
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 519

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

PART VII

GENERAL RULES

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.

Status: Point in time view as at 30/11/2020.

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: The hearing. (See end of Document for details)

(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;
- ^{F1}(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

- F1** 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.

Status: Point in time view as at 30/11/2020.

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: The hearing. (See end of Document for details)

(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 [^{F2} 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, [^{F3} 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.

[^{F4}(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), [^{F5}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.]

Status: Point in time view as at 30/11/2020.

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: The hearing. (See end of Document for details)

(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 [^{F6}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

- F2** 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)**
- F3** 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)**
- F4** 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)**
- F5** 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**
- F6** 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.

Status:

Point in time view as at 30/11/2020.

Changes to legislation:

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