

# **Tribunals (Scotland) Act 2014 – Consultation on Draft Regulations regarding:**

**(1) the Transfer of Functions and Members of the Mental Health Tribunal for Scotland to the Scottish Tribunals;**

**(2) the Rules of Procedure for the First-tier Tribunal for Scotland Mental Health Chamber;**

**(3) the Rules of Procedure for the Upper Tribunal for Scotland when hearing cases from the First-tier Tribunal Mental Health Chamber;**

**(4) the Composition of the First-tier Tribunal and Upper Tribunal for Scotland when hearing mental health cases;**

**(5) the Eligibility for Membership of the First-tier Tribunal for Scotland Mental Health Chamber and Upper Tribunal for Scotland; and**

**(6) time limits for seeking permission to appeal a decision of the First-tier Tribunal Mental Health Chamber**

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## PART 1: BACKGROUND

- 1) The Tribunals (Scotland) Act 2014 (the 2014 Act) creates a new, simplified statutory framework for tribunals in Scotland, bringing existing tribunal jurisdictions together and providing a structure for new jurisdictions. The 2014 Act creates two new tribunals, the First-tier Tribunal for Scotland (First-tier Tribunal) and the Upper Tribunal for Scotland (Upper Tribunal), known collectively as the Scottish Tribunals.
- 2) The 2014 Act provides a mechanism for regulations to transfer the functions of existing tribunals and their membership to the First-tier Tribunal and/or the Upper Tribunal. Alternatively, functions may be directly conferred on the First-tier Tribunal and/or the Upper Tribunal for newly created jurisdictions or extensions of jurisdiction. The 2014 Act also provides for the First-tier Tribunal to be organised into a number of subject-specific Chambers.
- 3) The Mental Health Tribunal for Scotland (MHTS) was established by the Mental Health (Care and Treatment) (Scotland) Act 2003 (the 2003 Act). The primary role of the Tribunal is to consider and determine applications for compulsory treatment orders (CTOs) under the 2003 Act, and to consider appeals against compulsory measures made under the 2003 Act. The Tribunal also plays a monitoring role, periodically reviewing the compulsory measures in place for an individual.
- 4) It is proposed that the functions and members of the MHTS will transfer into the Scottish Tribunals on 12<sup>th</sup> November 2018. The First-tier Tribunal will have a Mental Health Chamber for hearing these cases. The MHTS as it presently stands will then be abolished.
- 5) Legal aid will continue to be available in the First-tier Tribunal Mental Health Chamber and the Upper Tribunal.
- 6) The draft regulations are attached at **Annexes A, B, C, D, E and F**. To note, the foot notes for the draft regulations will be completed after the consultation.
- 7) The draft regulations in **Annex A** provide for:
  - The transfer of functions of the MHTS to the Scottish Tribunals;
  - Transitional arrangements to regulate how cases in progress before the MHTS on 12<sup>th</sup> November will be dealt with;
  - Consequential amendments and repeals required in light of the transfer of functions;
  - The transfer of members of the MHTS to the Scottish Tribunals.
- 8) The draft regulations in **Annex B** set out the Rules of Procedure for the First-tier Tribunal Mental Health Chamber.

- 9) The draft regulations in **Annex C** set out the Rules of Procedure for the Upper Tribunal when hearing cases from the First-tier Tribunal Mental Health Chamber.
- 10) The draft regulations in **Annex D** set out the composition, by type and number of members, of the First-tier Tribunal Mental Health Chamber, and the Upper Tribunal when hearing appeals from the First-tier Tribunal Mental Health Chamber.
- 11) The draft regulations in **Annex E** set out the eligibility criteria for membership of the First-tier Tribunal Mental Health Chamber and the Upper Tribunal when hearing cases from the First-tier Tribunal Mental Health Chamber.
- 12) The draft regulations in **Annex F** set out the time limits for seeking permission to appeal a decision of the First-tier Tribunal Mental Health Chamber.

## **PART 2: CONSULTATION ON DRAFT REGULATIONS TO TRANSFER THE FUNCTIONS AND MEMBERS OF THE MHTS TO THE SCOTTISH TRIBUNALS AND REPEAL EXISTING STATUTORY PROVISIONS.**

### **Background**

- 13) Section 28(2) of the 2014 Act provides the power for the Scottish Ministers to make regulations to transfer the functions of the listed tribunals in Schedule 1 of the 2014 Act, to the First-tier Tribunal only; the Upper Tribunal only; or to the First-tier Tribunal and the Upper Tribunal.
- 14) Schedule 2 and section 29 of the 2014 Act provides the power for the Scottish Ministers to make regulations to transfer the members of the listed tribunals to the First-tier or Upper Tribunal.

### **Draft Regulations**

- 15) The policy intent is for the MHTS to transfer into the Scottish Tribunals structure with their existing membership and functions insofar as practicable and insofar as is in line with existing legislation. Upon transfer the MHTS will be abolished and thereafter first instance decisions will be heard in the First-tier Tribunal Mental Health Chamber with appeals heard by the Upper Tribunal or the Court of Session as appropriate.
- 16) The draft regulations propose that the President of the MHTS transfers in as Chamber President of the First-tier Tribunal Mental Health Chamber. Medical and general members of the MHTS will transfer in as ordinary members of the First-tier Tribunal. In practice they will be allocated to the Mental Health Chamber.

- 17) The criteria for legal membership of the MHTS is currently set out in the Mental Health Tribunal for Scotland (Appointment of Legal Members) Regulations 2004 (the 2004 Regulations) and sets out that a legal member shall be a person—
- (a) being an advocate or solicitor admitted in Scotland of at least seven years standing;
  - (b) having a seven year general qualification within the meaning of section 71 of the Courts and Legal Services Act 1990; or
  - (c) being a member of the Bar of Northern Ireland or solicitor of the Supreme Court of Northern Ireland of at least seven years standing.
- 18) We propose to revoke the 2004 Regulations and rely on the criteria for legal membership that is generic across the First-tier Tribunal and already set out in schedule 3 of the 2014 Act and the Scottish Tribunals (Eligibility for Appointment) Regulations 2015. Briefly, a person may only be appointed as a legal member of the Scottish Tribunals if the person is practising and has practised for a period of not less than 5 years as a solicitor or advocate in Scotland. If a person is not currently practising in Scotland, but has previously engaged in practice for not less than five years as a solicitor or advocate in Scotland, they must have subsequently engaged in exercising judicial functions in any court or tribunal, practice or employment as a lawyer of any kind or teaching or researching law at or for an educational institution. A qualification and practice in Scots law is considered an appropriate requirement when dealing with devolved case law and legislation and this change will ensure consistency across the First-tier Tribunal.
- 19) In order to ensure consistency across the First-tier Tribunal, we would propose to replicate the effect of the Judicial Pensions and Retirement Act 1993. Scottish Tribunals members are required to retire from the Scottish Tribunals at the age of 70, although Scottish Ministers can choose to reappoint the member for one year at a time, until they reach the age of 75, if their reappointment is in the public interest.
- 20) The draft regulations set out the transitional arrangements, which state that cases in progress before the MHTS on the day of transfer will be completed in the First-tier Tribunal. The First-tier Tribunal panel will be comprised of the same members as were hearing the case in the MHTS, where possible. Time limits which have started to run prior to commencement of these regulations and have not expired shall continue to apply.
- 21) If a party wishes to appeal a decision of the MHTS which previously would have been appealed to the Sheriff Principal, but has not exercised this right before 12 November 2018 then the appeal route will be to the Upper Tribunal as opposed to the Sheriff Principal. If a party has already exercised their right of appeal before 12 November 2018 then the appeal will not be affected by the new regulations and will be completed by the Sheriff Principal. Appeal rights to the Court of Session will remain unaffected; these appeals will not transfer to the Upper Tribunal.

- 22) The regulations will repeal schedule 2 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (the 2003 Act), which set up the MHTS. Once the MHTS is transferred into the Scottish Tribunals the 2014 Act and these draft regulations will cover the operation of the Scottish Tribunals when dealing with mental health cases.
- 23) The draft regulations make amendments to existing legislation, replacing references to the MHTS with references to the First-tier Tribunal, and references to the Sheriff Principal with references to the Upper Tribunal.
- 24) The draft regulations repeal the Mental Health Tribunal for Scotland (Appointment of General Members) Regulations 2004<sup>1</sup>, the Mental Health Tribunal for Scotland (Appointment of Medical Members) Regulations 2004<sup>2</sup>, and the Mental Health Tribunal for Scotland (Appointment of Legal Members) Regulations 2004<sup>3</sup>, the Mental Health Tribunal for Scotland (Disciplinary Committee) Regulations 2004<sup>4</sup>, the Mental Health Tribunal for Scotland (Disqualification) Regulations 2004<sup>5</sup>, as these are replaced by the eligibility criteria set out in the 2014 Act and put forward in this consultation (for ordinary members) and in the Scottish Tribunals (Eligibility for Appointment) Regulations 2015<sup>6</sup> (for legal members).
- 25) The draft regulations also repeal the Mental Health Tribunal for Scotland (Practice and Procedure) Rules 2005<sup>7</sup>, the Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2005<sup>8</sup> and the Mental Health Tribunal for Scotland (Delegation of the President's Functions) Regulations 2004<sup>9</sup> and replace those with the new Rules and Procedure for the Mental Health Chamber of the First-tier Tribunal.

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<sup>1</sup> <http://www.legislation.gov.uk/ssi/2004/375/contents/made>

<sup>2</sup> <http://www.legislation.gov.uk/ssi/2004/374/contents/made>

<sup>3</sup> <http://www.legislation.gov.uk/ssi/2004/286/contents/made>

<sup>4</sup> <http://www.legislation.gov.uk/ssi/2004/402/contents/made>

<sup>5</sup> <http://www.legislation.gov.uk/ssi/2004/154/contents/made>

<sup>6</sup> <http://www.legislation.gov.uk/ssi/2015/381/contents/made>

<sup>7</sup> <http://www.legislation.gov.uk/ssi/2005/420/contents/made>

<sup>8</sup> <http://www.legislation.gov.uk/ssi/2005/519/contents/made>

<sup>9</sup> <http://www.legislation.gov.uk/ssi/2004/373/contents/made>

## QUESTIONS ON THE TRANSFER OF THE MHTS

Q1: Do you have any comments on the draft transfer of functions and members Regulations?

Q2: Are you content with the provisions relating to the transfer of members?

Q3: Are you content with the proposal to align the eligibility requirement for MHTS legal members with legal members of the First-tier Tribunal?

Q4: Are you content with the provisions regarding transitional arrangements?

Q5: Do you have any other comments you wish to make?



## **PART 3: CONSULTATION ON DRAFT REGULATIONS THAT SET OUT THE RULES OF PROCEDURE FOR THE FIRST-TIER TRIBUNAL FOR SCOTLAND MENTAL HEALTH CHAMBER**

### **Background**

26) Schedule 9, paragraph 2(2) and section 81 of the 2014 Act provides the power for the Scottish Ministers to make regulations for the procedural rules of a listed tribunal that are in force immediately before the transfer to have effect for the purposes of the First-tier Tribunal.

### **Draft Regulations**

27) As the MHTS already has comprehensive procedural rules in place these have been replicated where possible in the draft Mental Health Chamber Rules in Annex B. However, refinements are also proposed which aim to remove duplication, increase transparency and, where appropriate, to provide consistency within the Scottish Tribunals.

28) It is proposed that the First-tier Tribunal should be able to transfer cases to the Upper Tribunal to hear in the first instance, as provided at rule 36 of the draft Mental Health Chamber Rules. It is proposed that transfers of cases should be restricted only to points of law, and that the permission of the Chamber President would need to be given before a transfer could take place.

29) We have amended the existing rule 44 to remove the power to dismiss a case where it is considered to be frivolous or vexatious, and, to remove reference to cases which have no reasonable prospect of success. The Tribunal has to date not used this power and it is thought that, in the context of mental health cases, it would not be appropriate to dismiss a case on any of these grounds. Rule 37 of the draft Mental Health Chamber Rules sets out the restricted grounds for dismissal of a case.

30) Under rule 40(6) of the draft Mental Health Chamber Rules, documents which the Tribunal decides should not be disclosed to a patient will only be able to be disclosed to a legal representative or, in their absence, a *curator ad litem*. Such documents will no longer be disclosed to lay representatives. This change is to reflect the position that lay representatives have no professional conduct duties which would prevent them from sharing documents.

31) As set out in draft rule 52, the Tribunal may decide a case at such a hearing if all the parties, having been afforded an opportunity to provide such evidence or representations, do not wish to. The wording of this rule has been updated to reflect the definition of a hearing under the rules and to more closely align with the 2003 Act. The procedure is as set out in the current rules. Comments are sought on the circumstances in which the Tribunal might use this procedure in practice, which could be clarified in the wording of the rule. We would also be interested to hear views on

how procedure in such cases could be improved upon to benefit users of the Tribunal.

- 32) It is proposed that the requirements under rule 62 of the existing MHTS Rules of Procedure in relation to expert reports are amended. Currently, any expert report obtained by a person in relation to a patient's case must be disclosed to the Tribunal (unless permission is sought from the Tribunal for it not to be disclosed). It is proposed that this requirement is removed so that there is no obligation for the patient or any other person to disclose a report to the Tribunal that they have obtained. Rule 56 of the draft Mental Health Chamber Rules, relating to expert reports, reflects this position.
- 33) In order to simplify proceedings for interested third parties and to prevent third parties from automatically receiving copies of papers, orders, records or certificates which contain sensitive information, it has been proposed that the concept of a 'relevant person' be removed and we would welcome comments on this proposal. In addition, this simplification has removed the requirement on parties to provide a notice of response to the Tribunal. Any person with an interest in a case, such as a victim, nearest relative or carer, or listed initiator<sup>10</sup>, should be able to send the Tribunal a written request seeking leave to make oral or written submissions and/or permission to lead or produce evidence. We are also seeking views on whether it is necessary to remove the requirement or ability to seek leave from the Tribunal to enter the proceedings as a party.
- 34) Rule 47 of the current MHTS Rules of Procedure provides that the Tribunal may decide at its own initiative whether to withhold documents or reports from disclosure to the patient or parties involved in a case, although only in exceptional circumstances. It is proposed that this rule should be amended to provide that the Tribunal must only assess documents that it receives from people who have sought leave to provide representations, in order to determine whether those should be withheld from the patient or other parties. A draft rule has not been provided and so views are being sought on principle only.
- 35) In order to mirror current mental health practice and procedural rules, which are intended to ensure that a patient's appeal is heard promptly, we do not intend to bring in a right to review any decision of the First-tier Tribunal.

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<sup>10</sup> <http://www.legislation.gov.uk/ssi/2016/232/contents/made>

## QUESTIONS ON THE FIRST-TIER MENTAL HEALTH CHAMBER RULES OF PROCEDURE

Q1: Do you have any comments on rule 36, which provides that certain cases are able to be transferred to the Upper Tribunal, and, in particular, whether this should be restricted only to cases transferred on a point of law?

Q2: Do you have any comments on rule 37, which sets out the restricted grounds on which a case may be dismissed as being incompetent?

Q3: Do you have any comments on the proposal to simplify proceedings for interested third parties and remove the requirement or ability to seek leave from the Tribunal to enter the proceedings as a party?

Q4: Do you have any comments on the principle that the Tribunal must only assess documents received from persons who have sought leave to provide representations, to determine if those should be withheld from the patient and other parties?

Q5: Do you have any comments on the proposal to clarify the terminology in rule 52 on the circumstances in which the Tribunal may decide a case at a hearing without oral evidence or oral representations? Include any comments that you have on the practical implications of such hearings.

Q6: Do you have any comments on the proposal that there should be no ability for the First-Tier Tribunal Mental Health Chamber to review its own decisions?

Q7: Do you have any other comments on the draft regulations for the First-Tier Tribunal Mental Health Chamber Rules of Procedure?

## **PART 4: CONSULTATION ON DRAFT REGULATIONS THAT SET OUT THE RULES OF PROCEDURE FOR THE UPPER TRIBUNAL FOR SCOTLAND WHEN HEARING CASES FROM THE FIRST-TIER TRIBUNAL MENTAL HEALTH CHAMBER**

### **Background**

36) Schedule 9, paragraph 2(2) and section 81 of the 2014 Act provides the power for the Scottish Ministers to make regulations for the procedural rules of a listed tribunal that are in force immediately before the transfer to have effect for the purposes of either or both the First-tier Tribunal and the Upper Tribunal.

### **Draft Regulations**

37) The Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016<sup>11</sup> (the 2016 Regulations) set out the rules for hearing appeals from the First-tier Tribunal. Due to the nature of the work of the MHTS, a bespoke set of Upper Tribunal Rules of Procedure has been drafted for use when it is hearing cases from the First-tier Tribunal Mental Health Chamber. The bespoke procedural rules being consulted on (at Annex C) therefore differ in some areas from the general rules provided in the 2016 Regulations.

38) When the Upper Tribunal receives notice of an appeal, it must fix a hearing and notify respondents and interested parties of that hearing. Only when all parties have consented to a decision being made without a hearing can the Upper Tribunal proceed on that basis.

39) It is proposed that the Upper Tribunal may suspend the effect of a decision made either in the First-tier Tribunal or the Upper Tribunal, where that decision is the subject of an appeal, as set out in rule 7. This rule is replicated from the 2016 Regulations. It is considered that it would be beneficial for the Upper Tribunal to have this ability in the context of mental health cases, as, it may be in the best interests of certain patients.

40) Rule 19(4) provides the criteria for determining what fresh evidence may be led in the Upper Tribunal. This rule is replicated from the 2016 Regulations. It would be helpful to receive views on whether the wording of this rule is appropriate for mental health cases.

41) All hearings will be held in private, unless a party makes an application for the proceedings to be held in public and the Upper Tribunal decides that to hold the hearing in public would not be detrimental to the patient's welfare. Public disclosure of documents and information before the Upper Tribunal is therefore prohibited, unless the Upper Tribunal makes an order allowing the public disclosure of an aspect of the proceedings.

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<sup>11</sup> <http://www.legislation.gov.uk/ssi/2016/232/contents/made>

42) The time limit for notices of appeal and responses to notices of appeal to the Upper Tribunal is 14 days. The time limit for the Upper Tribunal to give notice of a hearing is between 7 and 14 days. The time limit for the Upper Tribunal to give parties notice of its decision and reasons is 14 days.

43) In order to mirror current mental health practice and rules, which are intended to ensure that a patient's appeal is heard promptly, we do not intend to bring in a right to a review any decision of the Upper Tribunal.

**QUESTIONS ON THE UPPER TRIBUNAL RULES OF PROCEDURE**

Q1: Do you have any comments on the proposal that the Upper Tribunal should be able to suspend a decision made by either itself or the First-Tier Tribunal, which is the subject of an appeal, in rule 7?

Q2: Do you have any comments on the criteria for fresh evidence, in rule 19(4)?

Q3: Do you have any comments on hearings automatically being held in private in and the prohibition of public disclosure of documents and information?

Q4: Do you have any comments on the proposals regarding time limits in the Upper Tribunal?

Q5: Do you have any comments on the proposal that there should be no ability for the Upper Tribunal to review its own decisions in mental health cases?

Q6: Do you have any other comments you wish to make on the draft regulations for the Upper Tribunal rules of procedure?

## PART 5: CONSULTATION ON DRAFT REGULATIONS THAT SET OUT THE COMPOSITION OF THE FIRST-TIER TRIBUNAL AND UPPER TRIBUNAL FOR SCOTLAND

### Background

44) Sections 38 and 40 of the 2014 Act allow the Scottish Ministers, by regulation, to determine the composition of the First-tier and Upper Tribunals.

### Draft regulations

45) The draft regulations in **Annex D** apply to the composition of the First-tier Tribunal Mental Health Chamber and the Upper Tribunal when dealing with cases from the First-Tier Tribunal Mental Health Chamber.

46) The policy intention is to mirror the existing composition of the MHTS as set out in Schedule 2 of the 2003 Act. This means that cases in the First-tier Tribunal will be heard by the Chamber President and two ordinary members (one with medical experience and one with mental health care experience), or a legal member and two ordinary members (one medical experience and one with mental health care experience), or where appropriate, a judicial member (a sheriff) and two ordinary members (one medical experience and one with mental health care experience).

47) Cases appealed or transferred to the Upper Tribunal will be heard by judicial members of the Upper Tribunal, mirroring the type of judiciary that currently hear appeals in the courts. However, the appeals will take place in the Upper Tribunal, as opposed to the sheriff court. The Chamber President, the President of Tribunals or the Lord President will also be able to hear cases in the Upper Tribunal. They may either sit alone or with another judicial member of the Upper Tribunal. The Chamber President may only hear a case if they were not involved with the case before the First-tier Tribunal. The President of Tribunals will determine how the Upper Tribunal should be composed on a case-by-case basis. Cases that are currently appealed to the Court of Session will continue to be appealed to the Court of Session.

## QUESTIONS ON COMPOSITION REGULATIONS

Q1: Do you have any comments on the proposals regarding the composition of the First-tier Tribunal Mental Health Chamber?

Q2: Do you have any comments on the proposals regarding the composition of the Upper Tribunal when hearing cases appealed or transferred from the First-tier Tribunal Mental Health Chamber?

Q3: Do you have any other comments you wish to make?



## PART 6: DRAFT REGULATIONS SETTING OUT THE ELIGIBILITY FOR MEMBERSHIP OF THE FIRST-TIER TRIBUNAL MENTAL HEALTH CHAMBER

### Background

48) The draft regulations contained in **Annex E** prescribe eligibility criteria for ordinary members of the First-tier Tribunal assigned to the Mental Health Chamber and the Upper Tribunal. The criteria for ordinary (i.e. non legal) members have been developed specifically to cover members assigned to the mental health jurisdiction.

### Draft Regulations

49) The draft regulations contained within **Annex E** set out the criteria proposed to be applied by the Scottish Ministers in appointing ordinary members that hear cases within the First-tier Tribunal Mental Health Chamber. Ordinary members will have either medical experience or mental health care experience.

50) For ordinary membership with medical experience, the criteria are that a person must be fully registered within section 55(1) of the Medical Act 1983, whether or not that person holds a licence to practice and who:

- (a) is a member or fellow of the Royal College of Psychiatrists, or
- (b) has a minimum of four years whole time equivalent experience of providing psychiatric services.

51) For ordinary membership with mental health care experience, the criteria are that members must be a person who:

has experience of-

- (a) a mental disorder and using services provided in relation to mental disorder, or is a carer for a person with such experience
- (b) is a registered nurse with experience of providing services to persons having a mental disorder;
- (c) is a clinical psychologist registered with the Health Care Professions Council;
- (d) is a social worker (having the meaning given by section 77(1) of the Regulation of Care (Scotland) Act 2001) with experience in the assessment and care management of persons having a mental disorder;
- (e) is an occupational therapist registered with the Health Care Professions Council who has experience in the assessment and care management of persons having a mental disorder; or
- (f) not being a person mentioned in (a) to (e), is employed in the provision of (or in managing the provision of) a care service (having the meaning given by subsection (1)(a), (b), (d), (f), (g) and (j) of section 47 of Public Services Reform (Scotland) Act 2010 to persons having a mental disorder.

52) The draft regulations replicate the eligibility criteria set out above. On transfer-in, medical and general members of the MHTS will become ordinary members of the First-tier Tribunal.

**QUESTIONS ON ELIGIBILITY REGULATIONS**

Q1: Do you have any comments on the proposals regarding the eligibility criteria for ordinary members with medical or general mental health experience?

Q2: Are there any additional criteria you would wish to see prescribed?

Q3: Are there any proposed criteria that you do not wish to see prescribed?

Q4: Do you have any other comments you wish to make?

## **PART 7: DRAFT REGULATIONS AMENDING THE TIME LIMITS FOR SEEKING PERMISSION TO APPEAL**

### **Background**

53) The Scottish Tribunals (Time Limits) Regulations 2016<sup>12</sup> set out the time limits for applying to the First-tier Tribunal or Upper Tribunal for permission to appeal against its own decision, and the time limits for applying to the Upper Tribunal for permission to appeal against a decision of the First-tier Tribunal. The time limits are set as 30 days from the relevant date.

### **Draft Regulations**

54) The draft regulations contained within Annex F amend the time limits for applying to the First-tier Tribunal or Upper Tribunal for permission to appeal against its own decision to specify a 21 day time limit for decisions made in the Mental Health Chamber. The time limits for applying to the Upper Tribunal for permission to appeal against a decision of the First-tier Tribunal Mental Health Chamber will also be amended to 21 days from the relevant date. These changes are considered appropriate in order to maintain the current position as it stands in the MHTS with regard to time limits.

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<sup>12</sup> <http://www.legislation.gov.uk/ssi/2016/231/contents/made>

**QUESTIONS ON REGULATIONS AMENDING THE TIME LIMITS FOR SEEKING PERMISSION TO APPEAL**

Q1: Do you have any comments on the proposals regarding the amendments to time limits for seeking permission to appeal?

Q2: Do you have any other comments you wish to make?

## **PART 8: RESPONDING TO THIS CONSULTATION**

We are inviting responses to this consultation by 20 May 2018

Please respond to this consultation using the Scottish Government's consultation platform, Citizen Space. You view and respond to this consultation online at:

<https://consult.gov.scot/tribunals-and-administrative-justice/mental-health-tribunal>

You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 20 May 2018

If you are unable to respond online, please complete the Respondent Information Form (see "Handling your Response" below) to:

tribunals.consultations@gov.scot

Or by post to:

George Dickson  
Tribunals and Administrative Justice Policy  
GW15 St Andrew's House  
Regent Road  
Edinburgh  
EH1 3DG

### **Handling your response**

If you respond using Citizen Space (<http://www.consult.scotland.gov.uk/>), you will be directed to the Respondent Information Form. Please indicate how you wish your response to be handled and, in particular, whether you are happy for your response to be published.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form attached included in this document. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

### **Next steps in the process**

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material, responses will be made available to the public at <https://www.consult.scotland.gov.uk> If you use Citizen Space to respond, you will receive a copy of your responses via email.

Following the closing date, all responses will be analysed and considered along with any other evidence available to help us. Responses will be published where we have been given permission to do so.

## **Comments and complaints**

If you have any comments about how this consultation exercise has been conducted, please send them to [tribunals.consultations@gov.scot](mailto:tribunals.consultations@gov.scot)

## **Scottish Government consultation process**

Consultation is an essential part of the policy-making process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online: <http://consult.scotland.gov.uk>. Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Consultations may involve seeking views in a number of different ways, such as public meetings, focus groups, or other online methods such as Dialogue (<https://www.ideas.gov.scot>)

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body

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 SCOTTISH STATUTORY INSTRUMENTS
 

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**2018 No.**

**TRIBUNALS AND INQUIRIES**

**The First-tier Tribunal for Scotland (Transfer of Functions and  
Members of the Mental Health Tribunal for Scotland)  
Regulations 2018**

*Made* - - - - 2018

*Coming into force* - - 12th November 2018

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 20(2), 28(2), 28(6), 79(1) and 80(1) and paragraph 1(1) of schedule 2 of the Tribunals (Scotland) Act 2014(a) and all other powers enabling them to do so.

In accordance with section 11(1)(a) and (b) of that Act, the Scottish Ministers have obtained the Lord President's approval and have consulted such other persons as they considered appropriate.

In accordance with section 79(2)(a) and (b) and section 80(2)(a) of that Act, a draft of this instrument has been laid before, and approved by resolution of, the Scottish Parliament.

**Citation and commencement**

**1.**—(1) These Regulations may be cited as the First-tier Tribunal for Scotland (Transfer of Functions and Members of the Mental Health Tribunal for Scotland) Regulations 2018.

(2) These Regulations come into force on 12th November 2018.

**Interpretation**

**2.** In these Regulations—

“the appointed day” means 12th November 2018;

“general member of the MHTS” means a member of a panel appointed under paragraph 1(1)(c) of schedule 2 of the 2003 Act;

“proceedings before the MHTS” means any application, reference or appeal to the MHTS, any review by it, or any case remitted to it;

“the 2003 Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003(b);

“the 2014 Act” means the Tribunals (Scotland) Act 2014(c);

“functions of the MHTS” mean the functions conferred on the MHTS by virtue of the 2003 Act;

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(a) 2014 asp 10.

(b) 2003 asp 13 as amended by

(c) 2014 asp 10.

“legal member of the MHTS” means a member of a panel appointed under paragraph 1(1)(a) of schedule 2 of the 2003 Act;

“medical member of the MHTS” means a member of a panel appointed under paragraph 1(1)(b) of schedule 2 of the 2003 Act;

“MHTS” means the Mental Health Tribunal for Scotland constituted in accordance with schedule 2 of the 2003 Act;

“President of the MHTS” means the individual appointed under paragraph 3(1) of schedule 2 of the 2003 Act to be President of the MHTS; and

“sheriff convener” means a member of a panel appointed under paragraph 2 of schedule 2 of the 2003 Act.

### **Transfer of functions to the First-tier Tribunal and abolition**

**3.**—(1) Subject to regulations 4 and 5, on the appointed day the functions of the MHTS are transferred to the First-tier Tribunal with allocation to the First-tier Tribunal Mental Health Chamber.

(2) The MHTS is abolished on the appointed day.

### **Transfer of MHTS members to the First-tier Tribunal**

**4.**—(1) Subject to paragraphs (2) and (3), members of the MHTS under the age of 70 on the appointed day are transferred to and become members of the First-tier Tribunal, with—

- (a) legal members of the MHTS becoming legal members of the First-tier Tribunal;
- (b) medical members of the MHTS and general members of the MHTS becoming ordinary members of the First-tier Tribunal; and
- (c) the President of the MHTS becoming Chamber President of the First-tier Tribunal Mental Health Chamber.

(2) Members of the MHTS transferred to the First-tier Tribunal under paragraph (1) shall (subject to the provisions of the 2014 Act) be members of the First-tier Tribunal in accordance with terms and conditions to be offered by the Scottish Ministers on transfer, which will supersede any existing terms and conditions of appointment.

(3) A member of the MHTS who is aged 70 or over on the appointed day shall transfer only if the Scottish Ministers in consultation with the President of Tribunals consider it is desirable in the public interest that the member should transfer.

(4) Paragraph (1) does not apply to any member of the MHTS if the member has already been transferred to and is a member of the First-tier Tribunal by virtue of regulations made under section 28(2) of the 2014 which were in force prior to the appointed day.

(5) Paragraph (1) does not apply to any member of the MHTS who is not eligible for appointment to the First-tier Tribunal under regulations made by Scottish Ministers under paragraph 1(2) of schedule 3 of the 2014 Act.

### **Transitional and savings provisions**

**5.** Schedule 1 of these Regulations contains transitional and savings provisions.

### **Consequential amendments and repeals**

**6.**—(1) The consequential amendments and repeals of primary legislation set out in Part 1 of schedule 2 of these Regulations have effect.

(2) The consequential amendments to subordinate legislation set out in Part 2 of schedule 2 of these Regulations have effect.



(3) The consequential revocations of subordinate legislation set out in Part 3 of schedule 2 of these Regulations have effect.

St Andrew's House,  
Edinburgh

2018

A member of the Scottish Government

**Transitional and savings provisions****Proceedings in progress before the MHTS immediately before the appointed day to transfer to the First-tier Tribunal**

1. Any application to the MHTS made before the appointed day but not determined, or any proceedings of the MHTS in progress immediately before that day, shall be transferred to and be completed by the First-tier Tribunal but with so far as possible the same persons hearing and determining the matter before the First-tier Tribunal as members of that tribunal as were prior to the appointed hearing the matter as members of the MHTS.

**Decisions, directions and guidance of the MHTS to continue in force**

2. Any decision, direction or guidance given or made in or in respect of any application to, or proceedings before, the MHTS which is in force immediately before the appointed day remains in force on and after that date as if it were a decision, direction or guidance of the First-tier Tribunal.

**Time limits in respect of proceedings before the MHTS to carry over to the First-tier Tribunal**

3. Any time limit which has started to run before the appointed day in respect of applications to, and proceedings before, the MHTS (and which has not expired) shall continue to apply where applications and proceedings are transferred to the First-tier Tribunal.

**Unexercised right of appeal to sheriff principal, if exercised, is an appeal to the Upper Tribunal**

4. Where in respect of a decision of the MHTS before the appointed day, there lies a right of appeal to a sheriff principal by virtue of section 320 of the 2003 Act, which has not been exercised before that date but is still exercisable, any appeal on or after the appointed day shall be to the Upper Tribunal as if the decision had been made by the First-tier Tribunal and the appeal shall be an appeal from the First-tier Tribunal for the purposes of section 46(1) of the 2014 Act.

**Unexercised right of appeal to the Court of Session, if exercised, is still an appeal to the Court of Session**

5. Where in respect of a decision of the MHTS before the appointed day, there lies a right of appeal to the Court of Session by virtue of section 322 of the 2003 Act which has not been exercised before that date but is still exercisable, any appeal on or after the appointed day shall not be affected by these Regulations and be to the Court of Session except that any reference in the 2003 Act to the Court of Session remitting such an appeal to it back to the MHTS shall be construed as a reference to remitting the appeal back to the First-tier Tribunal.

**Exercised right of appeal to the sheriff principal shall be completed by the sheriff principal**

6. Where in respect of a decision of the MHTS before the appointed day, there lies a right of appeal to the sheriff principal by virtue of section 320 of the 2003 Act which has been exercised before that date but not determined, the appeal shall not be affected by these Regulations and be completed by the sheriff principal except that—

- (a) any reference in the 2003 Act to the sheriff principal remitting such an appeal back to the MHTS shall be construed as a reference to remitting the reference back to the First-tier Tribunal; and

- (b) any appeal of the decision of the sheriff principal after the appointed day shall be to the Upper Tribunal, as if the decision of the sheriff principal had been made by the First-tier Tribunal and the appeal shall be an appeal from the First-tier Tribunal for the purposes of section 46(1) of the 2014 Act.

**Exercised right of appeal to the Court of Session shall be completed by the Court of Session**

7. Where in respect of a decision of the MHTS before the appointed day, there lies a right of appeal to the Court of Session by virtue of section 322 of the 2003 Act which has been exercised before that date but not determined, the appeal shall not be affected by these Regulations and be completed by the Court of Session except that any reference in the 2003 Act to the Court of Session remitting such an appeal to it back to the MHTS shall be construed as a reference to remitting the appeal back to the First-tier Tribunal.

**Applications for Assistance by Way of Representation**

8. Any application for assistance by way of representation made to the Scottish Legal Aid Board immediately before the appointed day in relation to proceedings before the Mental Health Tribunal for Scotland which has still to be determined or has been approved, shall be treated on or after the appointed day as if it had been made, or approved, in relation to proceedings before the First-tier Tribunal for Scotland Mental Health Chamber.

## PART 1

## Consequential amendments and repeals of primary legislation

**Tribunals and Inquiries Act 1992**

1.—(1) The Tribunals and Inquiries Act 1992<sup>(a)</sup> is amended as follows.

(2) In Part II of Schedule 1 (tribunals under the supervision of Scottish committee), omit the entry for “Mental health” at paragraph 54A.

**Scottish Public Services Ombudsman Act 2002**

2.—(1) The Scottish Public Services Ombudsman Act 2002<sup>(b)</sup> is amended as follows.

(2) In schedule 3 (specified tribunals for the purposes of sections 6 and 7), omit paragraph 4A.

**Criminal Justice (Scotland) Act 2003**

3.—(1) The Criminal Justice (Scotland) Act 2003<sup>(c)</sup> is amended as follows.

(2) In section 16C(2)(g) (information to be given under section 16A), for “Mental Health Tribunal” substitute “First-tier Tribunal”.

(3) In section 17B(5)(b) (mentally-disordered offender: victim’s right to make representations), for “Mental Health Tribunal” substitute “First-tier Tribunal”.

(4) In section 17D(3)(b) (right to information after section 17B decision), for “Tribunal’s” substitute “First-tier Tribunal’s”.

(5) In section 17E(1)(b) (information sharing in respect of mentally-disordered offenders), for “Mental Health Tribunal” substitute “First-tier Tribunal”.

(6) In section 18A(1) (interpretation of part)—

(a) before the entry for “Mental Health Act” insert—

““First-tier Tribunal” means the First-tier Tribunal for Scotland Mental Health Chamber;” and

(b) omit the entry for “Mental Health Tribunal”.

**Mental Health (Care and Treatment) (Scotland) Act 2003**

4.—(1) The Mental Health (Care and Treatment) (Scotland) Act 2003<sup>(d)</sup> is amended as follows.

(2) In section 1(7)(f) (principles for discharging certain functions), for “Tribunal” substitute “First-tier Tribunal”.

(3) Part 3 (the Mental Health Tribunal for Scotland) is repealed.

(4) In section 48(2)(c) (extension certificate: notification), for “Tribunal” substitute “First-tier Tribunal”.

(5) In section 49(4)(a) (responsible medical officer’s duty to review continuing need for detention), for “Tribunal” substitute “First-tier Tribunal”.

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(a) 1992 c.53.

(b) 2002 asp 11.

(c) 2003 asp 7.

(d) 2003 asp 13.

(6) In section 50 (patient’s right to apply for revocation of short-term detention certificate or extension certificate etc.), in subsections (1)(b), (2), (3)(h), (3)(i) and (4), for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”.

(7) In section 52(g) (revocation of short-term detention certificate or extension certificate: notification), for “Tribunal” substitute “First-tier Tribunal”.

(8) In section 57(1) (mental health officer’s duty to apply for compulsory treatment order), for “Tribunal” substitute “First-tier Tribunal”.

(9) In section 61(4)(h) (mental health officer’s duty to prepare report), for “Tribunal” substitute “First-tier Tribunal”.

(10) In section 63(1) (application for compulsory treatment order), for “Tribunal” substitute “First-tier Tribunal”.

(11) In section 64 (powers of Tribunal on application under section 63: compulsory treatment order)—

- (a) in subsections (2), (3)(i), (3)(j) and (5)(f) for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”;
- (b) in subsection (4) for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”; and
- (c) in subsection (7) for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”.

(12) The title of section 64 becomes “**Powers of First-tier Tribunal on application under section 63: compulsory treatment order**”.

(13) In section 65 (powers of tribunal on application under section 63: compulsory treatment order), in subsections (2), (3), (4) and (5)(c), for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”.

(14) The title of section 65 becomes “**Powers of First-tier Tribunal on application under section 63: interim compulsory treatment order**”.

(15) The italic heading preceding section 69 becomes “*Time Limits for First-tier Tribunal’s determination: special case*”.

(16) In section 69 (time limit for determining application etc. where section 68 applies), for “Tribunal” substitute “First-tier Tribunal”.

(17) In section 74(3)(f) (revocation under section 72 or 73: notification), for “Tribunal” substitute “First-tier Tribunal”.

(18) In section 82(3)(f) (revocation of order: notification), for “Tribunal” substitute “First-tier Tribunal”.

(19) In section 87 (determination extending order: notification etc.)—

- (a) in subsections (2)(b) and (2)(c) and (4), for “Tribunal” in both places where it occurs substitute “First-tier Tribunal”;
- (b) in subsection (4), for “Tribunal” in both places where it occurs substitute “First-tier Tribunal”.

(20) In section 87A (further information where order extended), in subsections (1)(b), (2)(b), (2)(c) and (3), for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”.

(21) In section 90(2) (responsible medical officer’s duty to apply for extension and variation of order), for “Tribunal” substitute “First-tier Tribunal”.

(22) In section 92 (application to Tribunal), for “Tribunal” substitute “First-tier Tribunal”.

(23) The title of section 92 becomes “**Application to First-tier Tribunal**”.

(24) In section 93 (responsible medical officer’s duties: variation of order), in subsections (4A)(a) and (4E)(a) and (5), for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”.

(25) In section 95 (application to tribunal by responsible medical officer), for “Tribunal” substitute “First-tier Tribunal”.

(26) The title of section 95 becomes “**Application to First-tier Tribunal by responsible medical officer**”.

(27) The italic heading preceding section 96 becomes “Recorded matters: reference to First-tier Tribunal by responsible medical officer”.

(28) In section 96(3) (recorded matters: reference to tribunal by responsible medical officer), for “Tribunal” substitute “First-tier Tribunal”.

(29) The title of section 96 becomes “**Recorded matters: reference to First-tier Tribunal by responsible medical officer**”.

(30) In section 97 (reference to tribunal under section 96(3): notification), for “Tribunal” substitute “First-tier Tribunal”.

(31) The title of section 97 becomes “**Reference to First-tier Tribunal under section 96(3): notification**”.

(32) The italic heading preceding section 98 becomes “*Reference to First-tier Tribunal by Commission*”.

(33) The title of section 98 becomes “**Reference to First-tier Tribunal by Commission**”.

(34) In section 99(1) (application by patient etc. for revocation of determination extending order), for “Tribunal” substitute “First-tier Tribunal”.

(35) In section 100(2) (application by patient etc. for revocation or variation of order), for “Tribunal” substitute “First-tier Tribunal”.

(36) The italic heading preceding section 101 becomes “Review by First-tier Tribunal of determination extending order”.

(37) In section 101 (tribunal’s duty to review determination under section 86), in subsections (2), (3)(b) and (3)(c), for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”.

(38) The title of section 101 becomes “First-tier Tribunal’s duty to review determination under section 86”.

(39) The italic heading preceding section 102 becomes “*Powers of First-tier Tribunal*”.

(40) In section 102 (powers of tribunal), in subsections (1), (2), (3)(h) and (3)(i), for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”.

(41) The title of section 102 becomes “**Powers of First-tier Tribunal on review under section 101**”.

(42) In section 103 (powers of tribunal on application under section 92, 95, 99 or 100), in subsections (1), (2), (3), (4), (5) and (6)(b), for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”.

(43) The title of section 103 becomes “**Powers of First-tier Tribunal on application under section 92, 95, 99 or 100**”.

(44) In section 104 (powers of tribunal on reference under section 96 or 98), in subsections (1), (2) and (3)(b), for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”.

(45) The title of section 104 becomes “**Powers of First-tier Tribunal on reference under section 96 or 98**”.

(46) In section 105(2) (interim extension etc. of order: application under section 92), for “Tribunal” in both places where it occurs substitute “First-tier Tribunal”.

(47) In section 106 (interim variation of order: application, reference or review under chapter)—

(a) in subsection (1)(c), for “Tribunal” substitute “First-tier Tribunal”; and

(b) in subsection (2), for “Tribunal” in both places where it occurs substitute “First-tier Tribunal”.

(48) In section 107 (limit on tribunal’s power to make interim orders), for “Tribunal” substitute “First-tier Tribunal”.

(49) The title of section 107 becomes “**Limit of First-tier Tribunal’s power to make interim orders**”.

(50) In section 108 (tribunal’s order varying compulsory treatment order), for “Tribunal” both times it occurs substitute “First-tier Tribunal”.

(51) The title of section 108 becomes “**First-tier Tribunal’s order varying compulsory treatment order**”.

(52) In section 109 (ancillary powers of tribunal)—

(a) in subsections (1)(a), (1)(b), and (1)(c), for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”; and

(b) in subsection (2), for “Tribunal” in both places where it occurs substitute “First-tier Tribunal”.

(53) The title of section 109 becomes “**Ancillary powers of First-tier Tribunal**”.

(54) In section 120(2) (certificates under sections 114(2) and 115(2): patient’s right to apply to tribunal), for “Tribunal” substitute “First-tier Tribunal”.

(55) The title of section 120 becomes “**Certificates under sections 114(2) and 115(2): patient’s right to apply to First-tier Tribunal**”.

(56) In section 125 (transfer to hospital other than state hospital: appeal to tribunal)-

(a) in subsections (2) and (5), for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”; and

(b) in subsection (4), for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”.

(57) The title of section 125 becomes “**Transfer to hospital other than state hospital: appeal to First-tier Tribunal**”.

(58) In section 126 (transfer to hospital: appeal to tribunal)—

(a) in subsections (2) and (5), for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”; and

(b) in subsection (4), for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”.

(59) The title of section 126 becomes “**Transfer to hospital: appeal to First-tier Tribunal**”.

(60) In section 144(3)(f) (revocation of compulsion order: notification), for “Tribunal” substitute “First-tier Tribunal”.

(61) In section 148(3) (first review: responsible medical officer’s duty to apply for extension of compulsion order), for “Tribunal” substitute “First-tier Tribunal”.

(62) In section 149 (application to tribunal for extension of order following first review), for “Tribunal” substitute “First-tier Tribunal”.

(63) The title of section 149 becomes “**Application to First-tier Tribunal for extension of order following first review**”.

(64) In section 153 (determination extending compulsion order: notification)—

(a) in subsection (2)(b) and (2)(c), for “Tribunal” in both places where it occurs substitute “First-tier Tribunal”; and

(b) in subsection (4), for “Tribunal” in both places where it occurs substitute “First-tier Tribunal”.

(65) In section 153A (further information on extension of compulsion order), in subsections (1)(b), (2)(b), (2)(c) and (3) for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”.

(66) In section 154(3)(a) (responsible medical officer’s duty where extension and variation proposed), for “Tribunal” substitute “First-tier Tribunal”.

(67) In section 156(2) (responsible medical officer’s duty to apply for extension and variation of compulsion order), for “Tribunal” substitute “First-tier Tribunal”.

(68) In section 158 (application to tribunal for extension and variation of compulsion order), for “Tribunal” substitute “First-tier Tribunal”.

(69) The title of section 158 becomes “**Application to First-tier Tribunal for extension and variation of compulsion order**”.

(70) In section 161 (application to Tribunal by responsible medical officer), for “Tribunal” substitute “First-tier Tribunal”.

(71) The title of section 161 becomes “**Application to First-tier Tribunal by responsible medical officer**”.

(72) The italic heading preceding section 162 becomes “*Reference to First-tier Tribunal by Commission*”.

(73) In section 162(2) (commission’s power to make reference to tribunal), for “Tribunal” substitute “First-tier Tribunal”.

(74) The title of section 162 becomes “**Commission’s power to make reference to First-tier Tribunal**”.

(75) The italic heading preceding section 163 becomes “*Applications to First-tier Tribunal by patient etc*”.

(76) In section 163 (application to tribunal by patient etc. For revocation of determination extending compulsion order), in subsections (1) and (2) for “Tribunal” in both places where it occurs substitute “First-tier Tribunal”.

(77) The title of section 163 becomes “**Application to First-tier Tribunal by patient etc. for revocation of determination extending compulsion order**”.

(78) In section 164(2) (application to tribunal by patient etc. For revocation or variation of compulsion order), for “Tribunal” substitute “First-tier Tribunal”.

(79) The title of section 164 becomes “**Application to First-tier Tribunal by patient etc. for revocation or variation of compulsion order**”.

(80) The italic heading preceding section 165 becomes “*Review by First-tier Tribunal of determination extending order*”.

(81) In section 165(2) (tribunal’s duty to review determination under section 152), for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”.

(82) The title of section 165 becomes “**First-tier Tribunal’s duty to review determination under section 152**”.

(83) The italic heading preceding section 166 becomes “**Powers of First-tier Tribunal**”.

(84) In section 166 (power of tribunal on review under section 165), in subsections (1), (2), (3)(h) and (3)(i), for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”.

(85) The title of section 166 becomes “**Powers of First-tier Tribunal on review under section 165**”.

(86) In section 167 (powers of tribunal on application under section 149, 158, 161, 163 or 164), in subsections (1), (2), (3), (4), (5), (6) and (7)(b), for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”.

(87) The title of section 167 becomes “**Powers of First-tier Tribunal on application under section 149,158, 161, 163 or 164**”.

(88) In section 168(2) (interim extension etc. of order: application under section 149 or 158), for “Tribunal” in both places where it occurs substitute “First-tier Tribunal”.

(89) In section 169 (interim variation of order following application, reference or review under chapter)—

(a) in subsection (1)(c), for “Tribunal” substitute “First-tier Tribunal”; and

(b) in subsection (2), for “Tribunal” in both places where it occurs substitute “First-tier Tribunal”.



(90) In section 170 (limit on power of tribunal to make interim order), for “Tribunal” substitute “First-tier Tribunal”.

(91) The title of section 170 becomes “**Limit on power of First-tier Tribunal to make interim order**”.

(92) In section 171 (powers of tribunal on reference under section 162), in subsections (1), (2) and (3)(b), for “Tribunal” in each place it occurs substitute “First-tier Tribunal”.

(93) The title of section 171 becomes “**Powers of First-tier Tribunal on reference under section 162**”.

(94) In section 172 (tribunal’s order varying compulsion order), for “Tribunal” in both places where it occurs substitute “First-tier Tribunal”.

(95) The title of section 172 becomes “First-tier Tribunal’s order varying compulsion order”.

(96) In section 173 (applications to tribunal: ancillary powers)—

(a) in subsections (1)(a) and (1)(b), for “Tribunal” in both places where it occurs substitute “First-tier Tribunal”.

(b) in subsection (2), for “Tribunal” in both places where it occurs substitute “First-tier Tribunal”.

(97) The title of section 173 becomes “**Applications to First-tier Tribunal: ancillary powers**”.

(98) The italic heading preceding section 185 becomes “Reference to First-tier Tribunal by Scottish Ministers”.

(99) In section 185(1) (duty of Scottish ministers on receiving report from responsible medical officer), for “Tribunal” substitute “First-tier Tribunal”.

(100) In section 186(2) (commission’s power to require Scottish ministers to make reference to tribunal), for “Tribunal” substitute “First-tier Tribunal”.

(101) The title of section 186 becomes “**Commission’s power to require Scottish Ministers to make reference to First-tier Tribunal**”.

(102) In section 187(2) (notice under section 186(2): reference to tribunal), “Tribunal” substitute “First-tier Tribunal”.

(103) The title of section 187 becomes “**Notice under section 186(2): reference to First-tier Tribunal**”.

(104) In section 188 (duty of Scottish ministers to keep compulsion order and restriction order under review), in subsections (3), (4), (5), (6) and (7), for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”.

(105) In section 189 (reference to tribunal by Scottish ministers)—

(a) in subsection (2), for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”;

(b) in subsection (3), for “Tribunal” substitute “First-tier Tribunal”.

(106) The title of section 189 becomes “**Reference to First-tier Tribunal by Scottish Ministers**”.

(107) In section 191 (application to tribunal), for “Tribunal” substitute “First-tier Tribunal”.

(108) The title of section 191 becomes “**Application to First-tier Tribunal**”.

(109) In section 192 (application to tribunal by patient and named person), in subsections (2) and (4)(b)(ii), for “Tribunal” in both places where it occurs substitute “First-tier Tribunal”.

(110) The title of section 192 becomes “**Application to First-tier Tribunal by patient and named person**”.

(111) The italic heading preceding section 193 becomes “*Proceedings before First-tier Tribunal*”.

(112) In section 193 (powers of tribunal on reference under section 185(1), 187(2) or 189(2) or application under section 191 or 192(2))—

- (a) in subsections (2), (4), (5), (6), (8), (9)(f), (9)(j) and (10), for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”;
- (b) in subsection (3), for “Tribunal” in both places where it occurs substitute “First-tier Tribunal”;
- (c) in subsection (7), for “Tribunal” in both places where it occurs substitute “First-tier Tribunal”; and
- (d) in subsection (9A), for “Tribunal” in both places where it occurs substitute “First-tier Tribunal”.

(113) The title of section 193 becomes “**Powers of First-tier Tribunal on reference under section 185(1), 187(2) or 189(2) or application under section 191 or 192(2)**”.

(114) In section 194 (tribunal’s powers etc. when varying compulsion order), for “Tribunal” in both places where it occurs substitute “First-tier Tribunal”.

(115) The title of section 194 becomes “**First-tier Tribunal’s powers etc. when varying compulsion order**”.

(116) In section 195 (deferral of conditional discharge), for “Tribunal” in both places where it occurs substitute “First-tier Tribunal”.

(117) In section 196(1) (general effect of orders under section 193), for “Tribunal” substitute “First-tier Tribunal”.

(118) In section 197 (effect of revocation of compulsion order), for “Tribunal” substitute “First-tier Tribunal”.

(119) In section 198(1) (effect of revocation of restriction order), for “Tribunal” substitute “First-tier Tribunal”.

(120) In section 200 (variation of conditions imposed on conditional discharge), in subsections (1)(a), (1)(b), (2) and (3), for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”.

(121) In section 201 (appeal to tribunal against variation of conditions imposed on conditional discharge)—

- (a) in subsection (1) for “Tribunal” in both places it occurs substitute “First-tier Tribunal”; and
- (b) in subsection (3) for “Tribunal” substitute “First-tier Tribunal”.

(122) The title of section 201 becomes “**Appeal to First-tier Tribunal against variation of conditions imposed on conditional discharge**”.

(123) In section 202(1) (recall of patients from conditional discharge) for “Tribunal” substitute “First-tier Tribunal”.

(124) In section 204 (appeal to tribunal against recall from conditional discharge), in subsections (1) and (3) for “Tribunal” in both places where it occurs substitute “First-tier Tribunal”.

(125) The title of section 204 becomes “**Appeal to First-tier Tribunal against recall from conditional discharge**”.

(126) The italic heading preceding section 209 becomes “Reference to First-tier Tribunal by Scottish Ministers”.

(127) In section 209(2) (commission’s power to require Scottish ministers to make reference to tribunal), for “Tribunal” substitute “First-tier Tribunal”.

(128) The title of section 209 becomes “**Commission’s power to require Scottish Ministers to make reference to First-tier Tribunal**”.

(129) In section 210(3) (duty of Scottish ministers on receiving report from responsible medical officer), for “Tribunal” substitute “First-tier Tribunal”.

(130) In section 211(2) (notice under section 209(2): reference to tribunal), for “Tribunal” substitute “First-tier Tribunal”.

(131) The title of section 211 becomes “**Notice under section 209(2): reference to First-tier Tribunal**”.

(132) In section 213 (reference to tribunal by Scottish ministers)-

(a) in subsection (2), for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”; and

(b) in subsection (3), for “Tribunal” substitute “First-tier Tribunal”.

(133) The title of section 213 becomes “**Reference to First-tier Tribunal by Scottish Ministers**”.

(134) In section 214(2) (application to tribunal by patient and named person), for “Tribunal” substitute “First-tier Tribunal”.

(135) The title of section 214 becomes “**Application to First-tier Tribunal by patient and named person**”.

(136) The italic heading preceding section 215 becomes “*Proceedings before the First-tier Tribunal*”.

(137) In section 215 (powers of tribunal on reference under section 210(3), 211(2) or 213(2) or on application under section 214(2))—

(a) in subsections (2), (3), (5), (6), (7)(f), (7)(j) and (8), for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”;

(b) in subsection (4), for “Tribunal” in both places where it occurs substitute “First-tier Tribunal”.

(138) The title of section 215 becomes “**Powers of First-tier Tribunal on reference under section 210(3), 211(2) or 213(2) or on application under section 214(2)**”.

(139) In section 219 (appeal to tribunal against transfer under section 218 to hospital other than state hospital)—

(a) in subsections (2) and (5), for “Tribunal” in both places it occurs substitute “First-tier Tribunal”; and

(b) in subsection (4), for “Tribunal” in both places it occurs substitute “First-tier Tribunal”.

(140) The title of section 219 becomes “**Appeal to First-tier Tribunal against transfer under section 218 to hospital other than state hospital**”.

(141) In section 220 (appeal to tribunal against transfer under section 218 to state hospital)—

(a) in subsections (2) and (5), for “Tribunal” in both places it occurs substitute “First-tier Tribunal”; and

(b) in subsection (4), for “Tribunal” in both places it occurs substitute “First-tier Tribunal”.

(142) The title of section 220 becomes “**Appeal to First-tier Tribunal against transfer under section 218 to state hospital**”.

(143) In section 256(1) (named person: application by patient etc.), for “Tribunal” substitute “First-tier Tribunal”.

(144) In section 257 (named person: tribunal’s powers)—

(a) in subsection (2), for “Tribunal” in both places it occurs substitute “First-tier Tribunal”; and

(b) in subsections (3), (4) and (6)(a), for “Tribunal” in each place it occurs substitute “First-tier Tribunal”.

(145) The title of section 257 becomes “**Named person: First-tier Tribunal’s powers**”.

(146) In section 264 (detention in conditions of excessive security: state hospitals) in subsections (2), (3), (4), (5) and (9), for “Tribunal” in each places it occurs substitute “First-tier Tribunal”.

(147) In section 265 (order under section 264: further provision)—

- (a) in subsection (2), for “Tribunal” in both places it occurs substitute “First-tier Tribunal”; and
  - (b) in subsections (3), (4), (5), (6) and (7) for “Tribunal” in each place it occurs substitute “First-tier Tribunal”.
- (148) In section 267 (order under section 264 or 265: recall), in subsection (2) and (5), for “Tribunal” in both places it occurs substitute “First-tier Tribunal”.
- (149) In section 268 (detention in conditions of excessive security: hospitals other than state hospitals), in subsections (2), (3), (4), (5), (9), (10)(i) and (10)(l), for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”.
- (150) In section 269 (order under section 268: further provision)—
- (a) in subsection (2), for “Tribunal” in both places where it occurs substitute “First-tier Tribunal”;
  - (b) in subsection (3), for “Tribunal” in both places where it occurs substitute “First-tier Tribunal”; and
  - (c) in subsections (4), (5), (6) and (7), for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”.
- (151) In section 271 (orders under sections 268 or 269: recall), in subsections (2) and (5), for “Tribunal” in both places where it occurs substitute “First-tier Tribunal”.
- (152) In section 274(5)(b) (code of practice), for “Tribunal” substitute “First-tier Tribunal”.
- (153) In section 276 (advance statements: effect)—
- (a) in subsection (6), for “Tribunal” substitute “First-tier Tribunal”; and
  - (b) in subsection (7), for “Tribunal” in both places it occurs substitute “First-tier Tribunal”.
- (154) In section 291 (application to tribunal in relation to unlawful detention), in subsections (2) and (3), for “Tribunal” in both places where it occurs substitute “First-tier Tribunal”.
- (155) The title of section 291 becomes “**Application to First-tier Tribunal in relation to unlawful detention**”.
- (156) Section 320 (appeal to sheriff principal against certain decisions of the Tribunal) is repealed.
- (157) Section 321 (appeal to Court of Session against decisions of sheriff principal) is repealed.
- (158) In section 322 (appeal to court of session against certain decisions of the tribunal), in subsections (1) and (2), for “Tribunal” in both places where it occurs substitute “First-tier Tribunal”.
- (159) The title of section 322 becomes “**Appeal to Court of Session against certain decisions of the First-tier Tribunal**”.
- (160) In section 323(1) (suspension of decision of tribunal pending determination of certain appeals), for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”.
- (161) The title of section 323 becomes “**Suspension of decision of First-tier Tribunal pending determination of certain appeals**”.
- (162) In section 324 (appeals: general provisions)—
- (a) subsection (1) omit “(a) to the sheriff principal under section 320(2) of this Act; or”
  - (b) in subsection (2), for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”;
  - (c) in subsection (3)—
    - (i) for “Tribunal” substitute “First-tier Tribunal”;
    - (ii) omit “320(2) or”; and
    - (iii) omit “and in any appeal from the decision of the sheriff principal under section 321(1)”;
  - (d) in subsection (4)—

- (i) for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”; and
  - (ii) omit ”320(2), 321(1) or”;
  - (e) in subsection (5)—
    - (i) omit ”320(2), 321(1) or”; and
    - (ii) for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”;
  - (f) in subsection (6), for ”Tribunal” in both places where it occurs substitute ”First-tier Tribunal”;
  - (g) in subsection (7), omit ”320(2), 321(1) or”; and
  - (h) in subsection (8)—
    - (i) omit “the sheriff principal or”; and
    - (ii) omit “as the case may be”.
- (163) In section 329 (interpretation)—
- (a) in subsection (1), after the entry for “extension certificate” insert—
    - ““the First-tier Tribunal” means the First-tier Tribunal for Scotland Mental Health Chamber;”;
  - (b) in subsection (1), omit the entry for ”the Tribunal”; and
  - (c) in subsection (2)—
    - (i) for “Tribunal” substitute “First-tier Tribunal”; and
    - (ii) for “tribunal concerned” substitute “First-tier Tribunal”.
- (164) Schedule 2 (the Mental Health Tribunal for Scotland) is repealed.

### **Public Services Reform (Scotland) Act 2010**

- 5.—**(1) The Public Services Reform (Scotland) Act 2010(a) is amended as follows.
- (2) In section 16(6) (preconditions)—
- (a) for “paragraph 7(4) of schedule 2 to the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)” substitute “regulation [ ] of the First-tier Tribunal for Scotland Mental Health Chamber and Upper Tribunal for Scotland (Composition) Regulations 2018 (SSI 2018/ )”; and
  - (b) for “Mental Health Tribunal for Scotland” substitute “First-tier Tribunal for Scotland Mental Health Chamber and Upper Tribunal for Scotland”.
- (3) In section 18(6) (preconditions)—
- (a) for “paragraph 7(4) of schedule 2 to the Mental Health (Care and Treatment) (Scotland) Act 2003 (asp 13)” substitute “regulation [ ] of the First-tier Tribunal for Scotland Mental Health Chamber and Upper Tribunal for Scotland (Composition) Regulations 2018 (SSI 2018/ )”; and
  - (b) for “Mental Health Tribunal for Scotland” substitute “First-tier Tribunal for Scotland Mental Health Chamber and Upper Tribunal for Scotland”.
- (4) In schedule 5 (improvement of public functions: listed bodies), in paragraph 1, omit the entry for “Mental Health Tribunal for Scotland”.
- (5) In schedule 8 (information on exercise of public functions: listed public bodies), omit the entry for “Mental Health Tribunal for Scotland”.

### **Public Records (Scotland) Act 2011**

- 6.—**(1) The Public Records (Scotland) Act 2011(a) is amended as follows.

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(a) 2010 asp 8.

(2) In the schedule (authorities to which Part 1 applies), omit the entry for “Mental Health Tribunal for Scotland”.

## PART 2

### Consequential amendments of subordinate legislation

#### **Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003**

**7.**—(1) The Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003**(b)** are amended as follows.

(2) In regulation 1(2), omit the entry for “Mental Health Tribunal for Scotland”.

(3) In regulation 3(d), for “Mental Health Tribunal for Scotland” substitute “First-tier Tribunal for Scotland Mental Health Chamber”.

(4) In regulation 9(b), for “Mental Health Tribunal for Scotland” substitute “First-tier Tribunal for Scotland Mental Health Chamber”.

#### **Mental Health (Care and Treatment) (Scotland) Act 2003 (Transitional and Savings Provisions) Order 2005**

**8.**—(1) Mental Health (Care and Treatment) (Scotland) Act 2003 (Transitional and Savings Provisions) Order 2005**(c)** is amended as follows.

(2) In article 4, in paragraphs (4), (5) and (7)(e), for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”.

(3) In article 10, in paragraphs (5), (6) and (8)(e), for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”.

(4) In article 15, in paragraphs (5), (6) and (8)(e), for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”.

(5) In article 17, in paragraph (3)(a), (6), (7) and (9)(e), for “Tribunal” substitute “First-tier Tribunal”.

(6) In article 20—

(a) in paragraph (4), for “Tribunal” in both places where it occurs substitute “First-tier Tribunal”; and

(b) in paragraph (6) for “Tribunal” in both places where it occurs substitute “First-tier Tribunal”.

(7) In article 24(1), for “Tribunal” in both places where it occurs substitute “First-tier Tribunal”.

(8) In article 25(2), for “Tribunal” in both places where it occurs substitute “First-tier Tribunal”.

(9) In article 29(4), for “Tribunal” in both places where it occurs substitute “First-tier Tribunal”.

#### **Mental Health (Compulsion orders - documents and reports to be submitted to the Tribunal) (Scotland) Regulations 2005**

**9.**—(1) The Mental Health (Compulsion orders - documents and reports to be submitted to the Tribunal) (Scotland) Regulations 2005**(d)** are amended as follows.

(2) In regulation 2, for “Tribunal” substitute “First-tier Tribunal”.

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(a) 2011 asp 12.  
(b) S.S.I. 2003/179.  
(c) S.S.I. 2005/452.  
(d) S.S.I. 2005/365.

- (3) The title of regulation 2 becomes **”Documents to accompany application to First-tier Tribunal under section 149”**.
- (4) In regulation 3, for “Tribunal” substitute “First-tier Tribunal”.
- (5) The title of regulation 3 becomes **“Documents to accompany application to First-tier Tribunal under section 158”**.
- (6) In regulation 4, for “Tribunal” substitute “First-tier Tribunal”.
- (7) The title of regulation 4 becomes **“Documents to accompany application to First-tier Tribunal under section 161”**.
- (8) In regulation 5, for ”Tribunal” in each place where it occurs substitute “First-tier Tribunal”.
- (9) The title of regulation 5 becomes **“Application for extension of compulsion order following first review: reports to be prepared and submitted to First-tier Tribunal under section 173”**.
- (10) In regulation 6, for ”Tribunal” in each place where it occurs substitute “First-tier Tribunal”.
- (11) The title of regulation 6 becomes **“Application for extension and variation of compulsion order: reports to be prepared and submitted to First-tier Tribunal under section 173”**.
- (12) In regulation 7, for ”Tribunal” in each place where it occurs substitute “First-tier Tribunal”.
- (13) The title of regulation 7 becomes **“Application for variation of compulsion order: report to be submitted to First-tier Tribunal under section 173”**.
- (14) In regulation 8, for ”Tribunal” in each place where it occurs substitute “First-tier Tribunal”.
- (15) The title of regulation 8 becomes **“Application for revocation of determination extending compulsion order or revocation or variation of compulsion order: reports to be submitted to First-tier Tribunal under section 173”**.
- (16) In regulation 9, for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”.
- (17) The title of regulation 9 becomes **“Review of determination extending compulsion order: reports to be submitted to First-tier Tribunal under section 173”**.

**Mental Health (Compulsory treatment orders - documents and reports to be submitted to the Tribunal) (Scotland) Regulations 2005**

- 10.—**(1) The Mental Health (Compulsory treatment orders - documents and reports to be submitted to the Tribunal) (Scotland) Regulations 2005(a) are amended as follows.
- (2) In regulation 2, for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”.
- (3) The title of regulation 2 becomes **“Documents to accompany application to First-tier Tribunal under sections 92,95 and 96”**.
- (4) In regulation 3, for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”.
- (5) The title of regulation 3 becomes **“Application for extension and variation of a compulsory treatment order: report to be prepared and submitted to First-tier Tribunal under section 109”**.
- (6) In regulation 4, for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”.
- (7) The title of regulation 4 becomes **“Application for variation of a compulsory treatment order: reports to be prepared and submitted to First-tier Tribunal under section 109”**.
- (8) In regulation 5, for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”.
- (9) The title of regulation 5 becomes **“Applications by the patient etc. for revocation of determination extending compulsory treatment order and revocation or variation of compulsory treatment order: reports to be prepared and submitted to First-tier Tribunal under section 109”**.

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(a) S.S.I. 2005/366.

- (10) In regulation 6, for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”.
- (11) The title of regulation 6 becomes “**Review of determination extending compulsory treatment order: reports to be submitted to First-tier Tribunal under section 109**”.
- (12) In regulation 7, for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”.
- (13) The title of regulation 7 becomes “**Reference concerning non-provision of a recorded matter: report to be prepared and submitted to First-tier Tribunal under section 109**”.
- (14) In regulation 8, for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”.
- (15) The title of regulation 8 becomes “**Reference by Mental Welfare Commission for Scotland: reports to be prepared and submitted to First-tier Tribunal under section 109**”.

**Mental Health (Cross border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005**

**11.**—(1) Mental Health (Cross border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005(a) are amended as follows.

- (2) In regulation 13, for “Tribunal” in each place where it occur substitute “First-tier Tribunal”.
- (3) The title of regulation 13 becomes “**Appeal to First-tier Tribunal**”.
- (4) In regulation 13B, for ”Tribunal” in each place where it occurs substitute ”First-tier Tribunal”.
- (5) The title of regulation 13B becomes “First-tier Tribunal’s duties to notify Scottish Ministers”.
- (6) Revoke regulation 14 (appeals to the sheriff principal and Court of Session against certain decisions).
- (7) In regulation 15, for “Tribunal” in both places where it occurs substitute “First-tier Tribunal”.
- (8) The title of regulation 15 becomes “Appeal to the Court of Session against certain decisions of the First-tier Tribunal”.
- (9) In regulation 17(1), for “Tribunal” substitute “First-tier Tribunal”.
- (10) The title of regulation 17 becomes “Reference to First-tier Tribunal by Commission”.
- (11) In regulation 18, for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”.
- (12) The title of regulation 18 becomes “Powers of the First-tier Tribunal on reference”.
- (13) In regulation 41(3)(d), for “Tribunal” substitute “First-tier Tribunal”.
- (14) Mental Health (England and Wales Cross-border transfer: patients subject to requirements other than detention) (Scotland) Regulations 2008.

**Mental Health (England and Wales Cross-border transfer: patients subject to requirements other than detention) (Scotland) Regulations 2008**

**12.**—(1) The Mental Health (England and Wales Cross-border transfer: patients subject to requirements other than detention) (Scotland) Regulations 2008(b) are amended as follows.

- (2) In regulation 8, for “Tribunal” in each place where it occurs substitute “First-tier Tribunal”.
- (3) The title of regulation 8 becomes ”**Appeal to First-tier Tribunal**”.
- (4) Revoke regulation 9 (appeal from tribunal).

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(a) S.S.I. 2005/467.  
(b) S.S.I. 2008/356.



### **Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013**

**13.**—(1) The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013(a) is amended as follows.

(2) In schedule 1 (proceedings), in paragraph 4, for “Mental Health Tribunal for Scotland” substitute “First-tier Tribunal for Scotland Mental Health Chamber”.

### **Scottish Parliament (Disqualification) Order 2015**

**14.**—(1) The Scottish Parliament (Disqualification) Order 2015(b) is amended as follows.

(2) In Part 1 of schedule 1 (office-holders disqualified from being a member of the Scottish Parliament), omit the entry “President or member of the Mental Health Tribunal for Scotland”.

**15.**—(1) The Mental Health (Scotland) Act 2015 (Commencement No 1, Transitional and Saving Provisions Order 2015(c) is amended as follows.

(2) In article 1(2)—

(a) omit the entry for “the Tribunal”; and

(b) after the entry for “the appointed day” insert—

“the First-tier Tribunal” means the First-tier Tribunal means the First-tier for Scotland Mental Health Chamber”.

(3) In article 4(2), for “Tribunal” substitute “First-tier Tribunal”.

(4) In article 6, for “Tribunal” substitute “First-tier Tribunal”.

## **PART 3**

### **Consequential revocations of subordinate legislation**

<i>Instruments revoked</i>	<i>References</i>
The Mental Health Tribunal for Scotland (Appointment of President) Regulations 2004	S.S.I. 2004/155
The Mental Health Tribunal for Scotland (Appointment of Legal Members) Regulations 2004	S.S.I. 2004/286
The Mental Health Tribunal for Scotland (Delegation of the President’s Functions) Regulations 2004	S.S.I. 2004/373
The Mental Health Tribunal for Scotland (Appointment of Medical Members) Regulations 2004	S.S.I. 2004/374
The Mental Health Tribunal for Scotland (Appointment of General Members) Regulations 2004	S.S.I. 2004/375
The Mental Health Tribunal for Scotland (Disciplinary Committee) Regulations 2004	S.S.I. 2004/402
The Mental Health Tribunal for Scotland (Disqualification) Regulations 2004	S.S.I. 2004/154
The Mental Health Tribunal for Scotland (Practice and Procedure) Rules 2005	S.S.I. 2005/420
The Mental Health Tribunal for Scotland (Practice and Procedure) (No. 2) Rules 2005	S.S.I. 2005/519

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(a) S.S.I. 2013/50.  
(b) S.S.I. 2015/350.  
(c) S.S.I. 2015/361.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make provision for the transfer of the functions and members of the Mental Health Tribunal for Scotland (“the MHTS”) to the Scottish Tribunals. The Scottish Tribunals comprise the First-tier Tribunal for Scotland and the Upper Tribunal for Scotland.

The First-tier Tribunal was set up by the Tribunals (Scotland) Act 2014. It is divided into chambers, with the chambers hearing cases according to the subject-matter of the case. The First-tier Tribunal Mental Health Chamber hears cases previously dealt with by MHTS.

Transitional provisions are made to manage the transfer of on-going casework before the MHTS and appeals from decisions of the MHTS to the sheriff principal and/or Court of Session. When this instrument comes into force on 12th November 2018, all cases pending before the MHTS will transfer to the First-tier Tribunal.

These Regulations also make consequential amendments to other primary and subordinate legislation, largely substituting references to the MHTS with references to the First-tier Tribunal.

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SCOTTISH STATUTORY INSTRUMENTS

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**2018 No.**

**TRIBUNALS AND INQUIRIES**

**The First-tier Tribunal for Scotland Mental Health Chamber  
(Procedure) Regulations 2018**

<i>Made</i>	- - - -	2018
<i>Laid before the Scottish Parliament</i>		2018
<i>Coming into force</i>	- -	12th November 2018

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 55(1), 61(2) and 80(1) and paragraph 4(2) of schedule 9 of the Tribunals (Scotland) Act 2014(a) and all other powers enabling them to do so.

In accordance with paragraph 4(3) of schedule 9 of that Act, they have consulted the President of Tribunals and such other persons as they have considered appropriate.

**Citation and commencement**

1.—(1) These Regulations may be cited as the First-tier Tribunal for Scotland Mental Health Chamber (Procedure) Regulations 2018 and the Rules set out in the schedule may be cited as the First-tier Tribunal for Scotland Mental Health Chamber Rules of Procedure 2018.

(2) These Regulations come into force on 12th November 2018.

**Application of the First-tier Tribunal for Scotland Mental Health Chamber Rules of Procedure 2018**

2. The First-tier Tribunal for Scotland Mental Health Chamber Rules of Procedure 2018 set out in the schedule apply to proceedings before the First-tier Tribunal for Scotland Mental Health Chamber when exercising the functions transferred or allocated to it by—

- (a) the First-tier Tribunal (Transfer of Functions and Members of the Mental Health Tribunal for Scotland) Regulations 2018(b); and
- (b) the Mental Health (Care and Treatment) (Scotland) Act 2003(c).

**Transitional provisions**

3. Any application, review, appeal or reference to the First-tier Tribunal for Scotland Mental Health Chamber received prior to 12th November 2018 is to be treated as if it were received on or after that day.

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(a) 2014 asp 14.  
(b) S.S.I. 2018/  
(c) 2003 asp 13.

4. A reference in the First-tier Tribunal for Scotland Mental Health Chamber Rules of Procedure 2018 to a curator ad litem appointed by the First-tier Tribunal includes a curator ad litem appointed by the Mental Health Tribunal for Scotland in respect of the same proceedings.

St Andrew's House,  
Edinburgh  
2018

A member of the Scottish Government

# SCHEDULE

## The First-tier Tribunal for Scotland Mental Health Chamber Rules of Procedure 2018

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## PART 1

### INTRODUCTION

#### **Interpretation**

**1.—(1)** In these Rules—

“the 2003 Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003;

“the 2014 Act” means the Tribunals (Scotland) Act 2014;

“appellant” means a person who appeals to the First-tier Tribunal under or by virtue of any of the sections specified in Part III of these Rules;

“applicant” means a person who makes an application to the First-tier Tribunal under the 2003 Act;

“Chamber President” means the Chamber President of the First-tier Tribunal;

“Clerk” means a member of staff of the Scottish Courts and Tribunals Service employed to carry out the administration of the First-tier Tribunal or to act as Clerk at a hearing of the First-tier Tribunal;

“Commission” means the Mental Welfare Commission for Scotland;

“convener” means the Chamber President, a legal member selected by the Chamber President or a judicial member selected by the Chamber President;

“electronic communication” has the meaning given to it by section 15(1) of the Electronic Communications Act 2000(a); and

“electronic signature” has the meaning given to it by section 7 of the Electronic Communications Act 2000(b);

“First-tier Tribunal” means the First-tier Tribunal for Scotland Mental Health Chamber;

“hearing” means a sitting of the First-tier Tribunal for the purpose of enabling the First-tier Tribunal to take a decision on any matter relating to the case before it;

“judicial member” means a sheriff who is authorised by the President of Tribunals for the purpose of section 17(3)(a) of the 2014 Act;

“legal member” means an individual holding membership of the First-tier Tribunal in accordance with section 15(2) of the 2014 Act.

“notice” means notice in writing;

“party” means—

- (a) the person who initiated the proceedings before the First-tier Tribunal except a person who initiated them by virtue of a provision giving a listed initiator authority to act;
- (b) the patient to whom the proceedings relate;
- (c) the named person of the patient to whom the proceedings relate;
- (d) any person whose decision (which must include any direction or order, determination or grant of a certificate, but does not include a decision by a court) is the subject of the proceedings before the First-tier Tribunal;
- (e) only in respect of proceedings relating to a relevant patient, the Scottish Ministers; and
- (f) only in respect of proceedings under sections 264 to 271, the relevant Health Board;

“patient” means the patient to whom the proceedings relate;

“principles in the 2003 Act” means the principles for discharging certain functions set out in section 1;

“referee” means a person who makes a reference to the First-tier Tribunal under, or by virtue of, the 2003 Act;

“relevant Health Board” and “relevant patient” are to be interpreted in accordance with section 273;

“representative” means, unless otherwise indicated, a legal representative or lay representative;

“respondent” means the person who made the decision which is the subject of appeal under or by virtue of Part 3 of these Rules; and

“working day” means a day which is not a Saturday, a Sunday or a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(c).

(2) The “listed initiator requirement” means that the application or appeal must be accompanied by—

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(a) 2000 c.7. Section 15(1) is amended by the Communications Act 2003 (c.21), Schedule 17, paragraph 158.  
(b) 2000 c.7.  
(c) 1971 c.80.



- (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.
- (3) A reference in these Rules to a provision giving a listed initiator authority to act is a reference to—
- (a) section 257A;
  - (b) regulation 8A of the Mental Health (England and Wales Cross-border transfer: patients subject to requirements other than detention) (Scotland) Regulations 2008; and
  - (c) regulation 13A of the Mental Health (Cross-border transfer: patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005.
- (4) References in these Rules to sections or subsections are to sections and subsections of the 2003 Act unless otherwise specified.
- (5) Where the time specified by these Rules for doing any act ends on a Saturday, Sunday or a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971 that act is done in time if it is done on the next day which is not a Saturday, Sunday or bank holiday.

## PART 2

### APPLICATIONS TO THE FIRST-TIER TRIBUNAL

#### **Scope of this Part**

**2.** This Part applies to applications to the First-tier Tribunal under, or by virtue of, the following provisions:—

- (a) section 50 (application for revocation of short term detention certificate or extension certificate);
- (b) section 63 (application for compulsory treatment order);
- (c) section 65 (application for interim compulsory treatment order);
- (d) section 92 (application for extension and variation of compulsory treatment order);
- (e) section 95 (application for variation of compulsory treatment order);
- (f) section 99 (application by patient etc. for revocation of determination extending compulsory treatment order);
- (g) section 100 (application by patient etc. for revocation or variation of a compulsory treatment order);
- (h) section 120 (Application by patient etc. for revocation of certificates under section 114(2) or 115(2));
- (i) section 149, 158 or 161 (applications by responsible medical officer);
- (j) section 163 (application by patient etc. for revocation of determination extending compulsion order);
- (k) section 164 (application by patient etc. for revocation or variation of a compulsion order);
- (l) section 120 (application by patient etc. for revocation of a certificate under section 114(2) as applied with modifications by section 177);

- (m) section 191 (application by the Scottish Ministers for an order under section 193);
- (n) section 192 (application by patient etc. for an order under section 193);
- (o) section 214(2) (application by patient and named person for revocation of hospital direction or transfer for treatment direction);
- (p) section 264 or 268 (application that detention in hospital is in conditions of excessive security);
- (q) section 267 or 271 (application for recall of an order); and
- (r) section 291 (application in relation to unlawful detention).

**Withdrawal of application**

3.—(1) This rule applies to all applications made under this Part.

(2) Where an application is made to the First-tier Tribunal, an applicant may make a motion to withdraw that application—

- (a) at any time before the hearing of the application, by sending to the Clerk a notice signed by the applicant; or
- (b) at the hearing on the application.

(3) On receipt of any such notice, the Clerk must send a copy to the parties and to the persons listed in the rule to which the application relates.

(4) Where an applicant makes such a motion under paragraph (2), the First-tier Tribunal may:

- (a) terminate the proceedings without making any order; or
- (b) refuse the motion and proceed to make a decision on the application.

**Amendment of application**

4.—(1) This rule applies to all applications made under this Part.

(2) A party may, at any time before notification of the date of the hearing of the application, amend the application by sending notice of any amendment to the Clerk.

(3) Any amendment under paragraph (2) must be signed by the party.

(4) A party may amend the application with the permission of the First-tier Tribunal at any time after receiving notification of the date of the hearing or, with the permission of the Convener, at the hearing itself.

(5) On receipt of any amendment, the Clerk must send a copy to the parties.

*Short-term detention*

**Application under section 50 (revocation of short term detention certificate or extension certificate)**

5.—(1) An application to the First-tier Tribunal for revocation of a short term detention certificate under section 50 must be made in writing.

(2) An application must state-

- (a) the name and address of the applicant;
- (b) the name and address of the patient;
- (c) the name and address of the patient’s named person, if known;
- (d) the name and address of the hospital, if any, where the patient is detained or apparently detained;
- (e) where the patient is required to reside at a specified place, the address of that specified place; and

- (f) a brief statement of the reasons for the application.
- (3) The applicant must sign the application.
- (4) 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.
- (5) The Clerk must send a copy of the application to the parties.
- (6) Upon receipt of the application the Clerk must fix a hearing as soon as possible.
- (7) The Clerk must send a notice of the application to:
  - (a) the patient;
  - (b) the patient's named person;
  - (c) any guardian of the patient;
  - (d) any welfare attorney of the patient;
  - (e) any approved medical practitioner who granted the short term certificate;
  - (f) the mental health officer who was consulted under section 44(3)(c);
  - (g) if the patient has a responsible medical officer, the responsible medical officer;
  - (h) any curator ad litem appointed in respect of the patient by the First-tier Tribunal; and
  - (i) any other person appearing to the First-tier Tribunal to have an interest in the application.
- (8) The notice under paragraph (7) must inform the persons—
  - (a) of the case number of the application (which must from then on be referred to in all correspondence relating to the application);
  - (b) that they are being afforded the opportunity—
    - (i) of making representations (whether orally or in writing); and
    - (ii) of leading, or producing evidence;
  - (c) of the date, time and place of the hearing; and
  - (d) that if they wish to make representations or lead or produce evidence, they must respond to the notice within the period specified in the notice.
- (9) If a person mentioned in paragraph (7) wishes to make representations (whether orally or in writing) or to lead or produce evidence, that person must within the period specified in the notice send to the First-tier Tribunal—
  - (a) a notice of response; and
  - (b) a copy of any documents the person intends to rely upon at the hearing.
- (10) The Clerk must send to each party a copy of each notice of response and copies of any documents received under paragraph (8) except where the person sending the documents under paragraph (8) has made a request for non-disclosure of the documents in accordance with rule 40.

### **Application for compulsory treatment order under section 63**

- 6.—**(1) An application for a compulsory treatment order under section 63 must state the matters specified in section 63(2).
- (2) The Clerk must send a copy of any accompanying documents mentioned in section 63(3) to the patient and the patient's named person.
- (3) The Clerk must send a notice of the application to:
  - (a) the patient;
  - (b) the patient's named person;
  - (c) any guardian of the patient;
  - (d) any welfare attorney of the patient;
  - (e) the mental health officer;

- (f) the medical practitioners who submitted the mental health reports which accompany the application;
  - (g) if the patient has a responsible medical officer, the responsible medical officer;
  - (h) any curator ad litem appointed in respect of the patient by the First-tier Tribunal; and
  - (i) any other person appearing to the First-tier Tribunal to have an interest in the application.
- (4) The notice under paragraph (3) must inform the persons—
- (a) of the case number of the application (which must from then on be referred to in all correspondence relating to the application);
  - (b) that an application has been made by the mental health officer;
  - (c) of the measures that are sought in relation to the patient in respect of whom the application is made;
  - (d) of the date, time and place of the hearing;
  - (e) that they are being afforded the opportunity—
    - (i) of making representations (whether orally or in writing); and
    - (ii) of leading, or producing evidence.
- (5) If a person mentioned in paragraph (3) wishes to make representations (whether orally or in writing) or to lead or produce evidence, that person must within 14 days of receipt of the notice, or within such other period specified in that notice, send to the First-tier Tribunal a notice of response.
- (6) The Clerk must send to each party a copy of each notice of response.

**Application for interim compulsory treatment order under section 65**

7. An application under section 65 for an interim compulsory treatment order may be made orally at a hearing of the First-tier Tribunal or in writing sent to the First-tier Tribunal.

**Determination of application for compulsory treatment order where section 68 applies: special case**

- 8.—(1) This rule applies where an application is made under section 63 and section 68 applies.
- (2) Before the expiry of the period of 5 days referred to in section 68(2)(a), the First-tier Tribunal must hold a hearing in order to determine whether an interim compulsory order should be made and, if it determines it should not be made, to determine the application.
- (3) Where the First-tier Tribunal—
- (a) makes an interim compulsory treatment order that authorises the detention of the patient in hospital; and
  - (b) does not determine that a compulsory treatment order should not be made,
- it must fix a further hearing.

**Application for extension and variation of compulsory treatment order under section 92 and variation of compulsory treatment order under section 95**

9.—(1) An application for extension and variation of a compulsory treatment order under section 92, and an application for variation of a compulsory treatment order under section 95, must state the matters mentioned in section 92(a) or, as the case may be, section 95(a).

(2) The Clerk must send a copy of the application and any accompanying documents prescribed by virtue of section 92(b) or, as the case may be, section 95(b) to the patient and the patient's named person.

- (3) The Clerk must send a notice of the application to:
- (a) the patient;

- (b) the patient's named person;
  - (c) any guardian of the patient;
  - (d) any welfare attorney of the patient;
  - (e) the mental health officer;
  - (f) the patient's responsible medical officer;
  - (g) the patient's primary carer;
  - (h) any curator ad litem appointed in respect of the patient by the First-tier Tribunal; and
  - (i) any other person appearing to the First-tier Tribunal to have an interest in the application.
- (4) The notice under paragraph (3) must inform the persons—
- (a) of the case number of the application (which must from then on be referred to in all correspondence relating to the application);
  - (b) that the application has been made and the orders sought in the application;
  - (c) of the terms of the existing compulsory treatment order;
  - (d) of the date, time and place of the hearing; and
  - (e) that they are being afforded the opportunity—
    - (i) of making representations (whether orally or in writing); and
    - (ii) of leading, or producing evidence.
- (5) If a person mentioned in paragraph (3) wishes to make representations (whether orally or in writing) or to lead or produce evidence, that person must within 14 days of receipt of the notice, or within such other period specified in that notice, send to the First-tier Tribunal a notice of response.
- (6) The Clerk must send to each party a copy of each notice of response.

**Application by patient etc. under section 99 for revocation of determination extending compulsory treatment order and for revocation or variation of a compulsory treatment order under section 100**

- 10.—**(1) An application under section 99 or 100 must state—
- (a) the name and address of the applicant;
  - (b) the name and address of the patient;
  - (c) the name and address of the patient's named person, if known;
  - (d) the name and address of the hospital, if any, where the patient is detained or is apparently detained;
  - (e) where the patient is required to reside at a specified place, the address of that specified place; and
  - (f) a brief statement of the reasons for the application.
- (2) The applicant must sign the application.
- (3) The Clerk must send a copy of the application to the patient's responsible medical officer.
- (4) 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.
- (5) The Clerk must send a notice of the application to:
- (a) the patient;
  - (b) the patient's named person;
  - (c) any guardian of the patient;
  - (d) any welfare attorney of the patient;
  - (e) the mental health officer;

- (f) the patient's responsible medical officer;
  - (g) the patient's primary carer;
  - (h) any curator ad litem appointed in respect of the patient by the First-tier Tribunal; and
  - (i) any other person appearing to the First-tier Tribunal to have an interest in the application.
- (6) The notice under paragraph (5) must inform the persons—
- (a) of the case number of the application (which must from then on be referred to in all correspondence relating to the application);
  - (b) that the application has been made;
  - (c) of the orders sought in the application;
  - (d) of the terms of the existing compulsory treatment order;
  - (e) of the date, time and place of the hearing; and
  - (f) that they are being afforded the opportunity—
    - (i) of making representations (whether orally or in writing); and
    - (ii) of leading, or producing evidence.
- (7) If a person mentioned in paragraph (5) wishes to make representations (whether orally or in writing) or to lead or produce evidence, that person must within 14 days of receipt of the notice, or within such other period specified in that notice, send to the First-tier Tribunal a notice of response.
- (8) The Clerk must send to each party a copy of each notice of response.

**Application by patient etc. under section 120 for revocation of certificates under sections 114(2) and 115(2)**

- 11.—**(1) An application under section 120 to the First-tier Tribunal for revocation of a certificate under section 114(2) or 115(2) must be in writing.
- (2) The application must state—
- (a) the name and address of the applicant;
  - (b) the name and address of the patient;
  - (c) the name and address of the patient's named person, if known;
  - (d) the name and address of the hospital, if any, where the patient is detained or is apparently detained;
  - (e) where the patient is required to reside at a specified place, the address of that specified place; and
  - (f) a brief statement of the reasons for the application.
- (3) The applicant must sign the application.
- (4) 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.
- (5) The Clerk must send a copy of the application and notice of the application to the parties.
- (6) The notice under paragraph (5) must inform the parties—
- (a) of the case number of the application (which must from then on be referred to in all correspondence relating to the application);
  - (b) that they are being afforded the opportunity—
    - (i) of making representations (whether orally or in writing); and
    - (ii) of leading, or producing evidence;
  - (c) of the date, time and place of the hearing.
- (7) If a party wishes to make representations (whether orally or in writing) or to lead or produce evidence, that party must within the period specified in the notice send to the First-tier Tribunal-

- (a) a notice of response; and
- (b) a copy of any documents the party intends to rely upon at the hearing.

(8) The Clerk must send to each party a copy of each notice of response and copies of any documents received under paragraph (7) except where the party sending the documents under paragraph (7) has made a request for non-disclosure of the documents in accordance with rule 40.

### *Compulsion orders*

#### **Application by responsible medical officer under sections 149, 158 and 161**

**12.—**(1) An application by a patient’s responsible medical officer to the First-tier Tribunal—

- (a) for an extension of a compulsion order following first review under section 149 must state the matters mentioned in section 149(a);
- (b) for extension and variation of a compulsion order under section 158 must state the matters mentioned in section 158(a); and
- (c) for an order varying a compulsion order under section 161 must state the matters mentioned in section 158(a) of that Act.

(2) The Clerk must send a copy of the application and any accompanying documents prescribed in respect of each application by regulations under section 149(b), 158(b) or 161(b), as the case may be, to the patient and the patient’s named person.

(3) The Clerk must send a notice of the application to:

- (a) the patient;
- (b) the patient’s named person;
- (c) any guardian of the patient;
- (d) any welfare attorney of the patient;
- (e) the mental health officer;
- (f) the patient’s responsible medical officer;
- (g) the patient’s primary carer;
- (h) any curator ad litem appointed in respect of the patient by the First-tier Tribunal; and
- (i) any other person appearing to the First-tier Tribunal to have an interest in the application.

(4) The notice under paragraph (3) must inform the persons—

- (a) of the case number of the application (which must from then on be referred to in all correspondence relating to the application);
- (b) that the application has been made and the orders sought in the application;
- (c) of the terms of the existing order;
- (d) of the date, time and place of the hearing, if known;
- (e) that they are being afforded the opportunity—
  - (i) of making representations (whether orally or in writing); and
  - (ii) of leading, or producing evidence.

(5) If a person mentioned in paragraph (3) wishes to make representations (whether orally or in writing) or to lead or produce evidence, that person must within 14 days of receipt of the notice, or within such other period specified in that notice, send to the First-tier Tribunal a notice of response.

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

**Application by patient etc. for revocation of determination extending compulsion order under section 163, for revocation or variation of a compulsion order under section 164 or under section 120 for revocation of a certificate under section 114(2) as applied with modifications by section 177**

- 13.—(1) An application must be in writing—
- (a) for revocation of a determination extending a compulsion order under section 163 or for revocation and variation of a compulsion order under section 164; or
  - (b) under section 120 as applied with modifications by section 177 to the First-tier Tribunal for revocation of a certificate under section 114(2).
- (2) The applicant must sign the application.
- (3) The application must state—
- (a) the name and address of the applicant;
  - (b) the name and address of the patient;
  - (c) the name and address of the patient’s named person, if known;
  - (d) the name and address of the hospital, if any, where the patient is detained or is apparently detained;
  - (e) where the patient is required to reside at a specified place, the address of that specified place; and
  - (f) a brief statement of the reasons for the application.
- (4) 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.
- (5) The Clerk must send a notice of the application to:
- (a) the patient;
  - (b) the patient’s named person;
  - (c) any guardian of the patient;
  - (d) any welfare attorney of the patient;
  - (e) the mental health officer;
  - (f) the patient’s responsible medical officer;
  - (g) the patient’s primary carer;
  - (h) any curator ad litem appointed in respect of the patient by the First-tier Tribunal; and
  - (i) any other person appearing to the First-tier Tribunal to have an interest in the application.
- (6) The notice under paragraph (5) must inform the persons—
- (a) of the case number of the application (which must from then on be referred to in all correspondence relating to the application);
  - (b) that the application has been made and the orders sought in the application;
  - (c) of the terms of the existing order;
  - (d) of the date, time and place of the hearing;
  - (e) that they are being afforded the opportunity—
    - (i) of making representations (whether orally or in writing); and
    - (ii) of leading, or producing evidence.
- (7) Where paragraph (1)(a) applies to the application, if a person mentioned in paragraph (5) wishes to make representations (whether orally or in writing) or to lead or produce evidence, that person must within 14 days of receipt of the notice, or within such other period specified in that notice, send to the First-tier Tribunal a notice of response.



(8) Where paragraph (1)(b) applies to the application, if a person mentioned in paragraph (5) wishes to make representations (whether orally or in writing) or to lead or produce evidence, that person must within 14 days of receipt of the notice, or within such other period specified in that notice, send to the First-tier Tribunal a notice of response and a copy of any documents the person intends to rely upon at the hearing.

(9) The Clerk must send to each party a copy of each notice of response and copies of any documents received under paragraph (7) or (8), as the case may be, except where the person sending the documents under paragraph (8) has made a request for non-disclosure of the documents in accordance with rule 40.

### *Compulsion orders and restriction orders*

#### **Application under section 191 by the Scottish Ministers for an order under section 193**

**14.**—(1) An application under section 191 by the Scottish Ministers for an order under section 193 must state the matters mentioned in section 191(a).

(2) The Clerk must send a copy of the application and any accompanying documents prescribed by virtue of section 191(b) to the patient and the patient's named person.

(3) The Clerk must send a notice of the application to:

- (a) the patient;
- (b) the patient's named person;
- (c) any guardian of the patient;
- (d) any welfare attorney of the patient;
- (e) the patient's primary carer;
- (f) the mental health officer;
- (g) the patient's responsible medical officer;
- (h) any curator ad litem appointed in respect of the patient by the First-tier Tribunal; and
- (i) any other person appearing to the First-tier Tribunal to have an interest in the application.

(4) The notice under paragraph (3) must inform the persons—

- (a) of the case number of the application (which must from then on be referred to in all correspondence relating to the application);
- (b) that the application has been made and the order, or orders, sought in the application;
- (c) of the terms of the existing order;
- (d) of the date, time and place of the hearing, if known;
- (e) that they are being afforded the opportunity—
  - (i) of making representations (whether orally or in writing); and
  - (ii) of leading, or producing evidence.

(5) If a person mentioned in paragraph (3) wishes to make representations (whether orally or in writing) or to lead or produce evidence, that person must within 14 days of receipt of the notice, or within such other period specified in that notice, send to the First-tier Tribunal a notice of response.

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

#### **Application by patient etc. under section 192 for order under section 193**

**15.**—(1) An application under section 192 for an order under section 193 must be in writing.

(2) The application must state—

- (a) the name and address of the applicant;
- (b) the name and address of the patient;

- (c) the name and address of the patient's named person, if known;
  - (d) the name and address of the hospital, if any, where the patient is detained or is apparently detained;
  - (e) where the patient is required to reside at a specified place, the address of that specified place;
  - (f) the name of the patient's responsible medical officer;
  - (g) the order sought; and
  - (h) a brief statement of the reasons for the application.
- (3) The applicant must sign the application.
- (4) The Clerk must send a copy of the application to the patient's responsible medical officer and the Scottish Ministers.
- (5) 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.
- (6) The Clerk must send a notice of the application to:
- (a) the patient;
  - (b) the patient's named person;
  - (c) the patient's primary carer;
  - (d) any guardian of the patient;
  - (e) any welfare attorney of the patient;
  - (f) the Scottish Ministers;
  - (g) the patient's responsible medical officer;
  - (h) the mental health officer;
  - (i) any curator ad litem appointed in respect of the patient by the First-tier Tribunal; and
  - (j) any other person appearing to the First-tier Tribunal to have an interest in the application.
- (7) The notice under paragraph (6) must inform the persons—
- (a) of the case number of the application (which must from then on be referred to in all correspondence relating to the application);
  - (b) that the application has been made and the order sought in the application;
  - (c) of the terms of the existing order;
  - (d) of the date, time and place of the hearing;
  - (e) that they are being afforded the opportunity—
    - (i) of making representations (whether orally or in writing); and
    - (ii) of leading, or producing evidence.
- (8) If a person mentioned in paragraph (6) wishes to make representations (whether orally or in writing) or to lead or produce evidence, that person must within 14 days of receipt of the notice, or within such other period specified in that notice, send to the First-tier Tribunal a notice of response.
- (9) The Clerk must send to each party a copy of each notice of response.

*Hospital directions and transfer for treatment directions*

**Application by patient and named person for revocation of hospital direction or transfer for treatment direction under section 214(2)**

- 16.**—(1) An application under section 214(2) must be in writing.
- (2) The application must state—
- (a) the name and address of the applicant;

- (b) the name and address of the patient;
  - (c) the name and address of the patient's named person, if known;
  - (d) the name and address of the hospital where the patient is detained;
  - (e) the direction which the applicant seeks to revoke; and
  - (f) a brief statement of the reasons for the application.
- (3) The applicant must sign the application.
- (4) 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.
- (5) The Clerk must send a copy of the application to the patient's responsible medical practitioner and the Scottish Ministers.
- (6) The Clerk must send a notice of the application to:
- (a) the patient;
  - (b) the patient's named person;
  - (c) the patient's primary carer;
  - (d) any guardian of the patient;
  - (e) any welfare attorney of the patient;
  - (f) the Scottish Ministers;
  - (g) the mental health officer;
  - (h) the patient's responsible medical officer;
  - (i) any curator ad litem appointed in respect of the patient by the First-tier Tribunal; and
  - (j) any other person appearing to the First-tier Tribunal to have an interest in the application.
- (7) The notice under paragraph (6) must inform the persons—
- (a) of the case number of the application (which must from then on be referred to in all correspondence relating to the application);
  - (b) that the application has been made and the direction which it seeks to revoke;
  - (c) of the terms of the existing direction;
  - (d) of the date, time and place of the hearing;
  - (e) that they are being afforded the opportunity—
    - (i) of making representations (whether orally or in writing); and
    - (ii) of leading, or producing evidence.
- (8) If a person mentioned in paragraph (6) wishes to make representations (whether orally or in writing) or to lead or produce evidence, that person must within 14 days of receipt of the notice, or within such other period specified in that notice, send to the First-tier Tribunal a notice of response.
- (9) The Clerk must send to each party a copy of each notice of response.

*Named person*

**Application by mental health officer under section 255, and patient etc. under section 256, for appointment of named person**

17.—(1) Subject to paragraph (5), an application under section 255 or section 256 for appointment of a named person must be made in writing.

- (2) The Clerk must send a copy of the application—
- (a) if the application is made under section 255, to the patient, the patient's apparent named person, if applicable, and any person whom it is proposed in the application should be the patient's named person; or

- (b) if the application is made under section 256, to the mental health officer, the patient, the patient's named person, if applicable, and any person whom it is proposed in the application should be the patient's named person,

together with notice of the case number of the application (which must from then on be referred to in all correspondence relating to the application).

(3) If a person mentioned in paragraph (2) wishes to make representations (whether orally or in writing) or to lead or produce evidence, that person must within 14 days of receipt of copy application, or within such other period specified in a notice sent with the copy application, send to the First-tier Tribunal a notice of response.

(4) The Clerk must send to each party and any person whom it is proposed in the application should be the patient's named person a copy of each notice of response.

(5) Where it considers it expedient to do so, the First-tier Tribunal may permit an application to which this rule applies to be made by oral request and, in that event, the First-tier Tribunal must take such steps as are reasonably practical to inform the persons mentioned in paragraph (2) of the application and to allow them to be heard on the application.

#### *Detention in conditions of excessive security*

#### **Application that detention in hospital is in conditions of excessive security**

**18.—**(1) An application to the First-tier Tribunal for an order under section 264(2) (detention in conditions of excessive security: state hospitals); or section 268(2) (detention in conditions of excessive security: hospitals other than state hospitals) must be in writing.

(2) The application must state—

- (a) the name and address of the applicant;
- (b) the name and address of the patient;
- (c) the name and address of the patient's named person, if known;
- (d) the name and address of the hospital where the patient is detained;
- (e) the address where the patient resided ordinarily immediately before the making of the order or direction by which their detention in hospital is authorised;
- (f) the order or direction under the authority of which the patient is detained in hospital, including, where the order is a compulsion order, whether or not the patient is subject to a restriction order; and
- (g) a brief statement of the reasons for the application.

(3) The applicant must sign the application.

(4) 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.

(5) The Clerk must send a notice of the application to:

- (a) the patient;
- (b) the patient's named person;
- (c) any guardian of the patient;
- (d) any welfare attorney of the patient;
- (e) the mental health officer;
- (f) the patient's responsible medical officer;
- (g) any curator ad litem appointed in respect of the patient by the First-tier Tribunal;
- (h) the relevant Health Board
- (i) the managers of the hospital in which the patient is detained
- (j) the Commission;

- (k) in the case of a relevant patient, the Scottish Ministers; and
  - (l) any other person appearing to the First-tier Tribunal to have an interest in the application.
- (6) The notice under paragraph (5) must inform the persons—
- (a) of the case number of the application (which must from then on be referred to in all correspondence relating to the application);
  - (b) of the date, time and place of the hearing; and
  - (c) that they are being afforded the opportunity—
    - (i) of making representations (whether orally or in writing); and
    - (ii) of leading, or producing evidence.
- (7) If a person mentioned in paragraph (5) wishes to make representations (whether orally or in writing) or to lead or produce evidence, that person must within 21 days of receipt of the notice, or within such other period specified in that notice, send to the First-tier Tribunal a notice of response.
- (8) The Clerk must send to each party a copy of each notice of response.

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

**19.**—(1) The report accompanying an application for an order under section 264(2) or 268(2) must state—

- (a) the name of the approved medical practitioner who prepared it; and
- (b) in which list compiled and maintained under section 22(1) the practitioner is included.

(2) In paragraph (1) “report” means the report required by section 264(7A) or 268(7A), as the case may be.

**Hearings under section 265(2) or 269(2)**

**20.**—(1) This rule applies where a hearing is to be held in accordance with section 265(2) or 269(2).

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

(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).

(4) The Clerk must send notice of the hearing to:

- (a) the patient;
- (b) the patient’s named person;
- (c) any guardian of the patient;
- (d) any welfare attorney of the patient;
- (e) the mental health officer;
- (f) if the patient has a responsible medical officer, the responsible medical officer;
- (g) any curator ad litem appointed in respect of the patient by the First-tier Tribunal;
- (h) the relevant Health Board
- (i) the managers of the hospital in which the patient is detained
- (j) the Commission;
- (k) in the case of a relevant patient, the Scottish Ministers; and
- (l) any other person appearing to the First-tier Tribunal to have an interest in the application.

(5) The notice under paragraph (4) must inform the persons—

- (a) of the name of the person concerned;

- (b) of the date, time and place of the hearing;
- (c) of the section in accordance with which the hearings is to be held;
- (d) that they are being afforded the opportunity—
  - (i) of making representations (whether orally or in writing); and
  - (ii) of leading, or producing evidence.

(6) If a person mentioned in paragraph (4) wishes to make representations (whether orally or in writing) or to lead or produce evidence, that person must within 7 days of receipt of the notice, or within such other period as may be specified in the notice, send to the First-tier Tribunal a notice of response.

(7) The Clerk must send to each party a copy of each notice of response.

**Application under section 267 or 271 for recall of an order**

**21.**—(1) An application to the First-tier Tribunal under section 267(2) for recall of an order made under section 264(2) or 265(3), or section 271(2) for recall of an order made under section 268(2) or 269(3) must be made in writing.

(2) The application must state—

- (a) the name and address of the applicant;
- (b) the name and address of the patient;
- (c) the order to which the application relates; and
- (d) a brief statement of the reasons for the application.

(3) The applicant must sign the application.

(4) The Clerk must send notice of the application to:

- (a) the patient;
- (b) the patient’s named person;
- (c) any guardian of the patient;
- (d) any welfare attorney of the patient;
- (e) the mental health officer;
- (f) if the patient has a responsible medical officer, the responsible medical officer;
- (g) any curator ad litem appointed in respect of the patient by the First-tier Tribunal;
- (h) the relevant Health Board
- (i) the managers of the hospital in which the patient is detained
- (j) the Commission;
- (k) in the case of a relevant patient, the Scottish Ministers; and
- (l) any other person appearing to the First-tier Tribunal to have an interest in the application.

(5) The notice under paragraph (4) must inform the persons—

- (a) of the date, time and place of the hearing; and
- (b) that they are being afforded the opportunity—
  - (i) of making representations (whether orally or in writing); and
  - (ii) of leading, or producing evidence.

If a person mentioned in paragraph (4) wishes to make representations (whether orally or in writing) or to lead or produce evidence, that person must within 21 days of receipt of the notice, or within such other period specified in that notice, send to the First-tier Tribunal a notice of response.

*Informal patients*

**Application to First-tier Tribunal under section 291 in relation to unlawful detention**

**22.**—(1) An application to the First-tier Tribunal under section 291 for an order requiring the managers of the hospital to cease to detain the patient must in writing.

(2) The application must state—

- (a) the name and address of the applicant;
- (b) the name and address of the patient;
- (c) the name and address of the patient’s named person, if known;
- (d) the name and address of the hospital where the patient is apparently detained; and
- (e) a brief statement of the reasons for the application.

(3) The applicant must sign the application.

(4) The Clerk must send a copy of the application to the hospital managers and the patient.

(5) The Clerk must notify the hospital managers

- (a) of the case number of the application (which must from then on be referred to in all correspondence relating to the application);
- (b) that an application has been made;
- (c) of the date, time and place of the hearing;
- (d) that they are being afforded the opportunity-
  - (i) of making representations (whether orally or in writing); and
  - (ii) of leading, or producing evidence.

(6) If the hospital managers wish to make representations (whether orally or in writing) or to lead or produce evidence, they must as soon as reasonably practicable, or within such other period specified in that notice, send to the First-tier Tribunal a notice of response.

(7) The Clerk must send a copy of the notice of response to each party.

## PART 3

### APPEALS TO THE FIRST-TIER TRIBUNAL

#### **Scope of this Part**

**23.** This Part applies to appeals to the First-tier Tribunal under, or by virtue of, the following sections of the 2003 Act—

- (a) section 125(2) (appeal where patient subject to compulsory treatment order against transfer to hospital other than state hospital);
- (b) section 126(2) (appeal where patient subject to compulsory treatment order against transfer to state hospital);
- (c) section 178 (appeal where patient subject to compulsion order against transfers to state hospital or hospital other than state hospital);
- (d) section 201(1) (appeal against variations of conditions imposed on conditional discharge);
- (e) section 204(1) (appeal against recall from conditional discharge);
- (f) section 219(2) (appeal against transfer to hospital other than state hospital);
- (g) section 220(2) (appeal against transfer to state hospital); and
- (h) section 290(1) (appeal by patient under regulations against proposed removal from Scotland).

### **Initiating appeals to the First-tier Tribunal**

- 24.**—(1) An appeal to the First-tier Tribunal must be made in writing and must state—
- (a) the name and address of the appellant;
  - (b) the name and address of the patient;
  - (c) the name and address of the patient’s named person, if known;
  - (d) the name and address of the hospital, if any, where the patient is detained or is apparently detained;
  - (e) where the patient is required to reside at a specified place, the address of that specified place;
  - (f) the matter which is being appealed;
  - (g) a statement setting out the reasons for the appeal.
- (2) The appellant must sign the appeal.
- (3) 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.

### **Notice of the appeal**

- 25.**—(1) The Clerk must send a copy of the appeal to—
- (a) the patient;
  - (b) the patient’s named person; and
  - (c) the respondent.
- (2) The Clerk must send a notice of the appeal to the respondent informing the respondent of—
- (a) of the case number of the appeal (which must from then on be referred to in all correspondence relating to the appeal);
  - (b) of the date, time and place of the hearing; and
  - (c) that if the respondent wishes to make representations or lead or produce evidence, the respondent must send a notice of response to the First-tier Tribunal within the period specified in the notice.

### **Withdrawal of appeal**

- 26.**—(1) An appellant may withdraw their appeal—
- (a) at any time before the hearing of the appeal, by sending to the Clerk a notice signed by the appellant; or
  - (b) at the hearing of the appeal.
- (2) On receipt of any such notice, the Clerk must send a copy to the respondent.
- (3) No further appeal may be brought by the appellant in relation to the decision which was the subject of the appeal withdrawn.

### **Amendment of appeal**

- 27.**—(1) A party may, at any time before notification of the date of the hearing of the appeal, amend the appeal by sending a notice of any amendment to the Clerk.
- (2) A party may amend the appeal with the permission of the First-tier Tribunal at any time after receiving notification of the date of the hearing or with the permission of the Convener at the hearing itself.
- (3) On receipt of any amendment, the Clerk must send a copy of the amendment to any other party.



## PART 4

### REFERENCES TO THE FIRST-TIER TRIBUNAL

#### **Scope of this Part**

**28.** This Part applies to references to the First-tier Tribunal under the following provisions—

- (a) section 96(3) (reference on recorded matters by responsible medical officer);
- (b) section 98(2) (reference by Commission where patient subject to compulsory treatment order);
- (c) section 162(2) (reference by Commission where patient subject to compulsion order);
- (d) section 185(1) (reference by Scottish Ministers where patient subject to compulsion order and restriction order);
- (e) section 187(2) (reference by Scottish Ministers required by Commission where patient subject to a compulsion order and a restriction order);
- (f) section 189(2) (reference by Scottish Ministers where no reference made for two years and patient subject to compulsion order and a restriction order);
- (g) section 210(3) (reference by Scottish Ministers following report by responsible medical officer);
- (h) section 211(2) (reference by Scottish Ministers required by Commission where patient subject to a hospital direction or transfer for treatment direction);
- (i) section 213(2) (reference by Scottish Ministers where no reference has been made for two years where patient subject to a hospital direction or a transfer for treatment direction); and
- (j) regulations made under section 290(1) (reference by Commission under regulations against proposed removal of a patient from Scotland).

#### **Notice of the reference**

**29.**—(1) The Clerk must send notice of the reference—

- (a) under section 96(3), 98(2), 162(2) or regulations made under section 290(1), as the case may be, to—
  - (i) the patient;
  - (ii) the patient's named person;
  - (iii) any guardian of the patient;
  - (iv) any welfare attorney of the patient;
  - (v) the mental health officer;
  - (vi) the patient's responsible medical officer;
  - (vii) the patient's primary carer;
  - (viii) any curator ad litem appointed in respect of the patient by the First-tier Tribunal; and
  - (ix) any other person appearing to the First-tier Tribunal to have an interest in the reference.
- (b) under section 185(1), 187(2), 189(2), 210(3), 211(2) or 213(2), as the case may be, to—
  - (i) the patient;
  - (ii) the patient's named person;
  - (iii) the patient's primary carer;
  - (iv) any guardian of the patient;
  - (v) any welfare attorney of the patient;

- (vi) any curator ad litem appointed in respect of the patient by the First-tier Tribunal;
  - (vii) the Scottish Ministers;
  - (viii) the patient's responsible medical officer;
  - (ix) the mental health officer; and
  - (x) any other person appearing to the First-tier Tribunal to have an interest.
- (2) The notice must inform the persons—
- (a) of the case number of the reference (which must from then on be referred to in all correspondence relating to the reference);
  - (b) that they are being afforded the opportunity—
    - (i) of making representations (whether orally or in writing); and
    - (ii) of leading, or producing evidence; and
  - (c) of the date, time and place of the hearing.

### **Amendment of reference**

**30.**—(1) A referee may at any time before notification of the date of the hearing, amend the reference by sending notice of any amendment to the Clerk.

(2) A referee may amend the reference with the permission of the First-tier Tribunal at any time after receiving notification of the date of the hearing or with the permission of the Convener at the hearing itself.

(3) On receipt of any amendment, the Clerk must send a copy to each party.

## **PART 5 REVIEWS**

### **Scope of this Part**

**31.** This Part applies to reviews by the First-tier Tribunal under section 101(2) (review of determination extending compulsory treatment order under section 86) and section 165(2) (review of determination by responsible medical officer extending compulsion order under section 152).

### **Notice of review**

**32.**—(1) Where the First-tier Tribunal intend to review a determination under section 101(2) or 165(2), the Clerk must send notice of review to the following persons—

- (a) the patient;
  - (b) the patient's named person;
  - (c) any guardian of the patient;
  - (d) any welfare attorney of the patient;
  - (e) the mental health officer;
  - (f) the patient's responsible medical officer;
  - (g) the patient's primary carer;
  - (h) any curator ad litem appointed in respect of the patient by the First-tier Tribunal; and
  - (i) any other person appearing to the First-tier Tribunal to have an interest in the determination.
- (2) The notice must inform the persons—
- (a) of the case number of the review (which must from then on be referred to in all correspondence relating to the review);

- (b) that a review is to be made by the First-tier Tribunal and of the reason for the review;
- (c) of the date, time and place of the hearing; and
- (d) that they are being afforded the opportunity—
  - (i) of making representations (whether orally or in writing); and
  - (ii) of leading, or producing, evidence.

## PART 6

### GENERAL RULES

#### **Scope of this Part**

**33.—**(1) This Part applies generally to cases before the First-tier Tribunal.

(2) The cases referred to in paragraph (1) include an application, reference, appeal or review before the First-tier Tribunal, and to any case remitted to the Tribunal by the Court of Session under section 324(5)(b)(ii).

#### **Disqualification**

**34.—**(1) A person must be disqualified from serving as a member of the First-tier Tribunal in any case if that person—

- (a) is employed by or contracted to provide services in or to the hospital or independent health care service in which the patient is or may be detained;
- (b) is directly involved in providing medical treatment, community care services, relevant services or any other treatment, care or service to that patient; or
- (c) has a personal or professional connection with the patient.

(2) For the purposes of paragraph (1)(a), unless a person works wholly or mainly in a hospital or independent health care service, that person must not be regarded as being employed by or contracted to provide services in or to that hospital or independent health care service.

#### **Preliminary or procedural matters**

**35.—**(1) The First-tier Tribunal may, either on the written request of a party or on its own initiative, consider and determine any preliminary or procedural matter in relation to the case including any matter for which specific provision is made in this Part.

(2) Before determining such a matter, the First-tier Tribunal may—

- (a) send notice to any of the parties inviting them to make written representations within such period as may be specified; or
- (b) summon any of the parties to appear before the First-tier Tribunal for a preliminary hearing and may give any necessary directions relating to their appearance.

(3) The functions of the First-tier Tribunal under this rule may be carried out by the Chamber President, a Convener alone or with such other members as the Chamber President may direct.

#### **Transfer to the Upper Tribunal**

**36.** Where the First-tier Tribunal is satisfied that, on a point of law only, a case which it is hearing could be better considered by the Upper Tribunal for Scotland, it may request the Chamber President to transfer the case to the Upper Tribunal.

#### **Incompetent case**

**37.—**(1) A case before the First-tier Tribunal is incompetent if it is—

- (a) outwith the jurisdiction of the First-tier Tribunal; or
  - (b) made otherwise than in accordance with these Rules.
- (2) Where a case appears to the Clerk to be incompetent the Clerk must refer the case to a Convener.
- (3) A Convener may decide whether the case is incompetent either alone or with such other members as the Chamber President may direct.
- (4) Before dismissing a case as incompetent a Convener may—
- (a) send notice of the proposed dismissal to the parties inviting them to make written representations within 28 days or such other period as may be specified by the Convener;
  - (b) afford the parties an opportunity to be heard.
- (5) A Convener may, where appropriate, on dismissing an incompetent case refer the matter to the Commission.
- (6) Rules 67 and 68 apply to a decision made under this rule.

**Lodging of documents etc.**

- 38.**—(1) Except as otherwise provided in these Rules or as specified by the First-tier Tribunal in a particular case, a party must send to the First-tier Tribunal 7 days prior to any hearing—
- (a) a list of documents and the documents that the party wishes to lead as evidence;
  - (b) a list of witnesses whom the party wishes to call; and
  - (c) any written representations the party wishes to make.
- (2) Where a party seeks to rely upon documents not produced in accordance with paragraph (1)(a), the First-tier Tribunal may allow the documents to be lodged late where good reason is given.
- (3) In determining whether to allow documents to be lodged late, the First-tier Tribunal must have regard to whether to do so is fair in all the circumstances.

**Distribution of documents**

- 39.**—(1) Except as otherwise provided for in these Rules, the Clerk must as soon as reasonably practicable send a copy of any document received in relation to the case to the parties.
- (2) At the request of any party, or on its own initiative, the First-tier Tribunal or a Convener may determine whether a document should also be sent to any other person.

**Requests to the First-tier Tribunal for non-disclosure of documents**

- 40.**—(1) A request for non-disclosure of any document or part of it in connection with proceedings before the First-tier Tribunal must be made in writing by the person sending the document when that document is sent to the First-tier Tribunal, indicating the words and passages for which non-disclosure is claimed and giving reasons in each instance.
- (2) If so directed by the Convener or the First-tier Tribunal, the person making the request under paragraph (1) must, where practicable, supply a disclosable version of the relevant document.
- (3) On receipt of a request under paragraph (1), the Convener or the First-tier Tribunal, as the case may be, must determine whether the request must be intimated to any person, and the Clerk must intimate the request to such a person inviting that person—
- (a) to make written representations within such period as may be specified; or
  - (b) to make representations at a hearing on such date as specified in the notice.
- (4) On considering the request and accompanying reasons, and after taking into account any representations received in response to any intimation of that request under paragraph (3), the Convener or First-tier Tribunal, as the case may be, may—

- (a) where the Convener or First-tier Tribunal is satisfied that all or any part of the document should not be disclosed, direct that the document or any part of the document should not be disclosed;
- (b) where a disclosable version has been provided under paragraph (2), direct that the version will be disclosed in place of the relevant document; or
- (c) reject the request.

(5) The First-tier Tribunal must notify the person who made the request under paragraph (1) and any person to whom the request was intimated under paragraph (3) and who made representations that such a decision has been made and the reasons for that decision.

(6) Where a decision is made under this rule not to disclose a document or any part of it to a patient and the patient does not have a legal representative to represent their interests, a curator ad litem may be appointed under rule 49.

### **Submissions and evidence from persons who are not a party to proceedings**

**41.**—(1) Any person who has an interest in the case and wishes to make representations (whether orally or in writing) or to lead or produce evidence may send a written request to the First-tier Tribunal stating—

- (a) the person’s name and address;
- (b) the nature of the person’s interest; and
- (c) the person’s reasons for the request.

(2) A written request in paragraph (1) must be accompanied by a copy of any documents that the person intends to rely on.

(3) The First-tier Tribunal may refer the request to a Convener to decide or decide the matter itself at a hearing.

(4) On receipt of a request and accompanying documents under paragraphs (1) and (2), the Clerk must send a copy of them to the parties, inviting the parties to make written representations within such period as may be specified by the First-tier Tribunal or Convener.

(5) At the request of any party in writing within that period, the First-tier Tribunal or a Convener, as the case may be, may afford the parties an opportunity to be heard either by a Convener alone or with such other members as the Chamber President may direct.

(6) The First-tier Tribunal or a Convener, as the case may be, must consider any representations made, and if satisfied that the person who made the request under paragraph (1) has an interest in the case, and that it is reasonable to do so, may grant that request.

(7) On granting a request made under paragraph (1), the First-tier Tribunal or a Convener, as the case may be, must consider whether any decision already taken in the case requires to be reconsidered.

### **Directions**

**42.**—(1) Except as otherwise provide for in these Rules, the First-tier Tribunal may at any time, either on the request of a party or on its own initiative, give such directions as the First-tier Tribunal considers necessary or desirable to further the principles in the 2003 Act in the conduct of a case and may without prejudice to the generality—

- (a) direct a party to provide any further particulars or to produce any documents which may reasonably be required;
- (b) direct that a party must supply a list of documents and a list of witnesses whom that party wishes to call to give evidence at the hearing;
- (c) give directions as to the dates by which any documents or other evidence on which any party wishes to rely must be sent to the First-tier Tribunal;
- (d) give a direction as to the date by which a party must send any written representations on the case to the First-tier Tribunal;

- (e) direct that the parties or the parties should provide a statement of agreed facts;
- (f) give directions restricting the reporting, recording, photography or filming of any hearing;
- (g) give directions as to—
  - (i) any issues on which the First-tier Tribunal requires evidence;
  - (ii) the nature of the evidence which the First-tier Tribunal requires to decide those issues;
  - (iii) the way in which the evidence is to be led before the First-tier Tribunal; and
  - (iv) the exclusion of any evidence which is irrelevant, unnecessary or improperly obtained.
- (h) give directions on any other matter as is necessary to enable the First-tier Tribunal to decide the case as soon as possible.

(2) Where a request is made by a party for a direction under paragraph (1), it must be made in writing, specifying the direction sought and the basis for the request.

(3) On receipt of such a request, the Clerk must intimate the request to the parties inviting them to make written representations within 14 days or such other period as the First-tier Tribunal may specify.

(4) The requirement in paragraph (3) does not require the Clerk to intimate to the person who made the request.

(5) Where a party objects to the request, the First-tier Tribunal must consider the objection and, if the First-tier Tribunal considers it necessary in order to decide the request, may afford the parties an opportunity to be heard either by the Convener alone or with such other members as the First-tier Tribunal may direct.

(6) The First-tier Tribunal must, in deciding whether to make a direction, consider any representations made.

(7) A direction under this rule may, if appropriate, include a statement of the possible consequences of failure to comply as provided for in rule 45.

(8) Where a direction is made without prior intimation to a party whom it affects, that party must be notified in writing by the First-tier Tribunal of that direction as soon as reasonably practicable.

(9) The functions of the First-tier Tribunal under this rule, may be carried out by the Chamber President, a Convener alone or with such other members, as the Chamber President may direct.

### **Directions on fixing another hearing**

**43.**—(1) Where at the hearing on an application, reference, review or appeal the First-tier Tribunal does not decide the application, it must fix a further hearing.

(2) Before exercising its powers under paragraph (1) and giving any directions under rule 42, the First-tier Tribunal must afford the parties who are present at the hearing an opportunity to be heard.

### **Varying or setting aside of directions**

**44.**—(1) Where a direction that affects a person is given by the First-tier Tribunal without prior intimation to that person, that person may request that the First-tier Tribunal vary it or set it aside.

(2) The First-tier Tribunal must not vary or set aside a direction under paragraph (1) without first intimating the request to the parties and considering any representations made by them.

(3) The requirement in paragraph (2) to intimate a request to the parties does not require intimation to the person who made the request.

### **Power on failure to comply with directions**

**45.**—(1) If any direction given to a party under rule 42 is not complied with, the First-tier Tribunal may, before or at the hearing, direct that the party take no further part in proceedings.

(2) The First-tier Tribunal must not exercise its powers under paragraph (1) unless it has given the party concerned an opportunity to show cause why the First-tier Tribunal should not proceed to give such a direction.

(3) The functions of the First-tier Tribunal under this rule may be carried out by the Chamber President, a Convener alone or with such other member as the Chamber President may direct.

### **Other case management powers**

**46.**—(1) Subject to the provisions of the 2003 Act, 2014 Act and these Rules, the First-tier Tribunal may regulate its own procedure.

(2) The First-tier Tribunal may in any proceedings—

- (a) on the request of any party or on its own initiative, extend the time appointed by these Rules for carrying out any action act, even if the time appointed has expired, if—
  - (i) it would not be reasonable to expect the party concerned to comply or, as the case may be, to have complied with the time limit; or
  - (ii) it would be contrary to the interests of the patient not to extend the time limit;
- (b) require a party (other than the patient) or a party's representative or the patient's named person to attend a hearing; and
- (c) hold a hearing and receive evidence by telephone, video link or by any other method of communication if the First-tier Tribunal is satisfied that this would be fair in all the circumstances.

(3) Except where these Rules, the 2003 Act or the 2014 Act provide otherwise, the First-tier Tribunal may exercise its powers on the request of any party or on its own initiative.

(4) Where the First-tier Tribunal proposes to exercise a power on its own initiative, it may give any person likely to be affected an opportunity to make representations.

(5) Where, in accordance with paragraph (4), the First-tier Tribunal decides to give a person an opportunity to make representations, it must—

- (a) specify the period within which and the manner in which any representations must be made; and
- (b) take any representations into account before deciding whether to exercise the relevant power.

(6) Where there are two or more sets of proceedings pending before the First-tier Tribunal which relate to the same patient, the First-tier Tribunal may on the request of a party or on its own initiative—

- (a) adjourn the whole or part of the proceedings, either generally or until a specified date or event;
- (b) suspend the whole or part of any decision, either generally or until a specified date or event; or
- (c) hear and determine the proceedings concurrently, and give any directions necessary to enable it to do so.

### **Assistance to persons with communication difficulties**

**47.**—(1) This rule applies where—

- (a) a person taking part in proceedings before the First-tier Tribunal has difficulty in communicating, or generally communicates in a language other than English; and
- (b) section 261 does not apply.

(2) Where a person requires assistance to take part in the proceedings, the person must at the earliest opportunity notify the First-tier Tribunal of that requirement.

(3) Where a party becomes aware that a person requires assistance to take part in the proceedings, the party must at the earliest opportunity notify the Clerk of that requirement.

(4) The First-tier Tribunal must take all reasonable steps to make arrangements appropriate to the person's needs.

## **Representation**

**48.**—(1) This rule applies to a party who—

- (a) initiates proceedings before the First-tier Tribunal;
- (b) who wishes to take part in such proceedings; or
- (c) is taking part in such proceedings.

(2) A party must as soon as practicable give notice to the First-tier Tribunal of the name and address of their representative.

(3) If a party has not instructed a representative, the party must give notice as soon as practicable to the First-tier Tribunal as to whether they intend to instruct such a representative.

(4) If a party wishes to be represented by a different representative at any time, the party must notify the First-tier Tribunal of the name and address of that representative.

(5) At any hearing a party may conduct their own case (with assistance from any person if the party wishes) or may be represented by a representative.

(6) A party may disclose any document or information about the proceedings to their representative without contravening any prohibition or restriction on disclosure of the document or information.

(7) Where a document or information is disclosed under paragraph (6), the representative is subject to the same prohibition or restriction on disclosure of that document or information that the party is subject to.

(8) Anything permitted or required to be done by a party—

- (a) under these Rules; or
- (b) to comply with a practice direction or direction,

may be done by a representative, except signing of an affidavit or precognition.

(9) The First-tier Tribunal may direct that a lay representative is not to represent a party if—

- (a) it is of the opinion that the lay representative is an unsuitable person to act as a lay representative (whether generally or in the proceedings); or
- (b) it is satisfied that to make such a direction would be in the interests of the efficient administration of justice.

(10) Except where otherwise provided in these Rules, where a party has a representative, the First-tier Tribunal or Clerk, as the case may be, must send all documents and notices concerning the proceedings to the representative instead of to the party.

## **Curator ad litem**

**49.**—(1) A curator ad litem may be appointed by the First-tier Tribunal or a Convener, as the case may be, where any of the circumstances in paragraph (2) apply to proceedings before the First-tier Tribunal.

(2) The circumstances are—

- (a) the patient does not have the capacity to instruct a legal representative in the proceedings;
- (b) an application or appeal has been initiated by virtue of a provision giving a listed initiator authority to act;



- (c) the First-tier Tribunal or a Convener, as the case may be, has made a decision not to disclose a document or report or part of it to the patient under rule 40, and the patient does not have a legal representative; or
- (d) the patient has been excluded under rule 63 or 64 from any hearing or part of a hearing, and the patient does not have a representative.

(3) The First-tier Tribunal must provide all necessary information to any appointed curator ad litem to enable the curator to represent the patient's interests in the proceedings.

## **Notices**

**50.**—(1) Where these Rules require notice of proceedings before the First-tier Tribunal to be served upon all parties to the proceedings—

- (a) there is no requirement to serve that notice on the person who initiated the proceedings; and
- (b) the person must instead be sent a notice which intimates the date, time and place of the hearing and giving such directions as the First-tier Tribunal must consider appropriate in the circumstances.

(2) Where a person requests not to receive any notices or documents from the First-tier Tribunal, the First-tier Tribunal must comply with that request.

(3) A request in terms of paragraph (2) must be—

- (a) in writing; and
- (b) specify the proceedings before the First-tier Tribunal to which it relates.

(4) The Clerk must send to each party, not less than 7 days before the date fixed for a hearing (or such shorter period as the First-tier Tribunal or the Convener may decide is appropriate), notice intimating the date, time and place of the hearing and giving such directions as the First-tier Tribunal must consider appropriate in the circumstances.

(5) When intimating a notice in accordance with paragraph (4), the Clerk must provide each party with information and guidance, in a form approved by the Chamber President, about—

- (a) the right of a party to make representations in writing;
- (b) the attendance at the hearing of the parties and witnesses, including the consequences of failure to attend;
- (c) the sending of documents;
- (d) the right of representation or assistance by another person;
- (e) the need to notify the Clerk if a party or a witness requires assistance under rule 49;
- (f) the right of the parties to receive a copy of a decision of the First-tier Tribunal;
- (g) the availability from the First-tier Tribunal of general procedural advice in relation to proceedings; and
- (h) the availability of other sources of advice.

(6) Paragraphs (4) and (5) do not apply where parties have already been notified of the date of the hearing by virtue of a notice intimated in accordance with Parts 2 to 5 of these Rules.

## **Alteration of hearing**

**51.**—(1) The First-tier Tribunal may, on receipt of a written request from a party, or on its own initiative, alter the date, time or place of any hearing and must give the parties as much notice as is reasonably practicable of any such alteration.

(2) The First-tier Tribunal must not under paragraph (1) alter without good cause the date of a hearing to a date occurring before the date originally fixed.

### **Power to decide a case without oral representations and oral evidence**

**52.**—(1) The First-tier Tribunal may decide the case without oral representations and oral evidence where the following conditions are met—

- (a) the First-tier 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 oral representations and oral evidence;
- (b) to decide the case without oral representations or oral evidence will not, in the view of the First-tier Tribunal, be contrary to the interests of the patient;
- (c) the First-tier 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 or any person notified under sub-paragraph (c) has not applied for oral representations or oral evidence to be heard; and
- (e) no person who appears to the First-tier Tribunal to have an interest in the proceedings has applied for oral representations or oral evidence to be heard.

(2) The notice referred to in paragraph (1)(c) must state—

- (a) that the First-tier 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 First-tier 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 First-tier Tribunal; and
- (e) that the patient is entitled to have access to independent advocacy under section 259.

(3) Applications under this rule must be in writing.

(4) As soon as reasonably practicable, after the latest date by which applications must be made under paragraph (2)(d), the First-tier Tribunal must notify—

- (a) the patient; and
- (b) those persons who require to be afforded the opportunity of making representations or of leading or producing evidence;

as to whether there are to be oral representations and oral evidence.

### *Evidence*

#### **Production of documents etc.**

**53.**—(1) The First-tier Tribunal may, on the request of any party or on its own initiative, send a citation to any person requiring that person to attend and produce any document in the custody, or under the control of, such person which the First-tier Tribunal considers it necessary to examine.

(2) Paragraph (1) does not apply in respect of the circumstances—

- (a) provided for in regulations made under section 67 of the 2014 Act; and
- (b) referred to in paragraph (3).

(3) A citation under paragraph (1) must state that—

- (a) it is an offence under the Scottish Tribunals (Offences in Relation to Proceedings) Regulations 2016<sup>(a)</sup> to refuse or fail to attend, or to alter, conceal or destroy or refuse to

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(a) S.S.I. 2016/342.

produce, a document which such person is required to produce for the purposes of the proceedings before the First-tier Tribunal; and

- (b) a person need not produce any document if, the person having that document could not be compelled to produce it in proceedings in a court in Scotland.

(4) A citation under paragraph (1) does not require to be complied with unless the necessary expenses of the person whose attendance is required under the citation have been paid or tendered to the person.

(5) The Chamber President must direct whether the expenses under paragraph (4) are paid by the party who requested the person's attendance or the First-tier Tribunal.

(6) A person receiving a citation under this rule may apply in writing to the First-tier Tribunal for the citation to be varied or set aside, and a Convener may vary or set aside the citation as they see fit.

(7) The Clerk must send a copy of the decision under paragraph (6) to the person making the application under that paragraph and the parties.

(8) A condition of the production of any document under this rule is that a party to the proceedings in the First-tier Tribunal must use the document only for the purposes of the proceedings.

(9) In giving effect to this rule, the First-tier Tribunal must take into account—

- (a) the need to protect any matter that relates to intimate personal or financial circumstances or was communicated, or obtained, in confidence; and
- (b) any request for non disclosure made under rule 40.

#### **Evidence of witnesses**

**54.**—(1) Subject to paragraph (2), evidence before the First-tier Tribunal may be given orally or by signed statement.

(2) The First-tier Tribunal may at any stage of the proceedings require the personal attendance of any witness to give oral evidence.

#### **Attendance of witnesses**

**55.**—(1) The First-tier Tribunal may, on the written request of any party or on its own initiative, send a citation to a person requiring that person to attend as a witness.

(2) A request by a party under paragraph (1) must give the name and address of each person in respect of whom the request is made.

(3) A citation under paragraph (1) must state that—

- (a) it is an offence under the Scottish Tribunals (Offences in Relation to Proceedings) Regulations 2016(a) to refuse or fail to attend; and
- (b) a person need not give evidence as a witness if the person could not be compelled to give evidence in proceedings in a court in Scotland.

(4) A citation under paragraph (1) must give the person 5 working days' notice of the hearing, or such other period of notice as must be specified in the citation, which must be at least 48 hours' notice.

(5) A citation under paragraph (1) does not require to be complied with unless the necessary expenses of the person whose attendance is required under the citation have been paid or tendered to the person.

(6) The Chamber President must direct whether the expenses under paragraph (5) are paid by the party who requested the person's attendance or the First-tier Tribunal.

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(a) S.S.I. 2016/342.

## Expert reports

**56.**—(1) The First-tier Tribunal may appoint a person having appropriate qualifications to inquire into and report on any matter if any issue arises in any proceedings on which, in the opinion of the First-tier Tribunal, it would be desirable for the First-tier Tribunal to have the assistance of an expert.

(2) Subject to rule 40 (request for non-disclosure of documents), the First-tier Tribunal must supply the parties to the proceedings with a copy of any written report received under paragraph (1) in advance of the hearing.

(3) The First-tier Tribunal may direct that the expert must attend the hearing and give oral evidence.

(4) The First-tier Tribunal must pay an expert appointed under this rule the necessary expenses incurred in preparing and producing any written report and attending at the hearing, and the Chamber President must direct the amount to be paid.

## *The Hearing*

### Accommodation

**57.**—(1) The bodies listed in paragraph (2) must provide, in response to a request by the Chamber President and so far as it is reasonably practicable to do so, accommodation for the holding of hearings by the First-tier Tribunal.

(2) The bodies are—

- (a) a Health Board constituted by order under section 2(1)(a) of the National Health Service (Scotland) Act 1978**(a)**;
- (b) the State Hospitals Board for Scotland;
- (c) a local authority, being a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994**(b)**.

### Procedure

**58.**—(1) At the beginning of any hearing in the First-tier Tribunal the Convener must explain the manner and order of proceedings and the procedure which the First-tier Tribunal proposes to adopt.

(2) The First-tier Tribunal may, in accordance with the principles in the 2003 Act, conduct the hearing—

- (a) as informally as the circumstances of the case permit; and
- (b) in the manner the First-tier Tribunal considers—
  - (i) to be just; and
  - (ii) most suitable to the clarification and determination of the matters before the First-tier Tribunal.

(3) The parties to the proceedings, and any person whose request to make written or oral representations or lead or produce evidence has been granted by the First-tier Tribunal, must be entitled to make representations and to lead or produce evidence.

(4) At any hearing the First-tier Tribunal may, if satisfied that it is just and reasonable to do so, permit a party or any person whose request to make written or oral representations or lead or produce evidence has been granted by the First-tier Tribunal to rely on matters not stated in the application, reference, appeal, review, or written representations and to lead or produce any evidence not previously notified to the parties.

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(a) c.29.  
(b) c.39.

(5) Having considered the circumstances of the parties and whether (and to what extent) they are represented, the Convener—

- (a) may, in order to assist resolution of any disputed fact, put questions to—
  - (i) the parties;
  - (ii) any person whose request to make written or oral representations or lead or produce evidence has been granted by the First-tier Tribunal; and
  - (iii) witnesses;or may allow another member of the First-tier Tribunal to put such questions; and
- (b) must, to the extent the Convener considers it necessary for the just conduct of the hearing, explain any legal terms or expressions which are used.

(6) The First-tier Tribunal may exclude from the hearing any person who is to appear as a witness in the case until such time as they give evidence if it considers it is fair in all the circumstances to do so.

### **Absence of a member of the First-tier Tribunal**

**59.**—(1) Except as provided for otherwise in these Rules, a First-tier Tribunal must not decide any question unless all members of the tribunal are present and, if any member is absent, the case must be adjourned or referred to another First-tier Tribunal.

(2) If a member of a First-tier Tribunal ceases to be a member of the First-tier Tribunal or is otherwise unable to act before that First-tier Tribunal has commenced hearing the case, the Chamber President may allocate the hearing of that case to a different member of the First-tier Tribunal.

(3) If, after the commencement of any hearing, a member of a First-tier Tribunal other than the Convener is absent, the case may, with the consent of the parties, be heard by the other two members and, in that event, the First-tier Tribunal must be deemed to be properly constituted.

### **Adjournment of the hearing**

**60.**—(1) The First-tier Tribunal may on the request of a party or on its own initiative, adjourn a hearing in order that further information or evidence may be obtained or for such other purpose as it sees fit.

(2) The First-tier Tribunal must consider any representations made by any other party before deciding whether or not the hearing will be adjourned.

(3) The First-tier Tribunal must notify the parties of the date, time and place that the hearing has been adjourned to.

(4) Paragraph (3) does not apply where the date, time and place that the hearing is adjourned to are announced before the adjournment.

### **Hearings in public or private**

**61.**—(1) Subject to the provisions of this rule, hearings must be held in private.

(2) Where a patient applies in writing for a hearing to be held in public, the First-tier Tribunal may make an order that a hearing be held in public.

(3) The First-tier Tribunal may refuse to make an order under paragraph (2) where any of the requirements of paragraph (4) is met.

(4) The requirements are that a public hearing—

- (a) would fail to safeguard the welfare of the patient or any other person;
- (b) would not, in all the circumstances, allow the fair hearing of the case; or
- (c) would prejudice the interests of justice.

(5) The First-tier Tribunal must refuse to make an order under paragraph (2) only to the extent necessary to protect the interest which is being protected by the refusal, and only in relation to those parts of a hearing in respect of which any of the requirements of paragraph (4) is satisfied.

(6) The following persons must be entitled to attend a hearing, even although it may be held in private—

- (a) the Chamber President;
- (b) a member of the First-tier Tribunal who is not a member of the First-tier Tribunal conducting the hearing, or a member of staff of the First-tier Tribunal, with the agreement of the Convener;
- (c) an interpreter or other person giving other necessary assistance to a person entitled to attend the hearing;
- (d) any person whose attendance has been authorised by the Chamber President; and
- (e) any person whose attendance is needed to ensure the health, safety and welfare of the patient or any other person attending the hearing.

(7) The First-tier Tribunal may exclude from a hearing or any part of a hearing, any person, other than a representative of the patient or a party, where it is considering a document withheld from disclosure in accordance with rule 40.

(8) Where the First-tier Tribunal decides to exclude a person under paragraph (7), it must inform the person excluded of its reasons and record those reasons in writing.

### **Publicity**

**62.**—(1) Where the First-tier Tribunal has made an order under rule 61(2), the First-tier Tribunal may on the request of a party or on its own initiative make an order that any publicity to be given to the hearing should be limited, where the Convener considers it appropriate bearing in mind—

- (a) the need to safeguard the welfare of a patient or any other person;
- (b) the need to protect the private life of any person;
- (c) any representations on the matter which a party has provided in writing; and
- (d) the effect of any direction under rule 42.

(2) An order under paragraph (1) must limit publicity only to the extent necessary to protect the interest which is being protected by the order.

(3) An order under paragraph (1) may allow publicity that does not identify the parties.

### **Exclusion of persons from hearings in exceptional circumstances**

**63.**—(1) Where the Convener or the First-tier Tribunal is satisfied that attendance of any person at a hearing or part of a hearing may cause serious harm to the patient or any other person, the Convener or the First-tier Tribunal, as the case may be, may make a direction that such a person must be excluded from the hearing or any part or it.

(2) The Convener or the First-tier Tribunal, as the case may be, may appoint a person having appropriate skills or experience to—

- (a) assess whether attendance by the patient or another person may cause serious harm; and
- (b) report on the matter.

(3) The First-tier Tribunal must pay to an expert appointed under paragraph (2) such an amount in respect of necessary expenses incurred in preparing and producing any report as the Chamber President must direct.

(4) Where the Convener or the First-tier Tribunal is considering making a direction under paragraph (1), the Clerk must invite the parties to make written representations both as to the necessity of the direction and as to the availability of alternative measures, within such period as may be specified by the Convener.

(5) At the request of any party in writing within the period specified under paragraph (4), the First-tier Tribunal may afford the parties an opportunity to be heard either by the Convener alone or with such other members as the Chamber President may direct.

(6) If the person who may be the subject of a direction under paragraph (1) is the patient, and the patient does not have legal representation, the First-tier Tribunal must—

- (a) invite the patient to seek an adjournment of the First-tier Tribunal's consideration of the matter, in order to obtain legal representation and,
- (b) grant any adjournment sought by the patient.

(7) A direction under paragraph (1)—

- (a) must exclude the patient or other person only to the extent strictly necessary to prevent the serious harm which may be caused by attendance, and
- (b) may be made only after taking into account any report under paragraph (2) and any representations made under paragraph (4) or (5).

(8) Where such a direction excluding the patient is made and the patient does not have a representative, a curator ad litem may be appointed under rule 49.

### **Exclusion of persons disrupting hearing**

**64.**—(1) Without prejudice to any other powers of the First-tier Tribunal, the First-tier Tribunal may exclude from a hearing, or part of a hearing—

- (a) any person (including a party or the party's representative) whose conduct has disrupted, or is likely, in the opinion of the First-tier Tribunal, to disrupt the hearing;
- (b) any person whose presence is likely, in the opinion of the First-tier Tribunal, to make it difficult for any party to make representations or present evidence necessary for the proper conduct of the hearing; or
- (c) any person whose conduct has otherwise interfered with the administration of justice or is likely to do so.

(2) In deciding whether to exercise the power under paragraph (1) the First-tier Tribunal must have regard to—

- (a) the interests of the parties; and
- (b) in the case of the exclusion of a party or party's representative, whether the party will be adequately represented.

(3) Before the First-tier Tribunal decides to exclude a party, the First-tier Tribunal must—

- (a) allow the party's representative sufficient opportunity to consult the party;
- (b) afford the party concerned and any other party, as it thinks fit, an opportunity to be heard; and
- (c) consider the availability of alternative measures which may enable the party concerned to continue to participate in the hearing.

(4) Where the party concerned is the patient, and that patient does not have a representative present, the First-tier Tribunal may, before making a decision under paragraph (1), adjourn the hearing to allow—

- (a) the patient to obtain a representative; or
- (b) a curator ad litem to be appointed under rule 49.

(5) The First-tier Tribunal may make such alternative arrangements as may be necessary to enable a person excluded under this rule to continue to participate in the hearing, including allowing the hearing to continue through video-link or other method of communication.

(6) Where the First-tier Tribunal decides to exclude a patient under this rule and the patient does not have a representative to represent their interests, a curator ad litem may be appointed under rule 49.

### **Failure of a party to attend**

**65.**—(1) If a party or person whose request to make written or oral representations or lead or produce evidence has been granted by the First-tier Tribunal fails to attend or be represented at a hearing, the First-tier Tribunal may, if satisfied that—

- (a) the person was duly notified of the hearing; and
- (b) there is no good reason for such absence,

hear and decide the proceedings in that person's absence and may give such directions as the First-tier Tribunal thinks fit.

(2) Before deciding any case in the absence of a party or person whose request to make written or oral representations or lead or produce evidence has been granted by the First-tier Tribunal, the First-tier Tribunal must consider any written representations submitted by that party or person.

(3) Where a party has failed to attend or be represented at a hearing, the First-tier Tribunal must afford the party an opportunity to be heard either by the Convener alone or with such other members as the Chamber President may direct, to explain their absence and to advise whether the party wishes to continue with their involvement in the proceedings.

### **Inability to attend**

**66.**—(1) If the Convener is satisfied that any party is unable, through illness, age, incapacity or other sufficient cause to attend the hearing, the Convener may make such arrangements as may appear appropriate in all the circumstances of the case, to decide the case fairly

(2) Arrangements by the Convener under paragraph (1) may include—

- (a) permitting the party unable to attend to provide a signed statement, or evidence in such form as the Convener thinks fit;
- (b) taking the evidence of expert or other witnesses on behalf of the party unable to attend;
- (c) enabling the party unable to attend to make representations on the evidence;
- (d) enabling evidence to be taken and representations heard by video-link; and
- (e) to allow the case to be decided in the absence of the party unable to attend.

### **Decisions of the First-tier Tribunal**

**67.**—(1) The decision of the First-tier Tribunal may be given at the end of the hearing or reserved until a later date.

(2) The decision must be signed by the Convener and dated.

(3) Where a decision is to be made by more than one member of the First-tier Tribunal, the decision of the First-tier Tribunal must be voted for by a majority of members of that tribunal and, if there is a tie, the Convener must have a second vote as a casting vote.

(4) A decision of the First-tier Tribunal must be recorded in a document which contains a full statement of the facts found by the First-tier Tribunal and the reasons for the decision.

(5) Where a decision requires under paragraph (2) to be signed by the Convener, if the Convener is unable, by reason of death or incapacity to sign it, the decision must be signed by the other members of the First-tier Tribunal who heard the case or the Chamber President, as the case may be, who must certify that the Convener is unable to sign.

### **Intimation of decisions of the First-tier Tribunal**

**68.**—(1) The First-tier Tribunal must, as soon as reasonably practicable, send notice of the decision under rule 68 to—

- (a) the parties;
- (b) the patient's mental health officer (if they are not a party to the proceedings);
- (c) the patient's responsible medical officer (if they are not a party to the proceedings); and



(d) such other persons as the First-tier Tribunal may direct.

(2) Information, in such form as the Chamber President may approve, must be sent with the notice under paragraph (1), explaining any right of appeal under section 322 against the First-tier Tribunal's decision, including any time limits which may apply.

(3) Where a decision has been made by the First-tier Tribunal, whether at a hearing or otherwise, the Clerk must within 21 days of the date on which the decision is signed under rule 68 send a copy of the decision—

(a) to the Commission; and

(b) where the case was remitted to the First-tier Tribunal by the Court of Session, to that court.

(4) Paragraph (5) applies to decisions made by the First-tier Tribunal in relation to applications or references under sections 50(1), 63(1), 92, 95, 98(2), 99(1), 100(2), 120(2), 149, 158, 161, 162(2), 163(1), 164(2), 185(1), 187(2), 189(2), 191, 192(2), 210(3), 211(2), 213(2), 214(2), 255(4), (6) and (7), 256(1), 264(2), 267(2), 268(2), 271(2) and 291(2), but does not apply in relation to any such applications which are not granted by the First-tier Tribunal.

(5) Where a copy of a decision is sent to the Commission under paragraph (3) the Clerk must at the same time send to the Commission a copy of:—

(a) the application or reference, as the case may be; and

(b) in the case of an application, any mental health report that is required under the 2003 Act to accompany that application.

(6) Other than where a decision is made at the end of the hearing, a decision must be treated as having been made on the date on which a copy of the decision is sent to the parties under paragraph (1).

(7) Clerical mistakes or errors arising from an accidental slip or omission in the decision signed under rule 68, may at any time be corrected by the Convener by a certificate in writing.

(8) If the Convener is unable, by reason of death or incapacity, to make a correction in accordance with paragraph (7), the correction must be made by the other members of the First-tier Tribunal who heard the case or the Chamber President, as the case may be, who must certify that the Convener is unable to make the correction.

(9) If a document is corrected by certificate under paragraph (7) or (8), or if a decision is altered in any way by order of an appellate court, the Clerk must send a notice of the alteration to each of the parties and the Commission.

## **Publication**

**69.**—(1) The Chamber President must make such arrangements as the Chamber President considers appropriate for the publication of decisions of the First-tier Tribunal.

(2) Decisions may be published electronically.

(3) A decision may be published in an edited form, or subject to any deletions, where the Convener considers it appropriate, bearing in mind—

(a) the need to safeguard the welfare of the patient or any other person;

(b) the need to protect the private life of any person; and

(c) any representations on the matter which any party to the proceedings which gave rise to the decision has provided in writing.

(4) A decision of the First-tier Tribunal must be published in such a manner as to protect the anonymity of the patient.

## **Application for permission to appeal a decision of the First-tier Tribunal**

**70.**—(1) A person seeking permission to appeal must make a written application to the First-tier Tribunal for permission to appeal.

- (2) An application under paragraph (1) must—
- (a) identify the decision of the First-tier Tribunal to which it relates;
  - (b) identify the points of law on which the person making the application wishes to appeal; and
  - (c) state the result the party making the application is seeking.

### **First-tier Tribunal’s consideration of application for permission to appeal**

**71.**—(1) The First-tier Tribunal must decide whether to give permission to appeal on any point of law.

(2) The First-tier Tribunal must provide a record of its decision as soon as reasonably practicable to the parties to the relevant proceedings in the First-tier Tribunal, and any other person appearing to the First-tier Tribunal to have an interest in the appeal.

(3) If the First-tier Tribunal refuses permission to appeal on any point of law, it must provide with the record of its decision under paragraph (2)—

- (a) a statement of its reasons for the refusal; and
- (b) information on the right of the person who had sought permission under rule 70 to make an application to the Upper Tribunal for permission to appeal, and the time within which, and the method by which, such an application must be made.

### **Review of a decision**

**72.** No review of a decision of the First-tier Tribunal is available under these Rules.

### *Miscellaneous*

### **Performance of the First-tier Tribunal’s functions**

**73.** The Chamber President may authorise any member of the staff of the First-tier Tribunal to exercise such administrative functions under these Rules as the Chamber President must specify.

### **Relief from failure to comply with the Rules**

**74.**—(1) Where a party has failed to comply with any provision of these Rules due to mistake, oversight or other excusable cause before the First-tier Tribunal has decided the case, the First-tier Tribunal may—

- (a) relieve the party from the consequences of that failure under these Rules; and
- (b) give any direction as it thinks fit.

(2) In particular, where it considers that any party may have been prejudiced by such a failure to comply, the First-tier Tribunal may take any necessary steps to enable the case to proceed as if the failure had not occurred.

(3) Necessary steps under paragraph (3) may include amending any document and giving notice.

### **Signature of documents**

**75.**—(1) Where these Rules require a person to sign a document, if the document is to be sent by email, it must be signed with the electronic signature of that person.

(2) Where these Rules require a person to sign an application or appeal, it may be signed on the person’s behalf by the person’s representative.

## **Proof of documents**

**76.** Any document purporting to be a document signed or issued by the Chamber President or Convener on behalf of the First-tier Tribunal must, unless the contrary is proved, be deemed to be a document so signed or issued, as the case may be.

## **Method of delivering and receipt of notices and documents**

**77.**—(1) Any notice or document required or authorised by these Rules to be sent to the First-tier Tribunal may be sent or delivered to the Office of the First-tier Tribunal or such other office as may be notified by the First-tier Tribunal.

(2) All notices and documents required by these Rules to be sent or given by the First-tier Tribunal or the Clerk to a person must be—

- (a) in the case of a party—
  - (i) sent or delivered to the address specified by that party;
  - (ii) transmitted by fax to a specified fax number, where the party has agreed in writing that the party will accept notices and documents by fax; or
  - (iii) sent by email to a specified email address, where the party has agreed in writing that the party will accept notices and documents by email,
- (b) in the case of any other person—
  - (i) sent or delivered to the address specified by that person, or the person's last known address;
  - (ii) transmitted by fax to a specified fax number, where the person has agreed in writing that the person will accept notices and documents by fax; or
  - (iii) sent by email to a specified email address, where the person has agreed in writing that the person will accept notices and documents by email.

(3) All notices and documents required by these Rules to be sent or given by the First-tier Tribunal or the Clerk to a person, other than a party, must be—

- (a) sent or delivered to that person's last known address; or
- (b) in any manner specified for that purpose by the First-tier Tribunal or person to whom the notice or document is directed.

(4) Any notice or document sent to a person in accordance with this rule must, unless the contrary is proved, be deemed to be received—

- (a) where the document is sent by post, on the day after the day on which it was sent; and
- (b) in any other case, on the day on which the document was transmitted or delivered to that person.

(5) A notice or document sent or given to a party's representative must be deemed to have been sent or given to that party.

(6) A party may at any time by notice to the First-tier Tribunal change the address to which notices and documents are to be sent to the party.

## **Transfer of case**

**78.**—(1) Where a First-tier Tribunal is satisfied, in relation to a case which it is hearing that that case could be better considered by First-tier Tribunal members based in another geographical area, it may request the Chamber President to transfer the case to a First-tier Tribunal constituted of such other members.

(2) Where a case has been transferred in terms of this rule, any matters already decided in the case must not be further considered by the First-tier Tribunal to which the case is transferred.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations set out, in the schedule, the First-tier Tribunal for Scotland Mental Health Chamber (“the Chamber”) Rules of Procedure (“the Rules”). These Rules prescribe the practice and procedure to be followed in proceedings before the Chamber. The Chamber was created under the Tribunals (Scotland) Act 2014. The Rules re-enact, with minor amendments, the rules of procedure for the Mental Health Tribunal for Scotland whose functions have transferred to the Chamber.

Regulation 2 provides for the proceedings to which the Rules apply and regulation 3 makes transitional provision about applications received by the Chamber before the day these Regulations come into force.

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 SCOTTISH STATUTORY INSTRUMENTS
 

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**2018 No.**

**TRIBUNALS AND INQUIRIES**

**The Upper Tribunal for Scotland (Mental Health Rules of Procedure) Regulations 2018**

<i>Made</i>	- - - -	2018
<i>Laid before the Scottish Parliament</i>		2018
<i>Coming into force</i>	- -	12th November 2018

The Scottish Ministers make the following Regulations in exercise of the powers conferred by paragraph 4(1)(b) and (2) of schedule 9 of the Tribunals (Scotland) Act 2014(a) and all other powers enabling them to do so.

In accordance with paragraph 4(3) of schedule 9 of that Act, the Scottish Ministers have consulted the President of Tribunals and such other persons as they considered appropriate.

**Citation and commencement**

1.—(1) These Regulations may be cited as the Upper Tribunal for Scotland (Mental Health Rules of Procedure) Regulations 2018 and the Rules contained in the schedule may be cited as the Upper Tribunal for Scotland Mental Health Rules of Procedure 2018.

(2) These Regulations come into force on 12th November 2018.

(3) In these Regulations, “the 2003 Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003.

**Disapplication of the Upper Tribunal for Scotland Rules of Procedure 2016**

2. The Upper Tribunal for Scotland Rules of Procedure 2016(b) do not apply to proceedings before the Upper Tribunal under the 2003 Act.

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(a) 2014 asp 10.  
 (b) In S.S.I. 2016/232.

**Application of Rules in schedule**

**3.** The Rules in the schedule of these Regulations apply to all proceedings before the Upper Tribunal under the 2003 Act.

St Andrew's House,  
Edinburgh

2018

A member of the Scottish Government

The Upper Tribunal for Scotland Mental Health Rules of Procedure 2018

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## PART 1

### Interpretation and Application

#### **Interpretation**

**1.—(1) In these Rules—**

“the 2003 Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003(**a**);

“the 2014 Act” means the Tribunals (Scotland) Act 2014(**b**);

“Appeal Appendix” means all the documents and authorities to be relied on for the purpose of the appeal along with an inventory;

“appellant” means—

- (a) a person who makes an appeal to the Upper Tribunal, except a person who initiated them by virtue of a provision giving a listed initiator authority to act;
- (b) a person who has had an application to the First-tier Tribunal transferred to the Upper Tribunal; or
- (c) in any case, a person substituted as an appellant under rule 11(1) (addition, substitution and removal of parties);

“document” means anything in which information is recorded in any form;

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(a) 2003 asp 13.

(b) 2014 asp 10.



“First-tier Tribunal” means the First-tier Tribunal of Scotland Mental Health Chamber;

“hearing” means an oral hearing and includes a hearing conducted in whole or in part by video link, telephone or other means of instantaneous two-way electronic communication;

“interested party” means a person other than the appellant or respondent on whom the First-tier Tribunal has ordered the proceedings before it to be served;

“party” means a person who is (or was at the time that the Upper Tribunal disposed of the proceedings) an appellant or respondent in proceedings before the Upper Tribunal;

“practice direction” means a practice direction issued in terms of section 74 of the 2014 Act;

“President” means the President of Tribunals;

“proceedings” includes, unless indicated otherwise, a part of the proceedings;

“respondent” means—

- (a) in an appeal against a decision of the First-tier Tribunal, that tribunal and any person other than the appellant who—
  - (i) was a party before the First-tier Tribunal; or
  - (ii) otherwise has a right of appeal against the decision of the First-tier Tribunal and has given notice to the Upper Tribunal that they wish to be a party to the appeal;
  - (iii) in proceedings transferred or referred to the Upper Tribunal from the First-tier Tribunal, a person who was a respondent in the proceedings in the First-tier Tribunal; or
  - (iv) in any case, a person substituted or added as a respondent under rule 11 (addition, substitution and removal of parties);

“Upper Tribunal” means the Upper Tribunal for Scotland; and

“witness statement” means a written statement of a witness ordered by the Upper Tribunal to stand for the evidence-in-chief of the witness.

- (2) In these Rules “the listed initiator requirement” is that the 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 appeal; and
  - (b) a written statement from the person make the 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 by virtue of a 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 by virtue of that provision.
- (3) 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<sup>(a)</sup>;
  - (b) regulation 8A of the Mental Health (England and Wales Cross-border transfer; patients subject to requirements other than detention) (Scotland) Regulations 2008<sup>(b)</sup>; and
  - (c) regulation 13A of the Mental Health (Cross-border transfer; patients subject to detention requirement or otherwise in hospital) (Scotland) Regulations 2005<sup>(c)</sup>.

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(a) 2003 asp 13.  
 (b) S.S.I. 2008/356.  
 (c) S.S.I. 2005/467.

## **Application**

2. These Rules apply to all proceedings before the Upper Tribunal under the 2003 Act.

## **PART 2**

### **Role of The Upper Tribunal**

#### **Purpose of the Upper Tribunal**

3. The Upper Tribunal hears and decides cases transferred to it from the First-tier Tribunal and hears and decides appeals from the First-tier Tribunal.

## **PART 3**

### **Procedure for Cases in the Upper Tribunal**

#### **Notice of appeal against a decision of the First-tier Tribunal**

4.—(1) A person may lodge with the Upper Tribunal a notice of appeal against a decision of the First-tier Tribunal.

(2) A notice of appeal must—

- (a) identify the decision of the First-tier Tribunal to which it relates;
- (b) identify the alleged error or errors of law in the decision; and
- (c) state whether the person is content for the Upper Tribunal to decide the case without a hearing.

(3) The appellant must provide with the notice of appeal a copy of—

- (a) any written record of the decision being challenged;
- (b) any separate written statement of reasons for that decision; and
- (c) the notice of permission to appeal or alternatively notice of refusal of permission to appeal from the First-tier Tribunal.

(4) Where the notice of appeal is made by virtue of a provision giving a listed initiator authority to act, the listed initiator requirement in rule 1(2) must be complied with.

(5) When the Upper Tribunal receives a notice of appeal it must fix a hearing and send to each respondent and interested party (if any)—

- (a) a copy of the notice and any accompanying documents; and
- (b) notice of the date and time of a hearing.

(6) If the appellant lodges the notice of appeal with the Upper Tribunal later than the time required by paragraph (8)—

- (a) the notice of appeal must:
  - (i) include a request for an extension of time;
  - (ii) explain why the notice of appeal was not provided in time; and
  - (iii) state why it is said to be in the interests of justice that the time be extended; and
- (b) unless the Upper Tribunal extends the time for lodging a notice of appeal the Upper Tribunal may not admit the notice of appeal.

(7) The Upper Tribunal may, where the First-tier Tribunal has refused permission to appeal and the Upper Tribunal has held a hearing—

- (a) refuse permission to appeal;

- (b) give permission to appeal; or
- (c) give permission to appeal on limited grounds or subject to conditions;

and must send a notice of its decision to each party and any interested party including reasons for any refusal of permission or limitations or conditions on any grant of permission.

(8) Where the First-tier Tribunal sends a notice of permission or refusal of permission to appeal to a person who has sought permission to appeal, that person, if intending to appeal, must provide a notice of appeal to the Upper Tribunal within 14 days after the day of receipt by that person of the notice of permission or refusal of permission to appeal.

### **Response to the notice of appeal**

**5.**—(1) Subject to any order given by the Upper Tribunal, a respondent may provide a written response to a notice of appeal.

(2) Any response provided under paragraph (1) must be sent or delivered to the Upper Tribunal so that it is received no later than 14 days after the day on which the Upper Tribunal sent a copy of the notice of appeal to the respondent.

(3) The response must state—

- (a) the name and address of the respondent;
- (b) the name and address of the representative (if any) of the respondent;
- (c) an address where documents for the respondent may be sent or delivered;
- (d) whether the respondent opposes the appeal;
- (e) the grounds on which the respondent relies, including (in the case of an appeal against the decision of the First-tier Tribunal) any grounds on which the respondent was unsuccessful in the proceedings which are the subject of the appeal, but intends to rely in the appeal; and
- (f) whether the respondent consents to the case being heard without a hearing.

(4) If the respondent provides the response to the Upper Tribunal later than the time required by paragraph (2) or by an extension of time allowed under rule 7(3)(a) (power to extend time), the response must include a request for an extension of time and the reason why the response was not provided in time.

(5) When the Upper Tribunal receives the response it must send a copy of the response and any accompanying documents to the appellant and any interested party.

### **Cases transferred to the Upper Tribunal**

**6.**—(1) Paragraphs (2) and (3) apply to a case transferred to the Upper Tribunal from the First-tier Tribunal.

(2) In such a case—

- (a) the Upper Tribunal must give directions as to the procedure to be followed in the consideration and disposal of the proceedings;
- (b) the preceding rules in this Part will only apply to the proceedings to the extent provided for by such directions.

(3) If a case or matter is to be determined without notice to or the involvement of a respondent—

- (a) any provision in these Rules requiring a document to be provided by or to a respondent; and
- (b) any other provision in these Rules permitting a respondent to participate in the proceedings,

does not apply to that case or matter.

## PART 4

### General Powers and Provisions

#### Case management

7.—(1) Subject to the provisions of the 2014 Act and these Rules, the Upper Tribunal may regulate its own procedure.

(2) The Upper Tribunal may give a direction in relation to the conduct of proceedings before it at any time, including a direction amending, suspending or setting aside an earlier direction.

(3) In particular, and without restricting the general powers in paragraphs (1) and (2), the Upper Tribunal may—

- (a) extend or shorten the time for complying with any rule, direction or order;
- (b) conjoin or take concurrently two or more sets of proceedings or parts of proceedings raising common issues;
- (c) specify one or more cases as a lead case or lead cases where—
  - (i) two or more cases are before the Upper Tribunal;
  - (ii) in each such case the proceedings have not been finally determined; and
  - (iii) the cases give rise to common or related issues of fact or law,and sist the other cases until the common or related issues have been determined;
- (d) permit or require a party to amend a document;
- (e) permit or require a party or another person to provide documents, information, evidence or submissions to the Upper Tribunal or a party;
- (f) deal with an issue in the proceedings as a preliminary issue;
- (g) hold a hearing to consider any matter, including a case management issue;
- (h) decide the form of any hearing;
- (i) adjourn or postpone a hearing;
- (j) require a party to produce or lodge documents including but not confined to a note of argument and the Appeal Appendix;
- (k) sist proceedings;
- (l) transfer proceedings to another court or tribunal if that other court or tribunal has jurisdiction in relation to the proceedings and—
  - (i) because of a change of circumstances since the proceedings were started, the Upper Tribunal no longer has jurisdiction in relation to the proceedings; or
  - (ii) the Upper Tribunal considers that the other court or tribunal is a more appropriate forum for the determination of the case;
- (m) suspend the effect of its own decision pending an appeal of that decision;
- (n) in an appeal against the decision of the First-tier Tribunal, suspend the effect of that decision pending the determination of any permission to appeal or any appeal;
- (o) require the First-tier Tribunal to provide reasons for the decision, or other information or documents in relation to the decision or any proceedings before the First-tier Tribunal.

#### Procedure for applying for and giving directions

8.—(1) The Upper Tribunal may give a direction on the application of one or more of the parties or on its own initiative.

(2) An application for a direction may be made—

- (a) by sending or delivering a written application to the Upper Tribunal; or
- (b) orally during the course of a hearing.

(3) An application for a direction must include the reason for making that application.

(4) Before making a direction, the Upper Tribunal must afford parties an opportunity to make representations to it concerning whether the direction should be imposed and the terms of the direction.

#### **Failure to comply with rules etc.**

**9.**—(1) An irregularity resulting from a failure to comply with any requirement in these Rules, a direction, a practice direction or an order, does not of itself render void the proceedings or any step taken in the proceedings.

(2) If a party has failed to comply with a requirement in these Rules, a direction, a practice direction or an order, the Upper Tribunal may take such action as it considers just, which may include—

- (a) waiving the requirement;
- (b) requiring the failure to be remedied; or
- (c) exercising its power under rule 10 (dismissal of a party’s case).

#### **Dismissal of a party’s case**

**10.**—(1) The Upper Tribunal must dismiss the whole or a part of the proceedings if the Upper Tribunal—

- (a) does not have jurisdiction in relation to the proceedings or that part of them; and
- (b) does not exercise its power under rule 7(3)(1)(i) (transfer to another court or tribunal) in relation to the proceedings or that part of them.

(2) The Upper Tribunal may dismiss the whole or a part of the proceedings if—

- (a) the appellant has failed to comply with an order which stated that failure by the appellant to comply with the order could lead to the dismissal of the proceedings or part of them; or
- (b) the appellant has failed to co-operate with the Upper Tribunal to such an extent that the Upper Tribunal cannot deal with the proceedings fairly.

(3) The Upper Tribunal may not dismiss the whole or a part of the proceedings under paragraph (1) or (2) without first giving the appellant an opportunity to make representations in relation to the proposed dismissal.

#### **Addition, substitution and removal of parties**

**11.**—(1) The Upper Tribunal may give a direction adding, substituting or removing a party as an appellant or a respondent including where—

- (a) the wrong person has been named as a party; or
- (b) the addition, substitution or removal has become necessary because of a change in circumstances since the start of proceedings.

(2) If the Upper Tribunal gives a direction under paragraph (1) it may give such consequential directions as it considers appropriate.

(3) A person who is not a party may make a written application to the Upper Tribunal to be added or substituted as a party under this rule.

(4) If the Upper Tribunal refuses an application under paragraph (3) it must consider whether to permit the person who made the application to provide submissions or evidence to the Upper Tribunal.

#### **Orders for expenses**

**12.**—(1) The Upper Tribunal may make an order for expenses as taxed by the Auditor of the Court of Session in proceedings on appeal from the First-tier Tribunal if the First-tier Tribunal had

the power to make an order for expenses, and only on the basis on which the First-tier Tribunal had the power to award expenses.

(2) Notwithstanding paragraph (1) and without prejudice to that paragraph, the Upper Tribunal may make an order for expenses as taxed by the Auditor of the Court of Session against a party if that party's act, omission or other conduct has caused any other party to incur expense which it would be unreasonable for that other party to be expected to pay, with the maximum recoverable expenses being the expenses incurred.

(3) The Upper Tribunal, of its own initiative or on the application of a party or the parties, may in exceptional circumstances fix by order a sum payable by a party in discharge of an award of expenses.

### **Representatives**

**13.—**(1) A party may be represented in any proceedings by a lay representative or legal representative whose details must be communicated to the Upper Tribunal prior to any hearing.

(2) A party may show any document or communicate any information about the proceedings to that party's lay representative or legal representative without contravening any prohibition or restriction on disclosure of the document or information.

(3) Where a document or information is disclosed under paragraph (2), the lay representative or legal representative is subject to any prohibition or restriction on disclosure in the same way that the party is.

(4) Anything permitted or required to be done by a party under these Rules, a direction, a practice direction or an order may be done by a lay representative or legal representative, except signing of an affidavit or a precognition.

(5) The Upper Tribunal may order that a lay representative is not to represent a party if—

- (a) it is of the opinion that the lay representative is an unsuitable person to act as a lay representative (whether generally or in the proceedings concerned); or
- (b) it is satisfied that to do so would be in the interests of the efficient administration of justice.

### **Curator ad litem**

**14.—**(1) A curator ad litem may be appointed by the Upper Tribunal where any of the circumstances in paragraph (2) apply to proceedings before the Upper Tribunal.

(2) The circumstances are—

- (a) the patient does not have the capacity to instruct a legal representative in the proceedings;
- (b) an appeal to the Upper Tribunal has been initiated by virtue of a provision giving a listed initiator authority to act; or
- (c) where a case has been transferred to the Upper Tribunal from the First-tier Tribunal, the case was initiated before the First-tier Tribunal by virtue of a provision giving a listed initiator authority to act.

### **Supporters**

**15.—**(1) A party who is an individual may be accompanied by another person to act as a supporter.

(2) A supporter may assist the party by—

- (a) providing moral support;
- (b) helping to manage tribunal documents and other papers;
- (c) taking notes of the proceedings;
- (d) quietly advising on—

- (i) points of law and procedure;
- (ii) issues which the party might wish to raise with the tribunal.

(3) The party may show any document or communicate any information about the proceedings to that party's supporter without contravening any prohibition or restriction on disclosure of the document or information.

(4) Where a document or information is disclosed under paragraph (3), the supporter is subject to any prohibition or restriction on disclosure in the same way that the party is.

(5) A supporter may not represent the party.

(6) The Upper Tribunal may direct that a person is not to act as a supporter of a party if—

- (a) it is of the opinion that the supporter is an unsuitable person to act as a supporter (whether generally or in the proceedings concerned); or
- (b) it is satisfied that to do so would be in the interests of the efficient administration of justice.

### **Calculating time**

**16.—**(1) An act required by these Rules, a direction, a practice direction or an order to be done on or by a particular day must be done by 5pm on that day.

(2) If the time specified by these Rules, a direction, a practice direction or an order for doing any act ends on a day other than a working day, the act is done in time if it is done on the next working day.

(3) In this rule “working day” means any day except a Saturday, a Sunday, or a bank holiday in Scotland under section 1 of the Banking and Financial Dealings Act 1971(a).

### **Sending and delivery of documents**

**17.—**(1) Any document to be provided to the Upper Tribunal under these Rules, a direction, a practice direction or an order must be—

- (a) sent by pre-paid post or by document exchange, or delivered by hand, to the address of the Upper Tribunal; or
- (b) sent or delivered by such other method as the Upper Tribunal may permit or direct.

(2) Subject to paragraph (3), if a party or an interested party provides a fax number, email address or other details for the electronic transmission of documents to them, that party or interested party must accept delivery of documents by that method.

(3) If a party or an interested party informs the Upper Tribunal and all other parties and interested parties that a particular form of communication, other than pre-paid post or delivery by hand, should not be used to provide documents to that party or interested party, that form of communication must not be so used.

(4) If the Upper Tribunal or a party or an interested party sends a document to a party or interested party or the Upper Tribunal by email or any other electronic means of communication, the recipient may request that the sender provide a hard copy of the document to the recipient. The recipient must make such a request as soon as reasonably practicable after receiving the document electronically.

(5) The Upper Tribunal and each party and interested party may assume that the address provided by a party or interested party or its representative is and remains the address to which documents should be sent or delivered until receiving written notification to the contrary.

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(a) 1971 c.80.

### **Disclosure of documents and information**

**18.**—(1) Subject to paragraph (2), the public disclosure of any aspect of proceedings before the Upper Tribunal under these Rules is prohibited.

(2) The Upper Tribunal may at any stage of the proceedings, on its own initiative or on application by one or more of the parties or any interested party, make a direction allowing the public disclosure of any aspect of those proceedings so far as it considers appropriate.

### **Evidence and submissions**

**19.**—(1) Without restriction on the general powers in rule 7 (case management powers), the Upper Tribunal may give directions as to—

- (a) subject to paragraph (4), issues on which parties may lead fresh evidence or make submissions;
- (b) the nature of any such evidence;
- (c) whether the parties are permitted or required to provide expert evidence, and if so whether the parties must jointly appoint a single expert to provide such evidence;
- (d) any limit on the number of witnesses whose evidence a party may put forward, whether in relation to a particular issue or generally;
- (e) the manner in which any evidence or submissions are to be provided, which may include a direction for them to be given—
  - (i) orally at a hearing; or
  - (ii) by witness statement or written submissions; and
- (f) the time at which any evidence or submissions are to be provided.

(2) The Upper Tribunal may exclude evidence that would otherwise be admissible where—

- (a) the evidence was not, without reasonable excuse, provided within the time allowed by an order or a practice direction;
- (b) the evidence was otherwise, without reasonable excuse, provided in a manner that did not comply with an order or a practice direction; or
- (c) it would otherwise be unfair to admit the evidence.

(3) The Upper Tribunal may consent to a witness giving, or require any witness to give, evidence on oath or affirmation, and may administer an oath or affirmation for that purpose.

(4) Fresh evidence may only be led in an appeal if the Upper Tribunal is satisfied—

- (a) that the evidence—
  - (i) could not have been obtained with reasonable diligence at the First-tier Tribunal stage;
  - (ii) is relevant and will probably have an important influence on the hearing; and
  - (iii) is apparently credible; or
- (b) that the interests of justice justify the evidence being led.

### **Citation of witnesses and orders to answer questions or produce documents**

**20.**—(1) On the application of a party or on its own initiative, the Upper Tribunal may—

- (a) by citation require any person to attend as a witness at a hearing at the time and place specified in the citation; or
- (b) direct any person to answer any questions or produce any documents in that person's possession or control which relate to any issue in the proceedings.

(2) A citation under paragraph (1)(a) must—

- (a) give the person required to attend 14 days' notice prior to the day of the hearing or such other period as the Upper Tribunal may direct;



- (b) where the person is not a party, state (if appropriate) how expenses of attendance necessarily incurred may be recovered;
- (c) state that the person on whom the requirement is imposed may apply to the Upper Tribunal to vary or set aside the citation or direction, if the person did not have an opportunity to object to it before it was made or issued; and
- (d) state the consequences of failure to comply with the citation or direction.

(3) A person making an application referred to in paragraph (2)(c) must do so as soon as reasonably practicable after receiving notice of the citation or direction.

### **Withdrawal**

**21.**—(1) A party may give notice to the Upper Tribunal of the withdrawal of the case made by that party in the Upper Tribunal proceedings, or any part of that case—

- (a) by sending or delivering to the Upper Tribunal a notice of withdrawal; or
- (b) orally at a hearing.

(2) Unless satisfied that a party has already been notified, the Upper Tribunal must notify each party of its receipt of a withdrawal under this rule.

### **Chairing member**

**22.** Where a matter is to be decided by two or more members of the Upper Tribunal, the President must determine the chairing member.

### **Venue for hearings**

**23.** The Upper Tribunal is to be convened at such time and place in Scotland as the President may determine.

### **Enforcement of decisions**

**24.** An order for the payment of a sum payable in pursuance of a decision of the Upper Tribunal, or a copy of such an order certified by the Upper Tribunal, may be enforced as if it were an extract registered decree arbitral bearing a warrant for execution issued by the Court of Session.

## **PART 5**

### **Hearings**

#### **Hearings**

**25.**—(1) Subject to paragraph (2), the Upper Tribunal will make any decision with a hearing.

(2) Where all parties have consented to a decision being made without a hearing, the Upper Tribunal may make such a decision without a hearing.

#### **Entitlement to attend a hearing**

**26.** Subject to rules 13(5) (representatives) and 15(6) (supporters) and 28 (public and private hearings), each party and interested party is entitled to participate at a hearing together with any legal or lay representatives and supporters permitted by rules 13 and 15.

### **Notice of hearings**

**27.**—(1) The Upper Tribunal must give each party and interested party entitled to attend a hearing reasonable notice of the time and place of the hearing (including any adjourned or postponed hearing) and any change to the time and place of the hearing.

(2) The period of notice under paragraph (1) must be at least 7 days (and not more than 14 days) prior to the day of the hearing, except that the Upper Tribunal may give shorter notice—

- (a) with the consent of the parties and interested parties; or
- (b) in urgent or exceptional circumstances.

### **Public and private hearings**

**28.**—(1) Subject to the paragraph (2), all hearings must be held in private.

(2) The Upper Tribunal may direct that a hearing, or part of it, is to be held in public where-

- (a) a party to the proceedings has applied in writing for the hearings, or part of it, to be held in public; and
- (b) the Upper Tribunal considers that holding the hearing in public, as specified in the application, would not be detrimental to the patient's welfare.

(3) The Upper Tribunal may give a direction excluding from any hearing, or part of it—

- (a) any person whose conduct the Upper Tribunal considers is disrupting or is likely to disrupt the hearing;
- (b) any person whose presence the Upper Tribunal considers is likely to prevent another person from giving evidence or making submissions freely; or
- (c) any person where the purpose of the hearing would be defeated by the attendance of that person.

### **Hearings in a party's absence**

**29.** If a party fails to attend a hearing, the Upper Tribunal may proceed with the hearing if the Upper Tribunal—

- (a) is satisfied that the party has been notified of the hearing or that reasonable steps have been taken to notify the party of the hearing; and
- (b) considers that it is in the interests of justice to proceed with the hearing.

## **PART 6**

### **Decisions**

#### **Notice of decisions and reasons**

**30.**—(1) Subject to the remainder of this rule, the Upper Tribunal may give a decision orally at a hearing.

(2) The Upper Tribunal must provide to each party and interested party within 14 days of making a decision (other than a decision under Part 7) which finally disposes of all issues in the proceedings or on a preliminary issue dealt with following an order under rule 7(3)(f)—

- (a) a decision notice stating the Upper Tribunal's decision; and
- (b) notification of any rights of appeal against the decision and the time and manner in which such rights of appeal may be exercised.

(3) Subject to these Rules, the Upper Tribunal may publish any of its decisions if it considers it in the public interest so to do, with the manner of publication also at the discretion of the Upper Tribunal.

## **Review of a decision**

31. No review of a decision of the Upper Tribunal is available under these Rules.

## **PART 7**

### **Appealing Decisions of the Upper Tribunal**

#### **Interpretation of this Part**

32. In this Part, “appeal” means the exercise of a right of appeal under section 48(1) of the 2014 Act.

#### **Application for permission to appeal a decision of the Upper Tribunal**

33.—(1) A party seeking permission to appeal must make a written application to the Upper Tribunal.

(2) An application under paragraph (1) must—

- (a) identify the decision of the Upper Tribunal to which it relates;
- (b) identify the alleged error or errors of law in the decision; and
- (c) state in terms of section 50(4) of the 2014 Act what important point of principle or practice would be raised by a second appeal or what other compelling reason there is that shows the appeal should be allowed to proceed.

#### **Upper Tribunal’s consideration of application for permission to appeal**

34.—(1) The Upper Tribunal must consider whether to give permission to appeal in relation to the decision or part of it.

(2) The Upper Tribunal must provide a record of its decision to the parties and any interested party as soon as practicable.

(3) If the Upper Tribunal refuses permission to appeal it must provide with the record of its decision—

- (a) a statement of its reasons for such a refusal; and
- (b) notification of the right to make an application to the Court of Session for permission to appeal and the time within which, and the method by which, such application must be made

(4) The Upper Tribunal may give permission to appeal on limited grounds, but must comply with paragraph (3) in relation to any grounds on which it has refused permission.

## **PART 8**

### **Legal Aid**

#### **Legal aid**

35. If a party is granted legal aid by the Scottish Legal Aid Board in respect of a case before the Upper Tribunal that party must as soon as practicable send a copy of the legal aid certificate to the Upper Tribunal.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make the Upper Tribunal for Scotland Mental Health Rules of Procedure 2018. The Rules regulate the practice and procedure to be followed in the Upper Tribunal for Scotland when dealing with proceedings under the Mental Health (Care and Treatment) (Scotland) Act 2003.

All other proceedings before the Upper Tribunal are subject to the Upper Tribunal for Scotland Rules of Procedure 2016 (in S.S.I. 2016/232).

The Upper Tribunal hears appeals from, and cases transferred to it by, the First-tier Tribunal for Scotland. An appeal to the Upper Tribunal requires first the permission of the First-tier Tribunal, failing which the permission of the Upper Tribunal. An appeal can be on a point of law only.

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 SCOTTISH STATUTORY INSTRUMENTS
 

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**2018 No.**

**TRIBUNALS AND INQUIRIES**

**The First-tier Tribunal for Scotland Mental Health Chamber and  
Upper Tribunal for Scotland (Composition) Regulations 2018**

<i>Made</i>	- - - -	2018
<i>Laid before the Scottish Parliament</i>		2018
<i>Coming into force</i>	- -	12th November 2018

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 38(1) and 40(1) of the Tribunals (Scotland) Act 2014(a) and all other powers enabling them to do so.

In accordance with section 11(2) of that Act, they have consulted the President of Tribunals.

In accordance with section 79(2)(c) of that Act, a draft of this instrument has been laid before and approved by resolution of the Scottish Parliament.

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the First-tier Tribunal for Scotland Mental Health Chamber and Upper Tribunal for Scotland (Composition) Regulations 2018 and come into force on 12th November 2018.

(2) In these Regulations—

- “the 2003 Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003(b);
- “the 2014 Act” means the Tribunals (Scotland) Act 2014;
- “the 2015 Regulations” means the Scottish Tribunals (Eligibility for Appointment) Regulations 2015(c);
- “Chamber President” means the Chamber President of the First-tier Tribunal;
- “First-tier Tribunal” means the First-tier Tribunal for Scotland Mental Health Chamber;
- “judicial member of the First-tier Tribunal” means a sheriff who is authorised by the President of Tribunals for the purpose of section 17(3)(a) of the 2014 Act;
- “judicial member of the Upper Tribunal” means a judge of the Court of Session who is authorised by the President of the Tribunals for the purpose of section 17(4) of the 2014 Act;
- “legal member” means a member of the First-tier Tribunal who qualifies for appointment under sub-paragraph (1) or (2) of paragraph 5 of schedule 3 of the 2014 Act.

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(a) 2014 asp 10.

(b) 2003 asp 13.

(c) S.S.I. 2015/381 as amended by S.S.I. 2018/XXXX.

“ordinary member (medical experience)” means a member of the First-tier Tribunal for Scotland Mental Health Chamber who is eligible for appointment under regulation 6 of the 2015 Regulations;

“ordinary member (mental health care experience)” means a member of the First-tier Tribunal for Scotland Mental Health Chamber who is eligible for appointment under regulation 7 of the 2015 Regulations.

### **Composition of First-tier Tribunal**

**2.**—(1) The First-tier Tribunal, when convened to decide any matter in proceedings other than excepted proceedings, must consist of—

- (a) the Chamber President, an ordinary member (medical experience) and an ordinary member (mental health care experience); or
- (b) a legal member, an ordinary member (medical experience) and an ordinary member (mental health care experience).

(2) The First-tier Tribunal, when convened to decide any matter in excepted proceedings, must consist of—

- (a) the Chamber President, an ordinary member (medical experience) and an ordinary member (mental health care experience); or
- (b) a judicial member of the First-tier Tribunal, an ordinary member (medical experience) and an ordinary member (mental health care experience).

(3) For the purpose of this regulation, excepted proceedings are proceedings which relate solely to an application under section 255 or 256 of the 2003 Act where the patient is subject to—

- (a) a compulsion order and a restriction order;
- (b) a hospital direction; or
- (c) a transfer for treatment direction.

(4) This regulation is subject to any provision in the First-tier Tribunal for Scotland Mental Health Chamber Rules of Procedure 2018(a) which allows matters in proceedings to be decided by the Chamber President or a convener alone or with such other members as the Chamber President may direct.

### **Composition of Upper Tribunal hearing appeals or cases transferred from First-tier Tribunal**

**3.**—(1) The Upper Tribunal, when deciding a case appealed or transferred from the First-tier Tribunal to the Upper Tribunal, must consist of—

- (a) a sheriff principal;
- (b) the Chamber President, acting either alone or with a judicial member of the Upper Tribunal;
- (c) the President of Tribunals, acting either alone or with another judicial member of the Upper Tribunal; or
- (d) the Lord President, acting either alone or with another judicial member of the Upper Tribunal.

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(a) The Rules of Procedure are contained in S.S.I. 2018/XXX.

(2) The Chamber President referred to in paragraph (1) must not have had any involvement in the case prior to the appeal or referral of the case to the Upper Tribunal, other than, in accordance with rule 69(5) of the First-tier Tribunal for Scotland Mental Health Chamber Rules of Procedure 2018(a), signing a decision of the First-tier Tribunal and certifying that the convener is unable to sign.

St Andrew's House,  
Edinburgh

2018

A member of the Scottish Government

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(a)

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations make provision as to the composition of the First-tier Tribunal for Scotland when dealing with a case in the Mental Health Chamber. They also make provision as to the composition of the Upper Tribunal for Scotland when hearing cases from the First-tier Tribunal for Scotland Mental Health Chamber.

These two Tribunals were established by the Tribunals (Scotland) Act 2014 (“the Act”). The First-tier Tribunal is divided into chambers according to the subject matter of the case. Members of the tribunals can be ordinary members, legal members or judicial members according to criteria set out in the Tribunals (Scotland) Act 2014 and regulations made under that Act. This instrument sets out what combination of different types of member may hear cases in the two tribunals.



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 SCOTTISH STATUTORY INSTRUMENTS
 

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2018 No.

**TRIBUNALS AND INQUIRIES**
**The Scottish Tribunals (Eligibility for Appointment)  
Amendment Regulations 2018**

<i>Made</i>	- - - -	2018
<i>Laid before the Scottish Parliament</i>		2018
<i>Coming into force</i>	- -	12th November 2018

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 32(1) and (3) of, paragraph 1(2) of schedule 3, and paragraph 1(2) of schedule 5, of the Tribunals (Scotland) Act 2014(a) and all other powers enabling them to do so.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Scottish Tribunals (Eligibility for Appointment) Amendment Regulations 2018 and come into force on 12th November 2018.

(2) In these Regulations “the 2015 Regulations” mean the Scottish Tribunals (Eligibility for Appointment) Regulations 2015(b).

**Amendment of the 2015 Regulations**

2. After regulation 5 of the 2015 Regulations insert—

**“Eligibility for appointment as an ordinary member of the First-tier Tribunal for Scotland and Upper Tribunal (medical experience)**

6.—(1) A person is eligible for appointment as an ordinary member of the First-tier Tribunal for Scotland and Upper Tribunal if paragraph (2) or (3) applies to the person.

(2) The person is a fully registered person within the meaning of section 55(1) of the Medical Act 1983, whether or not that person holds a licence to practise, and is a member or fellow of the Royal College of Psychiatrists.

(3) The person is a fully registered person within the meaning of section 55(1) of the Medical Act 1983, whether or not that person holds a licence to practise, and has a minimum of four years whole time equivalent experience of providing psychiatric services.

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(a) 2014 asp 10.  
(b) S.S.I. 2015/381.

(4) For the purposes of paragraph (3), whole time equivalent experience will be calculated by multiplying the full length of the person's experience by the following fraction:—

$$\frac{\textit{person's hours of employment each week}}{\textit{hours constituting comparable whole time employment}}$$

**Eligibility for appointment as an ordinary member of the First-tier Tribunal for Scotland and Upper Tribunal (mental health care experience)**

7.—(1) A person is eligible for appointment as an ordinary member of the First-tier Tribunal for Scotland and Upper Tribunal if one or more of paragraphs (2) to (7) applies to the person.

(2) The person—

- (a) has experience of a mental disorder and of using services provided in relation to mental disorder; or
- (b) is a carer for a person with such experience.

(3) The person is a registered nurse with experience of providing services to persons having a mental disorder.

(4) The person is a clinical psychologist entered on the Health and Care Professions Council's register of chartered psychologists.

(5) The person is a social worker (having the meaning given by section 77(1) of the Regulation of Care (Scotland) Act 2001 and has experience in the assessment and care management of persons having a mental disorder.

(6) The person is an occupational therapist registered with the Health and Care Professions Council who has experience in the assessment and care management of persons having a mental disorder.

(7) The person is not a person mentioned in paragraphs (2) to (6) but is employed in the provision of (or in managing the provision of) a care service (having the meaning given by section 47(1)(a), (b), (d), (f), (g) and (j) of the Public Services Reform (Scotland) Act 2010) to persons having a mental disorder.”.

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St Andrew's House,  
Edinburgh

2018

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Scottish Tribunals (Eligibility for Appointment) Regulations 2015 (S.S.I. 2015/381) to set eligibility criteria for appointments of members of the First-tier Tribunal for Scotland and the Upper Tribunal for Scotland who have medical or mental health care experience.

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 SCOTTISH STATUTORY INSTRUMENTS
 

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**2018 No.**

**TRIBUNALS AND INQUIRIES**

**The Scottish Tribunals (Time Limits) Amendment Regulations  
2018**

<i>Made</i>	- - - -	2018
<i>Laid before the Scottish Parliament</i>		2018
<i>Coming into force</i>	- -	12th November 2018

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 55(1) and 79(1)(a) of the Tribunals (Scotland) Act 2014(a) and all other powers enabling them to do so.

In accordance with paragraph 4(3) of schedule 9 of that Act, the Scottish Ministers have consulted with the President of Tribunals and such other persons as they considered appropriate.

**Citation, commencement and interpretation**

**1.**—(1) These Regulations may be cited as the Scottish Tribunals (Time Limits) Amendment Regulations 2018.

(2) These Regulations come into force on 12th November 2018.

(3) In these Regulations “the 2016 Regulations” means the Scottish Tribunals (Time Limits) Regulations 2016(b).

**Amendment of the 2016 Regulations**

**2.**—(1) The 2016 Regulations are amended as follows.

(2) In regulation 2 (time limits for applying to the First-tier Tribunal or Upper Tribunal for permission to appeal against its own decision)—

- (a) at the start of paragraph (1) insert “Subject to paragraph (5)”; and
- (b) after paragraph (4) add—

“(5) An application for permission under section 46(3)(a) of the Act to appeal a decision of the Mental Health Chamber of the First-tier Tribunal must be received by that Tribunal within the period of 21 days beginning with the relevant date.”.

(3) In regulation (3) (time limits for applying to the Upper Tribunal for permission to appeal against a decision of the First-tier Tribunal)—

- (a) at the start of paragraph (1) insert “Subject to paragraph (4)”; and
- (b) after paragraph (3) add—

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(a) 2014 asp 10.  
(b) S.S.I. 2016/231.

“(4) An application for permission under section 46(3)(b) of the Act to appeal a decision of the Mental Health Chamber of the First-tier Tribunal must be received by the Upper Tribunal within the period of 21 days beginning with the relevant date.”.

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## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Scottish Tribunals (Time Limits) Regulations 2016 to set time limits for applications for permission to appeal decisions of the First-tier Tribunal for Scotland Mental Health Chamber to the Upper Tribunal for Scotland.

Permission may be sought from the First-tier Tribunal under section 46 of the Tribunals (Scotland) Act 2014, and permission can be sought from the Upper Tribunal under the same section if the First-tier Tribunal refuses its permission.



**Tribunals (Scotland) Act 2014 - Consultation on Draft Regulations regarding:**

**(1) the Transfer of Functions and Members of the Mental Health Tribunal for Scotland to the Scottish Tribunals;**

**(2) the rules of procedure for the First-tier Tribunal for Scotland Mental Health Chamber;**

**(3) the rules of procedure for the Upper Tribunal for Scotland when hearing cases from the First-tier Tribunal Mental Health Chamber**

**(4) the Composition of the First-tier and Upper Tribunals for Scotland;**

**(5) the Eligibility for Membership of the First-tier Tribunal for Scotland Mental Health Chamber; and**

**(6) time limits for seeking permission to appeal a decision of the First-tier Tribunal for Scotland Mental Health Chamber**

**RESPONDENT INFORMATION FORM**

**Please Note** this form **must** be completed and returned with your response.

Are you responding as an individual or an organisation?

Individual

Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

**Information for organisations:**

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

- Publish response with name
- Publish response only (without name)
- Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes
- No





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