

1983 No. 942

MENTAL HEALTH

The Mental Health Review Tribunal Rules 1983

Sweet & Maxwell Ltd.

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<i>Made</i>	<i>28th June 1983</i>
<i>Laid before Parliament</i>	<i>8th July 1983</i>
<i>Coming into Operation</i>	<i>30th September 1983</i>

The Lord Chancellor, in exercise of the powers conferred on him by section 78 of the Mental Health Act 1983 and all other powers enabling him in that behalf, and after consultation with the Council on Tribunals in accordance with section 10 of the Tribunals and Inquiries Act 1971, hereby makes the following Rules:—

PART I

INTRODUCTION

1. Title and commencement

These Rules may be cited as the Mental Health Review Tribunal Rules 1983 and shall come into operation on 30th September 1983.

2.— Interpretation

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

“the Act” means the Mental Health Act 1983;

“admission papers” means the application for admission under section 2 of the Act and the written recommendations of the two registered medical practitioners on which it is founded;

“assessment application” means an application by a patient who is detained for assessment and entitled to apply under section 66(1)(a) of the Act or who, being so entitled, has applied;

“the authority's statement” means the statement provided by the responsible authority pursuant to rule 6(1);

“chairman” means the legal member appointed by the Lord Chancellor as chairman of the Mental Health Review Tribunal under paragraph 3 of Schedule 2 to the Act or another member of the tribunal appointed to act on his behalf in accordance with paragraph 4 of that Schedule or section 78(6) of the Act as the case may be;

“decision with recommendations” means a decision with recommendations in accordance with section 72(3)(a) or (3A)(a) of the Act;

“health authority” has the same meaning as in the National Health Service Act 1977;

“National Health Service trust” means a body established under section 5(1) of the National Health Service and Community Care Act 1990

“nearest relative” means a person who has for the time being the functions under the Act of the nearest relative of a patient who is not a restricted patient;

[“NHS foundation trust” has the same meaning as in section 1(1) of the Health and Social Care (Community Health and Standards) Act 2003;]¹

“party” means the applicant, the patient, the responsible authority, any other person to whom a notice under rule 7 or rule 31(c) is sent or who is added as a party by direction of the tribunal;

“president” means the president of the tribunal as defined in paragraph 6 of Schedule 2 to the Act;

“private guardian” in relation to a patient means a person, other than a local social services authority, who acts as guardian under the Act;

“proceedings” includes any proceedings of a tribunal following an application or reference in relation to a patient;

“provisional decision” includes a deferred direction for conditional discharge in accordance with section 73(7) of the Act and a notification to the Secretary of State in accordance with section 74(1) of the Act;

“reference” means a reference under section 67(1), 68(1) or (2), 71(1) , (2) or (5) or 75(1) of the Act;

“registration authority” means the authority exercising the functions of the Secretary of State under the Nursing Homes Act 1975;

“responsible authority” means—

(a) in relation to a patient liable to be detained under the Act in a hospital or mental nursing home, the managers of the hospital or home as defined in section 145(1) of the Act; and

(b) in relation to a patient subject to guardianship, the responsible local social services authority as defined in section 34(3) of the Act; and

(c) in relation to a patient subject to after-care under supervision, the Health Authority or Primary Care Trust which has the duty under section 117 of the Act to provide after-care services for the patient.

“the Secretary of State's statement” means a statement provided by the Secretary of State pursuant to rule 6(2) or (3);

“tribunal” in relation to an application or a reference means the Mental Health Review Tribunal constituted under section 65 of the Act which has jurisdiction in the area in which the patient, at the time the application or reference is made, is detained or is liable to be detained or is subject to guardianship or is (or is to be) subject to the after-care under supervision, or the tribunal to which the proceedings are transferred in accordance with rule 17(2), or, in the case of a conditionally discharged patient, the tribunal for the area in which the patient resides.

¹ definition inserted by Health and Social Care (Community Health and Standards) Act 2003 (Supplementary and Consequential Provision) (NHS Foundation Trusts) Order 2004/696 art. 3(8)

PART II
PRELIMINARY MATTERS

3.— Making an application

- (1) An application shall be made to the tribunal in writing, signed by the applicant or any person authorised by him to do so on his behalf.
- (2) The application shall wherever possible include the following information—
- (a) the name of the patient;
 - (b) the patient's address, which shall include—
 - (i) the address of the hospital or mental nursing home where the patient is detained; or
 - (ii) the name and address of the patient's private guardian; or
 - (iii) in the case of a conditionally discharged patient or a patient to whom leave of absence from hospital has been granted, the address of the hospital or mental nursing home where the patient was last detained or is liable to be detained; together with the patient's current address;
 - (c) where the application is made by the patient's nearest relative, the name and address of the applicant and his relationship to the patient;
 - (d) the section of the Act under which the patient is detained or is liable to be detained;
 - (e) the name and address of any representative authorised in accordance with rule 10 or, if none has yet been authorised, whether the applicant intends to authorise a representative or wishes to conduct his own case.
 - [(f) In the case of a patient subject (or to be subject) to the after-care under supervision—
 - (i) the names of the persons who are (or who are to be) the patient's supervisor and community responsible medical officer;
 - (ii) the name and address of any place at which the patient is (or will be) receiving medical treatment;
 - (iii) where the patient is subject to after-care under supervision his current address, or in the case of a patient who is to be subject to after-care under supervision upon leaving hospital, the address of the hospital where he is, or was last, detained or is liable to be detained.

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- (3) If any of the information specified in paragraph (2) is not included in the application, it shall in so far as is practicable be provided by the responsible authority or, in the case of a restricted patient, the Secretary of State, at the request of the tribunal.

4.— Notice of application

- (1) On receipt of an application, the tribunal shall send notice of the application to—
- (a) the responsible authority;
 - (b) the patient (where he is not the applicant); and
 - (c) if the patient is a restricted patient, the Secretary of State.

² added by Mental Health Review Tribunal (Amendment) Rules 1996/314 r. 3.

(2) Paragraph (1) shall apply whether or not the power to postpone consideration of the application under rule 9 is exercised.

5. Preliminary and incidental matters

As regards matters preliminary or incidental to an application, the chairman may, at any time up to the hearing of an application by the tribunal, exercise the powers of the tribunal under rules 6, 7, 9, 10, 12, 13, 14(1), 15, 17, 19, 20, 26 and 28.

6.— Statements by the responsible authority and the Secretary of State

(1) The responsible authority shall send a statement to the tribunal and, in the case of a restricted patient, the Secretary of State, as soon as practicable and in any case within 3 weeks of its receipt of the notice of application; and such statement shall contain—

- (a) the information specified in Part A of Schedule 1 to these Rules, in so far as it is within the knowledge of the responsible authority; and
- (b) the report specified in paragraph 1 of Part B of that Schedule; and
- (c) the other reports specified in Part B of that Schedule, in so far as it is reasonably practicable to provide them.

(2) Where the patient is a restricted patient, the Secretary of State shall send to the tribunal, as soon as practicable and in any case within 3 weeks of receipt by him of the authority's statement, a statement of such further information relevant to the application as may be available to him.

(3) Where the patient is a conditionally discharged patient, paragraphs (1) and (2) shall not apply and the Secretary of State shall send to the tribunal as soon as practicable, and in any case within 6 weeks of receipt by him of the notice of application, a statement which shall contain—

- (a) the information specified in Part C of Schedule 1 to these Rules, in so far as it is within the knowledge of the Secretary of State; and
- (b) the reports specified in Part D of that Schedule, in so far as it is reasonably practicable to provide them.

[(3A) Where the patient is (or is to be) subject to after-care under supervision, paragraph (1) shall not apply and the responsible authority shall send a statement to the tribunal as soon as practicable, and in any case within 3 weeks of the responsible authority's receipt of the notice of application, and this statement shall contain—

- (a) the information specified in Part E of Schedule 1 to these rules, in so far as it is within the knowledge of the responsible authority;
- (b) the reports specified in Part F of that Schedule;
- (c) the details of the after-care services being (or to be) provided under section 117 of the Act; and
- (d) details of any requirements imposed (or not to be imposed) on the patient under section 25D of the Act;

and shall be accompanied by copies of the documents specified in paragraph 3 of Part E of that Schedule.

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³ added by Mental Health Review Tribunal (Amendment) Rules 1996/314 r. 4.

(4) Any part of the authority's statement or the Secretary of State's statement which, in the opinion of—

(a) (in the case of the authority's statement) the responsible authority; or

(b) (in the case of the Secretary of State's statement) the Secretary of State,

should be withheld from the applicant or (where he is not the applicant) the patient on the ground that its disclosure would adversely affect the health or welfare of the patient or others, shall be made in a separate document in which shall be set out the reasons for believing that its disclosure would have that effect.

(5) On receipt of any statement provided in accordance with paragraph (1), (2) or (3), the tribunal shall send a copy to the applicant and (where he is not the applicant) the patient, excluding any part of any statement which is contained in a separate document in accordance with paragraph (4).

7. Notice to other persons interested

On receipt of the authority's statement or, in the case of a conditionally discharged patient, the Secretary of State's statement, the tribunal shall give notice of the proceedings—

(a) where the patient is liable to be detained in a mental nursing home, to the registration authority of that home;

(b) where the patient is subject to the guardianship of a private guardian, to the guardian;

(bb) where the patient is, or will upon leaving the hospital be, subject to the after-care under supervision, to the person who appears to be the patient's nearest relative, and the persons who are, or will be, the patient's supervisor and community responsible medical officer and in the case of a patient who has not yet left hospital, the person who has prepared the medical report referred to in paragraph 1 of Part F of Schedule 1 to these rules;

(c) where the patient's financial affairs are under the control of the Court of Protection, to the Court of Protection;

(d) where any person other than the applicant is named in the authority's statement as exercising the functions of the nearest relative, to that person;

(e) where a health authority, Primary Care Trust, or National Health Service trust [or NHS foundation trust]⁴ has a right to discharge the patient under the provisions of section 23(3) of the Act, to that authority or trust;

(f) to any other person who, in the opinion of the tribunal, should have an opportunity of being heard.

8.— Appointment of the tribunal

(1) Unless the application belongs to a class or group of proceedings for which members have already been appointed, the members of the tribunal who are to hear the application shall be appointed by the chairman.

(2) A person shall not be qualified to serve as a member of a tribunal for the purpose of any proceedings where—

(a) he is a member or officer of the responsible authority or of the registration authority concerned in the proceedings; or

⁴ words inserted by Health and Social Care (Community Health and Standards) Act 2003 (Supplementary and Consequential Provision) (NHS Foundation Trusts) Order 2004/696 art. 3(2)

(b) he is a member or officer of a health authority, Primary Care Trust or National Health Service trust or NHS foundation trust which has the right to discharge the patient under section 23(3) of the Act; or

(c) he has a personal connection with the patient or has recently treated the patient in a professional medical capacity.

(3) The persons qualified to serve as president of the tribunal for the consideration of an application or reference relating to a restricted patient shall be restricted to those legal members who have been approved for that purpose by the Lord Chief Justice after consulting the Lord Chancellor.

[(4) The Lord Chief Justice may nominate a judicial office holder (as defined in section 109(4) of the Constitutional Reform Act 2005) to exercise his functions referred to in paragraph (3).]⁵

9.— Powers to postpone consideration of an application

(1) Where an application or reference by or in respect of a patient has been considered and determined by a tribunal for the same or any other area, the tribunal may, subject to the provisions of this rule, postpone the consideration of a further application by or in respect of that patient until such date as it may direct, not being later than—

(a) the expiration of the period of six months from the date on which the previous application was determined; or

(b) the expiration of the current period of detention, whichever shall be the earlier.

(2) The power of postponement shall not be exercised unless the tribunal is satisfied, after making appropriate inquiries of the applicant and (where he is not the applicant) the patient, that postponement would be in the interests of the patient.

(3) The power of postponement shall not apply to—

(a) an application under section 66(1)(d) or (gb) of the Act;

(b) an application under section 66(1)(f) of the Act in respect of a renewal of authority for detention of the patient for a period of six months or an application under section 66(1)(gc) of the Act in respect of a report furnished under section 25G(3) concerning renewal of after-care under supervision, unless the previous application or reference was made to the tribunal more than three months after the patient's admission to hospital, reception into guardianship or becoming subject to after-care under supervision;

(c) an application under section 66(1)(g) of the Act;

(d) any application where the previous application or reference was determined before a break or change in the authority for the patient's detention or guardianship or his being (or being about to be) subject to after-care under supervision as defined in paragraph (7).

(4) Where the consideration of an application is postponed, the tribunal shall state in writing the reasons for postponement and the period for which the application is postponed and shall send a copy of the statement to all the parties and, in the case of a restricted patient, the Secretary of State.

(5) Where the consideration of an application is postponed, the tribunal shall send a further notice of the application in accordance with rule 4 not less than 7 days before the end of the period of postponement and consideration of the application shall proceed thereafter, unless before the end of the period of postponement the application has been withdrawn or is deemed to be withdrawn

⁵ added by Lord Chancellor (Transfer of Functions and Supplementary Provisions) Order 2006/680 Sch. 1 para. 47(3)

in accordance with the provisions of rule 19 or has been determined in accordance with the next following paragraph.

(6) Where a new application which is not postponed under this rule or a reference is made in respect of a patient, the tribunal may direct that any postponed application in respect of the same patient shall be considered and determined at the same time as the new application or reference.

(7) For the purpose of paragraph (3)(d) a break or change in the authority for the detention or guardianship or his being (or being about to be) subject to after-care under supervision of a patient shall be deemed to have occurred only—

(a) on his admission to hospital in pursuance of an application for treatment or in pursuance of a hospital order without an order restricting his discharge; or

(b) on his reception into guardianship in pursuance of a guardianship application or a guardianship order; or

(c) on the application to him of the provisions of Part II or Part III of the Act as if he had been so admitted or received following—

(i) the making of a transfer direction, or

(ii) the ceasing of effect of a transfer direction or an order or direction restricting his discharge; or

(d) on his transfer from guardianship to hospital in pursuance of regulations made under section 19 of the Act.

[(e) on his ceasing to be subject to after-care under supervision on his reception into guardianship in accordance with section 25H(5)(b).]⁶

PART III

GENERAL PROVISIONS

10.— Representation, etc.

(1) Any party may be represented by any person whom he has authorised for that purpose not being a person liable to be detained or subject to guardianship[or after-care under supervision]⁷ under the Act or a person receiving treatment for mental disorder at the same hospital or mental nursing home as the patient.

(2) Any representative authorised in accordance with paragraph (1) shall notify the tribunal of his authorisation and postal address.

(3) As regards the representation of any patient who does not desire to conduct his own case and does not authorise a representative in accordance with paragraph (1) the tribunal may appoint some person to act for him as his authorised representative.

(4) Without prejudice to rule 12(3), the tribunal shall send to an authorised representative copies of all notices and documents which are by these Rules required or authorised to be sent to the person whom he represents and such representative may take all such steps and do all such things relating

⁶ added by Mental Health Review Tribunal (Amendment) Rules 1996/314 r. 7.(d)(ii)

⁷ words inserted after the words "to guardianship" by Mental Health Review Tribunal (Amendment) Rules 1996/314 r. 8.

to the proceedings as the person whom he represents is by these Rules required or authorised to take or do.

(5) Any document required or authorised by these Rules to be sent or given to any person shall, if sent or given to the authorised representative of that person, be deemed to have been sent or given to that person.

(6) Unless the tribunal otherwise directs, a patient or any other party appearing before the tribunal may be accompanied by such other person or persons as he wishes, in addition to any representative he may have authorised.

11. Medical examination

At any time before the hearing of the application, the medical member or, where the tribunal includes more than one, at least one of them shall examine the patient and take such other steps as he considers necessary to form an opinion of the patient's mental condition; and for this purpose the patient may be seen in private and all his medical records may be examined by the medical member, who may take such notes and copies of them as he may require, for use in connection with the application[and in the case of a patient subject to after-care under supervision this rule shall also apply to such other records relating to any after-care services provided under section 117of the Act]⁸ .

12.— Disclosure of documents

(1) Subject to paragraph (2), the tribunal shall, as soon as practicable, send a copy of every document it receives which is relevant to the application to the applicant, and (where he is not the applicant) the patient, the responsible authority and, in the case of a restricted patient, the Secretary of State and any of those persons may submit comments thereon in writing to the tribunal.

(2) As regards any documents which have been received by the tribunal but which have not been copied to the applicant or the patient, including documents withheld in accordance with rule 6, the tribunal shall consider whether disclosure of such documents would adversely affect the health or welfare of the patient or others and, if satisfied that it would, shall record in writing its decision not to disclose such documents.

(3) Where the tribunal is minded not to disclose any document to which paragraph (1) applies to an applicant or a patient who has an authorised representative it shall nevertheless disclose it as soon as practicable to that representative if he is—

- (a) a barrister or solicitor;
- (b) a registered medical practitioner;
- (c) in the opinion of the tribunal, a suitable person by virtue of his experience or professional qualification;

provided that no information disclosed in accordance with this paragraph shall be disclosed either directly or indirectly to the applicant or (where he is not the applicant) to the patient or to any other person without the authority of the tribunal or used otherwise than in connection with the application.

⁸ words inserted by Mental Health Review Tribunal (Amendment) Rules 1996/314 r. 9.

13. Directions

Subject to the provisions of these Rules, the tribunal may give such directions as it thinks fit to ensure the speedy and just determination of the application.

14.— Evidence

(1) For the purpose of obtaining information, the tribunal may take evidence on oath and subpoena any witness to appear before it or to produce documents, and the president of the tribunal shall have the powers of an arbitrator under section 12(3) of the Arbitration Act 1950 and the powers of a party to a reference under an arbitration agreement under subsection (4) of that section, but no person shall be compelled to give any evidence or produce any document which he could not be compelled to give or produce on the trial of an action.

(2) The tribunal may receive in evidence any document or information notwithstanding that such document or information would be inadmissible in a court of law.

15.— Further information

(1) Before or during any hearing the tribunal may call for such further information or reports as it may think desirable, and may give directions as to the manner in which and the persons by whom such material is to be furnished.

(2) Rule 12 shall apply to any further information or reports obtained by the tribunal.

16.— Adjournment

(1) The tribunal may at any time adjourn a hearing for the purpose of obtaining further information or for such other purposes as it may think appropriate.

(2) Before adjourning any hearing, the tribunal may give such directions as it thinks fit for ensuring the prompt consideration of the application at an adjourned hearing.

(3) Where the applicant or the patient (where he is not the applicant) or the responsible authority requests that a hearing adjourned in accordance with this rule be resumed, the hearing shall be resumed provided that the tribunal is satisfied that resumption would be in the interests of the patient.

(4) Before the tribunal resumes any hearing which has been adjourned without a further hearing date being fixed it shall give to all parties and, in the case of a restricted patient, the Secretary of State, not less than 14 days' notice (or such shorter notice as all parties may consent to) of the date, time and place of the resumed hearing.

17.— Transfer of proceedings

(1) Where any proceedings in relation to a patient have not been disposed of by the members of the tribunal appointed for the purposes, and the chairman is of the opinion that it is not practicable or not possible without undue delay for the consideration of those proceedings to be completed by those members, he shall make arrangements for them to be heard by other members of the tribunal.

(2) Where a patient in respect of whom proceedings are pending moves within the jurisdiction of another tribunal, the proceedings shall, if the chairman of the tribunal originally having jurisdiction over those proceedings so directs, be transferred to the tribunal within the jurisdiction of which the patient has moved and notice of the transfer of proceedings shall be given to the parties and, in the case of a restricted patient, the Secretary of State.

18.— Two or more pending applications

(1) The tribunal may consider more than one application in respect of a patient at the same time and may for this purpose adjourn the proceedings relating to any application.

(2) Where the tribunal considers more than one application in respect of the patient at the same time, each applicant (if more than one) shall have the same rights under these Rules as he would have if he were the only applicant.

19.— Withdrawal of application

(1) An application may be withdrawn at any time at the request of the applicant provided that the request is made in writing and the tribunal agrees.

(2) If a patient ceases to be liable to be detained or subject to guardianship or after-care under supervision in England and Wales, any application relating to that patient shall be deemed to be withdrawn.

[(2A) Where a patient subject to after-care under supervision fails without reasonable explanation to undergo a medical explanation under Rule 11, any application relating to that patient may be deemed by the tribunal to be withdrawn.]⁹

(3) Where an application is withdrawn or deemed to be withdrawn, the tribunal shall so inform the parties and, in the case of a restricted patient, the Secretary of State.

PART IV

THE HEARING

20. Notice of hearing

The tribunal shall give at least 14 days' notice of the date, time and place fixed for the hearing (or such shorter notice as all parties may consent to) to all the parties and, in the case of a restricted patient, the Secretary of State.

21.— Privacy of proceedings

(1) The tribunal shall sit in private unless the patient requests a hearing in public and the tribunal is satisfied that a hearing in public would not be contrary to the interests of the patient.

⁹ added by Mental Health Review Tribunal (Amendment) Rules 1996/314 r. 10.(b)

- (2) Where the tribunal refuses a request for a public hearing or directs that a hearing which has begun in public shall continue in private the tribunal shall record its reasons in writing and shall inform the patient of those reasons.
- (3) When the tribunal sits in private it may admit to the hearing such persons on such terms and conditions as it considers appropriate.
- (4) The tribunal may exclude from any hearing or part of a hearing any person or class of persons, other than a representative of the applicant or of the patient to whom documents would be disclosed in accordance with rule 12(3), and in any case where the tribunal decides to exclude the applicant or the patient or their representatives or a representative of the responsible authority, it shall inform the person excluded of its reasons and record those reasons in writing.
- (5) Except in so far as the tribunal may direct, information about proceedings before the tribunal and the names of any persons concerned in the proceedings shall not be made public.
- (6) Nothing in this rule shall prevent a member of the Council on Tribunals from attending the proceedings of a tribunal in his capacity as such provided that he takes no part in those proceedings or in the deliberations of the tribunal.

22.— Hearing procedure

- (1) The tribunal may conduct the hearing in such manner as it considers most suitable bearing in mind the health and interests of the patient and it shall, so far as appears to it appropriate, seek to avoid formality in its proceedings.
- (2) At any time before the application is determined, the tribunal or any one or more of its members may interview the patient, and shall interview him if he so requests, and the interview may, and shall if the patient so requests, take place in the absence of any other person.
- (3) At the beginning of the hearing the president shall explain the manner of proceeding which the tribunal proposes to adopt.
- (4) Subject to rule 21(4), any party and, with the permission of the tribunal, any other person, may appear at the hearing and take such part in the proceedings as the tribunal thinks proper, and the tribunal shall in particular hear and take evidence from the applicant, the patient (where he is not the applicant) and the responsible authority who may hear each other's evidence, put questions to each other, call witnesses and put questions to any witness or other person appearing before the tribunal.
- (5) After all the evidence has been given, the applicant and (where he is not the applicant) the patient shall be given a further opportunity to address the tribunal.

PART V

DECISIONS, FURTHER CONSIDERATION AND MISCELLANEOUS PROVISIONS

23.— Decisions

- (1) Any decision of the majority of the members of a tribunal shall be the decision of the tribunal and, in the event of an equality of votes, the president of the tribunal shall have a second or casting vote.
- (2) The decision by which the tribunal determines an application shall be recorded in writing; the record shall be signed by the president and shall give the reasons for the decision and, in particular, where the tribunal relies upon any of the matters set out in [section 72(1), (4) or (4A) or section 73(1) or (2)]¹⁰ of the Act, shall state its reasons for being satisfied as to those matters.
- (3) Paragraphs (1) and (2) shall apply to provisional decisions and decisions with recommendations as they apply to decisions by which applications are determined.

24.— Communication of decisions

- (1) The decision by which the tribunal determines an application may, at the discretion of the tribunal, be announced by the president immediately after the hearing of the case and, subject to paragraph (2), the written decision of the tribunal, including the reasons, shall be communicated in writing within 7 days of the hearing to all the parties and, in the case of a restricted patient, the Secretary of State.
- (2) Where the tribunal considers that the full disclosure of the recorded reasons for its decision to the patient in accordance with paragraph (1) would adversely affect the health or welfare of the patient or others, the tribunal may instead communicate its decision to him in such manner as it thinks appropriate and may communicate its decision to the other parties subject to any conditions it may think appropriate as to the disclosure thereof to the patient;
provided that, where the applicant or the patient was represented at the hearing by a person to whom documents would be disclosed in accordance with rule 12(3), the tribunal shall disclose the full recorded grounds of its decision to such a person, subject to any conditions it may think appropriate as to disclosure thereof to the patient.
- (3) Paragraphs (1) and (2) shall apply to provisional decisions and decisions with recommendations as they apply to decisions by which applications are determined.
- (4) Where the tribunal makes a decision with recommendations, the decision shall specify the period at the expiration of which the tribunal will consider the case further in the event of those recommendations not being complied with.

25.— Further consideration

- (1) Where the tribunal has made a provisional decision, any further decision in the proceedings may be made without a further hearing.

¹⁰ words substituted by Mental Health Review Tribunal (Amendment) Rules 1996/314 r. 11.

(2) Where the tribunal has made a decision with recommendations and, at the end of the period referred to in rule 24(4), it appears to the tribunal after making appropriate inquiries of the responsible authority that any such recommendation has not been complied with, the tribunal may reconvene the proceedings after giving to all parties [...] ¹¹ not less than 14 days' notice (or such shorter notice as all parties may consent to) of the date, time and place fixed for the hearing.

26.— Time

(1) Where the time prescribed by or under these Rules for doing any act expires on a Saturday, Sunday or public holiday, the act shall be in time if done on the next working day.

(2) The time appointed by these Rules for the doing of any act may, in the particular circumstances of the case, be extended or, with the exception of the periods of notice specified in rule 16(4), rule 20 and rule 25(2), abridged by the tribunal on such terms (if any) as it may think fit.

27. Service of notices etc.

Any document required or authorised by these Rules to be sent or given to any person may be sent by prepaid post or delivered—

- (a) in the case of a document directed to the tribunal or the chairman, to the tribunal office;
- (b) in any other case, to the last known address of the person to whom the document is directed.

28. Irregularities

Any irregularity resulting from failure to comply with these Rules before the tribunal has determined an application shall not of itself render the proceedings void, but the tribunal may, and shall, if it considers that any person may have been prejudiced, take such steps as it thinks fit before determining the application to cure the irregularity, whether by the amendment of any document, the giving of any notice, the taking of any step or otherwise.

PART VI

REFERENCES AND APPLICATIONS BY PATIENTS DETAINED FOR ASSESSMENT

29. References

The tribunal shall consider a reference as if there had been an application by the patient and the provisions of these Rules shall apply with the following modifications—

- (a) rules 3, 4, 9 and 19 shall not apply and where a reference is made under section 75(1) of the Act rule 20 shall also not apply;
- (b) the tribunal shall, on receipt of the reference, send notice thereof to the patient and the responsible authority;

provided that where the reference has been made by the responsible authority, instead of the notice of reference there shall be sent to the responsible authority a request for the authority's statement;

¹¹ words repealed by Mental Health Review Tribunal (Amendment) Rules 1998/1189 r. 2(3)

(c) rules 5, 6 and 7 shall apply as if rule 6(1) referred to the notice of reference, or the request for the authority's statement, as the case may be, instead of the notice of application and where a reference is made under section 75(1) of the Act—

(i) rule 6(2) shall apply as if the period of time specified therein was 2 weeks instead of 3 weeks; and

(ii) on receipt of the authority's statement, the tribunal shall give notice of the date, time and place fixed for the hearing to any person whom the tribunal notifies of the proceedings under rule 7;

[(cc) where a reference is made under section 75(1) of the Act, on receipt of the reference the tribunal shall—

(i) fix a date for the hearing being not later than eight weeks, nor earlier than five weeks, from the date on which the reference was received;

(ii) fix the time and place for the hearing; and

(iii) give notice of the date, time and place of the hearing to the patient, the responsible authority and the Secretary of State;

] ¹²

(d) a reference made by the Secretary of State in circumstances in which he is not by the terms of the Act obliged to make a reference may be withdrawn by him at any time before it is considered by the tribunal and, where a reference is so withdrawn, the tribunal shall inform the patient and the other parties that the reference has been withdrawn.

30.— Making an assessment application

(1) An assessment application shall be made to the tribunal in writing signed by the patient or any person authorised by him to do so on his behalf.

(2) An assessment application shall indicate that it is made by or on behalf of a patient detained for assessment and shall wherever possible include the following information—

(a) the name of the patient;

(b) the address of the hospital or mental nursing home where the patient is detained;

(c) the name and address of the patient's nearest relative and his relationship to the patient;

(d) the name and address of any representative authorised by the patient in accordance with rule 10 or, if none has yet been authorised, whether the patient intends to authorise a representative or wishes to conduct his own case.

(3) If any of the information specified in paragraph (2) is not included in the assessment application, it shall in so far as is practicable be provided by the responsible authority at the request of the tribunal.

31. Appointment of a tribunal and hearing date

On receipt of an assessment application the tribunal shall—

(a) fix a date for the hearing, being not later than 7 days from the date on which the application was received, and the time and place for the hearing;

(b) give notice of the date, time and place fixed for the hearing to the patient;

¹² added by Mental Health Review Tribunal (Amendment) Rules 1998/1189 r. 2(4)(c)

(c) give notice of the application and of the date, time and place fixed for the hearing to the responsible authority, the nearest relative (where practicable) and any other person who, in the opinion of the tribunal, should have an opportunity of being heard;

and the chairman shall appoint the members of the tribunal to deal with the case in accordance with rule 8.

32.— Provision of admission papers, etc.

(1) On receipt of the notice of an assessment application, or a request from the tribunal, whichever may be the earlier, the responsible authority shall provide for the tribunal copies of the admission papers, together with such of the information specified in Part A of Schedule 1 to these Rules as is within the knowledge of the responsible authority and can reasonably be provided in the time available and such of the reports specified in Part B of that Schedule as can reasonably be provided in the time available.

(2) The responsible authority shall indicate if any part of the admission papers or other documents supplied in accordance with paragraph (1) should, in their opinion, be withheld from the patient on the ground that its disclosure would adversely affect the health or welfare of the patient or others and shall state their reasons for believing that its disclosure would have that effect.

(3) The tribunal shall make available to the patient copies of the admission papers and any other documents supplied in accordance with paragraph (1), excluding any part indicated by the responsible authority in accordance with paragraph (2).

33. General procedure, hearing procedure and decisions

Rule 5, rule 8 and Parts III, IV and V of these Rules shall apply to assessment applications as they apply to applications in so far as the circumstances of the case permit and subject to the following modifications—

- (a) rule 12 shall apply as if any reference to a document being withheld in accordance with rule 6 was a reference to part of the admission papers or other documents supplied in accordance with rule 32 being withheld;
- (b) rule 16 shall apply with the substitution, for the reference to 14 days' notice, of a reference to such notice as is reasonably practicable;
- (c) rule 20 shall not apply;
- (d) rule 24 shall apply as if the period of time specified therein was 3 days instead of 7 days.

PART VII

TRANSITIONAL PROVISIONS AND REVOCATIONS

34. Transitional provisions

These Rules shall apply, so far as practicable, to any proceedings pending at the date on which they come into operation, and, where their operation is excluded by virtue of the foregoing provision, the rules in force immediately before that date shall continue to apply to such proceedings.

35. Revocations

Subject to rule 34, the rules specified in Schedule 2 to these Rules are hereby revoked.

Hailsham of St. Marylebone, C.

Dated 28th June 1983.

SCHEDULE 1**STATEMENTS BY THE RESPONSIBLE AUTHORITY AND THE SECRETARY OF STATE****Rules 6 and 32****PART A****INFORMATION RELATING TO PATIENTS (OTHER THAN CONDITIONALLY DISCHARGED PATIENTS[AND PATIENTS SUBJECT (OR TO BE SUBJECT) TO AFTER-CARE UNDER SUPERVISION]¹³)****1.**

The full name of the patient.

2.

The age of the patient.

3.

The date of admission of the patient to the hospital or mental nursing home in which the patient is currently detained or liable to be detained, or of the reception of the patient into guardianship.

4.

Where the patient is being treated in a mental nursing home under contractual arrangements with a health authority or Primary Care Trust the name of that authority[or Trust]¹⁴ .

5.

Details of the original authority for the detention or guardianship of the patient, including the Act of Parliament and the section of that Act by reference to which detention was authorised and details of any subsequent renewal of or change in the authority for detention.

6.

The form of mental disorder from which the patient is recorded as suffering in the authority for detention (including amendments, if any, under section 16 or 72(5) of the Act, but excluding cases within section 5 of the Criminal Procedure (Insanity) Act 1964).

¹³ words inserted by Mental Health Review Tribunal (Amendment) Rules 1996/314 r. 12.(1)

¹⁴ words inserted by National Health Service Reform and Health Care Professions Act 2002 (Supplementary, Consequential etc. Provisions) Regulations 2002/2469 Sch. 1(2) para. 41

7.

The name of the responsible medical officer and the period which the patient has spent under the care of that officer.

8.

Where another registered medical practitioner is or has recently been largely concerned in the treatment of the patient, the name of that practitioner and the period which the patient has spent under his care.

9.

The dates of all previous tribunal hearings in relation to the patient, the decisions reached at such hearings and the reasons given. (In restricted patient cases this requirement does not relate to decisions before 30th September 1983.)

10.

Details of any proceedings in the Court of Protection and of any receivership order made in respect of the patient.

11.

The name and address of the patient's nearest relative or of any other person who is exercising that function.

12.

The name and address of any other person who takes a close interest in the patient.

13.

Details of any leave of absence granted to the patient during the previous 2 years, including the duration of such leave and particulars of the arrangements made for the patient's residence while on leave.

PART B

REPORTS RELATING TO PATIENTS (OTHER THAN CONDITIONALLY DISCHARGED PATIENTS[AND PATIENTS SUBJECT (OR TO BE SUBJECT) TO AFTER-CARE UNDER SUPERVISION]¹⁵)

1.

An up-to-date medical report, prepared for the tribunal, including the relevant medical history and a full report on the patient's mental condition.

2.

An up-to-date social circumstances report prepared for the tribunal including reports on the following—

- (a) the patient's home and family circumstances, including the attitude of the patient's nearest relative or the person so acting;

¹⁵ words inserted by Mental Health Review Tribunal (Amendment) Rules 1996/314 r. 12.(1)

- (b) the opportunities for employment or occupation and the housing facilities which would be available to the patient if discharged;
- (c) the availability of community support and relevant medical facilities;
- (d) the financial circumstances of the patient.

3.

The views of the authority on the suitability of the patient for discharge.

4.

Any other information or observations on the application which the authority wishes to make.

PART C

INFORMATION RELATING TO CONDITIONALLY DISCHARGED PATIENTS

1.

The full name of the patient.

2.

The age of the patient.

3.

The history of the patient's present liability to detention including details of offence(s), and the dates of the original order or direction and of the conditional discharge.

4.

The form of mental disorder from which the patient is recorded as suffering in the authority for detention. (Not applicable to cases within section 5 of the Criminal Procedure (Insanity) Act 1964.)

5.

The name and address of any medical practitioner responsible for the care and supervision of the patient in the community and the period which the patient has spent under the care of that practitioner.

6.

The name and address of any social worker or probation officer responsible for the care and supervision of the patient in the community and the period which the patient has spent under the care of that person.

PART D

REPORTS RELATING TO CONDITIONALLY DISCHARGED PATIENTS

1.

Where there is a medical practitioner responsible for the care and supervision of the patient in the community, an up-to-date medical report prepared for the tribunal including the relevant medical history and a full report on the patient's mental condition.

2.

Where there is a social worker or probation officer responsible for the patient's care and supervision in the community, an up-to-date report prepared for the tribunal on the patient's progress in the community since discharge from hospital.

3.

A report on the patient's home circumstances.

4.

The views of the Secretary of State on the suitability of the patient for absolute discharge.

5.

Any other observations on the application which the Secretary of State wishes to make.

[PART E

INFORMATION AND DOCUMENTS RELATING TO PATIENTS SUBJECT (OR TO BE SUBJECT) TO AFTER-CARE UNDER SUPERVISION]¹⁶

[1.

The full name, address and age of the patient.]¹⁷

[2.

The date of the acceptance of the supervision application in respect of the patient.]¹⁸

[3.

A copy of the original supervision application, details of the after-care services provided (or to be provided) under section 117^[19] of the Act, details of any requirements imposed (or to be imposed) under section 25D(1)^[20] of the Act, a copy of any report furnished under section 25G(3)(b)^[21] of the Act in relation to renewal of the supervision application and a copy of any record of modification of the after-care services provided.]²²

[4.

Any reclassification of the form of mental disorder from which the patient is recorded as suffering in the supervision application reported in accordance with section 25F(1)^[23] of the Act.]²⁴

¹⁶ added by Mental Health Review Tribunal (Amendment) Rules 1996/314 r. 12.(2)

¹⁷ added by Mental Health Review Tribunal (Amendment) Rules 1996/314 r. 12.(2)

¹⁸ added by Mental Health Review Tribunal (Amendment) Rules 1996/314 r. 12.(2)

¹⁹ Section 117 was amended by paragraph 107(8) of Schedule 1 to the Health Authorities Act 1995 (c.17) and by paragraph 15 of Schedule 1 to the 1995 Act.

²⁰ Section 25D was inserted in the Act by section 1(1) of the 1995 Act.

²¹ Section 25G was inserted in the Act by section 1(1) the 1995 Act.

²² added by Mental Health Review Tribunal (Amendment) Rules 1996/314 r. 12.(2)

²³ Section 25F was inserted in the Act by section 1(1) of the 1995 Act.

²⁴ added by Mental Health Review Tribunal (Amendment) Rules 1996/314 r. 12.(2)

[5.

The name and address of the person who is (or is to be) the community responsible medical officer and the period (if any) during which he has been in charge of the patient's medical treatment.]²⁵

[6.

The name and address of the person who is (or is to be) the patient's supervisor.]²⁶

[7.

Where a registered medical practitioner other than the community responsible medical officer is or has recently been largely concerned in the treatment of the patient, details of the name and address of that practitioner and the period which the patient has spent under his care.]²⁷

[8.

The name and address of any place where the patient (if he has been discharged) is receiving medical treatment.]²⁸

[9.

The name and address of the hospital where the patient was detained or liable to be detained when the supervision application was made.]²⁹

[10.

The dates of any previous tribunal hearings in relation to the patient since he became subject to after-care under supervision, the decisions reached at such hearings and the reasons given.]³⁰

[11.

Details of any proceedings in the Court of Protection and of any receivership order made in respect of the patient.]³¹

[12.

The name and address of the patient's nearest relative or of any other person who is exercising that function.]³²

[13.

The name and address of any other person who takes a close interest in the patient.]³³

²⁵ added by Mental Health Review Tribunal (Amendment) Rules 1996/314 r. 12.(2)

²⁶ added by Mental Health Review Tribunal (Amendment) Rules 1996/314 r. 12.(2)

²⁷ added by Mental Health Review Tribunal (Amendment) Rules 1996/314 r. 12.(2)

²⁸ added by Mental Health Review Tribunal (Amendment) Rules 1996/314 r. 12.(2)

²⁹ added by Mental Health Review Tribunal (Amendment) Rules 1996/314 r. 12.(2)

³⁰ added by Mental Health Review Tribunal (Amendment) Rules 1996/314 r. 12.(2)

³¹ added by Mental Health Review Tribunal (Amendment) Rules 1996/314 r. 12.(2)

³² added by Mental Health Review Tribunal (Amendment) Rules 1996/314 r. 12.(2)

³³ added by Mental Health Review Tribunal (Amendment) Rules 1996/314 r. 12.(2)

[PART F

**REPORTS RELATING TO PATIENTS SUBJECT (OR TO BE SUBJECT) TO
AFTER-CARE UNDER SUPERVISION]³⁴****[1.**

An up-to-date medical report, prepared for the tribunal by the patient's community responsible medical officer or, if he has not yet left hospital, his responsible medical officer (or, where there is none, his last responsible medical officer), including the relevant medical history and a full report on the patient's mental condition.]³⁵

[2.

Where the patient is subject to after-care under supervision an up-to-date report prepared for the tribunal by the patient's supervisor including reports on the following—

- (a) the patient's home and family circumstances, including the attitude of the patient's nearest relative or the person so acting and the attitude of any person who plays a substantial part in the care of the patient but is not professionally concerned with any of the after-care services provided to the patient;
- (b) his progress in the community whilst subject to after-care under supervision including an assessment of the effectiveness of that supervision.]³⁶

[3.

Where the patient has not yet left hospital an up-to-date social circumstances report prepared for the tribunal by a person professionally concerned with the nature of the patient's social circumstances including reports on the following—

- (a) the patient's home and family circumstances, including the attitude of the patient's nearest relative or the person so acting;
- (b) the opportunities for employment or occupation and the housing facilities which would be available to the patient upon his discharge from hospital;
- (c) the availability of community support and relevant medical facilities;
- (d) the financial circumstances of the patient.]³⁷

SCHEDULE 2**REVOCATIONS****Rule 35**

Titles	References	Extent of Revocation
The Mental Health Review Tribunal Rules 1960	S.I. 1960/1139	The whole Rules.

³⁴ added by Mental Health Review Tribunal (Amendment) Rules 1996/314 r. 12.(2)

³⁵ added by Mental Health Review Tribunal (Amendment) Rules 1996/314 r. 12.(2)

³⁶ added by Mental Health Review Tribunal (Amendment) Rules 1996/314 r. 12.(2)

³⁷ added by Mental Health Review Tribunal (Amendment) Rules 1996/314 r. 12.(2)

Titles	References	Extent of Revocation
The Mental Health Review Tribunal (Welsh Forms) Rules 1971	S.I. 1971/1772	The whole Rules.
The Mental Health Review Tribunal (Amendment) Rules 1976	S.I. 1976/447	The whole Rules.

EXPLANATORY NOTE

(This note is not part of the Order)

These Rules substitute for the Mental Health Review Tribunal Rules 1960, as amended, a new code of procedure to be followed in proceedings before Mental Health Review Tribunals. The procedure has been revised and modernised generally and some amendments have also been necessitated by recent legislative changes, consolidated in the Mental Health Act 1983. Under the Rules, essentially the same procedure will apply in all types of case, although in the case of references and assessment applications, it is subject to appropriate modifications.

Rule 3 sets out the requirements for making an application; there are no prescribed forms. Rule 5 empowers the chairman of the tribunal to exercise specified powers of the tribunal in the period before the tribunal itself convenes. Rule 6 is to be read with Schedule 1 and specifies the information to be supplied to the tribunal by the responsible authority or, in restricted patient cases, the Secretary of State.

Rule 10 governs the right to representation and empowers the tribunal to authorise a representative for a patient who has omitted to exercise that right. Patients and other parties may also be accompanied before the tribunal by other persons of their choice. Rule 12 requires the tribunal to send copies of all documents it receives to the applicant (and if different, the patient) unless the tribunal considers that disclosure would adversely affect the health or welfare of the patient or others. All such documents must be disclosed to any representative of an applicant or patient who falls within certain specified categories. Rule 13 gives the tribunal a discretion to give directions to ensure the speedy and just determination of the case. There is a similar provision in rule 16 in relation to adjournments.

Rule 20 provides for the minimum period of notice of the hearing date to be 14 days. 14 days is also the minimum period of notice for resumption of an adjourned hearing (rule 16). Rule 21 is concerned with privacy of the proceedings. The tribunal has discretion to exclude anyone from the hearing or part of it but this does not extend to certain specified categories of representative of the applicant or patient. Rule 22 sets out the procedure to be followed at the hearing.

Rule 23 requires the tribunal to record its final decision in writing with reasons. Rule 24 empowers the president of the tribunal to announce the decision immediately after the case, and requires the tribunal to send a written decision, with reasons, to the parties within 7 days unless the tribunal considers that this would adversely affect the health or welfare of the patient or others. Rule 25(1) provides that where the tribunal makes a provisional decision (defined in rule 2) it may make a further decision without another hearing. Rule 25(2) empowers the tribunal to reconvene in a case

in which it has made a decision with recommendations (defined in rule 2) and it appears that the recommendations have not been complied with.

Rule 29 applies the procedure laid down by the Rules to references as well as applications subject to certain minor modifications.

Rules 30 to 33 are concerned with applications made by patients detained for assessment, in relation to which the time limits set by section 2(4) and section 66(2)(a) of the Mental Health Act 1983 have necessitated a number of modifications to the procedure for other types of applications. Rules 30 to 32 set out the preliminary procedure. Thereafter, rule 33 provides for the general provisions of Parts III, IV and V of the Rules to apply to assessment applications, subject to specified modifications, so far as the circumstances of the case permit.

Rule 35 revokes the earlier rules which these Rules supersede. The Mental Health Review Tribunal (Welsh Forms) Rules 1971 substituted for the forms prescribed in English by the Mental Health Review Tribunal Rules 1960, bilingual versions in Welsh and English to be used for applications to the Mental Health Review Tribunal for Wales. As the Rules do not prescribe any forms, it is no longer appropriate to provide for translations of prescribed forms.