

EXECUTIVE NOTE

THE MENTAL HEALTH TRIBUNAL FOR SCOTLAND (APPOINTMENT OF MEDICAL MEMBERS) AMENDMENT REGULATIONS 2009 SSI 2009/359

1. The above instrument was made in exercise of the powers conferred by paragraph 1(1)(b) of schedule 2 to the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the Act”). The instrument is subject to negative resolution procedure.

Background

2. The current regulations regulating appointment of medical members at the Mental Health Tribunal - the Mental Health Tribunal for Scotland (Appointment of Medical Members) Regulations 2004 (“the 2004 Regulations”) - provide for the appointment of a panel of persons for the purpose of serving as medical members of the Tribunal.

3. The 2004 Regulations list the qualifications and experience required of those persons, which is that they be a person who is a “medical practitioner” and either: is a member or fellow of the Royal College of Psychiatrists; or has a minimum of four years equivalent experience of providing psychiatric services. The term “medical practitioner” as used in the 2004 Regulations picks up a definition from the Medical Act 1983 (an Act which is reserved to Westminster) that this will be a “registered medical practitioner”.

4. However, following on from changes to the classification of doctors being brought in by the GMC, Department of Health are amending the definition of “registered medical practitioner” within the Medical Act 1983. Therefore, from 16th November 2009, the 2004 Regulations will now be read to mean that individuals seeking appointment as medical member must be “a fully registered person within the meaning of the Medical Act 1983 who holds a licence to practise under that Act”.

5. This means that, from 16th November, Scottish Ministers could not appoint any new medical members at the Tribunal who are not licensed to practice under the new system but are simply registered.

Policy objectives

6. At present, around 30% of the medical members of the Tribunal are retired, although none to date have in practice been appointed from retirement. Scottish Ministers are keen, however, to ensure that their current option to appoint experienced psychiatrists, who are registered but are no longer registered to practice, is maintained.

7. The amendment to the 2004 Regulations will continue to leave it open to Scottish Ministers to appoint as medical members of the Tribunal those who are fully registered, but no longer licensed to practice, and who are either: a member or fellow of the Royal College of Psychiatrists; or have a minimum of four years equivalent experience of providing psychiatric services.

Consultation

8. Representatives of the Mental Health Tribunal for Scotland, the Mental Welfare Commission and the Royal College of Psychiatrists were consulted on the above policy to amend the regulations, and agreed the changes.

Financial Effects

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

Scottish Government Health Directorate
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