

## SCHEDULE 2 THE MENTAL HEALTH TRIBUNAL FOR SCOTLAND

### PART 1

#### MEMBERS OF THE TRIBUNAL ETC.

##### *Members*

- 1 (1) The Scottish Ministers shall appoint as members of the Tribunal—
- (a) a panel of persons who have such legal—
    - (i) qualifications;
    - (ii) training; and
    - (iii) experience,as may be prescribed in regulations for the purposes of serving as legal members of the Tribunal;
  - (b) a panel of persons who have such qualifications, training and experience—
    - (i) in medicine; and
    - (ii) in the diagnosis and treatment of mental disorder,as may be prescribed in regulations for the purposes of serving as medical members of the Tribunal; and
  - (c) a panel of persons who have—
    - (i) such qualifications, training, skills and experience in caring for, or providing services to, persons having a mental disorder; or
    - (ii) experience of such description,as may be prescribed in regulations for the purposes of serving as general members of the Tribunal.
- (2) A person is disqualified from appointment as, and being, a member of the Tribunal if the person—
- (a) is a member of the Scottish Parliament;
  - (b) is a member of the Scottish Executive or a junior Scottish Minister; or
  - (c) is of such other description as may be prescribed in regulations.

##### *Shrieval panel*

- 2 There shall be a panel consisting of each person who for the time being holds the office of—
- (a) sheriff principal;
  - (b) sheriff; or
  - (c) part-time sheriff,
- for the purposes of serving as sheriff conveners of the Tribunal.

##### *The President*

- 3 (1) The Scottish Ministers shall appoint a person to be known as the President of the Mental Health Tribunal for Scotland (the “President”).
- (2) The President—

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- (a) shall preside over the discharge of the Tribunal’s functions; and
  - (b) may serve as a convener of the Tribunal.
- (3) The Scottish Ministers may not appoint a person to be the President unless that person has such—
- (a) qualifications;
  - (b) training; and
  - (c) experience,
- as may be prescribed by regulations.
- (4) The following provisions of this schedule apply (with the necessary modifications) to the President as they apply to a member of the Tribunal—
- (a) paragraph 1(2);
  - (b) paragraph 4;
  - (c) paragraph 5; and
  - (d) paragraph 6.
- (5) The functions of the President may, if the President is absent or otherwise unable to act, be discharged by one of the members of the panel mentioned in paragraph 1(1) (a) above appointed for that purpose by the Scottish Ministers.
- (6) Regulations may make provision as to the delegation by the President of any of the President’s functions to any of the members of the Tribunal or its staff.
- (7) Regulations made under sub-paragraph (6) above may include provision for different functions to be delegated to different persons for different areas.

*Terms of office etc.*

- 4 (1) Subject to this paragraph and paragraph 5 below, each member of the Tribunal shall hold office in accordance with the terms of such member’s instrument of appointment.
- (2) An appointment as a member of the Tribunal shall, subject to sub-paragraphs (3) and (4) below, last for 5 years.
- (3) A member of the Tribunal—
- (a) may at any time resign office by notice to the Scottish Ministers;
  - (b) shall vacate office on the day on which such member attains the age of 70; and
  - (c) shall vacate office on becoming disqualified from being a member of the Tribunal by virtue of paragraph 1(2) above.
- (4) A member of the Tribunal’s appointment shall come to an end upon the member’s being removed from office under paragraph 5(1) below.
- (5) A member of the Tribunal whose appointment comes to an end by operation of sub-paragraph (2) above may be reappointed and, except in the circumstances set out in sub-paragraph (6) below, shall be reappointed.
- (6) The circumstances referred to in sub-paragraph (5) above are that—
- (a) the member of the Tribunal has declined that reappointment;
  - (b) the member of the Tribunal is aged 69 or over;

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- (c) the President has made a recommendation to the Scottish Ministers against the reappointment;
  - (d) there has, since the member of the Tribunal was last appointed, been a reduction in the number of members of the panel to which the member belongs required by the Tribunal to discharge its functions;
  - (e) since the member of the Tribunal was last appointed, the member has, without reasonable excuse, failed to comply with the terms of the member's appointment; or
  - (f) the member of the Tribunal does not have such qualifications, training, skills or experience as are for the time being prescribed under paragraph 1(1) above for appointment to the panel to which the member of the Tribunal belongs.
- 5 (1) A member of the Tribunal may be removed from office only by order of the disciplinary committee constituted under sub-paragraph (3) below.
- (2) The disciplinary committee may order the removal from office of a member of the Tribunal only if, after investigation carried out at the request of the Scottish Ministers, it finds that the member is unfit for office by reason of inability, neglect of duty or misbehaviour.
- (3) The disciplinary committee shall consist of—
- (a) a Senator of the College of Justice or a sheriff principal (who shall preside);
  - (b) a person who is a solicitor or an advocate of at least ten years' standing; and
  - (c) one other person,
- all appointed by the Lord President of the Court of Session.
- (4) Regulations—
- (a) may make provision—
    - (i) enabling the disciplinary committee, at any time during an investigation, to suspend a member of the Tribunal from office; and
    - (ii) as to the effect and duration of such suspension; and
  - (b) shall make such further provision as respects the disciplinary committee (including in particular provision for the procedure of the committee) as the Scottish Ministers consider necessary or expedient.

*Remuneration and pensions etc.*

- 6 (1) The Scottish Ministers may pay, or make provision for paying, to, or in respect of, each member of the Tribunal such remuneration, expenses, pensions, allowances and gratuities (including by way of compensation for loss of office) as the Scottish Ministers may determine.
- (2) Sub-paragraph (1) above, so far as relating to pensions, allowances and gratuities, shall not have effect in relation to persons to whom Part I of the Judicial Pensions and Retirement Act 1993 (c. 8) applies, except to the extent provided by virtue of that Act.