
SCOTTISH STATUTORY INSTRUMENTS

2006 No. 171

MENTAL HEALTH

The Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Amendment Rules 2006

Made - - - - 22nd March 2006
Laid before the Scottish Parliament - - - - 23rd March 2006
Coming into force - - 1st May 2006

The Scottish Ministers, in exercise of the powers conferred by sections 21(4) and 326(2) of, and paragraph 10 of schedule 2 to, the Mental Health (Care and Treatment) (Scotland) Act 2003⁽¹⁾ and of all other powers enabling them in that behalf, and after consultation with the Council on Tribunals and its Scottish Committee in accordance with section 8(1) and (3) of the Tribunals and Inquiries Act 1992⁽²⁾, hereby make the following Rules:

Citation and commencement

1. These Rules may be cited as the Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Amendment Rules 2006 and shall come into force on 1st May 2006.

Amendment of the Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules

2.—(1) The Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2005⁽³⁾ are amended as follows.

(2) In rule 2(1) (interpretation)—

(a) in the definition of “party”—

(i) omit “and”; and

(ii) at the end of paragraph (e) insert— “and

(f) in the case of proceedings under sections 264 to 267 of the Act—

(i) the relevant Health Board; and

(1) 2003 asp 13.

(2) 1992 c. 53.

(3) S.S.I. 2005/519.

- (ii) in the case where those proceedings relate to a relevant patient, the Scottish Ministers;” and
- (b) after the definition of “referee” insert—
 - ““relevant Health Board” and “relevant patient” are to be interpreted in accordance with section 273 of the Act;”.
- (3) After rule 17 (application by mental health officer under section 255, and patient etc. under section 256, of the Act for appointment of named person) insert—

“Detention in conditions of excessive security

Application that detention in state hospitals is in conditions of excessive security

17A.—(1) An application to the Tribunal for an order under section 264(2) of the Act (detention in conditions of excessive security: state hospitals) 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 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.
- (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 state 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) of the Act.

(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 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.

Detention in state hospitals in conditions of excessive security: hearings under sections 265(2) and 266(2) of the Act

17B.—(1) This rule applies where section 265(2) or 266(2) of the Act applies.

(2) The Clerk shall, within seven days of the end of the period specified in the order made under section 264(2) or, as the case may be, 265(3) of the Act, send notice of the hearing to the persons mentioned in rule 17A(4).

(3) Notice under paragraph (2) shall inform the persons—

- (a) of the date, time and place of the hearing, which, as far as practicable, shall be within 21 days of the end of the period specified in the order made under section 264(2) or, as the case may be, section 265(3) of the Act; and

(b) 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 a hearing under section 265(2) or, as the case may be, 266(2) of the Act.

(3) If a person sent notice under paragraph (2) 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 7 days of receipt of the notice under that paragraph or within such other period specified in that notice.

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

Application under section 267 of the Act for recall of an order under sections 264 to 266 of the Act

17C.—(1) An application to the Tribunal under section 267(2) of the Act for a recall of an order made under section 264(2), 265(3) or 266(3) 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 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—

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- (i) of making representations (whether orally or in writing); and
- (ii) of leading, or producing, evidence

in relation to an application under section 267(2) for recall of an order made under section 264(2), 265(3) or, as the case may be, 266(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.”.

St Andrew’s House,
Edinburgh
22nd March 2006

LEWIS MACDONALD
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2005 (“the principal Rules”), which make rules as to the practice and procedure of the Mental Health Tribunal for Scotland.

The amendments make provision as to the practice and procedure of the Mental Health Tribunal for Scotland in connection with applications under sections 264 and 267, and hearings under sections 265 and 266, of the Mental Health (Care and Treatment) (Scotland) Act 2003. Applications and hearings under those sections relate to the making and recall of orders that a patient is being detained in a state hospital in conditions of excessive security.

Rule 2(2) amends the principal Rules to make provision as to who is a party in such proceedings.

Rule 2(3) amends the principal Rules to insert new rules 17A to 17C, which make provision for the form of applications, and the giving of notice, in connection with such proceedings.