THE MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003: THE MENTAL HEALTH (FORM OF DOCUMENTS)(SCOTLAND) REGULATIONS 2006

Executive Note

The Mental Health (Form of Documents)(Scotland) Regulations 2006 SSI/2006/12

The above instrument was made in exercise of the powers conferred by section 325 of the Mental Health (Care and Treatment) (Scotland) Act 2003 ("the 2003 Act"). The instrument is subject to negative resolution procedure. These regulations re-enact the Mental Health (Form of Documents) (Scotland) Regulations 2005, with changes to Form MH07.

Policy Objectives

The Mental Health (Care and Treatment) (Scotland) Act 2003 ('the Act') makes provision at section 325 to prescribe statutory forms. These Regulations amend the prescribed content of the form to be used for an application to recall or vary a removal order as provided for in the Act (MH07A).

Section 33 of the Act places a duty on a local authority to inquire into the situation of a person who appears to have a mental disorder who is living in the community. If it seems necessary to remove a mentally disordered person to a place of safety because they are or may be at risk, then an application can be made for an order under section 293 or 294. Section 295 allows either the person who is the subject of a removal order, or any person having an interest in that person's welfare to apply for recall or variation of that order.

The form of application for recall or variation of a removal order has been amended to provide for intimation of the application to the persons prescribed under section 295(5)(b). The following class of persons may therefore make representations or lead or produce evidence before the order is determined by the sheriff: the person who is the subject of the order; the mental health officer who applied for the removal order; any nearest relative; any primary carer; and any guardian or welfare attorney of the person.

The previous regulations have been revoked to ensure that only one instrument prescribing the content of the forms to be used is in force, to allay any possible confusion.

Consultation

No formal consultation was made on these instruments however policy was previously consulted on formally in a "regulations policy proposals consultation document" published in summer 2004.

Financial Effects

The instrument has no financial effects on the Scottish Executive or any other organisation.

Scottish Executive Health Department
January 2006