
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 519

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

PART II

APPLICATIONS TO THE TRIBUNAL

Short-term detention

Application for revocation of short term detention certificate or extension certificate under section 50 of the Act

5.—(1) An application to the Tribunal for revocation of a short term detention certificate under section 50 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) the name and address of the hospital where the patient is detained; and
- (e) a brief statement of the reasons for the application.

[^{F1}(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 parties.

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

(6) The Clerk shall send 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 approved medical practitioner who granted the short term certificate;
- (f) the mental health officer who was consulted under section 44(3)(c) of the Act;
- (g) if the patient has a responsible medical officer, the responsible medical officer;
- (h) any curator *ad litem* appointed in respect of the patient by the Tribunal; and
- (i) any other person appearing to the Tribunal to have an interest in the application.

(7) Notice under paragraph (6) 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 they are being afforded the opportunity—
 - (i) of making representations (whether orally or in writing); and
 - (ii) of leading, or producing evidence;
 - (c) of the date, time and place of the hearing; and
 - (d) that if they wish to make representations or lead or produce evidence, they must respond to the notice within the period specified in the notice.
- (8) If a person mentioned in paragraph (6) 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 documents the person intends to rely upon at the hearing.
- (9) The Clerk shall send a copy of each notice of response and any documents received under paragraph (8) to each party.
- (10) 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.
- (11) The Tribunal may on fixing a further hearing under paragraph (10) 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
 - (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.
- (12) Before fixing a further hearing and doing any of those things referred to in paragraph (11), the Tribunal shall afford the relevant persons who are present an opportunity to be heard.

Textual Amendments

- F1** Rule 5(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)**

Compulsory treatment orders

Application for compulsory treatment order under section 63 of the Act

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 [F2sections 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

- F2** 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

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

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

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

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.

[^{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) 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

F3 [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

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.

[^{F4}(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

(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

- F4** 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)

Compulsion orders

Application by responsible medical officer under sections 149, 158 and 161 of the Act

- 12.**—(1) An application by a patient's responsible medical officer to the Tribunal—
- (a) for an extension of a compulsion order following first review under section 149 of the Act shall state the matters mentioned in section 149(a) of the Act;
 - (b) for extension and variation of a compulsion order under section 158 of the Act shall state the matters mentioned in section 158(a) of the Act; and
 - (c) for an order varying a compulsion order under section 161 of the Act shall state the matters mentioned in section 158(a) of the Act.
- (2) The Clerk shall send a copy of the application and any accompanying documents prescribed in respect of each application by regulations under section 149(b), 158(b) or, as the case may be, 161(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* appointed in respect of the patient by the Tribunal; 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 order;
 - (d) of the date, time and place of the hearing, if known;
 - (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 or such other period specified in the notice.
- (6) The Clerk shall send a copy of each notice of response to each party.

Application by patient etc. for revocation of determination extending compulsion order under section 163 of the Act, for revocation or variation of a compulsion order under section 164 of the Act [F5, to end the disclosure period for a compulsion order under section 164A of the Act] and under section 120 of the Act for revocation of a certificate under section 114(2) of the Act as applied with modifications by section 177 of the Act

13.—(1) An application for revocation of a determination extending a compulsion order under section 163 of the Act [F6, for revocation and variation of a compulsion order under section 164 of the Act or to end the disclosure period applicable to a compulsion order under section 164A of the Act] shall be made in writing and 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.

(2) The applicant shall sign the application.

[F7(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 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* appointed in respect of the patient by the Tribunal; 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 order;
- (d) of the date, time and place of the hearing;
- (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.

(7) Rule 11 shall apply to an application under section 120, as applied by section 177, of the Act for revocation of a certificate under section 114(2) of the Act; the reference in paragraph (1) of that rule to section 120 shall be read as a reference to section 120 as modified by section 177 of the Act.

Textual Amendments

- F5** Words in rule 13 heading 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, **4(a)**
- F6** Words in rule 13(1) substituted (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, **4(b)**
- F7** Rule 13(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)**

compulsion orders and restriction orders

Application under section 191 of the Act by the Scottish Ministers for an order under section 193 of the Act

14.—(1) An application under section 191 of the Act by the Scottish Ministers for an order under section 193 of the Act shall state the matters mentioned in section 191(a) of the Act.

(2) The Clerk shall send a copy of the application and any accompanying documents prescribed by virtue of section 191(b) of the Act to the patient and the patient's named person.

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

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

(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 order, or orders, sought in the application;
- (c) of the terms of the existing order;
- (d) of the date, time and place of the hearing, if known;
- (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 192 of the Act for order under section 193 of the Act

15.—(1) An application under section 192 of the Act for an order under section 193 of the Act shall be made in writing and 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;
- (f) the name of the patient's responsible medical officer;
- (g) the order sought; and
- (h) a brief statement of the reasons for the application.

(2) The applicant shall sign the application.

[^{F8}(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 Clerk shall send a copy of the application to the patient's responsible medical officer and the Scottish Ministers.

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

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

(5) Notice under paragraph (4) 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 order sought in the application;
- (c) of the terms of the existing order;
- (d) of the date, time and place of the hearing;

- (e) that they are being afforded the opportunity—
- (i) of making representations (whether orally or in writing); and
 - (ii) of leading, or producing, evidence.

(6) If a person mentioned in paragraph (4) 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.

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

Textual Amendments

F8 Rule 15(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)**

Hospital directions and transfer for treatment directions

Application by patient and named person for revocation of hospital direction or transfer for treatment direction under section 214(2) of the Act

16.—(1) An application under section 214(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;
 - (d) the name and address of the hospital where the patient is detained;
 - (e) the direction which the applicant seeks to revoke; and
 - (f) a brief statement of the reasons for the application.

[^{F9}(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 practitioner and the Scottish Ministers.

- (5) The Clerk shall send notice of the application to the following persons:—
- (a) the patient;
 - (b) the patient's named person;
 - (c) the patient's primary carer;
 - (d) any guardian of the patient;
 - (e) any welfare attorney of the patient;
 - (f) any curator *ad litem* appointed by the Tribunal in respect of the patient;
 - (g) the Scottish Ministers;
 - (h) the patient's responsible medical officer;
 - (i) the mental health officer; and
 - (j) any other person appearing to the Tribunal to have an interest.

- (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 and the direction which it seeks to revoke;
 - (c) of the terms of the existing direction;
 - (d) of the date, time and place of the hearing;
 - (e) 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 that notice.
- (8) The Clerk shall send a copy of each notice of response to each party.

Textual Amendments

- F9** [Rule 16\(2A\)](#) 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)**

Named person

Application by mental health officer under section 255, and patient etc. under section 256, of the Act for appointment of named person

17.—(1) Subject to paragraph (5) of this rule, an application under section 255 or section 256 for appointment of a named person shall be made in writing.

- (2) The Clerk shall send a copy of the application—
- (a) if the application is made under section 255, to the patient, the patient's apparent named person, if applicable, and any person whom it is proposed in the application should be the patient's named person; or
 - (b) if the application is made under section 256, to the mental health officer, the patient, the patient's named person, if applicable, and any person whom it is proposed in the application should be the patient's named person,

together with notice of the case number of the application (which must from then on be referred to in all correspondence relating to the application).

(3) If a person mentioned in paragraph (2) wishes to make representations (whether orally or in writing) or lead or produce evidence, that person shall send a notice of response to the Tribunal within 14 days of receipt of the copy application under that paragraph or within such other period specified in a notice sent with the copy application.

(4) The Clerk shall send a copy of each notice of response to each party and any person whom it is proposed in the application should be the patient's named person.

(5) Where it considers it expedient to do so, the Tribunal may permit an application to which this rule applies to be made by oral request and, in that event, the Tribunal shall take such steps as are reasonably practical to inform the persons mentioned in paragraph (2) of the application and to allow them to be heard on the application.

[^{F10}Detention in conditions of excessive security

Textual Amendments

F10 Rules 17A-17C inserted (1.5.2006) by [The Mental Health Tribunal for Scotland \(Practice and Procedure\) \(No. 2\) Amendment Rules 2006 \(S.S.I. 2006/171\)](#), rules 1, **2(3)**

[^{F11}Application that detention in hospital is in conditions of excessive security]

17A.—[^{F12}(1) An application to the Tribunal for an order under—

- (a) section 264(2) of the Act (detention in conditions of excessive security: state hospitals); or
- (b) section 268(2) of the Act (detention in conditions of excessive security: hospitals other than state hospitals),

must 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) the address where the patient resided ordinarily immediately before the making of the order or direction by which their detention in hospital is authorised;
- (e) the order or direction under the authority of which the patient is detained in hospital, including, where the order is a compulsion order, whether or not the patient is subject to a restriction order; and
- (f) a brief statement of the reasons for the application.

[^{F13}(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 notice of the application to the following persons:—

- (a) the patient;
- (b) the patient’s named person;
- (c) the relevant Health Board;
- (d) the patient’s responsible medical officer;
- (e) the managers of the ^{F14}... hospital in which the patient is detained;
- (f) the mental health officer;
- (g) any guardian of the patient;
- (h) any welfare attorney of the patient;
- (i) any curator ad litem appointed by the Tribunal in respect of the patient;
- (j) the Commission;
- (k) in the case of a relevant patient, the Scottish Ministers; and
- (l) any other person appearing to the Tribunal to have an interest in the application.

(5) Notice under paragraph (4) 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) of the date, time and place of the hearing; and
- (c) 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 section 264(2) [^{F15}or 268(2)] of the Act.

[^{F16}(6) A person sent notice by the Clerk in accordance with paragraph (4) who wishes to—

- (a) make representations (orally or in writing); or
- (b) lead or produce evidence,

in relation to the application, must send a notice of response to the Tribunal within 21 days of the notice from the Clerk being received by the person or within such other period as may be specified in the notice from the Clerk.]

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

Textual Amendments

- F11** Rule 17A heading substituted (16.11.2015) by [The Mental Health Tribunal for Scotland \(Practice and Procedure\) \(No. 2\) Amendment Rules 2015 \(S.S.I. 2015/334\)](#), rules 1(1), **2(3)** (with rule 3)
- F12** Rule 17A(1) substituted (16.11.2015) by [The Mental Health Tribunal for Scotland \(Practice and Procedure\) \(No. 2\) Amendment Rules 2015 \(S.S.I. 2015/334\)](#), rules 1(1), **2(4)(a)** (with rule 3)
- F13** Rule 17A(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)**
- F14** Word in rule 17A(4)(e) omitted (16.11.2015) by virtue of [The Mental Health Tribunal for Scotland \(Practice and Procedure\) \(No. 2\) Amendment Rules 2015 \(S.S.I. 2015/334\)](#), rules 1(1), **2(4)(b)** (with rule 3)
- F15** Words in rule 17A(5)(c) inserted (16.11.2015) by [The Mental Health Tribunal for Scotland \(Practice and Procedure\) \(No. 2\) Amendment Rules 2015 \(S.S.I. 2015/334\)](#), rules 1(1), **2(4)(c)** (with rule 3)
- F16** Rule 17A(6) substituted (16.11.2015) by [The Mental Health Tribunal for Scotland \(Practice and Procedure\) \(No. 2\) Amendment Rules 2015 \(S.S.I. 2015/334\)](#), rules 1(1), **2(4)(d)** (with rule 3)

[^{F17}Application that detention in hospital is in conditions of excessive security: medical report

17AA.—(1) The report accompanying an application for an order under section 264(2) or 268(2) of the Act must (in addition to providing the information required by section 264(7A) or, as the case may be, 268(7A) of the Act) state—

- (a) the name of the approved medical practitioner who prepared it; and
- (b) in which list compiled and maintained under section 22(1) of the Act the practitioner is included.

(2) In paragraph (1) “report” means the report required by—

- (a) section 264(7A) of the Act, in the case of an application for an order under subsection (2) of that section; or
- (b) section 268(7A) of the Act, in the case of an application for an order under subsection(2) of that section.]

Textual Amendments

F17 Rule 17AA inserted (16.11.2015) by [The Mental Health Tribunal for Scotland \(Practice and Procedure\) \(No. 2\) Amendment Rules 2015 \(S.S.I. 2015/334\)](#), rules 1(1), **2(5)** (with rule 3)

[^{F18}Hearings under section 265(2) or 269(2) of the Act

17B.—(1) This rule applies where a hearing is to be held in accordance with section 265(2) or 269(2) of the Act.

(2) The Clerk must send notice of the hearing to the persons mentioned in rule 17A(4) within 7 days of the end of the period specified in the order made under section 264(2) or 268(2) of the Act.

(3) The date fixed for the hearing must, where practicable, be not more than 21 days after the end of the period specified in the order made under section 264(2) or, as the case may be, 268(2) of the Act.

(4) A notice under paragraph (2) must inform the recipient—

- (a) of the name of the patient concerned;
- (b) of the date, time and place of the hearing;
- (c) of the section of the Act in accordance with which the hearing is to be held;
- (d) that the recipient is being afforded the opportunity of—
 - (i) making representations (orally or in writing); and
 - (ii) leading and producing evidence,

in relation to the hearing under section 265(2) or, as the case may be, 269(2) of the Act.

- (e) that if the recipient wishes to take the opportunity of doing one or more of the things mentioned in sub-paragraph (d), the recipient must send the Tribunal a notice of response in accordance with paragraph (5).

(5) A person sent notice by the Clerk in accordance with paragraph (2) who wishes to—

- (a) make representations (orally or in writing); or
- (b) lead or produce evidence,

in relation to the hearing, must send a notice of response to the Tribunal within 7 days of the notice from the Clerk being received by the person or within such other period as may be specified in the notice from the Clerk.

(6) The Clerk must send a copy of any notice of response received to each party.]

Textual Amendments

F18 Rule 17B substituted (16.11.2015) by [The Mental Health Tribunal for Scotland \(Practice and Procedure\) \(No. 2\) Amendment Rules 2015 \(S.S.I. 2015/334\)](#), rules 1(1), **2(6)** (with rule 3)

[^{F19}Application under section 267 or 271 of the Act for recall of an order]

17C.—[^{F20}(1) An application to the Tribunal under—

- (a) section 267(2) of the Act for recall of an order made under section 264(2) or 265(3) of the Act; or
- (b) section 271(2) of the Act for recall of an order made under section 268(2) or 269(3) of the Act,

must 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 order to which the application relates; and
 - (d) a brief statement of the reasons for the application.
- (3) The applicant shall sign the application.
- (4) The Clerk shall send a notice of the application to the persons mentioned in rule 17A(4).
- (5) Notice under paragraph (4) shall inform the persons—
 - (a) of the date, time and place of the hearing; and
 - (b) that they are being afforded the opportunity—
 - (i) of making representations (whether orally or in writing); and
 - (ii) of leading, or producing, evidencein relation to an application under section 267(2) for recall of an order made under section 264(2) [F21 or 265(3) of the Act, or under section 271(2) for recall of an order made under section 268(2) or 269(3) of the Act.]
- (6) If a person sent notice under paragraph (4) 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 21 days of receipt of the notice under that paragraph or within such other period specified in that notice.
- (7) The Clerk shall send a copy of each notice of response to each party.]

Textual Amendments

- F19** Rule 17C heading substituted (16.11.2015) by [The Mental Health Tribunal for Scotland \(Practice and Procedure\) \(No. 2\) Amendment Rules 2015 \(S.S.I. 2015/334\)](#), rules 1(1), **2(7)** (with rule 3)
- F20** Rule 17C(1) substituted (16.11.2015) by [The Mental Health Tribunal for Scotland \(Practice and Procedure\) \(No. 2\) Amendment Rules 2015 \(S.S.I. 2015/334\)](#), rules 1(1), **2(8)(a)** (with rule 3)
- F21** Words in rule 17C(5) substituted (16.11.2015) by [The Mental Health Tribunal for Scotland \(Practice and Procedure\) \(No. 2\) Amendment Rules 2015 \(S.S.I. 2015/334\)](#), rules 1(1), **2(8)(b)** (with rule 3)

Informal patients

Application to Tribunal under section 291 of the Act in relation to unlawful detention

18.—(1) An application to the Tribunal under section 291 for an order requiring the managers of the hospital to cease to detain the patient 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) the name and address of the hospital where the patient is apparently detained; and
 - (e) a brief statement of the reasons for the application.
- (3) The applicant shall sign the application.

- (4) The Clerk shall send a copy of the application to the hospital managers and the patient.
- (5) The Clerk shall notify the hospital managers—
- (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;
 - (c) of the date, time and place of the hearing;
 - (d) that they are being afforded the opportunity—
 - (i) of making representations at the hearing (whether orally or in writing); and
 - (ii) of leading, or producing, evidence.
- (6) If the hospital managers wish to make representations (whether orally or in writing) or lead or produce evidence, they shall send a notice of response to the Tribunal as soon as reasonably practicable or within such other period specified in that notice.
- (7) The Clerk shall send a copy of the notice of response to each party.

Notice of response under Part II

19. A notice of response by any of the persons who are given notice under this Part shall be made in writing and shall state—

- (a) the name and address of the person;
- (b) the case reference number;
- (c) whether the person wishes to make representations, either orally or in writing; and
- (d) whether the person wishes to lead, or produce, evidence.

Withdrawal of application

20.—(1) Where an application is made to the Tribunal under section 50, 63, 99, 100, 120, 163, 164, [F22 164A,] 192 or 214 of the Act, an applicant may withdraw that application—

- (a) at any time before the hearing of the application by sending to the Clerk a notice signed by the applicant; or
- (b) at the hearing on the application.

(2) On receipt of any such notice, the Clerk shall send a copy to the relevant persons.

(3) Where an applicant gives notice under paragraph (1), the Tribunal may terminate the proceedings without making any order.

Textual Amendments

F22 Word in rule 20(1) 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, 5

Amendment of application or notice of response

21.—(1) A relevant person may, at any time before notification of the date of the hearing of the application, amend the application or the notice of response by sending notice of any amendment to the Clerk.

(2) A relevant person may amend the application or the notice of response with the permission of the Tribunal at any time after receiving notification of the date of the hearing or, with the permission of the Convener, at the hearing itself.

(3) On receipt of any amendment, the Clerk shall send a copy to the parties.

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 II.