SCOTTISH STATUTORY INSTRUMENTS

2015 No. 334

MENTAL HEALTH

The Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Amendment Rules 2015

Made - - - -	*15th September 2015*
Laid before the Scottish Parliament	*17th September 2015*
Coming into force - -	*16th November 2015*

The Scottish Ministers make the following Rules in exercise of the powers conferred by sections 21(4) and 326 of, and paragraph 10 of schedule 2 to, the Mental Health (Care and Treatment) (Scotland) Act 2003(**a**) and all other powers enabling them to do so.

Citation, commencement and interpretation

1.—(1) These Rules may be cited as the Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Amendment Rules 2015 and come into force on 16th November 2015.

(2) In these Rules, "the principal Rules" means the Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2005(**b**).

Amendment of the Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2005

2.—(1) The principal Rules are amended as follows.

(2) In rule 2(1) (interpretation), in the definition of "party"(**c**)—

(a) immediately after paragraph (e) omit "and"; and

(b) for paragraph (f) substitute—

"(f) the Scottish Ministers in any proceedings which relate to a relevant patient; and

(g) the relevant Health Board in any proceedings under sections 264 to 271 of the Act;".

(**a**) 2003 asp 13. Section 326 is amended by the Public Services Reform (Scotland) Act 2010 (asp 8), schedule 18, paragraph 1; the Sexual Offences (Scotland) Act 2009 (asp 9), schedule 5, paragraph 6; the Mental Health (Scotland) Act 2015 (asp 9), sections 16(7) and 36(3); and S.S.I. 2005/465.

(**b**) S.S.I. 2005/519. Rules 17A to 17C were inserted by S.S.I 2006/171.

(**c**) Rule 2(1)(f) was inserted S.S.I. 2006/171.

(3) For the cross heading to rule 17A substitute "Application that detention in hospital is in conditions of excessive security**"**.

(4) In rule 17A—

(a) for paragraph (1) substitute—

"(1) An application to the Tribunal for an order under—

(a) section 264(2) of the Act (detention in conditions of excessive security: state hospitals); or

(b) section 268(2) of the Act (detention in conditions of excessive security: hospitals other than state hospitals),

must be made in writing.";

(b) in paragraph (4)(e) omit "state";

(c) in paragraph (5)(c), after "264(2)" insert "or 268(2)";

(d) for paragraph (6) substitute—

"(6) A person sent notice by the Clerk in accordance with paragraph (4) who wishes to—

(a) make representations (orally or in writing); or

(b) lead or produce evidence,

in relation to the application, must send a notice of response to the Tribunal within 21 days of the notice from the Clerk being received by the person or within such other period as may be specified in the notice from the Clerk.".

(5) After rule 17A insert—

"**Application that detention in hospital is in conditions of excessive security: medical report**

17AA.—(1) The report accompanying an application for an order under section 264(2) or 268(2) of the Act must (in addition to providing the information required by section 264(7A) or, as the case may be, 268(7A) of the Act) state—

(a) the name of the approved medical practitioner who prepared it; and

(b) in which list compiled and maintained under section 22(1) of the Act the practitioner is included.

(2) In paragraph (1) "report" means the report required by—

(a) section 264(7A) of the Act, in the case of an application for an order under subsection (2) of that section; or

(b) section 268(7A) of the Act, in the case of an application for an order under subsection(2) of that section.".

(6) For rule 17B and the cross heading to that rule substitute—

"**Hearings under section 265(2) or 269(2) of the Act**

17B.—(1) This rule applies where a hearing is to be held in accordance with section 265(2) or 269(2) of the Act.

(2) The Clerk must send notice of the hearing to the persons mentioned in rule 17A(4) within 7 days of the end of the period specified in the order made under section 264(2) or 268(2) of the Act.

(3) The date fixed for the hearing must, where practicable, be not more than 21 days after the end of the period specified in the order made under section 264(2) or, as the case may be, 268(2) of the Act.

(4) A notice under paragraph (2) must inform the recipient—

(a) of the name of the patient concerned;

(b) of the date, time and place of the hearing;

(c) of the section of the Act in accordance with which the hearing is to be held;

(d) that the recipient is being afforded the opportunity of—

(i) making representations (orally or in writing); and

(ii) leading and producing evidence,

in relation to the hearing under section 265(2) or, as the case may be, 269(2) of the Act.

(e) that if the recipient wishes to take the opportunity of doing one or more of the things mentioned in sub-paragraph (d), the recipient must send the Tribunal a notice of response in accordance with paragraph (5).

(5) A person sent notice by the Clerk in accordance with paragraph (2) who wishes to–

(a) make representations (orally or in writing); or

(b) lead or produce evidence,

in relation to the hearing, must send a notice of response to the Tribunal within 7 days of the notice from the Clerk being received by the person or within such other period as may be specified in the notice from the Clerk.

(6) The Clerk must send a copy of any notice of response received to each party.".

(7) For the cross heading to rule 17C substitute "Application under section 267 or 271 of the Act for recall of an order".

(8) In rule 17C—

(a) for paragraph (1) substitute—

"(1) An application to the Tribunal under—

(a) section 267(2) of the Act for recall of an order made under section 264(2) or 265(3) of the Act; or

(b) section 271(2) of the Act for recall of an order made under section 268(2) or 269(3) of the Act,

must be made in writing."; and

(b) in paragraph (5), for ", 265(3)" to the end substitute "or 265(3) of the Act, or under section 271(2) for recall of an order made under section 268(2) or 269(3) of the Act.".

Savings provision: applications or hearings in progress

3.—(1) Notwithstanding the amendment of the principal Rules by rule 2 and the repeal of section 266 of the Act by section 15(2) of the Mental Health (Scotland) Act 2015(**a**), the principal Rules continue to apply on and after 16th November 2015 as they would have applied immediately before that date in relation to any relevant proceedings in connection with an application made before that date under section 264(2) of the Act.

(2) In this rule, "relevant proceedings" means—

(a) a hearing held in accordance with section 266(2) of the Act;

(**a**) 2015 asp 9.

(b) an application to the Tribunal under section 267(2) of the Act for recall of an order made under section 266(2) of the Act.

JAMIE HEPBURN
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
15th September 2015

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend rules 17A to 17C of the Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2005 ("the principal Rules"). At present, Rules 17A to 17C of the principal Rules only extend to patients detained in a state hospital. These Rules amend the principal Rules to make provision in relation to patients detained in a qualifying hospital.

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

Rule 2(3) and (4) amends rule 17A to make provision in relation to an order under section 268(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003 ("the 2003 Act").

Rule 2(5) inserts a new rule 17AA, which prescribes that any application against detention in conditions of excessive security under section 264 or 268 of the 2003 Act must be accompanied by a report prepared by an approved medical practitioner. In addition to providing the information required under section 264(7A) and 268(7A) of the 2003 Act, the report must state the name of the approved medical practitioner who prepared it, the section of the 2003 Act in accordance with which the hearing is to be held, and in which list compiled and maintained under section 22(1) of the 2003 Act the practitioner is included. This new rule reflects the amendments to sections 264 and 268 of the 2003 Act by section 14 of the Mental Health (Scotland) Act 2015 ("the 2015 Act").

Rule 2(6) substitutes a new rule 17B. This extends the application of rule 17B to include hearings held in relation to a qualifying hospital held in accordance with section 269(2) of the 2003 Act.

Rule 2(8) and (9) amends rule 17C to extend that rule so that it applies in relation to an application under section 271(2) of the 2003 Act for recall of an order made under section 268(2) or 269(3) of the 2003 Act.

Rule 3 is a saving provision, the effect of which is that the amendments to the principal Rules, and the repeal of section 266 of the 2003 Act (orders under section 265: further provision) by section 15(2) of the 2015 Act (process for enforcement of orders), do not apply to any relevant proceedings in connection with an application made under section 264(2) of the Act. For the purpose of the saving provision, relevant proceedings under the 2003 Act include a hearing held in accordance with section 266(2) and an application to the Tribunal under section 267(2) for recall of an order made under section 266(2).

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