Executive Note

THE MENTAL HEALTH (RECALL OR VARIATION OF REMOVAL ORDER) (SCOTLAND) REGULATIONS 2006. S.S.I. 2006/11

The above instrument was made in exercise of the powers conferred by section 295(5)(b) of the Mental Health (Care and Treatment) (Scotland) Act 2003 ("the Act"). The instrument is subject to negative resolution procedure.

Policy Objectives

Section 293 of the Act provides for a mental health officer to make an application to a sheriff for a removal order where a person may have been subject or exposed to ill-treatment, neglect or some other deficiency in care or treatment, to remove that person to a specified place of safety. Regulations have prescribed persons who may make representations and to lead or produce evidence in respect of the application, unless such delay would be prejudicial to the person who is the subject of the application.

Section 295 provides for the person who is the subject of the removal order or any person having an interest in that person's welfare to subsequently make an application to the sheriff for a recall or variation of the order. Regulations may prescribe persons, other than the person who is the subject of the application, who are to be afforded an opportunity by the sheriff to make representations and to lead or produce evidence before the application for recall or variation of the order is determined by the sheriff.

The purpose of the instrument is to provide for the prescribed persons under section 293 to be afforded the opportunity to make representations or submit evidence to the sheriff in any subsequent application for recall or variation of the removal order. The prescribed persons are: the nearest relative of the person; any guardian of the person; any welfare attorney of the person; any primary carer of the person; and, in addition, the mental health officer who was the applicant for the removal order.

Consultation

Policy on this instrument was consulted on formally in a "regulations policy proposals consultation document" published in summer 2004. Further consultation has also taken place by way of discussion with the Sheriff Court Rules Council and the Mental Welfare Commission.

Financial Effects

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

Scottish Executive Health Department
January 2006