
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 519

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

PART II S

APPLICATIONS TO THE TRIBUNAL

Compulsory treatment orders

Application for compulsory treatment order under section 63 of the Act S

6.—(1) An application for a compulsory treatment order shall state the matters specified in section 63(2) of the Act.

(2) The Clerk shall send a copy of the application and any accompanying documents mentioned in section 63(3) of the Act to the patient and the patient's named person.

(3) The Clerk shall send a notice of the application to the following persons:—

- (a) the patient;
- (b) the patient's named person;
- (c) any guardian of the patient;
- (d) any welfare attorney of the patient;
- (e) the mental health officer;
- (f) the medical practitioners who submitted the mental health reports which accompany the application;
- (g) if the patient has a responsible medical officer, that officer;
- (h) the patient's primary carer;
- (i) any curator *ad litem* appointed in respect of the patient by the Tribunal; and
- (j) any other person appearing to the Tribunal to have an interest in the application.

(4) Notice under paragraph (3) shall inform the persons—

- (a) of the case number of the application (which must from then on be referred to in all correspondence relating to the application);
- (b) that an application has been made by the mental health officer;
- (c) of the measures that are sought in relation to the patient in respect of whom the application is made;
- (d) of the date, time and place of the hearing; and
- (e) that they are being afforded the opportunity—
 - (i) of making representations (whether orally or in writing); and
 - (ii) of leading, or producing, evidence,

in relation to the making of an order under [F1sections 64 or 65] of the Act.

(5) If a person mentioned in paragraph (3) wishes to make representations (whether orally or in writing) or to lead or produce evidence, that person shall send a notice of response to the Tribunal within 14 days of receipt of the notice under that paragraph or within such other period specified in that notice.

(6) The Clerk shall send a copy of each notice of response to each party.

Textual Amendments

F1 Words in rule 6(4)(e) 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, 5

Application for interim compulsory treatment order under section 65 of the Act **S**

7. An application under section 65 of the Act for an interim compulsory treatment order may be made orally at a hearing of the Tribunal or in writing sent to the Tribunal.

Determination of application for compulsory treatment order where section 68 of the Act applies: special case **S**

8.—(1) This rule applies where an application is made under section 63 of the Act and section 68 of the Act applies.

(2) Before the expiry of the period of 5 days referred to in section 68(2)(a) of the Act, the Tribunal shall hold a hearing (“a first hearing”) in order to determine whether an interim compulsory order should be made and, if it determines it should not be made, to determine the application.

(3) Where the Tribunal—

- (a) makes an interim compulsory treatment order that authorises the detention of the patient in hospital; and
- (b) does not determine that a compulsory treatment order should not be made,

it shall fix a further hearing.

(4) The Tribunal may on fixing a further hearing under paragraph (3), do any of the following as it thinks fit:—

- (a) it may 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; the exclusion of any evidence which is irrelevant, unnecessary or improperly obtained;
 - (iv) the dates by which any documents or other evidence upon which any relevant person is intending to rely shall be sent to the Tribunal;
 - (v) the date by which a relevant person shall send any written representations on the case to the Tribunal; and
 - (vi) any other matter as is necessary to enable the Tribunal to decide the application as soon as possible;
- (b) take any steps required by rule 53 to secure the needs of a person with communication difficulties;
- (c) appoint a curator *ad litem* as necessary to meet the circumstances narrated in rule 55(2);

(d) decide any request or interim application made by any relevant person in relation to the case before the Tribunal.

(5) Before fixing a further hearing and doing any of those things referred to in paragraph (4), the Tribunal shall afford the relevant persons who are present an opportunity to be heard.

Application for extension and variation of compulsory treatment order under section 92 of the Act and variation of compulsory treatment order under section 95 of the Act **S**

9.—(1) An application for extension and variation of a compulsory treatment order under section 92 of the Act and an application for variation of a compulsory treatment order under section 95 of the Act shall state the matters mentioned in section 92(a) or, as the case may be, 95(a), of the Act.

(2) The Clerk shall send a copy of the application and any accompanying documents prescribed by virtue of section 92(b) or, as the case may be, section 95(b), of the Act to the patient and the patient's named person.

(3) The Clerk shall send notice of the application to—

- (a) the patient;
- (b) the patient's named person;
- (c) any guardian of the patient;
- (d) any welfare attorney of the patient;
- (e) the mental health officer;
- (f) the patient's responsible medical officer;
- (g) the patient's primary carer;
- (h) any curator *ad litem*; and
- (i) any other person appearing to the Tribunal to have an interest in the application.

(4) Notice under paragraph (3) shall inform the persons—

- (a) of the case number of the application (which must from then on be referred to in all correspondence relating to the application);
- (b) that the application has been made and the orders sought in the application;
- (c) of the terms of the existing compulsory treatment order;
- (d) of the date, time and place of the hearing; and
- (e) that they are being afforded the opportunity—
 - (i) of making representations (whether orally or in writing); and
 - (ii) of leading, or producing, evidence.

(5) If a person mentioned in paragraph (3) wishes to make representations (whether orally or in writing) or to lead or produce evidence, that person shall send a notice of response to the Tribunal within 14 days of receipt of the notice under that paragraph or within such other period specified in that notice.

(6) The Clerk shall send a copy of each notice of response to each party.

Application by patient etc. under section 99 of the Act for revocation of determination extending compulsory treatment order and for revocation or variation of a compulsory treatment order under section 100 of the Act **S**

10.—(1) An application under section 99 or 100 of the Act shall be made in writing.

- (2) The application shall state—
- (a) the name and address of the applicant;
 - (b) the name and address of the patient;
 - (c) the name and address of the patient's named person;
 - (d) where the patient is detained, the name and address of the hospital where the patient is detained;
 - (e) where the patient is required to reside at a specified place, the address of that specified place; and
 - (f) a brief statement of the reasons for the application.

[^{F2}(2A) Where an application is made by virtue of a provision giving a listed initiator authority to act, the listed initiator requirement must be complied with.]

- (3) The applicant shall sign the application.
- (4) The Clerk shall send a copy of the application to the patient's responsible medical officer.
- (5) The Clerk shall send notice of the application to—
- (a) the patient;
 - (b) the patient's named person;
 - (c) any guardian of the patient;
 - (d) any welfare attorney of the patient;
 - (e) the mental health officer;
 - (f) the patient's responsible medical officer;
 - (g) the patient's primary carer;
 - (h) any curator *ad litem*; and
 - (i) any other person appearing to the Tribunal to have an interest in the application.
- (6) Notice under paragraph (5) shall inform the persons—
- (a) of the case number of the application (which must from then on be referred to in all correspondence relating to the application);
 - (b) that the application has been made;
 - (c) of the orders sought in the application;
 - (d) of the terms of the existing compulsory treatment order;
 - (e) of the date, time and place of the hearing; and
 - (f) that they are being afforded the opportunity—
 - (i) of making representations (whether orally or in writing); and
 - (ii) of leading, or producing, evidence.
- (7) If a person mentioned in paragraph (5) wishes to make representations (whether orally or in writing) or to lead or produce evidence, that person shall send a notice of response to the Tribunal within 14 days of receipt of the notice or within such other period specified in the notice.
- (8) The Clerk shall send a copy of each notice of response to each party.

Textual Amendments

- F2** Rule 10(2A) 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, **4(1)**

Application by patient etc. under section 120 of the Act for revocation of certificates under sections 114(2) and 115(2) of the Act **S**

11.—(1) An application under section 120 to the Tribunal for revocation of a certificate under section 114(2) or 115(2) of the Act shall be made in writing.

(2) The application shall state—

- (a) the name and address of the applicant;
- (b) the name and address of the patient;
- (c) the name and address of the patient's named person, if known;
- (d) where the patient is detained, the name and address of the hospital where the patient is detained;
- (e) where the patient is required to reside at a specified place, the address of that specified place; and
- (f) a brief statement of the reasons for the application.

[^{F3}(2A) Where an application is made by virtue of a provision giving a listed initiator authority to act, the listed initiator requirement must be complied with.]

(3) The applicant shall sign the application.

(4) Upon receipt of the application the Clerk shall fix a hearing as soon as possible.

(5) The Clerk shall send a copy of the application together with notice of the application to the parties.

(6) Notice under paragraph (5) shall inform the parties—

- (a) of the case number of the application (which must from then on be referred to in all correspondence relating to the application); and
- (b) of the date, time and place of the hearing.

(7) If a party wishes to make representations (whether orally or in writing) or to lead or produce evidence, that person shall within the period specified in the notice—

- (a) send a notice of response to the Tribunal; and
- (b) send to the Tribunal a copy of any document the person intends to rely upon at the hearing.

(8) The Clerk shall send a copy of any notice of response and any documents received under paragraph (7) to each party.

(9) Where at the hearing on an application to which this rule applies the Tribunal does not decide the application, it shall fix a further hearing.

(10) The Tribunal may on fixing a further hearing under paragraph (9) do any of the following as it thinks fit;—

- (a) it may 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;
 - (iv) the exclusion of any evidence which is irrelevant, unnecessary or improperly obtained;
 - (v) the dates by which any documents or other evidence upon which any relevant person is intending to rely shall be sent to the Tribunal;
 - (vi) the date by which a relevant person shall send any written representations on the case to the Tribunal; and

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, Cross Heading: Compulsory treatment orders. (See end of Document for details)*

- (vii) any other matter as is necessary to enable the Tribunal to decide the application as soon as possible;
 - (b) take any steps required by rule 53 to secure the needs of a person with communication difficulties;
 - (c) appoint a curator *ad litem* as necessary to meet the circumstances narrated in rule 55(2);
 - (d) decide any request or interim application made by any relevant person in relation to the case before the Tribunal.
- (11) Before fixing a further hearing and doing any of those things referred to in paragraph (10), the Tribunal shall afford the relevant persons who are present an opportunity to be heard.

Textual Amendments

- F3** [Rule 11\(2A\)](#) 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, **4(1)**

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, Cross Heading: Compulsory treatment orders.