STATUTORY INSTRUMENTS

1975 No. 459 (S. 59)

DANGEROUS DRUGS

The Misuse of Drugs Tribunal (Scotland) Rules 1975

Made - - - -	10*th March* 1975
Laid before Parliament	2*nd April* 1975
Coming into Operation	23*rd April* 1975

In exercise of the powers conferred on me by paragraph 4 of Schedule 3 to the Misuse of Drugs Act 1971**(a)**, and after consultation with the Council on Tribunals in accordance with section 10 of the Tribunals and Inquiries Act 1971**(b)**, I hereby make the following rules:—

Citation and commencement

1. These Rules may be cited as the Misuse of Drugs Tribunal (Scotland) Rules 1975 and shall come into operation on 23rd April 1975.

Interpretation

2.—(1) In these Rules, unless the context otherwise requires—

"the Act" means the Misuse of Drugs Act 1971;

"the chairman" means the person appointed by the Lord President of the Court of Session to be the chairman of the tribunal;

"hearing" means the hearing by the tribunal of a case referred to it under section 14 of the Act;

"the respondent" has the same meaning as in section 14(2) of the Act;

"the secretary" means, in relation to any proceedings, the person whose services are made available by the Secretary of State to act as secretary to the tribunal either generally or in relation to those proceedings;

"the solicitor" means, in relation to any proceedings, the solicitor nominated for the purposes of these Rules by the Secretary of State either generally or in relation to those proceedings;

"the tribunal" means a tribunal in Scotland constituted under Part I of Schedule 3 to the Act.

(2) In these Rules a form referred to by number means the form so numbered in the Appendix to these Rules, or a form substantially to the like effect, with such variations as the circumstances of the particular case require.

(3) The Interpretation Act 1889**(c)** shall apply for the interpretation of these Rules as it applies for the interpretation of an Act of Parliament.

(a) 1971 c. 38. **(b)** 1971 c. 62.
(c) 1889 c. 63.

Terms of reference and parties

3.—(1) As soon as the Secretary of State has referred a case to the tribunal under section 14(1) of the Act, he shall serve on the solicitor and on the respondent a notice in writing specifying the terms of the reference, and the names and addresses of the secretary and of the solicitor.

(2) The solicitor shall thereafter be responsible for the preparation and presentation before the tribunal of the case against the respondent and shall be a party to the proceedings on the reference.

(3) No person other than the solicitor and the respondent shall be a party to the proceedings on the reference.

Notice of proceedings

4.—(1) Within twenty-eight days after service on him of the notice of the terms of reference the solicitor shall serve on the respondent a notice of proceedings in Form 1, together with a copy of the Act and of these Rules (and of any instrument amending these Rules) and shall send a copy of the notice of proceedings to the tribunal.

(2) The notice of proceedings may be amended—

(*a*) before the hearing, with the leave of the chairman on an *ex parte* application (which may be disposed of if the chairman thinks fit without a hearing of the application), or

(*b*) at any time during the hearing, with the leave of the tribunal,

and where the notice of proceedings is amended before the hearing, the solicitor shall forthwith serve notice in writing of the amendment on the respondent and send a copy of the notice to the tribunal.

Notice of hearing

5. The chairman shall fix a date, time and place at which the proceedings are to be held, and, not less than twenty-eight days before the date so fixed, the secretary shall serve a notice in Form 2 on the solicitor and on the respondent.

Inspection of documents

6.—(1) The solicitor shall, within fourteen days after the issue of the notice of proceedings, and the respondent may not later than seven days after receipt by him of the notice of hearing, serve on the other party a notice containing a list of the documents on which he proposes to rely, and the solicitor and the respondent shall send to the tribunal a copy of such notice served under this paragraph.

(2) A notice under paragraph (1) shall specify a reasonable period (commencing not earlier than seven days and ending not later than fourteen days after the date of the notice) during which, and a reasonable place at which, the other party may inspect and take copies of the documents contained in the list in the notice.

(3) A party shall be entitled to inspect and take copies of any document set out in the notice specified in paragraph (1) served by the other party during the period and at the place specified by such other party in his notice or during such period and at such place as the tribunal may direct.

(4) Unless the tribunal otherwise directs, a party shall produce any document set out in the list of documents contained in the notice at the hearing of the case when called upon to do so by the other party.

Applications for directions on incidental matters

7.—(1) An application for directions on any incidental matter arising in connection with the proceedings may be made by the solicitor or the respondent to the chairman.

(2) The application shall be in writing and shall state the matters on which directions are sought and the grounds upon which the application is made.

(3) Notice of the application shall be served on the respondent or on the solicitor, as the case may be, who may send to the chairman and serve on the other party written notice of objection.

(4) Where written notice of objection is sent the chairman shall, before giving any direction on the application, consider such objection and, if he considers it necessary for the proper determination of the application, shall give the parties an opportunity of appearing before him.

(5) The chairman shall serve notice in writing of his decision on the solicitor and on the respondent.

(6) If at any stage the chairman decides that an application involves a question which ought to be decided by the tribunal, he shall fix a date, time and place for a hearing of the application by the tribunal and the secretary shall serve notice thereof on the solicitor and on the respondent not less than fourteen days before the date fixed.

Right of audience

8. At the hearing and at the hearing of an application under rule 7 each party shall be entitled to appear on his own behalf or be represented by counsel or a solicitor.

Default of appearance

9.—(1) Where, on the date fixed for the hearing, the solicitor does not appear, then, whether or not the respondent appears, the tribunal shall adjourn the proceedings on such terms (if any) as it thinks fit.

(2) Where, on the date fixed for the hearing, the respondent does not appear, it shall be the duty of the solicitor to satisfy the tribunal that the notice of proceedings and the notice of hearing have been served on the respondent in accordance with rule 18 and, if so satisfied, the tribunal may proceed, if it thinks fit, in the absence of the respondent.

(3) Where on the date fixed for the hearing of an application under rule 7, the solicitor or the respondent does, or both of them do, not appear, the tribunal may make such order as it thinks fit.

Procedure at hearing

10.—(1) Where the respondent appears at the hearing the following order of proceedings shall, unless the tribunal otherwise directs, be observed, that is to say—

(*a*) the solicitor shall read out the allegations in the notice of proceedings;

(*b*) the chairman shall ask the respondent whether he admits each such allegation, and if the respondent admits any allegation there shall be recorded a finding that there thas been such a contravention or such conduct as is alleged therein;

(*c*) in respect of any allegation which is not admitted the chairman may ask the respondent whether he is willing to admit any of the matters of fact stated in the allegation, and any admission made by the respondent shall be recorded by the chairman;

(*d*) the solicitor may, in relation to any allegation which is not admitted, address the tribunal and adduce evidence in respect of any matter of fact which has not been admitted;

(*e*) the respondent may address the tribunal and adduce evidence in relation to any allegation still undisposed of;

(*f*) on the application of either party the tribunal may then allow evidence in reply or rebuttal if it considers it to be in the interests of the fair disposal of any such allegation to do so;

(*g*) the solicitor may then address the tribunal;

(*h*) the respondent may then address the tribunal.

(2) Where the respondent does not appear at the hearing and the tribunal proceeds in his absence, the solicitor may address the tribunal both before and after he has adduced evidence.

Evidence

11.—(1) Any witness called by a party to the proceedings shall be liable to cross-examination by the other party and, if cross-examined, to re-examination by the party calling him.

(2) The tribunal may accept without proof any matter admitted by a party to the proceedings.

(3) Where any document is put in evidence at the hearing it shall not be necessary to prove its authenticity unless the tribunal otherwise directs.

(4) The tribunal shall not be bound to reject evidence on the ground only that it would be inadmissible in a court of law.

Findings of tribunal

12. In respect of each allegation, other than one in respect of which a finding has been recorded under rule 10(1)(*b*), the tribunal shall make and record a finding either--

(*a*) that there has been such a contravention or such conduct as is alleged; or

(*b*) that there has been no such contravention or conduct.

Submissions and evidence with reference to recommendation

13. Where there has been recorded any such finding as is mentioned in rule 10(1)(*b*) or 12(*a*) the solicitor and, if he appears, the respondent may address the tribunal and adduce evidence with reference to the recommendation to be made in respect of the respondent.

Majority decision, etc.

14. In the event of disagreement between the members of the tribunal any decision of the tribunal may be taken by a majority thereof and, if the members are equally divided, the chairman shall have a second and casting vote.

Report of tribunal

15.—(1) At the conclusion of the hearing the tribunal may adjourn in order to consider its report to the Secretary of State.

(2) The report shall contain a statement—

(*a*) of the findings of the tribunal;

(*b*) of the reasons for the findings;

(*c*) (in the event of a finding under rule 10(1)(*b*) or 12(*a*))—

(i) of the recommendation of the tribunal, or, as the case may be, of the fact that the tribunal considers that a direction should not be given, and

(ii) of the reasons for the recommendation, or, as the case may be, for considering that a direction should not be given; and

(*d*) (in the event of a disagreement between the members of the tribunal) of the names of the majority and of the minority, and of the latter's reasons, so far as at variance with those of the majority, on—

(i) the findings, or, as the case may be,

(ii) the question whether a recommendation should be made, or

(iii) the terms of any recommendation.

(3) The chairman shall sign the report on behalf of the tribunal and the secretary shall serve a copy of the report on the solicitor and on the respondent.

(4) Where the hearing has taken place in private the tribunal shall ensure that the report does not disclose the identity of any person, other than the respondent, about whom an adverse finding of fact has been made, or of any person referred to in the report as being addicted to, or having taken, controlled drugs of any description.

Reference back to or to another tribunal

16.—(1) When the Secretary of State has referred a case to the tribunal under section 14(7)(*b*) of the Act he shall serve on the solicitor and on the respondent notice in writing of the terms of the reference under that paragraph, and, subject to paragraph (2) of this rule, the provisions of these Rules shall apply to the proceedings on that reference as they apply to proceedings on a reference under section 14(1) of the Act.

(2) Where the notice of proceedings served under paragraph (1) is the same, or substantially the same, as that on the previous reference under section 14(1) or, as the case may be, under section 14(7)(*b*) of the Act (in this paragraph alike referred to as the "previous reference") an order may be made on an application under rule 7 that the list or lists of documents supplied under rule 6 and any order made under rule 7 or under this paragraph for the purposes of the previous reference shall be deemed to have been supplied or made in the proceedings on the reference (or latest reference) under section 14(7)(*b*) of the Act.

Application for consent of tribunal under section 15(6) *of the Act*

17.—(1) An application by the Secretary of State for the consent of the tribunal under section 15(6) of the Act to the extension of a direction may be made by sending to the chairman a notice of application in writing, together with a copy of the report of the professional panel, and an application for consent under that subsection to a further extension may be made by sending to him a notice of application in writing.

(2) The Secretary of State shall serve a copy of the notice of application, and, as the case may be, of the report, on the respondent and shall at the same time inform the respondent that he may, within five days of service upon him, send to the chairman written representations relating to the proposed extension or further extension.

(3) On the expiration of the time limit for the sending of representations the chairman shall consider the application and any representations and shall either give or withhold the consent of the tribunal.

(4) The secretary shall as soon as may be inform the Secretary of State and serve notice on the respondent of the consent or of the withholding of the consent of the tribunal.

Service of notice

18.—(1) Any notice or document required to be served on the respondent under these Rules shall be deemed to have been duly served if it is sent or given to a solicitor acting on behalf of the respondent or is delivered to the respondent personally or left at his proper address or sent to him there—

(*a*) in the case of notices under rules 3, 4 and 5, by registered post or by recorded delivery service, or

(*b*) in any other case, by post.

(2) Any notice or document required to be served on the solicitor may be sent to the address for service specified in the notice of the terms of reference.

(3) Any notice or document to be sent to the tribunal or to the chairman may be sent to the address of the secretary specified in the notice of the terms of reference.

(4) In this rule "proper address" means the address of the respondent for the time being registered in the Register kept by the relevant body within the meaning of paragraph 1 of Schedule 3 to the Act, and where in the opinion of the person serving the document or notice, a letter addressed to the respondent at the address appears unlikely to reach him, the last-known residential or professional address of the respondent, or any other address at or through which he may be found.

Extension of time

19. The time appointed by or under these Rules for doing any act or taking any step in connection with any proceedings may be extended by the chairman, whether or not the period has expired, on such terms and conditions, if any, as appear to him just.

Failure to comply with rules

20. Any failure on the part of any person to comply with the provisions of these Rules shall not render the proceedings, or anything done in pursuance thereof, invalid unless the chairman or the tribunal so directs, but the chairman or the tribunal may give such directions for the purpose of mitigating the consequences of the irregularity as the justice of the case may require.

Power to regulate procedure

21. Subject to the provisions of the Act and of these Rules the tribunal shall have power to regulate its own procedure, and may adjourn or postpone the proceedings as it thinks fit.

William Ross,
One of Her Majesty's Principal Secretaries of State.

St Andrew's House,
EDINBURGH.

10th March 1975.

APPENDIX

FORM 1 (Rule 4)

MISUSE OF DRUGS TRIBUNAL

(Scotland)

In the matter of .....[(a doctor)][(a)] [(a practitioner)][(a)]

(a) Delete whichever is inapplicable.

NOTICE OF PROCEEDINGS

To .....

of .....[*address*]

WHEREAS the Secretary of State considers that there are grounds for giving a direction under section 13[(1)][(a)][(2)][(a)] of the Misuse of Drugs Act 1971 (hereinafter called "the Act") on account of [an alleged contravention by a doctor][(a)] [alleged conduct by a practitioner] [(a)] as is there mentioned.

AND WHEREAS he has referred the case to a tribunal constituted in accordance with the Act and has given notice in writing of the terms of reference to you as the respondent [doctor][(a)][practitioner][(a)] and to me as the person nominated by him to act as solicitor.

NOW I .....

of.....

.....

do hereby give notice that the tribunal is to consider the case on a date to be notified in due course by the tribunal and will inquire in particular into the following [allegation][(a)] [allegations][(a)] against you:—

(1)[*If the allegation relates to contravention*] That you did on the day of contravene [the provisions of regulation of the Regulations 19][(a)] [the terms of a licence issued to you [*or as appropriate*] on][(a)] in that you [here specify the contravention alleged].

Or

(2) [*If the allegation relates to conduct*] That you [are][(a)][have been][(a)]

prescribing[(b)]
administering[(b)]
supplying[(b)]
authorising the administration of[(b)]
authorising the supply of[(b)]

} controlled drugs in an irresponsible manner

(b) Delete any not relied on.

in that you [here specify the conduct alleged]

[*Where there is more than one allegation, the allegations are to be numbered consecutively but each allegation may contain more than one alleged act if appropriate.*]

Delete as ng as applicable.

A copy of the Act and a copy of the Misuse of Drugs Tribunal (Scotland) Rules 1975 [and of the instrument[s][c] amending those rules][c] are enclosed for your information.

Dated this day of 19

Signed.....(Solicitor)

(Rule 5)

FORM 2

MISUSE OF DRUGS TRIBUNAL

(Scotland)

NOTICE OF HEARING

Delete ıichever is ıpplicable.

In the matter of.....[(a doctor)][a]

[(a practitioner)][a]

To.....(the solicitor)

of.....

and to

.....(the respondent)

of.....

TAKE NOTICE that the tribunal will consider the case referred to it concerning the respondent on the day of at a.m./p.m. at [*address*].

Signed.....(Secretary)

EXPLANATORY NOTE

(This Note is not part of the Rules.)

These Rules prescribe the procedure to be followed in proceedings before the tribunal in Scotland constituted under Part I of Schedule 3 to the Misuse of Drugs Act 1971. This tribunal is required to consider and report to the Secretary of State on any case referred to it by him where he considers that there are grounds for making a direction inhibiting certain practitioners from, *inter alia*, prescribing controlled drugs. The main provisions of the Rules are as follows.

Proceedings will be begun by a notice of the terms of reference issued by the Secretary of State, which is served on the respondent practitioner and on the solicitor nominated by the Secretary of State (rule 3(1)). The solicitor is thereafter to be responsible for the preparation and presentation before the tribunal of the case against the respondent (rule 3(2)) and he and the respondent are made parties to the proceedings (rule 3(3)). The solicitor is to serve on the respondent a notice of proceedings in Form 1 which is to set out the allegations against the respondent (rule 4).

The solicitor is required and the respondent is enabled to list his documents for inspection by the other party (rule 6). Applications for directions on incidental matters by either party to the proceedings are covered by rule 7 and the procedure at the hearing (which may take place in default of the respondent's appearance (rule 9)) is regulated by rule 10.

Provision is made for majority decisions of the tribunal (rule 14) and for the content of the tribunal's report to the Secretary of State, a copy of which is to be served on the solicitor and on the respondent (rule 15).

Rule 17 provides a summary means for the obtaining by the Secretary of State of the tribunal's consent to the extension or further extension of a temporary direction imposed by him pending the outcome of proceedings.

SI 1975/459
ISBN 0-11-050459-3

