EXECUTIVE NOTE

THE MENTAL HEALTH TRIBUNAL FOR SCOTLAND (PRACTICE AND PROCEDURES) (NO 2) AMENDMENT RULES 2006 S.S.I. 2006/ 170

The above instrument was made in exercise of the powers conferred by section 21(4) and 326 of, and paragraph 10 of Schedule 2 of the Mental Health (Care and Treatment) (Scotland) Act 2003 ("the Act"). These Rules amend the Mental Health Tribunal for Scotland (Practice and Procedure) (No 2) Rules 2005 ("the Tribunal Rules") to make provision in relation to applications to the Tribunal under sections 264 and 267 and hearings under sections 265 and 266.

The instrument is subject to negative resolution procedure.

Policy Objectives

The provisions in Part 17 Chapter 3 of the Act - Detention in conditions of excessive security - come into effect on 1 May 2006. The purpose of the instrument is to amend the Rules to specify the practice and procedure to be followed in proceedings before the Mental Health Tribunal for Scotland in relation to patients subject to a detention in a state hospital (sections 264 to 267). (Sections 268 to 271 make similar provision in relation to 'qualifying patients' in 'qualifying hospitals', however no regulations are being made at this time to provide for 'qualifying patients' or 'qualifying hospitals' under section 268 (11) or (12).

Section 264 of the Act makes provision for the Tribunal to consider an application in relation to a patient detained in the State Hospital that the patient does not require to be detained under conditions of special security that can be provided only by a state hospital and where appropriate to make a determination that the patient should be moved to a hospital where they may be detained in conditions of lesser security by a certain date. New rule 17A inserted into the Tribunal Rules by these rules sets out the procedure to be followed by any person listed at s265(6) of the Act in making an application to the Tribunal and the notice to be given in relation to a hearing.

Sections 265 and 266 make provision that where the Tribunal has not been informed that the patient has been so moved by the set date to hold further hearings. New Rule 17B inserted into the Tribunal Rules by these rules sets out the notice to be given in relation to holding a hearing under s265(2) or s266(2) and the timescales for these.

Section 267 makes provision that where an order has been made by the Tribunal under s264(2), 265(3) or 266(3) for a person listed in s267(4) of the Act to apply to the Tribunal for that order to be recalled. Rule 17C sets out the procedure to be followed by any person making an application to the Tribunal under s267(2) and notice to be given in relation to a hearing.

The Rules are also amended to include the relevant Health Board, and for a restricted patient the Scottish Ministers, as a party in any hearings under sections 246 to 247 of the Act.

The Amended Rules come into force on 1 May 2006.

Consultation
Consultation on these amendments took place with the Scottish Committee of the Council on Tribunals and the President and Chief Executive of the Tribunal.

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

Scottish Executive Health Department
Mental Health Division
17 March 2006