

**2004 No. 402**

**MENTAL HEALTH**

**The Mental Health Tribunal for Scotland (Disciplinary  
Committee) Regulations 2004**

*Made* - - - - - *15th September 2004*

*Laid before the Scottish Parliament* *17th September 2004*

*Coming into force* - - - *9th October 2004*

The Scottish Ministers, in exercise of the powers conferred by paragraph 5(4) of schedule 2 to the Mental Health (Care and Treatment) (Scotland) Act 2003(a), and of all other powers enabling them in that behalf, hereby make the following Regulations:

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Mental Health Tribunal for Scotland (Disciplinary Committee) Regulations 2004 and shall come into force on 9th October 2004.

(2) In these Regulations—

“the Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003;

“investigation” means an investigation carried out under paragraph 5(2) of schedule 2 to the Act;

“member of the Tribunal” means the member of the Tribunal who is the subject of the investigation; and

“disciplinary committee” means the disciplinary committee constituted under paragraph 5(3) of schedule 2 to the Act.

**Commencement of investigation**

2. Prior to an investigation by the disciplinary committee, the disciplinary committee shall give the member of the Tribunal written notice of the investigation and of the reasons for requiring the investigation.

**Change in membership of the disciplinary committee**

3.—(1) This regulation shall apply where, after commencement of an investigation, any member of the disciplinary committee—

(a) dies;

(b) resigns; or

(c) is, in the opinion of the Lord President of the Court of Session, unable to act.

(2) Subject to paragraph (3), the Lord President of the Court of Session shall appoint a new member of the disciplinary committee from the same category of persons listed in paragraph 5(3) of schedule 2 to the Act as the member referred to in paragraph (1).

(3) Where the member referred to in paragraph (1) is not the person presiding over the disciplinary committee, a new member of the disciplinary committee need not be appointed under paragraph (2) unless the member of the Tribunal so wishes.

(4) Where a member of the disciplinary committee is appointed under paragraph (2), the disciplinary committee shall, if requested by the member of the Tribunal, commence the investigation anew.

#### **Procedure – further provisions**

4.—(1) The disciplinary committee may receive oral or written evidence from such persons as it thinks fit.

(2) The disciplinary committee shall give the member of the Tribunal the opportunity to make written and oral representations regarding the matters which are the subject of the investigation.

(3) Representations under paragraph (2) may be made by the member of the Tribunal personally or by anyone acting on his or her behalf.

(4) The disciplinary committee shall sit in private and no member shall disclose information received in the course of an investigation other than for the purposes of carrying out the functions conferred on the disciplinary committee by the Act and these Regulations.

#### **Suspension**

5.—(1) At any time during an investigation, the disciplinary committee may suspend the member of the Tribunal from office.

(2) A suspension imposed under paragraph (1) shall terminate—

- (a) on the disciplinary committee deciding not to order removal of the member of the Tribunal from office; or
- (b) before then, on the disciplinary committee deciding to bring the suspension to an end.

(3) If the disciplinary committee so directs, a member of the Tribunal suspended under this regulation may remain in office as a member of the Tribunal but only for the purpose of continuing to deal with proceedings of the Tribunal commenced prior to the suspension taking effect.

#### **Draft findings to be sent to member of the Tribunal**

6.—(1) The disciplinary committee shall send to the member of the Tribunal a draft of its findings and shall give the member of the Tribunal an opportunity to make comments on the draft by such date as the disciplinary committee may specify.

(2) The disciplinary committee shall have regard to any comments made under paragraph (1), but need not give the member of the Tribunal an opportunity to comment on any alterations made to the draft prior to submission of the final report under regulation 7.

#### **Report and decisions**

7.—(1) On completion of its investigation, the disciplinary committee shall submit a written report to the Scottish Ministers specifying—

- (a) its findings;
- (b) its decision on whether to order removal of the member of the Tribunal from office; and
- (c) where appropriate, the date of removal from office.

(2) At the same time as submitting its report under paragraph (1), the disciplinary committee shall send a copy of it to the member of the Tribunal.

St Andrew's House,  
Edinburgh  
15th September 2004

*MALCOLM CHISHOLM*  
A member of the Scottish Executive

## EXPLANATORY NOTE

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

These Regulations make provision for the procedure to be followed by and before a disciplinary committee constituted under paragraph 5(3) of schedule 2 to the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13). Such a disciplinary committee is constituted to carry out an investigation at the request of the Scottish Ministers in order to ascertain whether a member of the Mental Health Tribunal for Scotland is unfit for office by reason of inability, neglect of duty or misbehaviour.

Before any investigation by a disciplinary committee commences, the disciplinary committee must give the member of the Tribunal who is subject to the investigation written notice of the investigation and of the reasons why the investigation has been requested (regulation 2).

The Regulations make provision for the disciplinary committee to receive oral or written evidence; for the member under investigation to make written or oral representations; for such representations to be made personally by the member or anyone acting on behalf of the member, and for the confidentiality of proceedings before the disciplinary committee (regulation 4). The Regulations also make provision for a change in the membership of the disciplinary committee after an investigation has commenced (regulation 3).

The Regulations make provision allowing the disciplinary committee to suspend the member under investigation from office during the investigation. The disciplinary committee may direct that a member of the Tribunal so suspended may remain in office for the limited purpose of continuing to deal with proceedings commenced before the suspension took effect (regulation 5).

The disciplinary committee must send a draft of its findings on the investigation to the member under investigation and must give the member the opportunity to make comments on the draft (regulation 6). On completion of the investigation, the disciplinary committee must submit a written report to the Scottish Ministers and send a copy of it to the member. The report must specify the disciplinary committee's findings on the investigation and its decision on whether to order removal of the member of the Tribunal from office (regulation 7).

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