
STATUTORY INSTRUMENTS

2008 No. 2705

The Mental Health Review Tribunal for Wales Rules 2008

PART 3

Proceedings before the Tribunal

CHAPTER 1

Before the final determination

Procedure for applications and references

14.—(1) An application or reference must be made in writing, be signed (in the case of an application, by the applicant or any person authorised by the applicant to do so) and be provided to the Tribunal so that it is received within the time specified in the Act or the Repatriation of Prisoners Act 1984(3).

- (2) An application or reference must, if possible, include—
- (a) the name and address of the patient;
 - (b) in the event of an application being made by the patient's nearest relative, that person's name, address and relationship to the patient;
 - (c) the provision under which the patient is detained or liable to be detained, subject to guardianship or after-care under supervision or a community patient;
 - (d) whether the person making the application has appointed a representative or intends to do so, and the name and address of any representative appointed;
 - (e) the name and address of the responsible authority in relation to the patient.
- (3) On receipt of an application or reference, the Tribunal must send notice of the same to—
- (a) the responsible authority;
 - (b) the patient (where the patient is not the applicant); and
 - (c) if the patient is a restricted patient, the Secretary of State.

Statements, reports and documents

15.—(1) Subject to rule 17 (withholding documents or information likely to cause harm), when the Tribunal receives a document from any party it must send a copy of that document to each other party.

(2) When the Tribunal receives an application or reference it must send to the responsible authority or the Secretary of State, as the case may be, a request for the documents and information required to be provided under paragraph (3), (4) or (5).

(3) In proceedings under section 66(1)(a) of the Act (application for admission for assessment), on the earlier of receipt of the copy of the application or receipt of a request from the Tribunal, the responsible authority must send or deliver to the Tribunal by the commencement of the hearing—

- (a) the application for admission;
- (b) the written medical recommendation or recommendations, as the case may be, of the registered medical practitioners on which the application is founded;
- (c) such of the information specified in Part A of the Schedule as is within the knowledge of the responsible authority and can reasonably be provided in the time available; and
- (d) such of the reports specified in Part B of the Schedule as can reasonably be provided in the time available.

(4) If the patient is a conditionally discharged patient the Secretary of State shall send to the Tribunal as soon as practicable, and in any event within 6 weeks of receipt by the Secretary of State of a copy of the application or request from the Tribunal, a statement which shall contain—

- (a) the information specified in Part C of the Schedule, in so far as it is within the knowledge of the Secretary of State; and
- (b) the reports specified in Part D of the Schedule, in so far as it is reasonably practicable to provide them.

(5) If neither paragraph (3) nor (4) applies, the responsible authority must send a statement to the Tribunal as soon as practicable, and in any event within 3 weeks of receipt by the responsible authority of a copy of the application or receipt of a request from the Tribunal, a statement which shall contain—

- (a) the information specified in Part A of the Schedule, in so far as it is within the knowledge of the responsible authority;
- (b) the report specified in paragraph 1 of Part B of that Schedule; and
- (c) the other reports specified in Part B of the Schedule, in so far as it is reasonably practicable to provide them.

(6) If the patient is a restricted patient the responsible authority must also send the statement under paragraph (5) to the Secretary of State, and the Secretary of State must send a statement of any further relevant information to the Tribunal as soon as practicable and in any event—

- (a) in proceedings under section 75(1) of the Act, within 2 weeks of receipt by the Secretary of State of the relevant authority's statement; or
- (b) otherwise, within 3 weeks of receipt by the Secretary of State of the relevant authority's statement.

(7) If the Welsh Ministers or Secretary of State wish to seek the approval of the Tribunal under section 86(3) of the Act, the Welsh Ministers or Secretary of State, as the case may be, must refer the patient's case to the Tribunal and the provisions of these Rules applicable to references under the Act apply to the proceedings.

Notice of proceedings

16. When the Tribunal receives the information required by rule 15(3), (4) or (5), the Tribunal must give notice of the proceedings—

- (a) where the patient is subject to the guardianship of a private guardian, to the guardian;
- (b) where there is an extant order of the superior court of record established by section 45(1) of the Mental Capacity Act 2005(1), to that court;

- (c) unless the patient requests otherwise, where any person other than the applicant is named in the responsible authority's statement as exercising the functions of the nearest relative, to that person;
- (d) where a local health board, a National Health Service trust, a primary care trust, a NHS Foundation Trust, a Strategic Health Authority, the Welsh Ministers or the Secretary of State has or have a right to discharge the patient under the provisions of section 23(3) of the Act, to such board, trust, authority, person or persons; and
- (e) to any other person the Tribunal may consider should have an opportunity of being heard.

Withholding documents or information likely to cause harm

17.—(1) The Tribunal must give a direction prohibiting the disclosure of a document or information to a person if it is satisfied that—

- (a) such disclosure would be likely to cause that person or some other person serious harm; and
- (b) having regard to the interests of justice that it is proportionate to give such a direction.

(2) If a party (“the first party”) considers that the Tribunal should give a direction under paragraph (1) prohibiting the disclosure of part or all of a document or of information to another party (“the second party”), the first party must—

- (a) exclude that part of the relevant document or that information from any document that will be provided to the second party; and
- (b) provide to the Tribunal the excluded part of document or information and the reason for its exclusion, in order that the Tribunal may decide whether the document or information should be disclosed to the second party or should be the subject of a direction under paragraph (1).

(3) The Tribunal must conduct proceedings as appropriate in order to avoid undermining a direction given under paragraph (1).

(4) If the Tribunal gives a direction under paragraph (1) which prevents disclosure to a party who has a representative, the Tribunal may give a direction that the document or information be disclosed to that representative if it is satisfied that—

- (a) disclosure to the representative would be in the interests of the party; and
- (b) the representative would not be likely to act contrary to paragraph (5).

(5) Documents or information disclosed to a representative in accordance with a direction under paragraph (4) must not—

- (a) be disclosed either directly or indirectly to any other person without the Tribunal's consent; or
- (b) be used otherwise than in connection with the proceedings.

Further evidence and submissions

18.—(1) Without restriction on the general powers in rule 5(1) and (2) (case management powers), the Tribunal may give directions as to—

- (a) issues on which it requires evidence or submissions;
- (b) the nature of the evidence or submissions it requires;
- (c) whether the parties are permitted or requested to provide expert evidence;
- (d) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally;

- (e) the manner in which any evidence or submissions are to be provided, which may include a direction for them to be given—
 - (i) orally at a hearing; or
 - (ii) by written submissions or witness statement; and
 - (f) the time in which any evidence or submissions are to be provided.
- (2) The Tribunal may—
- (a) admit evidence whether or not—
 - (i) the evidence would be admissible in a civil trial in the United Kingdom; or
 - (ii) the evidence was available to a previous decision maker;
 - (b) exclude evidence that would otherwise be admissible where—
 - (i) the evidence was not provided within the time allowed by a direction;
 - (ii) the evidence was otherwise provided in a manner that did not comply with a direction; or
 - (iii) it would otherwise be unfair to admit the evidence.
- (3) The Tribunal may require any witness to give evidence on oath or affirmation, and may administer an oath or affirmation for that purpose.

Summoning of witnesses and orders to answer questions or produce documents

- 19.**—(1) On the application of a party or on its own initiative, the Tribunal may—
- (a) by summons require any person to attend as a witness at a hearing at the time and place specified in the summons, provided that—
 - (i) the person has been given reasonable notice of the hearing; and
 - (ii) unless the person is a party to the proceedings, the summons makes provision for the person's necessary expenses of attendance to be paid, and states by whom; and
 - (b) by order require any person to answer any questions or produce any documents in that person's possession or control which relate to any issue in the proceedings.
- (2) A summons under this rule must, if the person to whom it is addressed has not had an opportunity to object to it, state that the person may apply to the Tribunal to vary or set aside the summons.
- (3) When a summons is issued, the Tribunal must send a copy of the summons to each party to the proceedings.
- (4) No person may be compelled to give any evidence or produce any document that the person could not be compelled to give or produce on a trial of an action in a court of law in England or Wales.

Medical examination

- 20.**—(1) Before the hearing to consider the final determination, a medical member of the Tribunal must, so far as practicable—
- (a) examine the patient; and
 - (b) take such other steps as that member considers necessary to form an opinion of the patient's mental condition.
- (2) For the purposes of paragraph (1) that member may—
- (a) examine the patient in private;

(b) examine records relating to the detention or treatment of the patient and any after-care services;

(c) take notes and copies of records for use in connection with the proceedings.

(3) At any time before the Tribunal makes the final determination, the Tribunal or any one or more of its members may interview the patient, which interview may take place in the absence of any other person.

Postponement and adjournment

21.—(1) The Tribunal may at any time postpone or adjourn a hearing for the purpose of obtaining further information or for such other purposes as it may think appropriate.

(2) Before postponing or adjourning any hearing, the Tribunal may give such direction as it thinks fit for ensuring the prompt consideration of the application at a postponed or adjourned hearing.

(3) Where a party requests that a hearing postponed or adjourned in accordance with this rule be reconvened, the hearing must be reconvened if the Tribunal is satisfied that reconvening would be in the interests of the patient.

(4) Save in respect of an application under section 66(1)(a) of the Act, before the Tribunal reconvenes any hearing which has been adjourned without a further hearing date being fixed, it must give to all parties not less than 14 days' notice (or such shorter notice as all parties may consent to) of the date, time and place of the reconvened hearing.

Withdrawal

22.—(1) Subject to paragraphs (2) to (3), an applicant may withdraw an application by sending to the Tribunal a written notice of withdrawal stating reasons.

(2) Before making a withdrawal under paragraph (1), the consent of the Tribunal must be obtained.

(3) Where an application is withdrawn, the Tribunal shall so inform the parties and such other persons as the Tribunal considers necessary.

(4) A reference made by the Welsh Ministers or the Secretary of State in circumstances in which they are not by the terms of the Act obliged to make a reference may be withdrawn by the Welsh Ministers or the Secretary of State, as the case may be, at any time before it is considered by the Tribunal and, where a reference is so withdrawn, the Tribunal shall inform the patient and the other parties that the reference has been withdrawn.

Transfer of Proceedings

23.—(1) Where any proceedings in relation to a patient have not been disposed of by the members of the Tribunal appointed for the purpose, and the chairman is of the opinion that it is not practicable or not possible without undue delay for the consideration of those proceedings to be completed by those members, he shall make arrangements for them to be heard by other members of the Tribunal.

(2) Where a patient in respect of whom proceedings are pending moves to the jurisdiction of the First-tier Tribunal⁽²⁾, the proceedings shall, if the chairman of the Tribunal so directs, be transferred to the First-tier Tribunal and notice of the transfer of proceedings shall be given to the parties and such other persons as the Tribunal considers necessary.

(2) The First-tier Tribunal was established under section 3(1) of the Tribunals, Courts and Enforcement Act 2007 (c. 15).