

*This Scottish Statutory instrument supersedes S.S.I. 2005/411 published on 24th August 2005 and is being issued free of charge to all known recipients of that instrument.*

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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 442**

**MENTAL HEALTH**

**The Mental Welfare Commission for Scotland (Procedure and Delegation of Functions) (No. 2) Regulations 2005**

*Made* - - - - - *9th September 2005*  
*Laid before the Scottish Parliament* *13th September 2005*  
*Coming into force* - - - *5th October 2005*

The Scottish Ministers, in exercise of the powers conferred by paragraph 8(1) of schedule 1 to the Mental Health (Care and Treatment) (Scotland) Act 2003<sup>(a)</sup> and of all other powers enabling them in that behalf, after consulting such persons or groups of persons as they considered appropriate in accordance with paragraph 8(2) of schedule 1, hereby make the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Mental Welfare Commission for Scotland (Procedure and Delegation of Functions) (No. 2) Regulations 2005 and shall come into force on 5th October 2005.

(2) In these Regulations, “the Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003.

**Appointment of committees and sub-committees**

2.—(1) The Commission may appoint committees for such purposes as the Commission may determine.

(2) Any committee shall consist of—

- (a) a committee convener who is a member of the Commission; and
- (b) other persons, whether or not members of the Commission, appointed by the Commission.

(3) Any committee may appoint sub-committees for such purposes as the committee may determine.

(4) Any sub-committee shall consist of—

- (a) a sub-committee convener who is member of the Commission or a member of the Commission staff, appointed by the committee; and
- (b) other persons, whether or not members of the Commission, appointed by the committee or the Commission.

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<sup>(a)</sup> 2003 asp 13. See section 329 for the definition of “regulations”.

(5) Sub-committees shall be responsible to the committee which appoints them.

### **Procedure**

3.—(1) The procedure of the Commission and of any committee or sub-committee shall be conducted in accordance with these Regulations and standing orders made under regulation 4.

(2) At every meeting of the Commission and of any committee or sub-committee, the convener, if present, shall preside.

(3) If the convener is absent from any meeting the vice-convener, if present, shall preside and, if the convener and vice-convener are both absent, the members of the Commission, committee or sub-committee as the case may be present at the meeting shall elect from among themselves a person to act as convener for that meeting.

(4) All acts of, and all questions coming or arising before, the Commission or a committee or sub-committee shall be done and decided by a majority of the members of the Commission, committee or sub-committee present and, where there is no clear majority, the person presiding at the meeting may call for a formal vote by those members present and, in the case of an equality of votes, that person shall have a second or casting vote.

(5) The procedure of the Commission or of any committee or sub-committee shall not be invalidated by any vacancy in its membership or by any defect in the appointment of a member of the Commission, committee or sub-committee, as the case may be.

(6) If it is necessary or expedient to do so, any meeting of the Commission or of any committee or sub-committee may be adjourned to another day, time and place.

### **Standing Orders**

4.—(1) The Commission shall make, and may vary or revoke, standing orders for the regulation of the procedure of the Commission and of any committee or sub-committee.

(2) Standing orders under paragraph (1) shall include the matters set out in the Schedule.

### **Delegation of functions**

5.—(1) Subject to the provisions of this regulation, the Commission may delegate any of its functions (other than excepted functions) to—

- (a) a committee of the Commission;
- (b) a sub-committee of such a committee; or
- (c) an individual member of the Commission, committee or sub-committee or a member of staff of the Commission.

(2) Where, under paragraph (1), the Commission has delegated a function to a committee, the committee may with the approval of the Commission, arrange for the function to be discharged on behalf of the Commission, by a sub-committee of the committee or by an individual member of the Commission, committee or sub-committee or a member of staff of the Commission.

(3) Where under paragraphs (1) or (2), the Commission or a committee have arranged for the discharge of a function of the Commission to be discharged by a sub-committee, the sub-committee may with the approval of the Commission or committee, arrange for the function to be discharged by an individual member of the Commission, committee or sub-committee or a member of staff of the Commission.

(4) The Commission shall approve the nature and extent of any powers to be exercised by a committee, sub-committee or an individual member of the Commission, committee or sub-committee or a member of staff of the Commission.

(5) The Commission shall not delegate any function unless it is satisfied that adequate arrangements have been made for reporting to it by the committee, sub-committee or the individual to whom the function is to be delegated.

- (6) Any delegation by the Commission of a function under this regulation–
- (a) shall not affect the responsibility of the Commission in the exercise of the function or any liability arising from the exercise of that function;
  - (b) shall not prevent the Commission from exercising a function; and
  - (c) may be revoked at any time by the Commission, or the committee or sub-committee making the arrangement.
- (7) In this regulation “excepted functions” means–
- (a) functions relating to the discharge of patients under the Act;
  - (b) the making of standing orders under regulation 4;
  - (c) the constitution, terms of reference and reporting arrangements of any committees and sub-committees of the Commission;
  - (d) the appointment of a person to chair or conduct an inquiry under section 12 of the Act;
  - (e) the acquisition and disposal of land and other property with a value in excess of £50,000 or such other amount as may be agreed by the Commission; and
  - (f) the keeping of annual accounts, the auditing of those accounts and the transmission of such accounts to the Scottish Ministers.

### **Revocation**

**6.** The Mental Welfare Commission for Scotland (Procedure and Delegation of Functions) Regulations 2005(a) are hereby revoked.

St Andrew’s House,  
Edinburgh  
9th September 2005

*LEWIS MACDONALD*  
Authorised to sign by the Scottish Ministers

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(a) S.S.I. 2005/411.

## SCHEDULE

Regulation 4(2)

### MATTERS TO BE INCLUDED IN STANDING ORDERS REGULATING PROCEDURE OF THE COMMISSION AND ITS COMMITTEES AND SUB-COMMITTEES

#### **Calling meetings**

1.—(1) The convener may call a meeting of the Commission at any time and the convener of a committee or sub-committee may call a meeting of that committee or sub-committee at any time and shall call a meeting when required to do so by the Commission or committee respectively.

(2) The convener shall call a meeting of the Commission on receiving a requisition in writing for a meeting signed by at least one-third of the whole number of members of the Commission, within 14 days of receipt of the requisition, provided that no business shall be transacted at the meeting other than that specified in the requisition.

#### **Notice of meetings**

2.—(1) Before each meeting of the Commission, or of a committee or sub-committee, a notice of the meeting, specifying the time, place and the business proposed to be transacted at the meeting, shall be given to each member of the Commission, committee or sub-committee as the case may be.

(2) The proceedings of any meeting shall not be invalidated by failure to give such notice to any such member.

#### **Quorum**

3.—(1) No business shall be transacted at a meeting of the Commission unless at least five members of the Commission of whom at least one shall be a medical commissioner are present.

(2) No business shall be transacted at a meeting of a committee or sub-committee unless at least half of the whole number of members of that committee or sub-committee is present.

#### **Minutes**

4.—(1) The names of the members of the Commission, committee or sub-committee present and the person presiding at a meeting of the Commission or of a committee or sub-committee, shall be recorded in the minutes of the proceedings of the meeting.

(2) Where there is a formal vote, the number of votes cast in relation to any question at a meeting shall be recorded in the minutes of proceedings of the meeting.

(3) The minutes of the proceedings of a meeting shall be drawn up and submitted to the next meeting for approval and signed by the person presiding at that meeting.

(4) The minutes of proceedings of a meeting of a committee shall, after approval by that committee, be submitted to the next meeting of the Commission.

#### **Suspension**

5.—(1) A member of the Commission or a committee or a sub-committee may on reasonable cause shown, be suspended from a meeting of the Commission, committee or sub-committee, by motion determined by the members of the Commission, committee or sub-committee, as the case may be, present at the meeting and a member so suspended shall leave the meeting and take no further part in any business being transacted at the meeting.

(2) A member so suspended, who refuses to leave a meeting may be removed from the meeting by any person authorised by the person presiding to do so.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations replace (with amendments to regulation 3, the heading of and paragraph 1(2) of the Schedule) the Mental Welfare Commission for Scotland (Procedure and Delegation of Functions) Regulations 2005 (S.S.I. 2005/411) which are revoked by these Regulations (regulation 6). The content of the Regulations is otherwise the same.

These Regulations make provision concerning the proceedings of, and the delegation of functions by, the Mental Welfare Commission for Scotland (“the Commission”).

In particular, they make provision for the appointment and composition of committees and sub-committees for purposes determined by the Commission and its committees respectively (regulation 2) and for the procedure of the Commission, its committees and sub-committees, including the calling and chairing of meetings, the constitution of a quorum, the taking of decisions, including voting, the taking and approval of minutes and the suspension of a member from a meeting (regulations 3 and 4 and the Schedule). Provision is also made for the delegation of functions of the Commission, but excluding certain excepted functions (regulation 5).



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