

2012 No. 132

MENTAL HEALTH

The Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Amendment Rules 2012

<i>Made</i> - - - -	<i>26th April 2012</i>
<i>Laid before the Scottish Parliament</i>	<i>30th April 2012</i>
<i>Coming into force</i> - -	<i>1st June 2012</i>

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.

In accordance with section 44(2) of, and paragraph 24(1) of Schedule 7 to, the Tribunals, Courts and Enforcement Act 2007^(b), they have consulted the Administrative Justice and Tribunals Council and its Scottish Committee.

Citation and commencement

1. These Rules may be cited as the Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Amendment Rules 2012 and come into force on 1st June 2012.

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

2. For rule 58 of the Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2005^(c) substitute—

“Power to decide a case without a hearing

58.—(1) The Tribunal may decide the case without a hearing where the following conditions are met—

- (a) the Tribunal considers that, having regard to the nature of the issues raised in the case, sufficient evidence is available to enable it to come to a decision without a hearing;
- (b) to do so will not, in the view of the Tribunal, be contrary to the interests of the patient;

(a) 2003 asp 13.
(b) 2007 c.15; the Mental Health Tribunal for Scotland, constituted in accordance with section 21 of, and Schedule 2 to, the Mental Health (Care and Treatment) (Scotland) Act 2003 is a listed tribunal for the purposes of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007, by virtue of S.S.I. 2007/436.
(c) S.S.I. 2005/519, to which there are amendments not relevant to these Rules.

- (c) the Tribunal has, as soon as reasonably practicable, given notice to those persons who require to be afforded the opportunity of making representations or of leading or producing evidence of its proposal to dispense with oral representations and oral evidence;
 - (d) the patient has not applied for oral representations or oral evidence to be heard;
 - (e) no other person notified under sub-paragraph (c) has, in the opinion of the Tribunal, shown cause why oral representations or oral evidence should be heard; and
 - (f) no application from a person who appears to the Tribunal to have an interest in the proceedings has, in the opinion of the Tribunal, shown cause why oral representations or oral evidence should be heard.
- (2) The notice referred to in paragraph (1)(c) shall state—
- (a) that the Tribunal proposes to invoke this rule;
 - (b) that an application from the patient for oral representations or oral evidence to be heard will be granted;
 - (c) that the Tribunal will consider applications for oral representations or oral evidence to be heard from those persons who require to be afforded the opportunity of making representations or of leading or producing evidence;
 - (d) the latest date by which such applications must be made to the Tribunal; and
 - (e) that the patient is entitled to have access to independent advocacy as provided under section 259 of the Act.
- (3) Applications—
- (a) from the patient must be in writing; and
 - (b) from other persons must be in writing and give reasons why oral representations or oral evidence should be heard.
- (4) The Tribunal shall, as soon as reasonably practicable, notify those persons who require to be afforded the opportunity of making representations or of leading or producing evidence and any other person who has made an application under this rule as to whether there is to be a hearing or not.”

St Andrew's House,
Edinburgh
26th April 2012

MICHAEL MATHESON
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Rules)

These Rules further amend the Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2005 to replace rule 58 (power to decide a case without a hearing) with a new version.

The previous version of the rule required that ‘the relevant persons’ agree in writing before the case could be decided without a hearing. The amended rule permits certain persons, including the patient, to request that oral representations or oral evidence be heard. Persons other than the patient must show cause for these to be heard. A request from the patient for oral representations or oral evidence to be heard must be granted.

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