

**EXPLANATORY MEMORANDUM TO
THE MENTAL HEALTH REVIEW TRIBUNAL FOR WALES RULES**

2008 No 2705 (L.17)

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This statutory instrument, the Mental Health Review Tribunal for Wales Rules 2008 (the “Rules”), puts into place the practice and procedures for proceedings before the Mental Health Review Tribunal for Wales (the “Tribunal”).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 The SI applies to the Tribunal and will replace the Mental Health Review Tribunal Rules 1983¹ in relation to Wales. The decision to replace the 1983 Rules has been precipitated by two Acts.

4.2 The Mental Health Act 2007 makes a number of amendments to the Mental Health Act 1983, affecting the nature of the cases reaching the Tribunal after commencement of the relevant provisions of the Mental Health Act 2007 on 3 November 2008. Because of this, amendments to the 1983 Rules were necessary.

4.3 Section 78 of the Mental Health Act 1983 sets out that Rules for the Tribunal are made by the Lord Chancellor.

5. Extent

5.1 The Mental Health Review Tribunal for Wales Rules 2008 apply to Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

7. Policy background

7.1 In the UK, the Mental Health Review Tribunal hears applications and references for people detained under the Mental Health Act 1983. The

¹ the *Mental Health Review Tribunal Rules 1983* - SI 1983/942

Tribunal covers the whole of England, split between North and South. There is a separate Mental Health Review Tribunal for Scotland and a separate Mental Health Review Tribunal for Wales.

- 7.2 The Mental Health Act 2007, which received Royal Assent on 19 July 2007, was designed to amend the 1983 Act in certain ways. The relevant provisions in the 2007 Act will come into force on 3 November 2008 and the Rules have been drafted to reflect these provisions, for example the introduction of supervised community treatment which helps ensure that patients remain in contact with services when they no longer need to be detained in hospital and can be recalled to hospital quickly where necessary.
- 7.3 The Rules are intended to be simple, flexible and easy to understand. They are not intended to radically overhaul current processes; on the contrary, they draw heavily upon existing tried and tested processes and are designed to allow current best practices to be maintained. The overriding objective of the Rules is to deal with cases fairly, justly, efficiently and expeditiously.

Consultation

- 7.4 A six week public consultation exercise on the Rules ran between 19 August and 29 September 2008. The consultation paper and draft Rules can be found here, entry dated 19 August: <http://www.tribunals.gov.uk/latestnews.htm>
- 7.5 A consultation document was distributed to those involved in the work of the Tribunal in Wales, including members of that Tribunal, legal representatives, responsible authorities and service users. Two consultation events were held with the members of the Tribunal who provided informal feedback and a total of nine consultation responses were received; the Rules were broadly welcomed. The Administrative Justice and Tribunals Council were consulted.
- 7.6 As a result of issues raised in the responses a few very minor amendments to the consultation draft were made. For example, one concerned changing the test for 'withholding documents or information likely to cause harm' to serious 'harm'. The main changes made as a result of the consultation were to remove anomalies within the Rules.

8. Impact

- 8.1 An initial assessment was completed and did not indicate that the proposals were likely to lead to additional costs or savings for business, charities or the voluntary sector. Therefore, an additional Impact Assessment was not prepared.

9. Contact

- 9.1 Howard Ripley at the Ministry of Justice can answer questions on the instrument. He can be contacted via 020 3334 6555 or howard.ripley@tribunals.gsi.gov.uk