

## **Executive Note**

### **The Mental Health (Form of Documents) (Scotland) Regulations 2005 SSI/2005/444**

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.

### **Policy Objectives**

The Mental Health (Care and Treatment) (Scotland) Act 2003 (‘the Act’) makes provision at section 325 to prescribe statutory forms. These Regulations prescribe the content of the forms to be used when making application to a sheriff or a justice of the peace for powers of entry, removal and possible detention of a person as provided for in the Act. The forms include forms of applications, forms of intimation, citation and form of warrants.

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, in the course of an inquiry, it appears that entry to premises, access to medical records, or a medical examination is necessary but access has been or is likely to be denied, then a warrant can be sought under section 35 of the Act.

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 in addition to any warrant sought under section 35. 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.

Where an authorised person (that is a person who has authority under the Act or associated regulations to take, or retake, a patient to any place or into custody) is unable to exercise their authority, they may apply for a warrant under section 292 of the Act to enable them to enter premises for the purposes of taking, or retaking, the patient.

### **Consultation**

Policy was 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  
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