
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 519

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

PART VII

GENERAL RULES

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 46(3).

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.