
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 172

MENTAL HEALTH

The Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Amendment Rules 2017

<i>Made</i>	- - - -	<i>30th May 2017</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>1st June 2017</i>
<i>Coming into force</i>	- -	<i>30th June 2017</i>

The Scottish Ministers make the following Rules in exercise of the powers conferred by sections 21(4) and 326(1) and paragraph 10 of schedule 2 of the Mental Health (Care and Treatment) (Scotland) Act 2003(2) and all other powers enabling them to do so.

Citation and commencement

1. These Rules may be cited as the Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Amendment Rules 2017 and come into force on 30th June 2017.

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

2. The Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2005(3) are amended in accordance with rules 3 to 7.

Ability to act if no named person

3.—(1) In rule 2 (interpretation)—

(a) in paragraph (a) of the definition of “party”, at the end insert “except a person who initiated them by virtue of a provision giving a listed initiator authority to act(4)”;

(b) after paragraph (1) insert—

(1) Section 326 was 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.

(2) 2003 asp 13.

(3) S.S.I. 2005/519 was amended by S.S.I. 2006/171, S.S.I. 2008/396, S.S.I. 2012/132, S.I. 2013/2042 and S.S.I. 2015/334.

(4) Section 257A (ability to act if no named person) was added to the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13) by the Mental Health (Scotland) Act 2015 (asp. 9). It applies where a patient does not have a named person, is 16 years old or over and is incapable in relation to a decision about the initiation of an application or appeal in their own case.

“(1A) The “listed initiator requirement” is that the application or appeal is accompanied by—

- (a) a written statement by an approved medical practitioner confirming that in the opinion of that practitioner the patient is incapable in relation to a decision as to whether to initiate an application or appeal; and
- (b) a written statement from the person making the application or appeal stating—
 - (i) that the patient has attained the age of 16 years and has no named person;
 - (ii) which of the categories of person who may initiate the appeal or application by virtue of the provision giving a listed initiator authority to act the person falls within; and
 - (iii) that the patient has not made a written declaration which precludes the person from initiating the appeal or application by virtue of that provision.

(1B) A reference in these Rules to a provision giving a listed initiator authority to act is a reference to—

- (a) section 257A of the Mental Health (Care and Treatment) (Scotland) Act 2003;
- (b) regulation 8A of the Mental Health (England and Wales Cross-border transfer: patients subject to requirements other than detention) (Scotland) Regulations 2008⁽⁵⁾; and
- (c) regulation 13A of the Mental Health (Cross-border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005⁽⁶⁾.”.

Listed initiator requirement

4.—(1) After paragraph (2) in rules 5, 10, 11, 13, 15, 16 and 17A⁽⁷⁾ insert—

“(2A) Where an application is made by virtue of a provision giving a listed initiator authority to act, the listed initiator requirement must be complied with.”.

(2) After paragraph (2) in rule 23 insert—

“(2A) Where an appeal is made by virtue of a provision giving a listed initiator authority to act, the listed initiator requirement must be complied with.”.

Compulsory treatment

5. In rule 6 (application for compulsory treatment order under section 63 of the Act), in paragraph (4)(e) for “section 63” substitute “sections 64 or 65”.

Curator ad litem

6. In rule 55 (curator ad litem)—

(5) [S.S.I. 2008/356](#) (“the 2008 Regulations”) was amended by [S.S.I. 2017/232](#) which inserted regulation 8A which allows certain people mentioned in the regulation the ability to initiate an appeal if the patient concerned does not have a named person. It also amended the 2008 Regulations so that they may also be cited as the Mental Health (Cross-border transfer: patients subject to requirements other than detention) (Scotland) Regulations 2008.

(6) [S.S.I. 2005/467](#) was amended by [S.S.I. 2017/229](#) which inserted regulation 13A which allows certain people mentioned in the regulation the ability to initiate an appeal where the patient has no named person.

(7) Rule 17A was inserted by [S.S.I. 2006/171](#).

- (a) in paragraph (2) after sub-paragraph (a) insert—
 - “(aa) an application or appeal has been initiated by virtue of a provision giving a listed initiator authority to act;”.
- (b) omit sub paragraphs (3) and (4).

Decisions

- 7. In rule 72 (decision of the tribunal)—
 - (a) in paragraph (3) after “the parties” insert “, the patient’s mental health officer (if they are not a party to the proceedings), the patient’s responsible medical officer (if they are not a party to the proceedings)”;
 - (b) in paragraph (6) for “it is sent to the parties” substitute “a copy of the document mentioned in sub-paragraph (7) is sent to the parties”.

St Andrew’s House, Edinburgh
30th May 2017

MAUREEN WATT
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules amend the Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2005 (“the 2005 Rules”) to take into account amendments made by the Mental Health (Scotland) Act 2015 (“the 2015 Act”) to the Mental Health (Care and Treatment) (Scotland) Act 2003. They come into force on 30th June 2017.

The 2015 Act made changes to the current provision about named persons so that it is no longer the case that every patient whose case comes before the Tribunal will automatically have a named person to act in their interests.

Section 257A of the 2015 Act instead provides that where a patient over the age of 16 does not have a named person, and is incapable in relation to a decision as to whether to initiate an application or appeal before the Tribunal, then certain persons listed in section 257A(9) may initiate certain applications or appeals on the patient’s behalf. As part of this change new appeal provisions have been inserted into the Mental Health (England and Wales Cross-border transfer: patients subject to requirements other than detention) (Scotland) Regulations 2008 and the Mental Health (Cross-border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005. This instrument makes changes to the 2005 Rules to accommodate those amendments.

Rule 2 of the 2005 Rules is amended so that the definition of “party” does not include a person who has initiated proceedings before the Tribunal by virtue of any of these new provisions. It is also amended to include a definition of the listed initiator requirement which must be met by anyone making an application on appeal by virtue of the new rules (rule 3).

Rules 5, 10, 11, 13, 15, 16, 17A and 23 of the 2005 Rules are amended to reflect the need to comply with the listed initiator requirement in certain proceedings before the Tribunal (rule 4).

Rule 55 of the 2005 Rules in relation to *curators ad litem* is amended so as to provide that where a person has initiated an application or appeal on the patient’s behalf by virtue of the new rules, the Tribunal may appoint a *curator ad litem* (rule 6).

The 2005 Rules are also amended to clarify existing practice.

Rule 6 of the 2005 Rules is amended to clarify reference to the powers the Tribunal has under sections 64 and 65 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (rule 5).

Rule 72 of the 2005 Rules is amended to make it clear that the clerk must send a copy of the document containing the Tribunal’s decision and a full statement of the facts found by the Tribunal and the reasons for the decision to the parties. In addition, the patient’s responsible medical officer and mental health officer are to receive a copy of the decision of the Tribunal where they are not already a party to the proceedings (rule 7).