1974. No. 256 [C]

DANGEROUS DRUGS

Misuse of Drugs Tribunal (Northern Ireland) Rules 1974

RULES, DATED 16TH OCTOBER 1974, MADE BY THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES FOR NORTHERN IRELAND UNDER PARAGRAPH 4 OF SCHEDULE 3 TO THE MISUSE OF DRUGS ACT 1971.

The Department of Health and Social Services, in exercise of the powers conferred upon it by paragraph 4 of Schedule 3 to the Misuse of Drugs Act 1971(a), the Departments (Transfer of Functions) Order (Northern Ireland) 1973(b) and paragraph 2(1) and (2) of Schedule 1 to the Northern Ireland Act 1974(c) and every other power enabling it in that behalf and after consultation with the Advisory Council, hereby makes the following Rules:

Citation and commencement

1. These Rules may be cited as the Misuse of Drugs Tribunal (Northern Ireland) Rules 1974 and shall come into operation on 18th November 1974.

Interpretation

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

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

"the chairman" means the person appointed by the Lord Chief Justice of Northern Ireland to be the chairman of the tribunal;

"the Department" means the Department of Health and Social Services;

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

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

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

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

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

(2) In these Rules a form referred to by number means the form so numbered in the Appendix to these Rules.

Terms of reference and parties

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

(a) 1971. c. 38.
(b) S.R. & O. 1973, No. 504.
(c) 1974. c. 28.

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

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

Notice of proceedings

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

(2) The notice of proceedings may be amended—

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

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

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

Notice of hearing

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

Inspection of documents

6.—(1) The solicitor shall within fourteen days after the issue of the notice of proceedings and the respondent may at any time serve on the other party a list of the documents on which he proposes to rely, and the solicitor and the respondent shall send to the tribunal a copy of any list served under this paragraph.

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

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

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

Interlocutory applications

7.—(1) An application for directions of an interlocutory nature in connection with the proceedings may be made by the solicitor or the respondent to the chairman.

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

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

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

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

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

Right of audience

8. At the hearing and at the hearing of an application under rule 7 the parties shall be entitled to appear and be heard either in person or by counsel or a solicitor.

Default of appearance

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

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

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

Procedure at hearing

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

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

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

(*c*) in respect of any allegation which is not admitted the chairman may ask the respondent whether he is willing to admit any of the facts stated in the allegation;

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

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

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

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

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

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

Evidence

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

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

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

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

Findings of tribunal

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

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

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

Submissions and evidence with reference to recommendation

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

Majority decision, etc.

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

Report of tribunal

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

(2) The report shall contain a statement—

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

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

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

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

(ii) of the reasons for the recommendation, or as the case may be, for so considering; and

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

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

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

(iii) the terms of any recommendation.

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

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

Reference back to or to another tribunal

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

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

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

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