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STATUTORY INSTRUMENTS

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**2008 No. 2705**

**The Mental Health Review Tribunal for Wales Rules 2008**

**PART 2**

**General powers and provisions**

**Preliminary and incidental matters**

**4.** As regards matters preliminary or incidental to an application or reference, the chairman may, at any time up to the hearing of an application or reference by the Tribunal, exercise the powers of the Tribunal under rules 5, 6, 10, 12, 13, 14, 15, 16, 17, 21, 22, 26, 28 and 29.

**Case management powers**

**5.—(1)** The Tribunal may give directions at any time in relation to the conduct or disposal of proceedings.

(2) In particular, and without restriction on the general power to give directions under paragraph (1) and any other provisions within these Rules, the Tribunal may by directions—

- (a) extend or shorten the time for complying with any rule or direction (unless such extension or abridgement would conflict with a provision of an enactment containing a time limit<sup>(1)</sup>) if—
    - (i) the party requiring the extension or abridgement has shown a good reason why it is necessary; and
    - (ii) the Tribunal considers the extension or abridgement to be in the interests of justice;
  - (b) permit or require a party to amend a document;
  - (c) permit or require a party or another person to provide documents, information or submissions to the Tribunal or, subject to rule 17 (withholding documents or information likely to cause harm), a party;
  - (d) provide that an issue in the proceedings will be dealt with as a preliminary issue;
  - (e) hold a hearing to consider any matter, including a case management issue;
  - (f) decide the form of any hearing;
  - (g) stay execution of its own decision pending an appeal of such decision;
  - (h) stay proceedings.
- (3) Rule 6 (directions) sets out the procedures for applying for and giving directions.

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<sup>(1)</sup> Provisions include sections 66(1) and (2), 68(2) (subject to any order made under section 68A), 69(1), (2) and (4), 70, 71(2) (subject to any order made under section 71(3)) and 75(1) and (2) of the Mental Health Act 1983 (c.20).

## **Directions**

6.—(1) The Tribunal may give a direction at any time, including a direction amending or suspending an earlier direction.

(2) The Tribunal may give a direction—

- (a) on the application of one or more of the parties; or
- (b) on its own initiative.

(3) An application for directions must include the reason for making that application.

(4) An application for directions may be made either—

- (a) by sending or delivering a written application to the Tribunal; or
- (b) orally during the course of a hearing.

(5) Unless the Tribunal considers that there is a good reason not to do so, the Tribunal must send written notice of any direction to every party and any other person affected by the direction.

## **Failure to comply with rules or directions**

7.—(1) An irregularity resulting from a failure to comply with any provision of these Rules or a direction does not of itself render void the proceedings or any step taken in the proceedings.

(2) If a party has failed to comply with a requirement in these Rules or a direction, the Tribunal may take such action the Tribunal considers just, which may include—

- (a) waiving the requirement; or
- (b) requiring the failure to be remedied.

## **Calculating time**

8.—(1) An act required by these Rules or a direction to be done on or by a particular day must be done before 5pm on that day.

(2) If the time specified by these Rules or a direction for doing any act ends on a day other than a working day, the act is done in time if it is done on the next working day.

## **Sending and delivery of documents**

9.—(1) Any document to be sent or delivered to the Tribunal under these Rules must be—

- (a) sent by prepaid post or delivered by hand;
- (b) sent by facsimile transmission to the number specified by the Tribunal; or
- (c) sent or delivered by such other method as the Tribunal may permit or direct.

(2) Subject to paragraph (3), a party may inform the Tribunal and all other parties that a particular form of communication (other than pre-paid post or delivery by hand) should not be used to send documents to that party.

(3) If a party provides a facsimile transmission number, email address or other details for the electronic transmission of documents to them, that party must accept delivery of documents by that method.

(4) Subject to paragraph (3), where any document is required or authorised by these Rules to be sent to any person it may be sent by prepaid post or delivered to the last known address of the person to whom the document is directed.

### **Prohibitions on disclosure or publication**

**10.**—(1) Unless the Tribunal gives a direction to the contrary, information about proceedings before the Tribunal and the names of any persons concerned in such proceedings must not be made public.

- (2) The Tribunal may make an order prohibiting the disclosure or publication of—
- (a) specified documents or information relating to the proceedings; or
  - (b) any matter likely to lead members of the public to identify any person who the Tribunal considers should not be identified.

(3) The Tribunal may use the power in paragraph (2) in order to take action under rule 17 (withholding documents or information likely to cause harm) and in such other circumstances as it considers just.

### **Appointment of the tribunal**

**11.**—(1) A person shall not be qualified to serve as a member of a Tribunal for the purpose of any proceedings where—

- (a) that person is a member, director or registered person (as the case may be) of the responsible authority concerned in the proceedings; or
- (b) that person is a member or director of a local health board or National Health Service trust which has the right to discharge the patient under section 23(3) of the Act; or
- (c) the chairman or, as the case may be, president of the Tribunal considers that that person appears to have a conflict of interest or bias of opinion in respect of the patient, or any other member of that Tribunal or party to the proceedings, or has recently been involved with the medical treatment of the patient in a professional capacity.

(2) The persons qualified to serve as president of the Tribunal for the consideration of an application or reference relating to a restricted patient shall be restricted to those legal members who have been approved for that purpose by the Lord Chief Justice after consulting the Lord Chancellor.

(3) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005(2)) to exercise his functions referred to in paragraph (2).

### **Substitution and addition of parties**

**12.**—(1) The Tribunal may give a direction substituting a party if—

- (a) the wrong person has been named as a party; or
- (b) the substitution has become necessary because of a change in circumstances since the start of proceedings.

(2) The Tribunal may give a direction adding a person to the proceedings as an interested party.

(3) If the Tribunal gives a direction under paragraph (1) or (2) it may give such consequential directions as it considers appropriate.

### **Representatives**

**13.**—(1) A party may appoint a representative (whether legally qualified or not) to represent that party in the proceedings, not being a person liable to be detained or subject to guardianship or after-care under supervision or a community patient under the Act, or a person receiving treatment for mental disorder at the same hospital or registered establishment as the patient.

(2) If a party appoints a representative, that party or representative must send or deliver to the Tribunal written notice of the representative's name and address.

(3) Anything permitted or required to be done by or provided to a party under these Rules or a direction, other than signing a witness statement, may be done by or provided to the representative of that party.

(4) In the event of a representative being duly appointed—

(a) the Tribunal and other parties may assume that the representative is and remains authorised until receiving written notification to the contrary from the representative or the represented party; and

(b) the Tribunal must provide to the representative any document which is required to be sent to the represented party, and need not provide that document to the represented party.

(5) The Tribunal may appoint a legal representative for the patient if—

(a) the patient has not appointed a representative; and

(b) (i) the patient has stated that they do not wish to conduct their own case or that they wish to be represented; or

(ii) the patient lacks the capacity to appoint a representative but the Tribunal believes that it is in the patient's best interests for the patient to be represented.

(6) Unless the Tribunal otherwise directs, a patient or any other party may be accompanied by such other person as the patient or party wishes, in addition to any representative that may have been appointed under this Rule, provided that such person does not act as the representative of the patient or other party.