**Mental Health Directorate Update on Coronavirus Act 2020 as it relates to Scottish Mental Health legislation**

The Coronavirus Act 2020 received Royal Assent on 25 March 2020. Schedule 9 contains temporary modifications to the Mental Health (Care and Treatment) (Scotland) Act 2003, the Criminal Procedure (Scotland) Act 1995 and related subordinate legislation. The Act allows Scottish Ministers to switch on these new powers if and when they are needed and crucially to switch them off again when no longer necessary.

**This note is to clarify that at present there is no change to the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003. The temporary modifications in relation to Scottish mental health legislation which are laid out in the Coronavirus Act 2020 are not yet in force and will not come into force until Scottish Ministers decide – on the basis of data and advice - to commence the provisions.**

Throughout the passage of the Act, Ministers have been clear that the measures will be commenced at an appropriate time, based on the situation in Scotland. They will make them available to professionals at times when the safe running of the mental health system requires it. These decisions will be taken on the basis of advice of Chief Medical Officers of the four nations, informed by the individual circumstances of each country. In Scotland, decisions will be informed by data on workforce pressures and advice from partner bodies.

**Until the mental health provisions as detailed within the Coronavirus Act 2020 are commenced by Scottish Ministers through the Scottish Parliament, all practice should continue to comply with existing legislation.**

Even if the measures are commenced, the expectation is that existing laws and process should continue to be complied with as far as possible with the temporary amendments only being relied upon to provide additional flexibility in situations where there are severe shortages of staff and other resources and where complying with existing legislation would be impractical or cause undesirable delay.

If and when Scottish Ministers decide to commence the temporary modifications to the legislation this will be to provide additional flexibility to support the continued safe running of mental health services and ensure those that require care and treatment continue to receive it. **When this happens it will be clearly communicated to all those affected**. Guidance on the temporary modifications and when they can be used will be issued to practitioners in due course.

Background

Recent developments with the Coronavirus has made it necessary to consider a range of time-limited amendments to mental health legislation, which may be required, to enable services to cope with significant staff shortages whilst maintaining appropriate safeguards for patients. These are extraordinary measures that do not apply in normal circumstances.

The Coronavirus Act 2020 sets out proposed emergency legislative measures to address the Coronavirus outbreak (Covid-19). The legislation will be time-limited for two years and subject to six monthly reviews. Given the diverse nature of legislative provisions, it would not be appropriate for all of the measures in the Act to come into force immediately and many of the measures in this Act can be commenced from time to time so as to ensure that the need to protect public health can be aligned with the need to safeguard individuals’ rights.

I hope this clarifies the current position.

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