regulations 2005

Scottish Statutory Instrument 2005 No. 466  
The Mental Health (Definition of Specified Person: Correspondence)  
(Scotland) Regulations 2005

### **Case examples**

**Question:** All patients in the ward are required to open their mail in the presence of nursing staff. Do they have to be made specified persons for this?

**Answer:** We do not consider this practice to be acceptable. It would be unacceptable for staff to read mail without the person being specified. Unless the RMO considers that, in the individual circumstance, the grounds for inspecting incoming mail are met, there is no justification for this. It is acceptable, for safety and security purposes ([see below](#)) to ensure that no harmful substances are sent in by mail. Therefore, it is reasonable where there are specific safety and security concerns to ask the person to open the mail to demonstrate that there are no harmful substances present and for staff to remove any such substances. If the use of safety and security regulations in this way are being considered for an individual who is not in the State Hospital, Orchard Clinic, Rohallion, Rowanbank or other medium secure facility, then the individual would need to be made a specified person.

**Question:** We have a patient who sends copious amounts of mail to members of staff in other wards by internal mail. Can we use the regulations to stop this?

**Answer:** No. Internal mail is not covered by these regulations. If the content of the letters is thought to be distressing to the recipients, then a decision should be made by the clinical team to restrict the use of internal mail by the patient with clear explanation and rationale for doing so.

**Question:** Can correspondence by electronic devices be restricted in the same way as by letter?

**Answer:** The Mental Health Act and Code of Practice refer to withholding of postal packets. There is no mention of correspondence by other means. In any case, the withholding of items of correspondence by electronic means would be difficult to monitor or enforce due to the plethora of means of this form of communication. Should it be felt that such correspondence posed a risk to the health, safety or welfare of individuals in hospital, it may be necessary to restrict the use of electronic devices used for this purpose under safety and security regulations.



## Safety and security

This part of the legislation is potentially open to wide interpretation; therefore, we consider it very important that the implementation is consistent with the principles of the Act.

The regulations apply automatically to all patients in the State Hospital, Orchard Clinic, Rohallion and Rowanbank, and will apply to any additional medium secure facility which may be commissioned. It does not apply automatically to low secure and IPCU facilities.

As with the other restrictions, the RMO must record a reasoned opinion with sufficient evidence to support designating the individual as a specified person in respect of safety and security.

The RMO must determine that “the person has sought to acquire or is likely to seek to acquire, any item which is likely to be prejudicial to the health or safety of any person or to the security or good order of the hospital”.

The duration of the reasoned opinion is six months.

The specific interventions, which are authorised, have to be clearly identified. This is not a ‘catch all’ specification that authorises all permitted actions. Therefore, specification should be in respect of searching, or the taking of samples, or the searching of visitors. That is not to say that an individual cannot be subject to more than one of the permitted interventions, but that the need for each one should be clearly evidenced in the RMO’s reasoned opinion or in the care plan that covers the interventions.

For further clarification see:

Scottish Statutory Instrument 2005 No. 464

The Mental Health (Safety and Security) (Scotland) Regulations 2005

### **What is permitted by legislation?**

#### **Searching**

All hospital wards should have a policy on searching of patients and how and when this may be carried out.

The search of specified persons and of anything they have with them in the hospital where they are detained can only occur if:

- a. The RMO is of the opinion that there would otherwise be a significant risk to the health safety and welfare of any person, or the security or good order of the hospital.
- b. The person has consented to the search on each occasion.
- c. If the person does not consent, then the search may proceed only if the RMO decides after reassessment that it should.

The search may consist of a 'rub down search', which is similar to that which happens in airports and can be augmented by the use of metal detectors, or other non-invasive detection equipment. Only jackets, coats, and shoes can be requested to be removed.

Alternatively, in **very serious circumstances**, a 'removal of clothing search' may be indicated. This comprises a visual examination of the external parts of the body after clothes have been removed and a visual examination of the person's open mouth. Force and the use of implements to assist are not permitted and the practice of 'intimate searches' of other body orifices is forbidden.

Clearly such measures raise important human rights issues and can have a significant impact on an individual. It is of paramount importance that any activity of this nature is carried out with due regard to the person's dignity and privacy. It is important that searches are carried out by staff and witnessed in the presence of another member of the staff team, who should be authorised and trained in undertaking searches. Searches that are carried out by those authorised to do so, should be done by those of the same sex as the person being searched. Where they are witnessed by another member of staff, unless it is impracticable to do so, the member of staff witnessing the search should also be the same sex as the person being searched.

Where a specified person refuses to consent to a search taking place, the RMO should record in the notes their reasons for deciding that a search should proceed. In a few circumstances, where there is clear evidence that the individual will always refuse consent and there are clearly identifiable and significant concerns, consistent with the criteria for specification, a care plan which clearly states that searches should be carried out would be appropriate.

It is important that this is reviewed at regular intervals, and at the least within the statutory timeframe of every six months, as required by the regulations.

### **Case example**

**Question:** Patients in hospital are required to have their belongings searched on admission – do they have to be made a specified person to do this?

**Answer:** Most psychiatric hospitals compile an inventory of a patient's possessions on admission. This is done with the agreement of the patient or with another member of staff who can witness this, if the individual is unable to consent. This approach may reveal objects or substances which are not permitted in the ward and gives staff and the patient the opportunity to arrange for safe disposal or storage. This would not require a person to be specified. Nor would it include a search of the patient unless a serious risk has been identified.

Hospitals have a duty of care to protect all its patients and staff. Where there is a reasonable suspicion that the safety and welfare of patients or staff may be in danger, an initial search, without the authority of the safety and security regulations, may be carried out. Staff should follow hospital policy in implementing this. Following such a search, where there are continuing concerns about the safety and welfare of the individual or other patients/staff, for patients subject to the Mental Health Act, the regulations in relation to s286 of the Act should be invoked. This will ensure that any further searches or invasive procedures are carried out with proper legal authority. If a patient refuses to consent, a search may still be carried out under duty of necessity, where there is an apprehension of imminent danger to either the patient themselves or to other patients and staff.

Clearly, there must be a very real suspicion of imminent danger, as a search without consent can only be justified under these circumstances. To do otherwise would be unlawful. Equally, to do nothing in the face of a reasonable suspicion of danger to the patient or others may be perceived as negligent should something occur which was, or could reasonably have been, foreseen.

If the search reveals that the suspicion was justified, this would be a reasonable trigger for the RMO to record a reasoned opinion and to make the individual a specified person. We would expect, in many cases, where such a search has been carried out, that the RMO or duty doctor will have been involved in the decision. If it was impracticable to consult with medical staff, those staff who are involved should ensure that the patient's RMO is notified as soon as possible. Subsequently, a decision can be made regarding the appropriate future use of the regulations.

### **Taking of samples**

The regulations authorise "the taking, from external parts of the body and, by means of swabbing, from the mouth, samples of body tissue, blood or other bodily fluid or other material, the taking of blood samples and the examination of the samples".

**The person's consent must be sought on each occasion and the RMO must agree that the action is required.** If the person refuses consent and the RMO still agrees that the taking of samples is appropriate, it is important to note that no physical force can be used.

The privacy and dignity of the person providing the sample should always be maintained. However, in the interests of accuracy, there is a need to ensure that any sample is not tampered with.

The taking of samples is a significant intervention and, therefore, the justification for it should be sufficiently robust. We would expect there to be clear evidence that the actions of the individual concerned are very strongly suggestive of behaviour likely to meet the safety and security criteria.

It would not be sufficient for there to be a concern that an individual had simply indulged in alcohol or illicit drug use. Rather, there would have to be evidence of significant risk to the individual or to others. There are other means of managing individuals who may return to a ward under the influence of alcohol or drugs.

Where individuals are primarily admitted for the treatment of alcohol or substance misuse, there is less likelihood of the use of compulsory measures under mental health legislation.

Frequently, staff develop individual patient contracts or ward protocols which make reference to blood/urine testing in relation to monitoring compliance with the treatment programme. People admitted under these conditions should have given consent to any treatment programme that includes relevant testing. Bearing in mind that consent can be withdrawn, it is not expected that individuals in these circumstances would be subject to compulsion and specified persons regulations in order for treatment to be carried out.

For individuals who have a co-existing mental disorder and substance misuse issues, the situation is less clear. For some individuals, who are not subject to detention in hospital, (and this includes those on a community based compulsory treatment orders who are in hospital informally) compliance with an agreed treatment plan which includes blood/urine testing on specific occasions, such as on return to the ward after agreed time away, could be managed by means of a clearly agreed care plan. If the person withdraws their consent to the care plan, consideration may have to be given to the use of the Mental Health Act and the specified persons regulations, where appropriate.

Although the regulations would permit random samples to be taken from specified persons, this would only be justifiable if there were clear significant risks.

## **Case example**

**Question:** Mr X is subject to community-based compulsory treatment and is known to have used illicit drugs. In the past this has led to behaviours that have put himself and others at risk. How do we find out whether he is still using drugs?

**Answer:** The regulations only apply to people detained in hospital. People on community-based orders are not included, nor are people whose detention is suspended, although samples could be taken when the person returns to hospital following a period of suspension of detention.

In this situation, there is no legal authority to require the person to provide samples to test for drugs and alcohol during compulsory community treatment. The person may agree to provide samples but should be told that this is not compulsory. The person should not be subject to any actual or implicit sanctions for refusing to provide samples.

The only exception is people with restricted status on specific Criminal Procedure Scotland Act 1995 orders. Scottish Ministers may apply conditions to suspension of detention or conditional discharge. This may include a requirement to test samples for drugs or alcohol.

## **Restriction of articles**

The regulations allow for articles or classes of articles which individuals can have with them in hospital to be restricted completely, or for access to them to be limited. Such restrictions must be the minimum necessary to avoid significant impact on the freedom of the individual.

This must be based on the reasoned opinion that access to or possession of the specific article will be a risk to the health or safety of any individual, or the security and good order of the hospital. For instance, where a patient has been assessed as a self-harm risk, phone charging cables can be removed to a safe storage place and charging carried out by staff overnight. However, this could also be incorporated into a policy on a ward e.g. for young people in order to ensure a good sleep pattern.

The intention of the legislation is to stop people having harmful items or substances in hospital. Items such as weapons, drugs, alcohol, and pornography could be seen as potentially harmful under these circumstances.

We have been asked about using these regulations to remove passports, bank cards, car keys or house keys to reduce the risk of the person absconding. We think this is better dealt with by negotiation and agreement and that, from a duty of care perspective, it may be reasonable for hospital managers to keep such articles secure without using these regulations. Any decision will be based on an appropriate risk assessment.

## **Use of social media**

Social media is another frequently used method of staying in touch with others when in hospital. However, posts made on social media may compromise the patient's privacy, safety and dignity at a future date by posting something causing embarrassment which they later regret. Where the person has lost capacity to make decisions about this, consideration should be given to making an application for a guardianship or an intervention order under the AWI Act.

Overuse of social media and internet may also be felt to be detrimental to treatment in some cases for example, eating disorders. This should be managed on an individual basis and should be incorporated in a ward policy regarding specific treatment programmes rather than use of legislation as it will also apply to patients not subject to the Mental Health Act.

If patients are detained in hospital and restrictions are imposed on their use of a mobile (or any) phone, this should be carried out under the authority of s284 and/or s286 of the Mental Health Act making them specified persons.

This would not apply to voluntary patients and clarification should be given of the authority that a hospital places on imposing such restrictions for those individuals not subject to the Mental Health Act. If there is a blanket ban on the use of mobile phones, even if an individual signed an agreement to this, that person is not being given any choice in the matter. Signatures to agreements are also most often sought in the early stages of admission when the patient is most unwell and unable to fully comprehend their rights.

Each individual's circumstances should be assessed for the risk that is posed by having a phone and only then the decision taken (with agreement for voluntary patients) to remove them or prevent their use. This decision should also be regularly reviewed.

## **Cameras and mobile phones**

Photographs or videos taken using cameras on mobile phones may also compromise patient confidentiality and privacy.

Photographs and videos should only be made with the person's permission and posting these on social media without agreement may lead to potential harm or breach of the person's right to confidentiality and privacy.

The hospital has a duty to intervene to protect individuals' rights and prevent risk of harm. Therefore, wards should incorporate this issue in a hospital policy dealing with issues of confidentiality and privacy.

## Restrictions and visitors

Restrictions can be placed on visitors for justifiable clinical reasons, for example, the patient may be too unwell, or the timing of the visit would interrupt their planned treatment. It would not be necessary for an individual to be made a specified person even if he or she is detained. Such restrictions can be authorised by the general duty to provide appropriate care and treatment.

It is also reasonable to manage the general behaviour of visitors without resorting to the use of the regulations. So, for example, a visitor who turns up to the ward under the influence of alcohol and is acting inappropriately can be prevented from visiting. The regulations are not meant to replace general effective management of the ward and appropriate policies ought to be in place to support staff and patients and ensure that hospitals are safe places. We would advise hospitals to have a policy specifically targeted to the restrictions which may be placed on visitors for all patients.

However, where the restrictions are implemented for other reasons, such as the concern that illicit substances or inappropriate material could be brought in, the use of specified persons regulations is required. For the restrictions to be enforced, the visitor must have refused to consent to a search of their belongings and/or a 'rub down' search. It is insufficient that staff have concerns that someone might attempt to bring something into hospital illegally. They should have been asked **and have refused** to consent to a search of their belongings and a 'rub down search'.

As with the searching of specified persons, for any search of a visitor, the member of staff (as well as the witnessing member of staff) that are carrying out the search should be of the same sex as the visitor, unless it is impracticable for the witness to be of the same sex. For the State Hospital and medium secure facilities, the implementation of these regulations, which are applied to all patients, is usually achieved by means of 'airport style' security checks on all visitors.

If staff believe that a crime has been or may be committed, staff may wish to refer the matter to the police.

## Surveillance

The regulations also allow for the surveillance of specified persons, with or without their consent, if the person's RMO deems it necessary. Surveillance of visitors is restricted to visiting areas and signs giving notice that surveillance is taking place must be present. It would be good practice to ensure these signs are easily understood by all, and that account is taken of the needs of people who have literacy problems or a visual impairment.

The use of CCTV to provide general safety within a hospital setting is not included in the regulations.

### **Case example**

**Question:** Patients who are specified persons sometimes have their detention status suspended for a period of time. Can the safety and security regulations in respect of taking samples and searching still be applied during periods of suspension of detention?

**Answer:** If the patient has had detention suspended and is discharged from the hospital, the regulations cannot be implemented. If, however, the suspension of detention refers to time away from the ward during the day, or for short overnight stays out with the ward, the regulations could be implemented, if necessary, when the patient returns to the ward. There would be significant practical difficulties in implementing restrictions on telephone calls or correspondence for people who have considerable amounts of time on unescorted suspension of detention during the day.



## Notifying the Commission

We have developed forms to facilitate hospital managers in carrying out their duty to inform us of specified persons and any associated actions.

Hospital managers are required to inform us of:

- each specified person (RES 1).
- each review of the specified person's status occurring at the request of the person or their named person (RES 2).
- any specific restrictions in respect of the use of the telephone (RES 3).
- any review of specific restrictions/prohibitions in respect of access to telephones at the request of the specified person.
- the annual figures in relation to the number of people subject to safety and security measures (RES 4 and 5).
- any implementation of restrictions in respect to correspondence (RES 6).

These forms are available to download from [our website](#)<sup>1</sup>.

As can be seen, there is the potential in respect of RES 6, for frequent notifications to us. On each occasion a postal packet is withheld from the person, or withheld from the postal carrier, this would have to be notified within seven days, as do details of the nature of the postal packet and the reason for withholding it. This requirement can prove difficult in those situations where a specified person is sending prolific amounts of restricted mail. In these circumstances we suggest that the service contact us to discuss the most appropriate approach to notification, including the frequency and extent of coverage of each RES 6.

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<sup>1</sup> Mental Welfare Commission website: [www.mwcscot.org.uk](http://www.mwcscot.org.uk)

## Our role

In addition to receiving notifications, we have a role in reviewing the restrictions or prohibitions where this is requested by the individual concerned. We have the power to direct hospital managers not to implement specific restrictions or prohibitions. As noted in previous sections, we would review the implementation of the regulations no more frequently than the timescales set out for review by the RMO.

Where we have been asked to review individual restrictions or prohibitions we will review the relevant documentation. If necessary, we will obtain further information from the individual concerned, the RMO and other relevant staff. A report will be submitted to our chief executive who will consult with colleagues at the Commission to reach a decision. The decision will then be conveyed to the hospital managers as well as to the individual concerned.

## Appendix 1: Forms

**(These will be subject to review)**

Forms provided for the purpose of following the specified person procedure are listed below:

- RES 1 Notification to the Commission of designation of specified person that includes the reasoned opinion
- RES 2 Notification to the Commission of reasoned opinion review at patient's request
- RES 3 Notification to the Commission of the implementation of measures re. telephones
- RES 3A Review of prohibitions/restrictions re. telephones at patient's request
- RES 4 Safety and security annual incidence and circumstance report
- RES 5 Safety and security annual incidence and circumstance report (extension)
- RES 6 Implementation of measures to withhold correspondence

These forms are available [here on our website](#)<sup>2</sup>.

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<sup>2</sup> Forms on our website: [www.mwcscot.org.uk/monitoring\\_care/forms](http://www.mwcscot.org.uk/monitoring_care/forms)

## Appendix 2: Listed persons

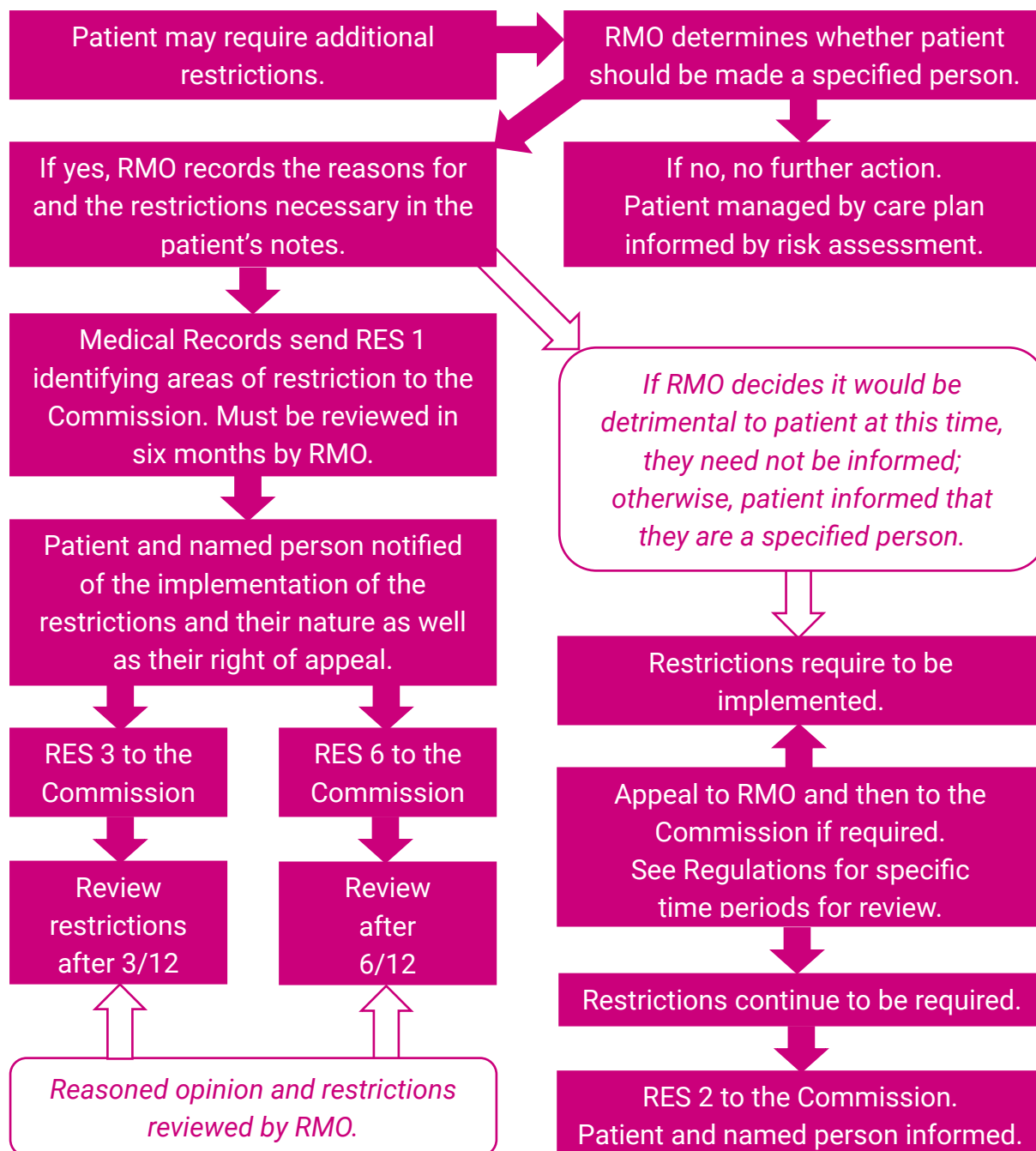
Restrictions may not be imposed on a specified person's contact with listed persons unless the listed person has requested that calls are intercepted or mail withheld.

From Section 281 of the Act these people are:

- Advocacy worker
- European Court of Human Rights
- NHS Board
- Hospital Managers
- Judge or clerk of court
- Legal adviser
- Local authority
- MP, MSP
- Member of Welsh Assembly or Northern Ireland National Assembly
- MEP elected for the UK
- Mental Health Tribunal for Scotland
- Mental Welfare Commission or any of its members
- Minister of the Crown
- National Health Service Trust
- Parliamentary Commissioner for Administration
- Scottish Freedom of Information Commissioner
- Scottish Minister
- Scottish Public Services Ombudsman
- Special Health Board

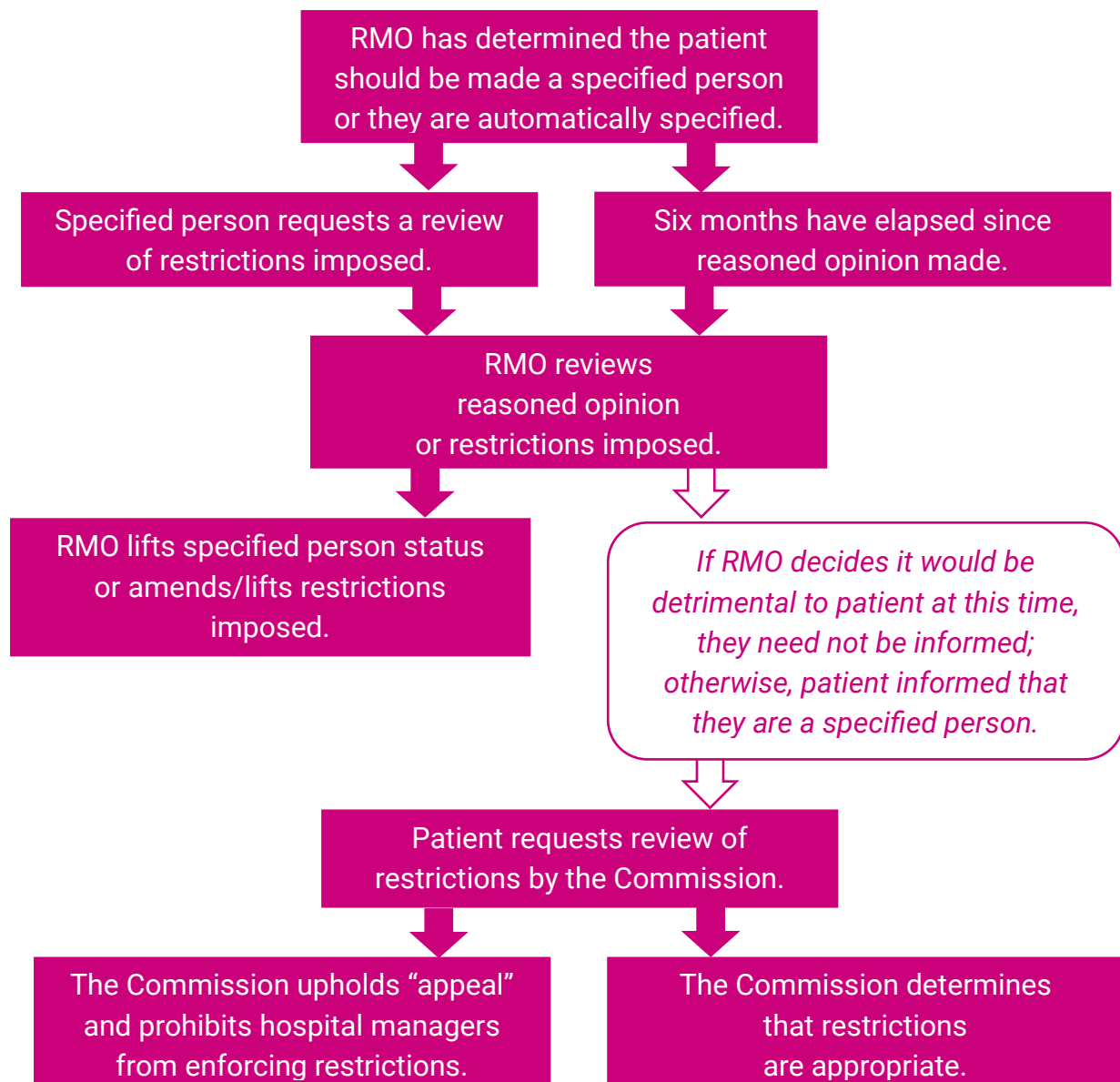
## Appendix 3: Specified person procedure flowcharts

### Specified person procedure for all hospitals except state hospital and medium secure facilities – general



**Note:** Specified person can request review by RMO of telephone restrictions once every three months (or seven days – see regulations for detail) and for other restrictions, once every six months. The RMO must notify the patient, named person and the Commission of the outcome. Use RES 3A for review at request of specified person. Implementation of safety and security measures are reported to the Commission on an annual basis.

## Specified person procedure – reviews



**Note:** an appeal can be made every six months in respect of specified person status.

**Telephones:** an appeal can be made within three months in respect of specific prohibitions or restrictions and where there is a specific prohibition, every seven days if continuously restricted.

**Correspondence:** the specified person or the person by whom the 'postal packet' was sent can apply to the Commission to have the decision to withhold reviewed. (s.283) Any application under this section must be made within six months.



If you have any comments or feedback on this publication, please contact us:

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