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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 519**

**The Mental Health Tribunal for Scotland  
(Practice and Procedure) (No. 2) Rules 2005**

**PART VII**

**GENERAL RULES**

**Scope of this Part**

**41.**—(1) This Part applies generally to cases before the Tribunal.

(2) The cases referred to in paragraph (1) include an application, reference, appeal or review before the Tribunal, and to any case referred to in Part VI, as the Tribunal may determine.

**Disqualification**

**42.**—(1) A person shall be disqualified from serving as a member of a tribunal in any case if that person—

- (a) is employed by or contracted to provide services in or to the hospital or independent health care service in which the patient is or may be detained;
- (b) is directly involved in providing medical treatment, community care services, relevant services or any other treatment, care or service to that patient; or
- (c) has a personal or professional connection with the patient.

[<sup>F1</sup>(2) For the purposes of paragraph (1)(a), unless a person works wholly or mainly in a hospital or independent health care service, that person shall not be regarded as being employed by or contracted to provide services in or to that hospital or independent health care service.]

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**Textual Amendments**

**F1** Rule 42(2) inserted (20.12.2008) by [The Mental Health Tribunal for Scotland \(Practice and Procedure\) \(No. 2\) Amendment Rules 2008 \(S.S.I. 2008/396\)](#), rules 1, **2(2)**

**Interim or preliminary matters**

**43.**—(1) The Tribunal may, either on the written request of a relevant person or on its own initiative, consider and determine any interim or preliminary matter in relation to the case including any matter for which specific provision is made in this Part.

(2) Any matter referred to in paragraph (1) may be considered by the Convener alone or with such other members as the Tribunal may direct

(3) Before determining such a matter, the Tribunal or the Convener, as the case may be, may—

- (a) send notice to any of the relevant persons inviting them to make written representations within such period as may be specified; or

- (b) summon any of the relevant persons to appear before the Tribunal or Convener for a preliminary hearing and may give any necessary directions relating to their appearance.

**Misconceived case**

44.—(1) A case before the Tribunal is misconceived if it is—

- (a) outwith the jurisdiction of the Tribunal;
- (b) made otherwise than in accordance with these Rules and has no reasonable prospect of success; or
- (c) frivolous or vexatious.

(2) Where a case appears to the Clerk to be misconceived, the Clerk shall refer the case to a Convener.

(3) The Convener may decide whether the case is misconceived either alone or with such other members as the Tribunal may direct.

(4) Before dismissing a case as misconceived, the Convener may—

- (a) send notice of the proposed dismissal to the relevant persons inviting them to make written representations within 28 days or such other period as may be specified by the Convener;
- (b) afford the relevant persons an opportunity to be heard.

(5) The Convener may where appropriate, on dismissing a misconceived application refer the matter to the Commission.

(6) Rule 72 shall apply to a decision made under this rule.

**Lodging of documents etc.**

45.—(1) Except as otherwise provided in these Rules or as specified by the Tribunal in a particular case, a relevant person shall send to the Tribunal seven days prior to any hearing—

- (a) a list of documents and the documents that the relevant person wishes to lead as evidence;
- (b) a list of witnesses whom the relevant person wishes to call; and
- (c) any written representations the relevant person wishes to make.

(2) Where a relevant person seeks to rely upon documents not produced in accordance with paragraph (1), the Tribunal may allow the documents to be lodged late where good reason is given.

(3) In determining whether to allow documents to be lodged late, the Tribunal shall have regard to whether to do so is fair in all the circumstances.

**[<sup>F2</sup>Distribution of documents**

46.—(1) Except as otherwise provided for in these Rules, the Clerk shall as soon as reasonably practicable send a copy of any document received in relation to the proceedings to the parties.

(2) At the request of any relevant person, or on its own initiative, the Tribunal or a Convener may determine whether a document should also be sent to any other person.]

**Textual Amendments**

**F2** Rules 46, 46A, 47 substituted for rules 46, 47 (20.12.2008) by [The Mental Health Tribunal for Scotland \(Practice and Procedure\) \(No. 2\) Amendment Rules 2008 \(S.S.I. 2008/396\)](#), rules 1, **2(3)**

## [<sup>F2</sup>Requests to the Tribunal for non-disclosure of documents

**46A.**—(1) A request for non-disclosure of any document or part of it in connection with proceedings before the Tribunal shall be made in writing by the person sending the document when that document is sent to the Tribunal, indicating the words and passages for which non disclosure is claimed and giving reasons in each instance.

(2) If so directed by the Convener or the Tribunal, the person making the request under paragraph (1) shall, where practicable, supply a disclosable version of the relevant document.

(3) On receipt of a request under paragraph (1), the Convener or the Tribunal shall determine whether the request shall be intimated to any person and the Clerk shall intimate the request to such a person inviting that person—

- (a) to make written representations within such period as may be specified; or
- (b) to make representations at a hearing on such date as specified in the notice.

(4) On considering the request and accompanying reasons, and after taking into account any representations received in response to any intimation of that request under paragraph (3), the Convener or Tribunal may—

- (a) where the Convener or Tribunal is satisfied that all or any part of the document should not be disclosed, direct that the document or any part of the document should not be disclosed;
- (b) where a disclosable version has been provided under paragraph (2), direct that the version will be disclosed in place of the relevant document; or
- (c) reject the request.

(5) The Tribunal shall notify the person who made the request under paragraph (1) and any person to whom the request was intimated under paragraph (3) and who made representations that such a decision has been made and the reasons for that decision.]

### Textual Amendments

**F2** Rules 46, 46A, 47 substituted for rules 46, 47 (20.12.2008) by [The Mental Health Tribunal for Scotland \(Practice and Procedure\) \(No. 2\) Amendment Rules 2008 \(S.S.I. 2008/396\)](#), rules 1, **2(3)**

## [<sup>F2</sup>Withholding documents or reports from disclosure at initiative of the Tribunal in exceptional circumstances

**47.**—(1) This rule applies to documents or reports received by the Tribunal where the Convener or the Tribunal is concerned that disclosure of all or any part of the contents of a document or report—

- (a) may cause serious harm to the patient or any other person such that it would be wrong to disclose it to the patient or another person; but
- (b) that in all the circumstances it would nevertheless not be unfair if the document or report or that part of it is considered by the Tribunal.

(2) The Convener or the Tribunal may appoint a person having appropriate skills or experience to—

- (a) assess whether disclosure of the document or report to a patient or another person may cause serious harm; and
- (b) report to the Convener or the Tribunal, as the case may be, on the matter.

(3) The Tribunal shall pay to an expert appointed under paragraph (2) such an amount in respect of necessary expenses incurred in preparing and producing any report, as the President shall direct.

(4) If the Convener or the Tribunal is satisfied, taking into account the report of any expert appointed under paragraph (2), as to the matters specified in paragraph (1), the Convener or the Tribunal, as the case may be, shall determine whether the document, report, or any part of it, is not to be disclosed and may direct that—

- (a) the document or report may be considered by the Tribunal; and
- (b) all or any part of its contents must not be disclosed to such persons as specified by the Convener or the Tribunal.

(5) The Tribunal shall notify the representative of the patient or other person to whom the document, report or any part of it is not to be disclosed, that such a decision has been made, and the reasons for that decision.

(6) Where a decision is made under this rule not to disclose a document, report or any part of it to a patient and the patient does not have a representative to represent their interests, a curator *ad litem* may be appointed under rule 55(1).

(7) After rule 72(5) insert—

“(5A) Paragraph 5B applies to decisions made by the Tribunal in relation to applications or references under sections 50(1), 63(1), 92, 95, 98(2), 99(1), 100(2), 120(2), 149, 158, 161, 162(2), 163(1), 164(2), 185(1), 187(2), 189(2), 191, 192(2), 210(3), 211(2), 213(2), 214(2), 255(4), (6) and (7), 256(1), 264(2), 267(2), 268(2), 271(2) and 291(2) of the Act but does not apply in relation to any such applications which are not granted by the Tribunal.

(5B) Where a copy of a decision is sent to the Commission under paragraph (5) the Clerk shall at the same time send to the Commission a copy of:—

- (a) the application or reference (as the case may be); and
- (b) in the case of an application, any mental health report that is required under the Act to accompany that application.”

#### **Textual Amendments**

**F2** Rules 46, 46A, 47 substituted for rules 46, 47 (20.12.2008) by [The Mental Health Tribunal for Scotland \(Practice and Procedure\) \(No. 2\) Amendment Rules 2008 \(S.S.I. 2008/396\)](#), rules 1, **2(3)**

#### **Additional parties and relevant persons**

**48.—(1)** Any person who has an interest in the case may send to the Tribunal a written request for leave to enter the proceedings stating—

- (a) the person's name and address;
- (b) the nature of the person's interest and the person's reasons for the request.

(2) The Tribunal may refer the request to a Convener to decide or decide the matter itself at a hearing.

(3) On receipt of a request under paragraph (1), the Clerk shall send a copy to the parties inviting them to make written representations within such period as may be specified by the Convener.

(4) At the request of any party in writing within that period, the Tribunal may afford the parties an opportunity to be heard either by the Convener alone or with such other members as the Tribunal may direct.

(5) The Tribunal or the Convener, as the case may be, shall consider any representations made, and if satisfied that the person has an interest in the case, and that it is reasonable to do so, may grant the request and direct that the person shall be treated as a party or as a relevant person and the request treated as their notice of response.

(6) On granting a request under paragraph (5), the Tribunal or the Convener, as the case may be, shall consider whether any decision already taken in the case requires to be reconsidered in the light of the person's notice of response.

### **Directions**

**49.**—(1) Except as otherwise provide for in these Rules, the Tribunal may at any time, either on the request of a relevant person or on its own initiative, give such directions as the Tribunal considers necessary or desirable to further the overriding objective in the conduct of a case and may in particular—

- (a) direct a relevant person to provide any further particulars or to produce any documents which may reasonably be required;
- (b) direct that a relevant person shall supply a list of documents and a list of witnesses whom that relevant person wishes to call to give evidence at the hearing;
- (c) give directions as to the dates by which any documents or other evidence on which any relevant person wishes to rely shall be sent to the Tribunal;
- (d) give a direction as to the date by which a relevant person shall send any written representations on the case to the Tribunal;
- (e) direct that the parties or the relevant persons should provide a statement of agreed facts;
- (f) give directions restricting the reporting, recording, photography or filming of any hearing;
- (g) give directions as to—
  - (i) any issues on which the Tribunal requires evidence;
  - (ii) the nature of the evidence which the Tribunal requires to decide those issues;
  - (iii) the way in which the evidence is to be led before the Tribunal; and
  - (iv) the exclusion of any evidence which is irrelevant, unnecessary or improperly obtained.

(2) Where a request is made by a relevant person for a direction under paragraph (1), it shall be made in writing specifying the direction sought and the basis for the request.

(3) On receipt of such a request, the Clerk shall intimate the request to the relevant persons inviting them to make written representations within 14 days or such other period as the Tribunal may specify.

(4) The requirement in the foregoing paragraph to intimate a request to the relevant persons does not require intimation to the person who made the request.

(5) Where a party objects to the request, the Tribunal shall consider the objection and, if the Tribunal considers it necessary in order to decide the request, may afford the relevant persons an opportunity to be heard either by the Convener alone or with such other members as the Tribunal may direct.

(6) The Tribunal shall, in deciding whether to make a direction, consider any representations made.

(7) A direction under this rule may, if appropriate, include a statement of the possible consequences of failure to comply mentioned in rule 51.

(8) A direction made without prior intimation to a relevant person whom it affects shall as soon as reasonably practicable be notified in writing to that relevant person by the Tribunal.

### **Varying or setting aside of directions**

**50.**—(1) Where a direction that affects a person is given by the Tribunal without prior intimation to that person, that person may request that the Tribunal to vary it or set it aside, but the Tribunal must not do so without first intimating the request to the relevant persons and considering any representations made by them.

(2) The requirement in paragraph (1) to intimate a request to the relevant persons does not require intimation to the person who made the request.

### **Failure to comply with directions**

**51.**—(1) If any direction given to a relevant person under rule 49 is not complied with by that relevant person, the Tribunal may, before or at the hearing, direct that relevant person concerned take no further part in proceedings.

(2) The Tribunal shall not exercise its powers under paragraph (1) unless it has given the relevant person concerned an opportunity to show cause why the Tribunal should not proceed to give such a direction.

### **Other case management powers**

**52.**—(1) Subject to the provisions of the Act and these Rules, the Tribunal may regulate its own procedure.

(2) The Tribunal may in any proceedings—

- (a) on the request of any relevant person or on its own initiative, extend the time appointed by these Rules for doing any act even if the time appointed has expired if—
  - (i) it would not be reasonable to expect the relevant person concerned to comply or, as the case may be, to have complied with the time limit; or
  - (ii) not to extend the time limit would be contrary to the interests of the patient;
- (b) require a relevant person (other than the patient) or a relevant person's representative or the patient's named person to attend a hearing; and
- (c) hold a hearing and receive evidence by telephone, through video link or by using any other method of communication if the Tribunal is satisfied that this would be fair in all the circumstances.

(3) Except where a rule or other enactment provides otherwise, the Tribunal may exercise its powers on the request of any relevant person or on its own initiative.

(4) Where the Tribunal proposes to exercise a power on its own initiative—

- (a) it may give any person likely to be affected an opportunity to make representations;
- (b) where it does so it must specify the period within which and the manner in which any representations must be made; and
- (c) it shall take any representations into account, when deciding whether to proceed to do so.

(5) Where there are two or more sets of proceedings pending before the Tribunal which relate to the patient, the Tribunal may, on the request of a relevant person or on its own initiative—

- (a) suspend the whole or part of any proceedings or decision either generally or until a specified date or event;
- (b) hear and determine the proceedings concurrently, and give any directions necessary to enable it to do so.

(6) The Tribunal may, on the request of a relevant person or on its own initiative, on cause shown, suspend the whole or part of any proceedings or decision either generally or until a specified date.

### **Assistance to persons with communication difficulties**

**53.**—(1) This rule applies where—

- (a) a person taking part in proceedings before the Tribunal has difficulty in communicating or generally communicates in a language other than English; and
- (b) assistance is not required to be given under section 261 of the Act.

(2) Where a person requires assistance to enable that person to take part in proceedings before the Tribunal, that person shall at the earliest opportunity notify the Tribunal of that requirement.

(3) Where a relevant person becomes aware that a person requires assistance to enable that person to take part in proceedings before the Tribunal, the relevant person shall at the earliest opportunity notify the Tribunal of that requirement.

(4) Where this rule applies, the Tribunal shall take all reasonable steps to secure that arrangements appropriate to the person's needs are made.

### **Representation**

**54.**—(1) A relevant person who initiates proceedings before the Tribunal or who wishes to take part in such proceedings shall as soon as practicable give notice to the Tribunal of the name and address of any representative appointed by the relevant person and if none has as yet been appointed, whether the relevant person intends to appoint a representative or to conduct the case without such assistance.

(2) If at any time a relevant person wishes to be represented by a person other than a representative whose details have been notified to the Tribunal, the relevant person shall notify the Tribunal of the name and address of that person.

(3) At any hearing a relevant person may conduct the relevant person's own case (with assistance from any person if the relevant person wishes) or may be represented by any person whether or not legally qualified.

(4) If the Tribunal is satisfied that there is a good reason, it may refuse to permit a particular person to assist or represent a relevant person at a hearing.

(5) References in these Rules (however expressed) to the sending of any notice or other documents to a relevant person shall be construed as references to the sending of any notice or other documents to the relevant person's representative.

### **Curator *ad litem***

**55.**—(1) Where the circumstances in paragraph (2) apply, a curator *ad litem* may be appointed by the Tribunal or a Convener.

(2) Those circumstances are—

- (a) that the patient does not have the capacity to instruct a solicitor to represent the patient's interests in proceedings before the Tribunal;

[<sup>F3</sup>(aa) an application or appeal has been initiated by virtue of a provision giving a listed initiator authority to act;]

- (b) that where the Tribunal or a Convener has made a decision not to disclose a document or report or part of it to the patient under rule 47, and the patient does not have a representative to represent their interests; or

- (c) that the patient has been excluded from any hearing or part of it under rule 68 or 69 and the patient does not have a representative to represent their interests.

<sup>F4</sup>(3) .....

<sup>F4</sup>(4) .....

(5) The Tribunal shall provide all necessary information to a curator *ad litem* appointed to enable the curator *ad litem* to represent the patient's interests in proceedings before the Tribunal.

**Textual Amendments**

**F3** Rule 55(2)(aa) inserted (30.6.2017) by The Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Amendment Rules 2017 (S.S.I. 2017/172), rules 1, **6(a)**

**F4** Rule 55(3)(4) omitted (30.6.2017) by virtue of The Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Amendment Rules 2017 (S.S.I. 2017/172), rules 1, **6(b)**

**Notices**

**56.**—(1) Where these Rules require notice of proceedings before the Tribunal to be served upon a person who initiated those proceedings, such a notice shall not require to be served, but in such a case a notice of hearing shall be sent intimating the date, time and place of the hearing and giving such directions as the Tribunal shall consider appropriate in the circumstances.

(2) Where a person has notified the Tribunal in writing that that person does not wish to receive any notices or documents from the Tribunal in relation to proceedings before it specified in the notification, these Rules do not require any such notices or documents to be sent to that person.

(3) Except where the relevant persons have already been notified of the date of the hearing under notice provided under Parts II to V of these Rules, the Clerk shall send to each relevant person, not less than 7 days before the date fixed (or such shorter period as the Tribunal or the Convener may decide is appropriate) notice of hearing intimating the date, time and place of the hearing and giving such directions as the Tribunal shall consider appropriate in the circumstances.

(4) The Clerk shall include with a notice of hearing, information and guidance in a form approved by the President, as to—

- (a) the right of a relevant person to make representations in writing;
- (b) the attendance at the hearing of the relevant persons and witnesses, including a statement explaining the consequences of non attendance;
- (c) the sending of documents;
- (d) the right of representation or assistance by another person;
- (e) the need to notify the Clerk if a relevant person or a witness requires assistance as referred to in rule 53;
- (f) the right of the parties to receive a copy of a decision of the Tribunal;
- (g) the availability of general procedural advice in relation to proceedings from the Office of the Mental Health Tribunal for Scotland; and
- (h) the availability of other sources of advice.

**Alteration of hearing**

**57.**—(1) The Tribunal may, on receipt of a written request from a relevant person, or on its own initiative, alter the date, time or place of any hearing and shall give the relevant persons as much notice as is reasonably practicable of any such alteration.

(2) The Tribunal shall not, without good cause, alter any date under paragraph (1) to a date before the date originally fixed.



### **Power to decide case without a hearing**

[<sup>F5</sup>58.—(1) The Tribunal may decide the case without a hearing where the following conditions are met—

- (a) the Tribunal considers that, having regard to the nature of the issues raised in the case, sufficient evidence is available to enable it to come to a decision without a hearing;
- (b) to do so will not, in the view of the Tribunal, be contrary to the interests of the patient;
- (c) the Tribunal has, as soon as reasonably practicable, given notice to those persons who require to be afforded the opportunity of making representations or of leading or producing evidence of its proposal to dispense with oral representations and oral evidence;
- (d) the patient has not applied for oral representations or oral evidence to be heard;
- (e) no other person notified under sub-paragraph (c) has, in the opinion of the Tribunal, shown cause why oral representations or oral evidence should be heard; and
- (f) no application from a person who appears to the Tribunal to have an interest in the proceedings has, in the opinion of the Tribunal, shown cause why oral representations or oral evidence should be heard.

(2) The notice referred to in paragraph (1)(c) shall state—

- (a) that the Tribunal proposes to invoke this rule;
- (b) that an application from the patient for oral representations or oral evidence to be heard will be granted;
- (c) that the Tribunal will consider applications for oral representations or oral evidence to be heard from those persons who require to be afforded the opportunity of making representations or of leading or producing evidence;
- (d) the latest date by which such applications must be made to the Tribunal; and
- (e) that the patient is entitled to have access to independent advocacy as provided under section 259 of the Act.

(3) Applications—

- (a) from the patient must be in writing; and
- (b) from other persons must be in writing and give reasons why oral representations or oral evidence should be heard.

(4) The Tribunal shall, as soon as reasonably practicable, notify those persons who require to be afforded the opportunity of making representations or of leading or producing evidence and any other person who has made an application under this rule as to whether there is to be a hearing or not.]

#### **Textual Amendments**

**F5** Rule 58 substituted (1.6.2012) by [The Mental Health Tribunal for Scotland \(Practice and Procedure\) \(No. 2\) Amendment Rules 2012 \(S.S.I. 2012/132\)](#), rules 1, 2

### *Evidence*

#### **Production of documents etc.**

59.—(1) Subject to the provisions of the Act and paragraph (2) of this rule, the Tribunal may on the request of any relevant person or on its own initiative send a citation to any person requiring that person to attend and produce any document in the custody, or under the control of, such person which the Tribunal considers it necessary to examine.

- (2) The citation must explain that—
- (a) it is an offence under paragraph 12(3) of schedule 2 to the Act for a person who is cited to attend the Tribunal—
    - (i) to refuse or fail to attend; and
    - (ii) to alter, conceal or destroy or refuse to produce, a document which such person is required to produce for the purposes of the proceedings before the Tribunal;
  - (b) a person need not produce any document if, were it a document that might be produced in any court in Scotland, the person having that document could not be compelled to produce it in such proceedings;
  - (c) it is a defence under paragraph 12(5) of schedule 2 to the Act for a person charged with contravening paragraph 12(3) to show that the person has a reasonable excuse for such contravention.
- (3) No person shall be required to attend and produce a document in compliance with a citation unless the necessary expenses of that person's attendance are paid or tendered to them by the relevant person who requested their attendance or by the Tribunal, as the President shall direct.
- (4) A person receiving a citation under this rule may apply in writing to the Tribunal for the citation to be varied or set aside and the Convener may vary or set aside the citation as they see fit.
- (5) The Clerk shall send a copy of the decision under paragraph (4) to the person making the application under that paragraph and the relevant persons.
- (6) It shall be a condition of the production of any document under this rule that a relevant person must use the document provided only for the purposes of the proceedings.
- (7) In giving effect to this rule, the Tribunal shall take into account—
- (a) the need to protect any matter that relates to intimate personal or financial circumstances or was communicated or obtained in confidence; and
  - (b) any request for non disclosure made under rule <sup>F6</sup>rule 46A(1)].

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#### Textual Amendments

- F6** Words in rule 59(7)(b) substituted (20.12.2008) by [The Mental Health Tribunal for Scotland \(Practice and Procedure\) \(No. 2\) Amendment Rules 2008 \(S.S.I. 2008/396\)](#), rules 1, **2(4)**

#### Evidence of witnesses – general rule

**60.** Evidence before the Tribunal may be given orally or by signed statement but the Tribunal may at any stage of the proceedings require the personal attendance of any witness to give oral evidence.

#### Attendance of witnesses

**61.—(1)** Subject to the provisions of the Act, the Tribunal may on the written request of any relevant person or on its own initiative send a citation to a person requiring that that person attends as a witness.

(2) A request by a relevant person under paragraph (1) shall give the name and address of each person in respect of whom the request is made.

- (3) The citation must explain that—
- (a) it is an offence under paragraph 12 of schedule 2 to the Act to refuse or fail, without reasonable excuse, to comply with it;

- (b) a person need not give evidence as a witness if the person could not be compelled to give that evidence in proceedings in any court in Scotland.
- (4) No person shall be required to attend as a witness in compliance with a citation unless—
  - (a) that person has been given 5 working days' notice of the hearing or such other period of notice, which must be at least 48 hours' notice, as shall be specified in the citation; and
  - (b) the necessary expenses of that person's attendance are paid or tendered to them by the relevant person who requested their attendance or by the Tribunal, as the President shall direct.

### **Experts' reports**

**62.**—(1) The Tribunal may, if any issue arises in relation to any proceedings on which, in the opinion of the Tribunal, it would be desirable for the Tribunal to have the assistance of an expert, appoint a person having appropriate qualifications to inquire into and report on any matter.

(2) Subject to rule 47, the Tribunal shall supply the parties with a copy of any written report received under paragraph (1) in advance of the hearing.

(3) The Tribunal may direct that the expert shall attend the hearing and give oral evidence.

(4) The Tribunal shall pay to an expert appointed under this rule such an amount in respect of necessary expenses incurred in preparing and producing any written report, and for attendance at the hearing as the President shall direct.

(5) Subject to the following paragraphs, where any relevant person obtains in relation to an issue before the Tribunal a written report from a person having expertise in any subject relevant to that issue, that relevant person shall send a copy of the report to the Tribunal 7 days prior to the next hearing of the Tribunal or at such period prior to the next hearing of the Tribunal as specified by the Tribunal in a particular case.

(6) A relevant person may send a request to the Tribunal for permission not to send a report to the Tribunal under paragraph (5), giving reasons for the request and, pending consideration of that request, the copy report need not be produced

(7) The Tribunal may afford the relevant person making the request an opportunity to be heard either by the Convener alone or with such other members as the Tribunal may direct.

(8) The Tribunal shall, in deciding the request, consider any representations made, and may either—

- (a) give permission to the relevant person not to send part or all of the report in question; or
- (b) order that part or all of the report be sent to the Tribunal within such time as the Tribunal may specify.

### *The hearing*

### **Procedure**

**63.**—(1) At the beginning of any hearing the Convener shall explain the manner and order of proceedings and the procedure which the Tribunal proposes to adopt.

- (2) The Tribunal may, in accordance with the overriding objective, conduct the hearing—
  - (a) as informally as the circumstances of the case permit; and
  - (b) in the manner the Tribunal considers—
    - (i) to be just; and

(ii) most suitable to the clarification and determination of the matters before the Tribunal.

(3) The relevant persons shall be entitled to make representations and to lead or produce evidence.

(4) At any hearing the Tribunal may, if satisfied that it is just and reasonable to do so, permit a relevant person to rely on matters not stated in the application, reference, appeal, review, written representations or notice of response and to lead or produce any evidence not previously notified to the other relevant persons.

(5) Having considered the circumstances of the relevant persons and whether (and to what extent) they are represented, the Convener—

- (a) may, in order to assist resolution of any disputed fact, put questions to the relevant persons and to witnesses or may allow another member of the Tribunal to put such questions; and
- (b) shall, to the extent the Convener considers it necessary for the just conduct of the hearing, explain any legal terms or expressions which are used.

(6) The Tribunal may require any witness to give evidence on oath or affirmation.

(7) The Tribunal may exclude from the hearing any person who is to appear as a witness in the case until such time as they give evidence if it considers it is fair in all the circumstances to do so.

#### **Absence of a member of the Tribunal**

**64.**—(1) Except as provided for otherwise in these Rules, a tribunal shall not decide any question unless all members are present and, if any member is absent, the case shall be adjourned or referred to another tribunal.

(2) If a member of a tribunal ceases to be a member of the Tribunal or is otherwise unable to act before that tribunal has commenced hearing the case, the President may allocate the hearing of that case to a differently constituted tribunal.

(3) If, after the commencement of any hearing, a member other than the Convener is absent, the case may, with the consent of the parties, be heard by the other two members and, in that event, the tribunal shall be deemed to be properly constituted.

#### **Adjournment of the hearing**

**65.**—(1) The Tribunal may on the request of a relevant person or on its own initiative, adjourn a hearing in order that further information or evidence may be obtained or for such other purpose as it sees fit.

(2) Where a relevant person requests an adjournment under paragraph (1), the Tribunal shall consider any representations made by any other relevant person before deciding whether or not the hearing will be adjourned.

(3) When a hearing is adjourned under paragraph (1), the Tribunal may give directions under rule 49 regarding the future conduct of the case as it considers appropriate and may, in particular, require any relevant person to intimate to the Tribunal by a specified date any matter to be relied upon by that person at the further hearing.

(4) The Tribunal shall notify the relevant persons of the date for the resumed hearing except that if the date, time and place of the resumed hearing are announced before the adjournment, no further notice shall be required.

#### **Hearings in public or private**

**66.**—(1) Subject to the provisions of this rule, hearings shall be held in private.

(2) Where a patient applies in writing for a hearing to be held in public, the Tribunal may make an order that a hearing be held in public.

(3) The Tribunal may refuse to make an order under paragraph (2) where any of the requirements of paragraph (4) is met.

(4) The requirements are that a public hearing—

- (a) would fail to safeguard the welfare of the patient or any other person;
- (b) would not, in all the circumstances, allow the fair hearing of the case; or
- (c) would prejudice the interests of justice.

(5) The Tribunal shall refuse to make an order under paragraph (2) only to the extent necessary to protect the interest which is being protected by the refusal and only in relation to those parts of a hearing in respect of which any of the requirements of paragraph (4) is satisfied.

(6) The following persons shall be entitled to attend a hearing, even although it may be held in private—

- (a) the President;
- (b) any member of the Tribunal, or a member of staff of the Tribunal, with the agreement of the Convener;
- <sup>F7</sup>(c) .....
- (d) an interpreter or other person giving other necessary assistance to a person entitled to attend the hearing.

(7) The Tribunal may exclude from any hearing or any part of a hearing, any person, other than a representative of the patient or a relevant person, where it is considering a document or report withheld from disclosure in accordance with rule 47, and in any case where the Tribunal decides to so exclude such a person, it shall inform the person excluded of its reasons and record those reasons in writing.

**Textual Amendments**

**F7** Rule 66(6)(c) omitted (19.9.2013) by virtue of [The Public Bodies \(Abolition of Administrative Justice and Tribunals Council\) Order 2013 \(S.I. 2013/2042\)](#), **Sch. para. 62**

**Publicity**

**67.—**(1) Where the Tribunal has made an order under rule 66, the Tribunal may on the request of a relevant person or on its own initiative make an order that any publicity to be given to the hearing should be limited, where the President or the Convener considers it appropriate bearing in mind—

- (a) the need to safeguard the welfare of a patient or any other person;
- (b) the need to protect the private life of any person;
- (c) any representations on the matter which a relevant person has provided in writing; and
- (d) the effect of any direction under rule 49.

(2) An order under paragraph (1) shall limit publicity only to the extent necessary to protect the interest which is being protected by the order.

(3) An order under paragraph (1) may allow publicity that does not identify the parties.

### **Excluding persons from hearings in exceptional circumstances**

**68.**—(1) Where the Convener or the Tribunal is satisfied that attendance of any person at the hearing or part of it may cause serious harm to the patient or any other person, the Convener or the Tribunal, as the case may be, may make a direction that such a person shall be excluded from the hearing or any part or it.

(2) The Convener or the Tribunal, as the case may be, may appoint a person having appropriate skills or experience to—

- (a) assess whether such attendance by the patient or another person may cause serious harm; and
- (b) report on the matter.

(3) The Tribunal shall pay to an expert appointed under paragraph (2) such an amount in respect of necessary expenses incurred in preparing and producing any report, as the President shall direct.

(4) Where the Convener or the Tribunal is considering making a direction under this rule, the Clerk shall invite the relevant persons to make written representations both as to the necessity of the direction and as to the availability of alternative measures, within such period as may be specified by the Convener.

(5) At the request of any relevant person in writing within that period, the Tribunal may afford the relevant persons an opportunity to be heard either by the Convener alone or with such other members as the Tribunal may direct.

(6) If the patient is the person who may be the subject of a direction under this rule, and does not have legal representation, the Tribunal shall invite the patient to seek an adjournment of the Tribunal's consideration of the matter, in order to obtain legal representation and, if the patient does seek such an adjournment, shall grant it.

(7) A direction under paragraph (1) shall exclude the patient or other person only to the extent strictly necessary to prevent the harm apprehended by attendance and may be made only after taking into account any report under paragraph (2) and any representations made under paragraph (4) or (5).

(8) Where such a direction excluding the patient is made and the patient does not have a representative to represent their interests, a curator *ad litem* may be appointed under rule 55(1).

### **Exclusion of persons disrupting hearing**

**69.**—(1) Without prejudice to any other powers the Tribunal may have, the Tribunal may exclude from any hearing, or part of it—

- (a) any person (including a relevant person or the relevant person's representative) whose conduct has disrupted, or is likely, in the opinion of the Tribunal, to disrupt the hearing;
- (b) any person whose presence is likely, in the opinion of the Tribunal, to make it difficult for any relevant person to make representations or present evidence necessary for the proper conduct of the hearing; or
- (c) any person whose conduct has otherwise interfered with the administration of justice or is likely to do so.

(2) In deciding whether to exercise the power conferred by paragraph (1) the Tribunal shall have regard to—

- (a) the interests of the relevant persons; and
- (b) in the case of the exclusion of a relevant person or relevant person's representative, whether the relevant person will be adequately represented.

(3) Before the Tribunal decides to exclude a relevant person, the Tribunal shall—

- (a) allow the relevant person's representative sufficient opportunity to consult the relevant person;
  - (b) afford the relevant person concerned and any other relevant person as it thinks fit, an opportunity to be heard; and
  - (c) consider the availability of alternative measures which may enable the relevant person concerned to continue to participate in proceedings.
- (4) Where the relevant person concerned is the patient, and that patient does not have a representative present to represent the patient's interests, the Tribunal may, before making a decision under paragraph (1), adjourn the hearing to allow—
- (a) the patient to obtain representation; or
  - (b) a curator *ad litem* to be appointed under rule 55(1).
- (5) The Tribunal may make such alternative arrangements as may be necessary to enable a person excluded to continue to participate in the proceedings, including allowing the proceedings to continue through video-link or other method of communication.
- (6) Where the Tribunal decides to exclude a patient under this rule and the patient does not have a representative to represent their interests, a curator *ad litem* may be appointed under rule 55(1).

#### **Failure of a relevant person to attend**

- 70.**—(1) If a relevant person fails to be present or represented at a hearing, the Tribunal may, if satisfied that the relevant person was duly notified of the hearing and that there is no good reason for such absence, hear and decide the proceedings in that relevant person's absence and may give such directions as the Tribunal thinks fit.
- (2) Before deciding any case in the absence of a relevant person, the Tribunal shall consider any representations in writing submitted by that relevant person in response to the notice of hearing.
- (3) Where the relevant person concerned is a party, the Tribunal shall afford that party an opportunity to be heard either by the Convener alone or with such other members as the Tribunal may direct to explain the absence and to advise whether the party wishes to proceed.

#### **Inability to attend**

- 71.**—(1) If the Convener is satisfied that any relevant person is unable, through illness, age, incapacity or other sufficient cause to attend the hearing, the Convener may make such arrangements as may appear best suited in all the circumstances of the case, for deciding the case fairly, and in particular may arrange—
- (a) for the relevant person to provide a signed statement, or evidence in such form as the Tribunal thinks fit;
  - (b) for taking the evidence of expert or other witnesses on behalf of the relevant person;
  - (c) for enabling the relevant person to make representations on the evidence; and
  - (d) for the case to be decided in the absence of the relevant person.
- (2) Arrangements under paragraph (1) may include arrangements to take evidence and hear representations by video-link.

#### **Decision of the Tribunal**

- 72.**—(1) A decision of the Tribunal may be given at the end of the hearing or reserved.
- (2) The decision shall be signed by the Convener and dated.

(3) The Tribunal shall, as soon as reasonably practicable, send notice of the decision to the parties [<sup>F8</sup>, the patient's mental health officer (if they are not a party to the proceedings), the patient's responsible medical officer (if they are not a party to the proceedings)] and such other relevant person as the Tribunal may direct.

(4) Information in such form as the President may approve, shall be sent with the notice referred to in paragraph (3), explaining any right of appeal against the Tribunal's decision under sections 320 and 322 of the Act, including any time limits which may apply.

(5) Where a decision has been made by the Tribunal, whether at a hearing or otherwise, the Clerk shall, [<sup>F9</sup>within 21 days of the date on which the decision is signed by the Convener], send a copy of the decision to the Commission and where the case was remitted to the Tribunal by a court, to that court.

[<sup>F10</sup>(5A) Paragraph 5B applies to decisions made by the Tribunal in relation to applications or references under sections 50(1), 63(1), 92, 95, 98(2), 99(1), 100(2), 120(2), 149, 158, 161, 162(2), 163(1), 164(2), [<sup>F11</sup>164A(2),] 185(1), 187(2), 189(2), 191, 192(2), 210(3), 211(2), 213(2), 214(2), 255(4), (6) and (7), 256(1), 264(2), 267(2), 268(2), 271(2) and 291(2) of the Act but does not apply in relation to any such applications which are not granted by the Tribunal.

(5B) Where a copy of a decision is sent to the Commission under paragraph (5) the Clerk shall at the same time send to the Commission a copy of:-

- (a) the application or reference (as the case may be); and
- (b) in the case of an application, any mental health report that is required under the Act to accompany that application.]

(6) Other than where a decision is made at the end of the hearing, a decision shall be treated as having been made on the date on which [<sup>F12</sup>a copy of the document mentioned in sub-paragraph (7) is sent to the parties].

(7) The Tribunal shall record the decision in a document which contains a full statement of the facts found by the Tribunal and the reasons for the decision.

(8) Clerical mistakes or errors arising from an accidental slip or omission in the document referred to in paragraph (7), may at any time be corrected by the Convener by certificate in writing.

(9) If a document is corrected by certificate under paragraph (8), or if a decision is altered in any way by order of an appellate court, the Clerk shall send a notice to each of the parties and to the Commission advising of that change.

(10) Where this rule requires a document to be signed by the Convener, but the Convener is unable, by reason of death or incapacity to sign it, the document shall be signed by the other members of the tribunal, whom failing the President, who shall certify that the Convener is unable to sign.

#### Textual Amendments

- F8** Words in rule 72(3) inserted (30.6.2017) by [The Mental Health Tribunal for Scotland \(Practice and Procedure\) \(No. 2\) Amendment Rules 2017 \(S.S.I. 2017/172\)](#), rules 1, **7(a)**
- F9** Words in rule 72(5) substituted (20.12.2008) by [The Mental Health Tribunal for Scotland \(Practice and Procedure\) \(No. 2\) Amendment Rules 2008 \(S.S.I. 2008/396\)](#), rules 1, **2(6)**
- F10** Rule 72(5A)(5B) inserted (20.12.2008) by [The Mental Health Tribunal for Scotland \(Practice and Procedure\) \(No. 2\) Amendment Rules 2008 \(S.S.I. 2008/396\)](#), rules 1, **2(7)**
- F11** Word in rule 72(5A) inserted (30.11.2020) by [The Mental Health Tribunal for Scotland \(Practice and Procedure\) \(No. 2\) Amendment Rules 2020 \(S.S.I. 2020/246\)](#), rules 1, **6**
- F12** Words in rule 72(6) substituted (30.6.2017) by [The Mental Health Tribunal for Scotland \(Practice and Procedure\) \(No. 2\) Amendment Rules 2017 \(S.S.I. 2017/172\)](#), rules 1, **7(b)**



## **Publication**

**73.**—(1) The President must make such arrangements as the President considers appropriate for the publication of Tribunal decisions.

(2) Decisions may be published electronically.

(3) A decision may be published in an edited form, or subject to any deletions, where the Convener considers it appropriate bearing in mind—

(a) the need to safeguard the welfare of a patient or any other person;

(b) the need to protect the private life of any person;

(c) any representations on the matter which any relevant person has provided in writing.

(4) A decision of the Tribunal, shall be published in such a manner as to protect the anonymity of the patient.

## *Miscellaneous*

### **Performance of the Tribunal's functions**

**74.** The President may authorise any member of the staff of the Tribunal to exercise such administrative functions under these Rules as the President shall specify.

### **Relief from failure to comply with the Rules**

**75.**—(1) Where before the Tribunal has decided a case, a relevant person has failed to comply with any provision of these Rules, which is shown to be due to mistake, oversight or other excusable cause, the Tribunal may—

(a) relieve the relevant person from the consequences of that failure; and

(b) give any direction as it thinks fit.

(2) In particular, where it considers that any relevant person may have been prejudiced by such failure, the Tribunal may take any necessary steps including the amendment of any document, the giving of any notice or otherwise, to enable the case to proceed as if the failure to comply with the provision had not occurred.

### **Signature of documents**

**76.**—(1) Any requirement in these Rules for a document to be signed by a person shall be satisfied, in the case of a document which is transmitted by electronic communication in accordance with these Rules, by electronic signature of the person who is required to sign the document.

(2) Any requirement in these Rules for an application or appeal to be signed by an applicant or appellant shall be satisfied if signed by the legal representative of the applicant or appellant.

### **Proof of documents**

**77.** Any document purporting to be a document duly executed or issued by the President, or Convener on behalf of the Tribunal shall, unless the contrary is proved, be deemed to be a document so executed or issued as the case may be.

### **Method of delivering and receipt of notices and documents**

**78.**—(1) Any notice or document required or authorised by these Rules to be sent to the Tribunal, may be sent to or presented at the Office of the Mental Health Tribunal for Scotland, or such other office as may be notified by the Tribunal.

(2) All notices and documents required by these Rules to be sent by the Tribunal or the Clerk or given to any person may—

(a) in the case of a relevant person—

(i) be sent by post or delivered (by courier or otherwise) to the address specified by that relevant person;

(ii) transmitted by fax to a specified fax number, where the relevant person has agreed in writing that the relevant person will accept documents transmitted to that fax number; or

(iii) transmitted by electronic communication to a specified address for such communications where the relevant person has agreed in writing that the relevant person will accept documents transmitted in that manner to that specified address,

(b) in the case of any other person, to the person's last known address or in any manner specified for that purpose by the Tribunal or person to whom the notice or document is directed.

(3) Any notice or document sent to a person in accordance with this rule shall, unless the contrary is proved, be deemed to be received—

(a) where the document is sent by post, on the second day after the day on which it was sent; and

(b) in any other case, on the day on which the document was transmitted or delivered to that person.

(4) A notice or document sent or given to the authorised representative of a relevant person shall be deemed to have been sent or given to that relevant person.

(5) A relevant person may at any time by notice to the Tribunal change the address to which notices and documents are to be sent to the relevant person.

### **Transfer of case**

**79.**—(1) Where a tribunal is satisfied, in relation to a case which it is hearing that that case could be better considered by a tribunal in another geographical area, it may request the President to arrange for such other tribunal to dispose of the case.

(2) Where the functions of the Tribunal are being discharged by more than one tribunal, the President shall determine by which tribunal any case is to be dealt with.

(3) Where this rule applies, the President shall transfer the case from one tribunal to another where necessary.

(4) Where a case has been transferred in terms of this rule, any matters already decided in the case shall not require to be further considered by the tribunal to which the case is transferred.

### **Transitional provision**

**80.**—(1) Where, before the date on which these Rules come into force, notice of an application for an interim compulsory treatment order has been sent under rule 7(3) of the rules revoked by rule 81 (“the old Rules”), but the period specified in accordance with rule 7(3)(f) of the old Rules expires on or after the date on which these rules come into force, then the provisions of rule 7(4) to (6) of the old Rules shall, notwithstanding rule 81, continue to apply in respect of that application.

(2) Where, before the date on which these Rules come into force, written representations have been invited by the Convener under rule 47(4) of the old Rules, but a determination as to whether a document, report or any part of it, is not to be disclosed has not yet been made by the Tribunal or the Convener then the provisions of rule 47 of the old Rules shall, notwithstanding rule 81, continue to apply in respect of the determination of that question.

(3) Where before the date on which these Rules come into force a copy of a written request to alter the date of a hearing has been sent by the Clerk under rule 57(3) of the old Rules, but the Tribunal has not yet made a decision as to whether the date of the hearing will be altered, then the provisions of rule 57(4) of the old Rules shall, notwithstanding rule 81, continue to apply in respect of the decision of the question.

### **Revocation**

**81.** The Mental Health Tribunal for Scotland (Practice and Procedure) Rules 2005<sup>M1</sup> are revoked.

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#### **Marginal Citations**

**M1** S.S.I. 2005/420.

**Changes to legislation:**

There are currently no known outstanding effects for the The Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2005, PART VII.