

**MENTAL HEALTH REVIEW TRIBUNAL RULES****(Cap. 136 sub. leg. C)****Contents**

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# MENTAL HEALTH REVIEW TRIBUNAL RULES

(Cap. 136 section 59G)

[29 December 1989] *L.N. 420 of 1989*

## PART I

### INTRODUCTION

#### 1. Citation

These rules may be cited as the Mental Health Review Tribunal Rules

#### 2. Interpretation

In these rules, unless the context otherwise requires—

“decision with recommendations” (附有建議的決定) means a decision with recommendations in accordance with section 59E(1)(b) of the Ordinance;

“guardianship” (監護) means guardianship under Part III or IIIA of the Ordinance; (*L.N. 100 of 1998*)

“party” (覆核一方) means the applicant, the mentally incapacitated person, the responsible authority, and any other person to whom a notice under rule 7 is sent or who is added as a party by direction of the tribunal; (*L.N. 100 of 1998*)

“private guardian” (非官方監護人) in relation to a mentally incapacitated person means a person, other than the Director of Social Welfare, who acts as guardian under Part III or IIIA of the Ordinance; (*L.N. 100 of 1998*)

“proceedings” (法律程序) includes any proceedings of the tribunal following an application or reference in relation to a mentally incapacitated person; (*L.N. 100 of 1998*)

“reference” (轉介) means a reference under section 59C(1) or 59D(1) of the Ordinance;

“responsible authority” (負責當局) means—

- (a) in relation to a patient liable to be detained in a mental hospital, or permitted to be absent under section 39 of the Ordinance, the medical superintendent;
- (b) in relation to a patient liable to be detained in the Correctional Services Department Psychiatric Centre, the Commissioner of Correctional Services;
- (c) in relation to a mentally incapacitated person subject to guardianship or who is a supervised person, the Director of Social Welfare; and (*L.N. 100 of 1998*)
- (d) in relation to a patient discharged conditionally under section 42B of the Ordinance—
  - (i) where subsection (6) of that section applies the medical officer referred to in paragraph (c) of that subsection; and
  - (ii) in any other case the medical superintendent;

“secretary” (秘書) means the secretary to the tribunal appointed under section 59A(8) of the Ordinance.

“supervised person” (受監管人) means a supervised person within the meaning of Part IIIB of the Ordinance. (*L.N. 100 of 1998*)

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## 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 authorized by him to do so on his behalf.
- (2) The application shall wherever possible include the following information—
  - (a) the name of the mentally incapacitated person and the number of any current identity card issued to the mentally incapacitated person under the Registration of Persons Ordinance (Cap. 177); (*L.N. 100 of 1998*)
  - (b) the mentally incapacitated person's address, which shall include— (*L.N. 100 of 1998*)
    - (i) the place where the patient is detained; or
    - (ii) the name and address of the mentally incapacitated person's private guardian, and the number of any current identity card issued to the guardian under the Registration of Persons Ordinance (Cap. 177); or (*L.N. 100 of 1998*)
    - (iii) in the case of a conditionally discharged patient or a patient to whom leave of absence from hospital has been granted, the place where the patient was last detained or is liable to be detained, together with the patient's current address and the address of any psychiatric out-patient clinic that he is required to attend;

- (c) where the application is made by the mentally incapacitated person's relative, the name and address of the applicant, the number of any current identity card issued to the applicant under the Registration of Persons Ordinance (Cap. 177), and the relationship of the applicant to the mentally incapacitated person; (*L.N. 100 of 1998*)
  - (d) the section of the Ordinance under which the patient is detained or is liable to be detained;
  - (e) the name and address of any representative authorized in accordance with rule 9 and the number of any current identity card issued to him under the Registration of Persons Ordinance (Cap. 177) or, if none has yet been authorized, whether the applicant intends to authorize a representative or wishes to conduct his own case.
- (3) If any of the information specified in subrule (2) is not included in the application it shall, in so far as is practicable, be provided by the responsible authority.

#### **4. Notice of application**

Within 14 days of the receipt of an application, or such further time as the tribunal may allow, the secretary shall send notice of the application to— (*L.N. 4 of 1989*)

- (a) the responsible authority; and
- (b) the mentally incapacitated person (where he is not the applicant). (*L.N. 100 of 1998*)

#### **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 4, 7, 9, 11, 12, 14, 18, 25 and 27.

*(L.N. 4 of 1989)*

**6. Statements by the responsible authority**

- (1) The responsible authority shall send to the tribunal as soon as practicable, and in any case within 8 weeks of receipt by him of the notice of application, a statement containing—
  - (a) the information specified in Part A of the Schedule, 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 the Schedule; and
  - (c) the other reports specified in Part B of the Schedule, in so far as it is reasonably practicable to provide them.
- (2) Where the patient is a conditionally discharged patient, subrule (1) shall not apply and the responsible authority shall send to the tribunal as soon as practicable, and in any case within 8 weeks of receipt by him of the notice of application, a statement containing—
  - (a) the information specified in Part C of the Schedule, in so far as it is within the knowledge of the responsible authority; and
  - (b) the reports specified in Part D of the Schedule, in so far as it is reasonably practicable to provide them.
- (3) Any part of the authority's statement which in the opinion of the responsible authority should be withheld from the applicant or (where he is not the applicant) the mentally incapacitated person on the ground that its disclosure would adversely affect the health or welfare of the mentally incapacitated person 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. *(L.N. 100 of 1998)*



- (4) The secretary shall send a copy of the authority's statement to the applicant and (where he is not the applicant) the mentally incapacitated person, excluding any part of the statement which is contained in a separate document in accordance with subrule (3). (*L.N. 100 of 1998*)

## 7. Notice to other persons interested

When the tribunal receives the authority's statement the secretary shall give notice of the proceedings—

- (a) where the mentally incapacitated person is subject to the guardianship of a private guardian, to the guardian; (*L.N. 100 of 1998*)
- (b) where the mentally incapacitated person's financial affairs are under the control of the Court of First Instance, to the Registrar of the High Court; and (*25 of 1998 s. 2; L.N. 100 of 1998*)
- (c) to any other person who, in the opinion of the tribunal, should have an opportunity of being heard.

## 8. Disqualification of tribunal members

A person shall not be qualified to serve as a member of the tribunal for the purpose of any proceedings where he has a personal connection with the mentally incapacitated person or has treated the mentally incapacitated person in a professional medical capacity within the preceding 12 months.

(*L.N. 100 of 1998*)

## PART III

### GENERAL PROVISIONS

#### 9. Representation, etc.

- (1) Any party may be represented by any person whom he has authorized for that purpose, not being—
  - (a) a person liable to be detained, or subject to guardianship (including guardianship under Part IVB of the Ordinance), under the Ordinance or who is a supervised person; or (*L.N. 100 of 1998*)
  - (b) a person receiving treatment for mental disorder at the same mental hospital as the patient; or
  - (c) in the case of a patient liable to be detained at the Correctional Services Department Psychiatric Centre, a person liable to be detained there.
- (2) Any representative authorized in accordance with subrule (1) shall notify the tribunal of his authorization and postal address.
- (3) As regards the representation of any mentally incapacitated person who does not desire to conduct his own case and does not authorize a representative in accordance with subrule (1) the tribunal may appoint some person to act for him as his authorized representative. (*L.N. 100 of 1998*)
- (4) Without prejudice to rule 11(3), the secretary shall send to an authorized representative copies of all notices and documents which are by these rules required or authorized to be sent to the person whom he represents and such representative may take all such steps and do all such things relating to the proceedings as the person whom he represents is by these rules required or authorized to take or do.

- (5) Any document required or authorized by these rules to be sent or given to any person shall, if sent or given to the authorized representative of that person, be deemed to have been sent or given to that person.
- (6) Unless the tribunal otherwise directs, a mentally incapacitated person 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 authorized.  
*(L.N. 100 of 1998)*

#### **10. 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 mentally incapacitated person and take such other steps as he considers necessary to form an opinion of the mentally incapacitated person's mental condition; and for this purpose the mentally incapacitated person 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.

*(L.N. 100 of 1998)*

#### **11. Disclosure of documents**

- (1) Subject to subrule (2), the secretary shall, as soon as practicable, send a copy of every document the tribunal receives which is relevant to the application to the applicant, and (where he is not the applicant) the mentally incapacitated person, the responsible authority 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 mentally incapacitated person, 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 mentally incapacitated person 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 subrule (1) applies to an applicant or a mentally incapacitated person who has an authorized 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; or
- (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 subrule shall be disclosed either directly or indirectly to the applicant or (where he is not the applicant) to the mentally incapacitated person or to any other person without the authority of the tribunal or used otherwise than in connection with the application.

*(L.N. 100 of 1998)*

## **12. 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.

## **13. Evidence**

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

## **14. 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 11 shall apply to any further information or reports obtained by the tribunal.

## **15. 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 mentally incapacitated person (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 mentally incapacitated person. (*L.N. 100 of 1998*)
- (4) Before the tribunal resumes any hearing which has been adjourned without a further hearing date being fixed the secretary shall give to all parties 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.

## **16. Transfer of proceedings**

Where any proceedings in relation to a mentally incapacitated person have not been disposed of by the members of the tribunal appointed for the purpose, 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.

*(L.N. 100 of 1998)*

**17. Two or more pending applications**

- (1) The tribunal may consider more than one application in respect of a mentally incapacitated person 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 mentally incapacitated person 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.

*(L.N. 100 of 1998)*

**18. 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 mentally incapacitated person ceases to be liable to be detained, subject to guardianship, or to be a supervised person, in Hong Kong, any application relating to that mentally incapacitated person shall be deemed to be withdrawn. *(L.N. 100 of 1998)*
- (3) Where an application is withdrawn, or deemed to be withdrawn, the tribunal shall so inform the parties.

## PART IV

### THE HEARING

#### 19. Notice of bearing

The secretary 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.

#### 20. Privacy of proceedings

- (1) The tribunal shall sit in private unless the mentally incapacitated person requests a hearing in public and the tribunal is satisfied that a hearing in public would not be contrary to the interests of the mentally incapacitated person. (*L.N. 4 of 1989; L.N. 100 of 1998*)
- (2) When the tribunal sits in private it may admit to the hearing such persons on such terms and conditions as it considers appropriate.
- (3) 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 mentally incapacitated person to whom documents would be disclosed in accordance with rule 11(3), and in any case where the tribunal decides to exclude the applicant or the mentally incapacitated person 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. (*L.N. 100 of 1998*)
- (4) 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.

## 21. 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 mentally incapacitated person 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 mentally incapacitated person, and shall interview him if he so requests, and the interview may, and shall if the mentally incapacitated person so requests, take place in the absence of any other person.
- (3) At the beginning of the hearing the chairman shall explain the manner of proceeding which the tribunal proposes to adopt.
- (4) Subject to rule 20(3), 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 mentally incapacitated person (where he is not the applicant) and the responsible authority who may all 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 mentally incapacitated person shall be given a further opportunity to address the tribunal.

*(L.N. 100 of 1998)*



## **PART V**

### **DECISIONS, FURTHER CONSIDERATION AND MISCELLANEOUS PROVISIONS**

#### **22. 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 chairman 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 chairman and shall give the reasons for the decision and, in particular, where the tribunal relies upon any of the matters set out in section 59E(2) or (5) of the Ordinance, shall state its reasons for being satisfied as to those matters.
- (3) Subrules (1) and (2) shall apply to decisions with recommendations as they apply to decisions by which applications are determined.

#### **23. Communication of decisions**

- (1) The decision by which the tribunal determines an application may, at the discretion of the tribunal, be announced by the chairman immediately after the hearing of the case and, subject to subrule (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.
- (2) Where the tribunal considers that the full disclosure of the recorded reasons for its decision to the mentally incapacitated person in accordance with subrule (1) would adversely affect the health or welfare of the mentally incapacitated

person 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 mentally incapacitated person:

Provided that, where the applicant or the mentally incapacitated person was represented at the hearing by a person to whom documents would be disclosed in accordance with rule 11(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 mentally incapacitated person. (*L.N. 100 of 1998*)

- (3) Subrules (1) and (2) shall apply to 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.

## **24. Further consideration**

Where the tribunal has made a decision with recommendations and, at the end of the period referred to in rule 23(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 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.

## **25. Time**

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 rules 15(4), 19 and 24, abridged by the tribunal on such terms (if any) as it may think fit.

**26. Service of notices etc.**

Any document required or authorized 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 secretary;
- (b) in any other case, to the last known address of the person to whom the document is directed.

**27. 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 or otherwise.

**28. Application requiring the leave of the tribunal**

- (1) Subject to this rule, where the leave of the tribunal to make an application is required by section 59B(5) of the Ordinance, these rules shall apply to a request for leave as if that request were an application.
- (2) Subrule (1)(b) and (c) and subrule (2)(b) and (c) of rule 6 and rule 19 shall not apply to the request for leave and proceedings on such a request unless the chairman otherwise directs.
- (3) Where an application is made which requires such leave, the chairman may direct that the application be treated as a

request for leave and if he does so direct it shall be deemed to be such a request.

- (4) Without derogation from the power of the tribunal to grant or refuse such leave, such leave may be granted or refused by the chairman who, in the exercise of his functions under this subrule, shall have all the powers conferred on the tribunal by these rules.
  - (5) Notwithstanding anything to the contrary in these rules a request for such leave may be considered by the chairman or, as the case may be, tribunal, summarily and without the presence of the person requesting leave or his representative or of the mentally incapacitated person (where he is not the person requesting leave). (*L.N. 100 of 1998*)
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## PART VI

### REFERENCES

#### 29. References

(Adaptation amendments retroactively made - see 60 of 2000 s. 3)

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 and 18 shall not apply;
- (b) the secretary 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;

- (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;
- (d) a reference made by the Chief Executive may be withdrawn by him at any time before it is considered by the tribunal and, where a reference is so withdrawn, the secretary shall inform the patient and the other parties that the reference has been withdrawn. *(60 of 2000 s. 3)*

## **SCHEDULE**

[rule 6]

### **STATEMENTS BY THE RESPONSIBLE AUTHORITY**

#### **PART A**

Information relating to mentally incapacitated persons  
(other than conditionally discharged patients)

1. The full name of the mentally incapacitated person and the number of any current identity card issued to the mentally incapacitated person under the Registration of Persons Ordinance (Cap. 177).
2. The age of the mentally incapacitated person.
3. The date of admission of the patient to the place in which the patient is currently detained or liable to be detained, or of the reception of the mentally incapacitated person into guardianship or when the mentally incapacitated person becomes a supervised person.

# MENTAL HEALTH REVIEW TRIBUNAL RULES

## SCHEDULE—PART A

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### Rule 5

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4. Details of the original authority for the detention of the mentally incapacitated person, including the Ordinance and the section of that Ordinance by reference to which detention was authorized and details of any subsequent renewal of or change in the authority for detention, or details of the original authority for making the mentally incapacitated person subject to guardianship or a supervised person, as the case requires.
5. The form of mental disorder from which the patient is recorded as suffering in the authority for detention.
6. The name of the attending medical officer and the period which the mentally incapacitated person has spent under the care of that officer.
7. Where another registered medical practitioner is or has recently been largely concerned in the treatment of the mentally incapacitated person, the name of that practitioner and the period which the mentally incapacitated person has spent under his care.
8. The dates of all previous tribunal hearings in relation to the mentally incapacitated person, the decisions reached at such hearings and the reasons given.
9. Details of any proceedings in the Court of First Instance in which the ability of the mentally incapacitated person to manage his affairs was in issue and of any receivership order, or any order for

the appointment of a committee, made in respect of the mentally incapacitated person. *(25 of 1998 s. 2)*

10. The name and address of any relative or other person who takes a close interest in the mentally incapacitated person.
11. 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.

*(L.N. 100 of 1998)*

## PART B

### Reports relating to mentally incapacitated persons (other than conditionally discharged patients)

1. An up-to-date medical report, prepared for the tribunal, including the relevant medical history and a full report on the mentally incapacitated person's mental condition.
2. An up-to-date social report prepared for the tribunal.



# MENTAL HEALTH REVIEW TRIBUNAL RULES

## SCHEDULE—PART C

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### Rule 1

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3. The views of the responsible authority on the suitability of the mentally incapacitated person for discharge.
4. Any other information or observations on the application which the authority wishes to make.

*(L.N. 100 of 1998)*

## PART C

### Information relating to conditionally discharged patients

1. The full name of the patient and the number of any current identity card issued to the patient under the Registration of Persons Ordinance (Cap. 177).
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.

# MENTAL HEALTH REVIEW TRIBUNAL RULES

## SCHEDULE—PART D

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### Rule 1

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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 public officer in the Social Welfare Department 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 officer.
7. The name and address of any psychiatric out-patient clinic which the patient is required to attend.

## 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, a report on the patient's attendance at any psychiatric out-patient clinic that he is required to attend and a full report on the patient's mental condition.

# MENTAL HEALTH REVIEW TRIBUNAL RULES

## SCHEDULE—PART D

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### Rule 3

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2. Where there is a public officer in the Social Welfare Department 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 and a report on the patient's home circumstances.
3. Any observations on the application which the Commissioner of Police wishes to make. (*L.N. 4 of 1989*)
4. (*Repealed L.N. 4 of 1989*)