

EXECUTIVE NOTE

THE MENTAL HEALTH TRIBUNAL FOR SCOTLAND (PRACTICE & PROCEDURE) (No.2) AMENDMENT RULES 2008 (SSI 2008/396)

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 further amend the Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2005, which were previously amended by SSI 2006/171 (“the Tribunal Rules”).

The instrument is subject to negative resolution procedure.

Policy Objectives

The purpose of the instrument is to amend certain rules contained within the Tribunal Rules, under which the Mental Health Tribunal for Scotland operates. The rules affected by the changes and the reasons for such changes are detailed below.

Disqualification

Rule 42 of the Tribunal Rules details the conditions by which an individual shall be disqualified from serving as a member of a tribunal. The existing rule 42 did not define exactly what was meant by “employed by or contracted to provide services in or to the hospital”. This had led to some confusion as to when individuals would be disqualified from serving as members of a tribunal. The change to the wording of rule 42 makes clear that a person is only employed by or contracted to provide services to the hospital for the purposes of that rule if the practitioner works wholly or mainly in that hospital. This will reduce the number of individuals who might be disqualified under rule 42 from serving on a tribunal by virtue of them being employed to provide cover, when on call, to all hospitals within a Health Board area. The wording of the rule change is modelled on regulation 4(2) of the Conflict of Interest Regulations (SSI 2005/380).

Distribution and disclosure of documents

Existing rule 46 concerned both the distribution and disclosure of documents, whilst rule 47 concerned withholding documents and reports from disclosure in exceptional circumstances.

The changes now made separate out the provisions on the distribution of documents (new rule 46) from the provisions relating to non-disclosure of documents (new rule 46A). New rule 46A removes the difficulty of operating the rules in practice where rules 46(2) and 46(3) were seen to be in conflict and caused some confusion. Separating the provisions on distribution of documents from the provisions relating to non-disclosure will resolve this previous potential conflict.

Rule 47 is also amended and replaced as part of this suite of changes, to eliminate the previous requirement for the Convener or Tribunal to afford the parties an opportunity to

make representations on documents which they have not seen. The policy intention behind this change to rule 47 is that if the Tribunal accepts that the reasons given for claiming non-disclosure are good reasons then the Tribunal may direct that the document should not be disclosed.

Copying of decisions to the Mental Welfare Commission for Scotland

Rule 72 concerns decisions of the Mental Health Tribunal for Scotland. Rule 72(5) ensures that the Mental Welfare Commission (or, if appropriate, the court) is copied the decision made by the Tribunal. New rule 72(5A) provides that where a copy of a decision is sent to the Commission (under rule 72(5)), a copy of the application and accompanying medical reports is also sent to them, except where an application is not granted by the Tribunal. Rule 72(5A) (b) (ii) also provides that where a decision arose as a result of a reference to the Tribunal then a copy of that reference is sent to the Commission. Receipt by the Mental Welfare Commission of all documentation relating to applications or references granted by the Tribunal will enable the Commission to complete its records and to inform its understanding of the patient's position. The information will allow the Commission to look more closely into how patients are managed and cared for whilst subject to compulsion and enable it to identify both areas of good practice and concern. This sits properly with the overarching duties of the Commission under the Act to monitor the operation of the Act and to investigate individual cases that cause the Commission concern.

Under the existing Tribunal Rules the Commission would have been required to make a separate application in respect of every single patient under section 16 of the Act. The rule changes ease this process and enable the Commission to carry out its statutory role more effectively.

The Amended Rules come into force on 20 December 2008.

Consultation

Consultation on a draft of these amendments took place with the Mental Welfare Commission, the Administrative Justice & Tribunals Council and the Mental Health Tribunal for Scotland, all of whom signified that they were content with the proposed changes.

Financial Effects

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

Primary and Community Care Directorate

Mental Health Division

November 2008