



## SCOTTISH EXECUTIVE

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Health Department  
Directorate of Health Care Policy and Strategy

Dear Colleague

**MENTAL HEALTH (CARE AND TREATMENT)  
(SCOTLAND) ACT 2003  
APPEALS AGAINST BEING HELD IN CONDITIONS OF  
EXCESSIVE SECURITY**

With effect from 1 May the provisions in the 2003 Act in relation to appeals against being held in conditions of excessive security come into effect.

This note provides guidance on these provisions and should be brought to the attention of all practitioners caring for patients subject to compulsion under the 2003 Act.

Yours sincerely

*Geoff Huggins*

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April 2006

**Addresses**

For action

Chief Executives, Health Boards  
Chief Executives, Local Authorities  
Mental Health Tribunal for Scotland

For information

Directors of Social Work/Chief Social  
Work Officers  
Chief Executive, State Hospitals  
Board for Scotland  
Royal College of Psychiatrists,  
Scottish Division  
Scottish Social Services Council  
Scottish Commission for the  
Regulation of Care  
Law Society of Scotland  
Scottish Courts Service  
Director, Mental Welfare  
Commission for Scotland

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## APPEALS AGAINST DETENTION IN CONDITIONS OF EXCESSIVE SECURITY

### Background

1. The main provision of the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003](#) came into effect on 5 October 2005. The provisions in Part 17 of the Act in relation to excessive security were not commenced at that time but are required by the Act to come into effect by 1 May 2006.

2. The provisions in Part 17 will therefore come into effect on 1 May 2006. **These provisions relate to appeals by patients in the State Hospital.** No regulations have been made under s268 to specify qualifying patients or hospitals to which the provisions in s268 to 270 apply. In effect these sections will not come into force on 1 May 2006. Further consideration is being given to whether and if so how these provisions might be extended to other hospitals and patients.

### Provisions in relation to the State Hospital

#### Relevant patient

3. A patient in the State Hospital who is subject to one of the following orders (ie a relevant patient) may appeal to the Tribunal under s264: a Compulsory Treatment Order, a Compulsion Order, with or without restrictions, a Transfer for treatment Direction and a Hospital Direction. Patients cannot appeal to the Tribunal under these provisions within the first 6 months of the date of making of the order.

#### Relevant Health Board

4. The 'relevant Health Board' is the Health Board who is responsible under the Act for identifying a suitable hospital for a patient who appeals successfully against being held in conditions of excessive security in the State Hospital (or in any hospital which might be defined in future regulations under s268 of the Act). In order to give effect to these provisions regulations have been made under s273 in relation to the relevant Health Board - [The Mental Health \(Relevant Health Board for Patients Detained in Conditions of Excessive Security\) \(Scotland\) Regulations 2006 \(SSI 2006/172\)](#). These regulations set out the definition of the 'relevant Health Board' for the purposes of Chapter 3 of Part 17 of the Act.

5. For relevant patients who resided in Scotland immediately before the making of the 2003 Act order or direction under which they are detained the relevant Health Board will be the Health Board for the area in which the patient resided immediately before the order, or direction, was made. For patients who did not reside in Scotland before the order or direction was made and who have no claim to residence in Scotland the Health Board for the area in which the hospital in which the patient is detained is situated will become the relevant hospital in relation to these appeals.

6. These regulations are in line with SEHD Guidance 'Establishing the Responsible Commissioner Guidance for NHS Scotland ([HDL\(2004\)15](#))'.

### Mental Health Tribunal Rules of Procedure and Practice

7. The Tribunal is responsible for considering applications from patient and others in relation to these appeals. An amendment to the Tribunal Rules (The Mental Health Tribunal for Scotland (Practice and Procedures) (No 2) Rules 2005 SSI 2005/519) has been made which sets out the procedures to be followed in relation to such appeals. The amendment to the rules is entitled - [The Mental Health Tribunal for Scotland \(Practice and Procedures\) \(No 2\) Amendment Rules 2006 \(SSI 2006/171.\)](#)

8. Hospital managers should be aware of the provisions of these regulations which can be viewed on the website of the Office of Public Sector Information at <http://www.opsi.gov.uk/legislation/scotland/s-stat.htm/>

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