
Changes to legislation: Mental Health (Care and Treatment) (Scotland) Act 2003, Part 3 is up to date with all changes known to be in force on or before 26 May 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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;

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- (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.

Commencement Information

I1 Sch. 2 para. 10 in force at 3.5.2004 by [S.S.I. 2004/153](#), art. 3, [Sch. 2](#)

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.

Commencement Information

I2 Sch. 2 para. 11 in force at 3.5.2004 by [S.S.I. 2004/153](#), art. 3, [Sch. 2](#)

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.

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- (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.

Commencement Information

I3 Sch. 2 para. 12 in force at 3.5.2004 by [S.S.I. 2004/153](#), art. 3, [Sch. 2](#)

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.
- (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 [^{F1}completion] of the document mentioned in sub-paragraph (3) above[^{F2}, send a copy] to each party.

Textual Amendments

- F1** Word in sch. 2 para. 13(4)(b) substituted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, [sch. 1 para. 32\(26\)\(b\)\(i\)](#)
- F2** Words in sch. 2 para. 13(4)(b) inserted (27.9.2005) by [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.S.I. 2005/465\)](#), art. 1, [sch. 1 para. 32\(26\)\(b\)\(ii\)](#)

Commencement Information

I4 Sch. 2 para. 13 in force at 3.5.2004 by [S.S.I. 2004/153](#), art. 3, [Sch. 2](#)

[^{F3}Withdrawn applications to be disregarded for certain purposes]

Textual Amendments

- F3** Sch. 2 para. 13A and cross-heading inserted (30.6.2007) by [Adult Support and Protection \(Scotland\) Act 2007 \(asp 10\)](#), [ss. 73, 79\(3\)](#); [S.S.I. 2007/334](#), art. 2(a), sch. 1

^{F4}13A

Textual Amendments

- F4** [Sch. 2 para. 13A](#) repealed (30.6.2017) by [Mental Health \(Scotland\) Act 2015 \(asp 9\)](#), [ss. 21\(5\), 61\(2\)](#); [S.S.I. 2017/197](#), art. 2, sch. (with art. 12(d))

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 64(8A)(8B) inserted by [2015 asp 9 s. 1\(2\)](#)
- s. 65(7) inserted by [2015 asp 9 s. 1\(3\)](#)