
STATUTORY INSTRUMENTS

2008 No. 2699

The Tribunal Procedure (First-tier Tribunal)
(Health, Education and Social Care Chamber) Rules 2008

PART 4

Proceedings before the Tribunal in mental health cases

CHAPTER 1

Before the hearing

Application of Part 4

31. This Part applies only to mental health cases.

Procedure in mental health cases

32.—(1) An application or reference must be—

- (a) made in writing;
- (b) signed (in the case of an application, by the applicant or any person authorised by the applicant to do so); and
- (c) sent or delivered to the Tribunal so that it is received within the time specified in the Mental Health Act 1983 or the Repatriation of Prisoners Act 1984.

(2) An application must, if possible, include—

- (a) the [^{F1}name, address and date of birth] of the patient;
- (b) if the application is made by the patient's nearest relative, the name, address and relationship to the patient of the patient's nearest relative;
- (c) the provision under which the patient is detained, liable to be detained, subject to guardianship, [^{F2}or] a community patient ^{F3}...;
- (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.

[^{F4}(2A) A reference must, if possible, include—

- (a) the name and address of the person or body making the reference;
- (b) the name, address and date of birth of the patient;
- (c) the name and address of any representative of the patient;
- (d) the provision under which the patient is detained, liable to be detained, subject to guardianship or a community patient (as the case may be);
- (e) whether the person or body making the reference has appointed a representative or intends to do so, and the name and address of any representative appointed;

- (f) if the reference is made by the Secretary of State, the name and address of the responsible authority in relation to the patient, or, in the case of a conditionally discharged patient, the name and address of the responsible clinician and any social supervisor in relation to the patient.]
- (3) Subject to rule 14(2) (withholding evidence 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.
- [^{F5}(4) If the patient is a conditionally discharged patient—
- (a) upon being notified by the Tribunal of an application, the Secretary of State must immediately provide to the Tribunal the names and addresses of the responsible clinician and any social supervisor in relation to the patient; and
 - (b) upon being notified by the Tribunal of an application or reference, the responsible clinician and any social supervisor named by the Secretary of State under this rule must send or deliver the documents specified in the relevant practice direction to the Tribunal so that they are received by the Tribunal as soon as practicable and in any event within 3 weeks after the notification.
- (5) In proceedings under section 66(1)(a) of the Mental Health Act 1983 (application in respect of an admission for assessment), on the earlier of receipt of the copy of the application or a request from the Tribunal, the responsible authority must immediately send or deliver to the Tribunal a copy of—
- (a) the application for admission; and
 - (b) the written medical recommendations on which that application was founded;
- and must as soon as practicable send or deliver to the Tribunal the documents specified in the relevant practice direction.
- (6) If neither paragraph (4) nor (5) applies, the responsible authority must send or deliver the documents specified in the relevant practice direction to the Tribunal so that they are received by the Tribunal as soon as practicable and in any event within 3 weeks after the responsible authority made the reference or received a copy of the application or reference.
- (7) If the patient is a restricted patient, a person or body providing a document to the Tribunal in accordance with paragraph (4)(b) or (6) must also send or deliver a copy of the document to the Secretary of State.
- (7A) The Secretary of State must send the information specified in paragraph (7B) and any observations the Secretary of State wishes to make to the Tribunal as soon as practicable and in any event—
- (a) in proceedings under section 75(1) of the Mental Health Act 1983 (reference concerning a conditionally discharged restricted patient who has been recalled to hospital), within 2 weeks after the Secretary of State received the documents sent or delivered in accordance with paragraph (7);
 - (b) otherwise, within 3 weeks after the Secretary of State received the documents sent or delivered in accordance with paragraph (7).
- (7B) The information specified in this paragraph is—
- (a) a summary of the offence or alleged offence that resulted in the patient being detained in hospital subject to a restriction order or, in the case of a patient subject to a restriction or limitation direction, that resulted in the patient being remanded in custody, kept in custody or sentenced to imprisonment;
 - (b) a record of any other criminal convictions or findings recorded against the patient;
 - (c) full details of the history of the patient's liability to detention under the Mental Health Act 1983 since the restrictions were imposed;

(d) any further information in the Secretary of State's possession that the Secretary of State considers relevant to the proceedings.]

(8) If the Secretary of State wishes to seek the approval of the Tribunal under section 86(3) of the Mental Health Act 1983 [^{F6}(removal of alien patients)], the Secretary of State must refer the patient's case to the Tribunal and the provisions of these Rules applicable to references under that Act apply to the proceedings.

[^{F7}(9) The responsible authority must make records relating to the detention or treatment of the patient and any after-care services available to the Tribunal on request and the Tribunal or an appropriate member of the Tribunal may, before or at the hearing, examine and take notes and copies of such records for use in connection with the proceedings.]

Textual Amendments

- F1** Words in rule 32(2)(a) substituted (6.4.2012) by [The Tribunal Procedure \(Amendment\) Rules 2012 \(S.I. 2012/500\)](#), rules 1(2), **3(2)(a)**
- F2** Word in rule 32(2)(c) inserted (6.4.2012) by [The Tribunal Procedure \(Amendment\) Rules 2012 \(S.I. 2012/500\)](#), rules 1(2), **3(2)(b)(i)**
- F3** Words in rule 32(2)(c) omitted (6.4.2012) by virtue of [The Tribunal Procedure \(Amendment\) Rules 2012 \(S.I. 2012/500\)](#), rules 1(2), **3(2)(b)(ii)**
- F4** Rule 32(2A) inserted (6.4.2012) by [The Tribunal Procedure \(Amendment\) Rules 2012 \(S.I. 2012/500\)](#), rules 1(2), **3(2)(c)**
- F5** Rule 32(4)-(7B) substituted for rule 32(4)-(7) (6.4.2012) by [The Tribunal Procedure \(Amendment\) Rules 2012 \(S.I. 2012/500\)](#), rules 1(2), **3(2)(d)**
- F6** Words in rule 32(8) inserted (6.4.2012) by [The Tribunal Procedure \(Amendment\) Rules 2012 \(S.I. 2012/500\)](#), rules 1(2), **3(2)(e)**
- F7** [Rule 32\(9\)](#) inserted (6.4.2014) by [The Tribunal Procedure \(Amendment\) Rules 2014 \(S.I. 2014/514\)](#), rules 1, **17**

Notice of proceedings to interested persons

33. When the Tribunal receives the information required by rule 32(4), (5) or (6) (procedure in mental health cases) 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 Court of Protection, to that court;
- (c) subject to a patient with capacity to do so requesting otherwise, where any person other than the applicant is named by the authority as exercising the functions of the nearest relative, to that person;
- (d) ^{F8} ... and
- (e) to any other person who, in the opinion of the Tribunal, should have an opportunity of being heard.

Textual Amendments

- F8** Rule 33(d) omitted (1.4.2013) by virtue of [The Tribunal Procedure \(Amendment\) Rules 2013 \(S.I. 2013/477\)](#), rules 1(2)(c), **19**

Medical examination of the patient

[^{F9}34.—(1) Where paragraph (2) applies, an appropriate member of the Tribunal must, so far as practicable, examine the patient in order to form an opinion of the patient’s mental condition, and may do so in private.

(2) This paragraph applies—

- (a) in proceedings under section 66(1)(a) of the Mental Health Act 1983 (application in respect of an admission for assessment), unless the Tribunal is satisfied that the patient does not want such an examination;
- (b) in any other case, if the patient or the patient’s representative has informed the Tribunal in writing, not less than 14 days before the hearing, that—
 - (i) the patient; or
 - (ii) if the patient lacks the capacity to make such a decision, the patient’s representative, wishes there to be such an examination; or
- (c) if the Tribunal has directed that there be such an examination.]

Textual Amendments

- F9** Rule 34 substituted (6.4.2014) by [The Tribunal Procedure \(Amendment\) Rules 2014 \(S.I. 2014/514\)](#), rules 1, **18**

CHAPTER 2

Hearings

[^{F10}Restrictions on disposal of proceedings without a hearing]

35.—[^{F11}(1) Subject to the following paragraphs, the Tribunal must hold a hearing before making a decision which disposes of proceedings.]

(2) This rule does not apply to a decision under Part 5.

[^{F12}(3) The Tribunal may make a decision on a reference under section 68 of the Mental Health Act 1983 (duty of managers of hospitals to refer cases to tribunal) without a hearing if the patient is a community patient aged 18 or over and either—

- (a) the patient has stated in writing that the patient does not wish to attend or be represented at a hearing of the reference and the Tribunal is satisfied that the patient has the capacity to decide whether or not to make that decision; or
- (b) the patient’s representative has stated in writing that the patient does not wish to attend or be represented at a hearing of the reference.

(4) The Tribunal may dispose of proceedings without a hearing under rule 8(3) (striking out a party’s case).]

Textual Amendments

- F10** Rule 35 title substituted (6.4.2012) by [The Tribunal Procedure \(Amendment\) Rules 2012 \(S.I. 2012/500\)](#), rules 1(2), **3(3)(a)**
- F11** Rule 35(1) substituted (6.4.2012) by [The Tribunal Procedure \(Amendment\) Rules 2012 \(S.I. 2012/500\)](#), rules 1(2), **3(3)(b)**

F12 Rule 35(3)(4) inserted (6.4.2012) by [The Tribunal Procedure \(Amendment\) Rules 2012 \(S.I. 2012/500\)](#), rules 1(2), **3(3)(c)**

Entitlement to attend a hearing

36.—(1) Subject to rule 38(4) (exclusion of a person from a hearing), each party to proceedings is entitled to attend a hearing.

(2) Any person notified of the proceedings under rule 33 (notice of proceedings to interested persons) may—

- (a) attend and take part in a hearing to such extent as the Tribunal considers proper; or
- (b) provide written submissions to the Tribunal.

Time and place of hearings

37.—(1) In proceedings under section 66(1)(a) of the Mental Health Act 1983 the hearing of the case must start within [^{F13}10] days after the date on which the Tribunal received the application notice.

(2) In proceedings under section 75(1) of that Act, the hearing of the case must start at least 5 weeks but no more than 8 weeks after the date on which the Tribunal received the reference.

(3) The Tribunal must give reasonable notice of the time and place of the hearing (including any adjourned or postponed hearing), and any changes to the time and place of the hearing, to—

- (a) each party entitled to attend a hearing; and
- (b) any person who has been notified of the proceedings under rule 33 (notice of proceedings to interested persons).

(4) The period of notice under paragraph (3) must be at least [^{F14}21 days], except that—

- (a) in proceedings under section 66(1)(a) of the Mental Health Act 1983 the period must be at least 3 working days; and
- (b) the Tribunal may give shorter notice—
 - (i) with the parties' consent; or
 - (ii) in urgent or exceptional circumstances.

Textual Amendments

F13 Word in [rule 37\(1\)](#) substituted (1.11.2022) by [The Tribunal Procedure \(Amendment No. 2\) Rules 2022 \(S.I. 2022/1030\)](#), rules 1, **3(2)**

F14 Words in [rule 37\(4\)](#) substituted (6.4.2014) by [The Tribunal Procedure \(Amendment\) Rules 2014 \(S.I. 2014/514\)](#), rules 1, **19**

Public and private hearings

38.—(1) All hearings must be held in private unless the Tribunal considers that it is in the interests of justice for the hearing to be held in public.

(2) If a hearing is held in public, the Tribunal may give a direction that part of the hearing is to be held in private.

(3) Where a hearing, or part of it, is to be held in private, the Tribunal may determine who is permitted to attend the hearing or part of it.

(4) The Tribunal may give a direction excluding from any hearing, or part of it—

- (a) any person whose conduct the Tribunal considers is disrupting or is likely to disrupt the hearing;
 - (b) any person whose presence the Tribunal considers is likely to prevent another person from giving evidence or making submissions freely;
 - (c) any person who the Tribunal considers should be excluded in order to give effect to a direction under rule 14(2) (withholding information likely to cause harm); or
 - (d) any person where the purpose of the hearing would be defeated by the attendance of that person.
- (5) The Tribunal may give a direction excluding a witness from a hearing until that witness gives evidence.

Hearings in a party's absence

39.—(1) Subject to paragraph (2), if a party fails to attend a hearing the Tribunal may proceed with the hearing if the Tribunal—

- (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
- (b) considers that it is in the interests of justice to proceed with the hearing.

[^{F15}(2) The Tribunal may not proceed with a hearing that the patient has failed to attend unless the Tribunal is satisfied that—

- (a) the patient—
 - (i) has decided not to attend the hearing; or
 - (ii) is unable to attend the hearing for reasons of ill health; and
- (b) an examination under rule 34 (medical examination of the patient)—
 - (i) has been carried out; or
 - (ii) is impractical or unnecessary.]

Textual Amendments

F15 Rule 39(2) substituted (6.4.2014) by [The Tribunal Procedure \(Amendment\) Rules 2014 \(S.I. 2014/514\)](#), rules 1, **20**

Power to pay allowances

40. The Tribunal may pay allowances in respect of travelling expenses, subsistence and loss of earnings to—

- (a) any person who attends a hearing as an applicant or a witness;
- (b) a patient who attends a hearing otherwise than as the applicant or a witness; and
- (c) any person (other than a legal representative) who attends as the representative of an applicant.

CHAPTER 3

Decisions

Decisions

41.—(1) The Tribunal may give a decision orally at a hearing.

(2) Subject to rule 14(2) (withholding information likely to cause harm), the Tribunal must provide to each party as soon as reasonably practicable after making ^{F16}a decision (except a decision under Part 5) which finally disposes of all issues in the proceedings or of a preliminary issue dealt with following a direction under rule 5(3)(e)]—

- (a) a decision notice stating the Tribunal's decision;
- (b) written reasons for the decision; and
- (c) notification of any right of appeal against the decision and the time within which, and the manner in which, such right of appeal may be exercised.

(3) The documents and information referred to in paragraph (2) must—

- (a) in proceedings under section 66(1)(a) of the Mental Health Act 1983, be provided at the hearing or sent within 3 working days after the hearing; and
- (b) in other cases, be provided at the hearing or sent within 7 days after the hearing.

(4) The Tribunal may provide written reasons for any decision to which paragraph (2) does not apply.

Textual Amendments

F16 Words in rule 41(2) substituted (1.4.2013) by [The Tribunal Procedure \(Amendment\) Rules 2013 \(S.I. 2013/477\)](#), rules 1(2)(c), **20**

Provisional decisions

42. For the purposes of this Part and Parts 1, 2 and 5, a decision with recommendations under section 72(3)(a) or (3A)(a) of the Mental Health Act 1983 ^{M1} or a deferred direction for conditional discharge under section 73(7) of that Act is a decision which disposes of the proceedings.

Marginal Citations

M1 [1983 c.20](#). Section 72(3A) was inserted by section 1(2) to, and paragraph 10(1) and (2) of Schedule 1 to, the [Mental Health \(Patients in the Community\) Act 1995 \(c.52\)](#), and is substituted by section 32(4) of, and paragraphs 1 and 21(1) and (4) of Schedule 3 to, the [Mental Health Act 2007 \(c.12\)](#).

Changes to legislation:

There are currently no known outstanding effects for the The Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008, PART 4.