EXECUTIVE NOTE

The Mental Health Tribunal for Scotland (Practice and Procedures) (No 2) Rules 2005 SSI/2005/519

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") established under section 21 of the Act. These Rules re-enact the Mental Health Tribunal for Scotland (Practice and Procedure) Rules 2005 with amendments to reflect developments in Scottish Executive policy and to correct drafting errors. The changes take account of the special nature of these tribunal hearings which will consider confidential patient information and which will on occasion have to be arranged at short notice to comply with the time constraints of the Act particularly in relation to reviews of short term detention and applications for compulsory treatment orders.

The instrument is subject to negative resolution procedure.

Policy Objectives

The purpose of the instrument is to specify the practice and procedure to be followed in proceedings before the Mental Health Tribunal for Scotland.

The Rules contain:

- introductory provisions which apply to cases before the Tribunal under these Rules;
- rules about applications to the Tribunal under the Act;
- rules about appeals to the Tribunal, under or by virtue of the Act;
- rules about references to the Tribunal under the Act;
- rules about reviews by the Tribunal under the Act;
- rules that may be applied by the Tribunal to cases remitted to the Tribunal by the court under section 324(5)(b)(ii) of the Act for consideration anew; and
- general provisions which apply to cases before the Tribunal under these Rules.

In Part II the changes made are:

Rule 6 - to remove the requirement on the Clerk to the Tribunal to send a copy of the care plan (which contains sensitive information about the patient) to all persons involved in the proceedings.

Rule 7 - to simplify the rule to allow that an application for an interim compulsory treatment order (which can only be made where an application for a compulsory treatment order has been made to the Tribunal) can be made writing to the Tribunal or orally at a hearing and will not cause unnecessary delay (for instance, where the patient is subject to a short term detention order).

In Part VII the changes made are:

Rule 47 - to allow representations to be made either orally or in writing providing flexibility in those cases where the hearing must be held before a particular date (for example, the expiry of a patient's short term order).

Rule 48(1) – to correct a drafting error.

Rule 51 – to provide flexibility where time is constrained.

Rule 55(2)(a) – to change the test for the appointment of a curator *ad litem* to a simpler test of whether the patient does not have the capacity to instruct a solicitor

Rule 55(6) –removed as Schedule 2, paragraph 16 of the Act provides power for President to pay allowances and expenses for the purposes of, or in connection with, a person's attendance at hearings of the Tribunal.

Rule 47, 55, 68 and 69 – minor drafting changes to clarify the position in relation to the appointment of a curator.

Rule 57 – amended to take account of time constraints on arranging hearings (for instance where the patient is subject to a short term detention order).

Rule 62 – to allow flexibility in the timing for the provision of reports in cases where time is constrained.

Rule 63(3) - amended to reflect the wording of the Act.

Rule 66 – to allow the President to attend any hearing of the Tribunal.

Rule 80 - makes transitional provision for certain matters in process on the introduction of the amended version of the Rules.

The Rules come into force on 14 November 2005.

The Mental Health Tribunal for Scotland (Practice and Procedure) Rules 2005 (SSI 2005/420) are revoked.

Consultation
Consultation on these changes took place with the Tribunal Sub-Group of the Reference Group on the implementation of the Act, the Scottish Committee of the Council on Tribunals (who are also represented on the Tribunal Sub-Group) 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
5 October 2005