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**Changes to legislation:** *Mental Health (Care and Treatment) (Scotland) Act 2003, Cross Heading: Terms of office etc. is up to date with all changes known to be in force on or before 26 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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## SCHEDULE 2 THE MENTAL HEALTH TRIBUNAL FOR SCOTLAND

### PART 1

#### MEMBERS OF THE TRIBUNAL ETC.

##### *Terms of office etc.*

- 4 (1) Subject to this paragraph and paragraph 5 below, each member of the Tribunal shall hold office in accordance with the terms of such member's instrument of appointment.
- (2) An appointment as a member of the Tribunal shall, subject to sub-paragraphs (3) and (4) below, last for 5 years.
- (3) A member of the Tribunal—
- (a) may at any time resign office by notice to the Scottish Ministers;
  - <sup>F1</sup>(b) .....
  - (c) shall vacate office on becoming disqualified from being a member of the Tribunal by virtue of paragraph 1(2) above.
- (4) A member of the Tribunal's appointment shall come to an end upon the member's being removed from office under paragraph 5(1) below.
- (5) A member of the Tribunal whose appointment comes to an end by operation of sub-paragraph (2) above may be reappointed and, except in the circumstances set out in sub-paragraph (6) below, shall be reappointed.
- (6) The circumstances referred to in sub-paragraph (5) above are that—
- (a) the member of the Tribunal has declined that reappointment;
  - <sup>F2</sup>(b) .....
  - (c) the President has made a recommendation to the Scottish Ministers against the reappointment;
  - (d) there has, since the member of the Tribunal was last appointed, been a reduction in the number of members of the panel to which the member belongs required by the Tribunal to discharge its functions;
  - (e) since the member of the Tribunal was last appointed, the member has, without reasonable excuse, failed to comply with the terms of the member's appointment; or
  - (f) the member of the Tribunal does not have such qualifications, training, skills or experience as are for the time being prescribed under paragraph 1(1) above for appointment to the panel to which the member of the Tribunal belongs.

#### Textual Amendments

- F1** Sch. 2 para. 4(3)(b) repealed (17.10.2005) by [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), s. 43(3), [sch. 3](#); S.S.I. 2005/492, art. 3(a), [sch. 1](#)
- F2** Sch. 2 para. 4(6)(b) repealed (17.10.2005) by [Smoking, Health and Social Care \(Scotland\) Act 2005 \(asp 13\)](#), s. 43(3), [sch. 3](#); S.S.I. 2005/492, art. 3(a), [sch. 1](#)

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**Commencement Information**

**I1** Sch. 2 para. 4 in force at 3.5.2004 by [S.S.I. 2004/153](#), [art. 3](#), [Sch. 2](#)

- 5 (1) A member of the Tribunal may be removed from office only by order of the disciplinary committee constituted under sub-paragraph (3) below.
- (2) The disciplinary committee may order the removal from office of a member of the Tribunal only if, after investigation carried out at the request of the Scottish Ministers, it finds that the member is unfit for office by reason of inability, neglect of duty or misbehaviour.
- (3) The disciplinary committee shall consist of—
- (a) a Senator of the College of Justice or a sheriff principal (who shall preside);
  - (b) a person who is a solicitor or an advocate of at least ten years' standing; and
  - (c) one other person,
- all appointed by the Lord President of the Court of Session.
- (4) Regulations—
- (a) may make provision—
    - (i) enabling the disciplinary committee, at any time during an investigation, to suspend a member of the Tribunal from office; and
    - (ii) as to the effect and duration of such suspension; and
  - (b) shall make such further provision as respects the disciplinary committee (including in particular provision for the procedure of the committee) as the Scottish Ministers consider necessary or expedient.

**Commencement Information**

**I2** Sch. 2 para. 5 in force at 3.5.2004 by [S.S.I. 2004/153](#), [art. 3](#), [Sch. 2](#)

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 64(8A)(8B) inserted by [2015 asp 9 s. 1\(2\)](#)
- s. 65(7) inserted by [2015 asp 9 s. 1\(3\)](#)