

SCHEDULE 2 THE MENTAL HEALTH TRIBUNAL FOR SCOTLAND

PART 3

TRIBUNAL PROCEDURE

Rules

- 10 (1) The Scottish Ministers may make rules as to the practice and procedure of the Tribunal.
- (2) Such rules may, without prejudice to the generality of sub-paragraph (1) above, include provision for or in connection with—
- (a) the composition of the Tribunal for the purposes of its discharge of particular functions;
 - (b) where the functions of the Tribunal are being discharged by more than one tribunal—
 - (i) determining by which tribunal any proceedings are to be dealt with; and
 - (ii) transferring proceedings from one tribunal to another;
 - (c) the form of applications to the Tribunal;
 - (d) the recovery and inspection of documents;
 - (e) the persons who may appear on behalf of the parties;
 - (f) enabling specified persons other than the parties to appear or be represented in specified circumstances;
 - (g) requiring specified persons to give notice to other specified persons of specified matters in such form and by such method as may be specified;
 - (h) as to the time within which any notice by virtue of sub-paragraph (g) above shall be given;
 - (i) enabling any matters that are preliminary or incidental to the determination of proceedings to be determined by the convener alone or with such other members of the Tribunal as may be specified;
 - (j) enabling hearings to be held in private;
 - (k) enabling the Tribunal (or the convener, with such other members of the Tribunal as may be specified, as the case may be) to exclude the person to whom the proceedings relate from attending all or part of hearings;
 - (l) enabling specified proceedings or specified matters that are preliminary or incidental to the determination of proceedings to be determined in specified circumstances without the holding of a hearing;
 - (m) enabling the Tribunal to hear and determine concurrently two or more sets of proceedings relating to the same person;
 - (n) the recording, publication and enforcement of decisions and orders of the Tribunal;
 - (o) the admissibility of evidence to the Tribunal;
 - (p) enabling matters to be referred to the Commission;
 - (q) enabling the Tribunal to commission medical and other reports in specified circumstances;

Status: This is the original version (as it was originally enacted).

- (r) requiring specified proceedings, or specified matters that are preliminary or incidental to the determination of proceedings, to be determined, or other specified actions to be taken, within specified periods;
- (s) the circumstances in which a *curator ad litem* may be appointed.

(3) In sub-paragraph (2) above, “specified” means specified in the rules.

Practice directions

11 Subject to rules made under paragraph 10 above the President may give directions as to the practice and procedure to be followed by the Tribunal in relation to any matter.

Evidence

12 (1) The Tribunal may by citation require any person to attend, at such time and place as is specified in the citation, for the purpose of—

- (a) giving evidence; or
- (b) producing any document in the custody, or under the control, of such person which the Tribunal considers it necessary to examine.

(2) In relation to persons giving evidence the Tribunal may administer oaths and take affirmations.

(3) A person who is cited to attend the Tribunal and—

- (a) refuses or fails—
 - (i) to attend; or
 - (ii) to give evidence; or
- (b) alters, conceals or destroys, or refuses to produce, a document which such person may be required to produce for the purposes of proceedings before the Tribunal,

shall, subject to sub-paragraph (4) below, be guilty of an offence.

(4) A person need not give evidence or produce any document if, were it evidence which might be given or a document that might be produced in any court in Scotland, the person having that evidence or document could not be compelled to give or produce it in such proceedings.

(5) It shall be a defence for a person charged with contravening sub-paragraph (3) above to show that the person has a reasonable excuse for such contravention.

(6) A person guilty of an offence under sub-paragraph (3)(a) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(7) A person guilty of an offence under sub-paragraph (3)(b) above shall be liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment to imprisonment for a term not exceeding 2 years or a fine or both.

Decisions of the Tribunal

13 (1) Subject to sub-paragraph (2) below, where a decision is to be made by more than one member of the Tribunal, the decision of the Tribunal shall be made by majority.

(2) If there is a tie, the convener shall have a second vote as a casting vote.

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- (3) A decision of the Tribunal shall be recorded in a document which contains a full statement of the facts found by the Tribunal and the reasons for the decision.
- (4) The Tribunal shall—
 - (a) inform each party of its decision; and
 - (b) as soon as practicable after being requested to do so by one of the parties, send a copy of the document mentioned in sub-paragraph (3) above to each party.