



Mental Health Act 1983

1983 CHAPTER 20

PART V

MENTAL HEALTH REVIEW TRIBUNALS

Constitution etc.

65 Mental Health Review Tribunals.

[^{F1}(1) There shall be tribunals, known as Mental Health Review Tribunals, for the purpose of dealing with applications and references by and in respect of patients under the provisions of this Act.

(1A) There shall be—

- (a) one tribunal for each region of England, and
- (b) one tribunal for Wales.

(1B) The Secretary of State—

- (a) shall by order determine regions for the purpose of subsection (1A)(a) above; and
- (b) may by order vary a region determined for that purpose;

and the Secretary of State shall act under this subsection so as to secure that the regions together comprise the whole of England.

(1C) Any order made under subsection (1B) above may make such transitional, consequential, incidental or supplemental provision as the Secretary of State considers appropriate.]

(2) The provisions of Schedule 2 to this Act shall have effect with respect to the constitution of Mental Health Review Tribunals.

(3) Subject to the provisions of Schedule 2 to this Act, and to rules made by the Lord Chancellor under this Act, the jurisdiction of a Mental Health Review Tribunal may be

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exercised by any three or more of its members, and references in this Act to a Mental Health Review Tribunal shall be construed accordingly.

- (4) The Secretary of State may pay to the members of Mental Health Review Tribunals such remuneration and allowances as he may with the consent of the Treasury determine, and defray the expenses of such tribunals to such amount as he may with the consent of the Treasury determine, and may provide for each such tribunal such officers and servants, and such accommodation, as the tribunal may require.

Textual Amendments

F1 S. 65(1)(1A)(1B)(1C) substituted for s. 65(1) (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, s. 2(1)(3), 8, **Sch. 1**, Pt. III, para. 107(6)

Modifications etc. (not altering text)

C1 S. 65(1A)(a): functions transferred (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), **art. 3(1)**, 4, 5, {Sch. 1 Table 1} (with Sch. 4)

Applications and references concerning Part II patients

66 Applications to tribunals.

(1) Where—

- (a) a patient is admitted to a hospital in pursuance of an application for admission for assessment; or
- (b) a patient is admitted to a hospital in pursuance of an application for admission for treatment; or
- (c) a patient is received into guardianship in pursuance of a guardianship application; or
- (d) a report is furnished under section 16 above in respect of a patient; or
- (e) a patient is transferred from guardianship to a hospital in pursuance of regulations made under section 19 above; or
- (f) a report is furnished under section 20 above in respect of a patient and the patient is not discharged; or
- [^{F2}(fa) a report is furnished under subsection (2) of section 21B above in respect of a patient and subsection (5) of that section applies (or subsections (5) and (6) (b) of that section apply) in the case of the report; or
- (fb) a report is furnished under subsection (2) of section 21B above in respect of a patient and subsection (8) of that section applies in the case of the report; or]
- (g) a report is furnished under section 25 above in respect of a patient who is detained in pursuance of an application for admission for treatment; or
- [^{F3}(ga) a supervision application is accepted in respect of a patient; or
- (gb) a report is furnished under section 25F above in respect of a patient; or
- (gc) a report is furnished under section 25G above in respect of a patient; or]
- (h) an order is made under section 29 above in respect of a patient who is or subsequently becomes liable to be detained or subject to guardianship under Part II of this Act,

an application may be made to a Mental Health Review Tribunal within the relevant period—

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- (i) by the patient (except in the cases mentioned in paragraphs (g) and (h) above) or, in the ^{F4}cases mentioned in paragraphs (d), (ga), (gb) and (gc), by his nearest relative if he has been (or was entitled to be) informed under this Act of the report or acceptance], and
 - (ii) in the cases mentioned in paragraphs (g) and (h) above, by his nearest relative.
- (2) In subsection (1) above “the relevant period” means—
- (a) in the case mentioned in paragraph (a) of that subsection, 14 days beginning with the day on which the patient is admitted as so mentioned;
 - (b) in the case mentioned in paragraph (b) of that subsection, six months beginning with the day on which the patient is admitted as so mentioned;
 - (c) in the ^{F5}cases mentioned in paragraphs (c) and (ga)] of that subsection, six months beginning with the day on which the application is accepted;
 - (d) in the cases mentioned in paragraphs (d) ^{F6}, (fb)]^{F7}, (g) and (gb)] of that subsection, 28 days beginning with the day on which the applicant is informed that the report has been furnished;
 - (e) in the case mentioned in paragraph (e) of that subsection, six months beginning with the day on which the patient is transferred;
 - (f) in the case mentioned in paragraph (f) ^{F8}or (fa) of that subsection, the period or periods] for which authority for the patient’s detention or guardianship is renewed by virtue of the report;
 - ^{F9}(fa) in the case mentioned in paragraph (gc) of that subsection, the further period for which the patient is made subject to after-care under supervision by virtue of the report;]
 - (g) in the case mentioned in paragraph (h) of that subsection, 12 months beginning with the date of the order, and in any subsequent period of 12 months during which the order continues in force.
- (3) Section 32 above shall apply for the purposes of this section as it applies for the purposes of Part II of this Act.

Textual Amendments

- F2** S. 66(1)(fa)(fb) inserted (1.4.1996) by 1995 c. 52, ss. 2(6)(a), 7(2)
- F3** S. 66(1)(ga)-(gc) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), Sch. 1, para. 7(2)
- F4** Words in s. 66(1)(i) substituted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), Sch. 1, para. 7(3)
- F5** Words in s. 66(2)(c) substituted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), Sch. 1, para. 7(4)(a)
- F6** Words in s. 66(2)(d) inserted (1.4.1996) by 1995 c. 52, ss. 2(6)(b), 7(2)
- F7** Words in s. 66(2)(d) substituted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), Sch. 1, para. 7(4)(b)
- F8** Words in s. 66(2)(f) substituted (1.4.1996) by 1995 c. 52, ss. 2(6)(b), 7(2),
- F9** S. 66(2)(fa) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), Sch. 1, para. 7(4)(c)

67 References to tribunals by Secretary of State concerning Part II patients.

- (1) The Secretary of State may, if he thinks fit, at any time refer to a Mental Health Review Tribunal the case of any patient who is liable to be detained or subject to guardianship ^{F10}or to after-care under supervision] under Part II of this Act.
- (2) For the purpose of furnishing information for the purposes of a reference under subsection (1) above any registered medical practitioner authorised by or on behalf of the patient may, at any reasonable time, visit the patient and examine him in private and

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require the production of and inspect any records relating to the detention or treatment of the patient in any hospital [^{F11} or to any after-care services provided for the patient under section 117 below].

- (3) Section 32 above shall apply for the purposes of this section as it applies for the purposes of Part II of this Act.

Textual Amendments

F10 Words in s. 67(1) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), Sch. 1, para. 8(2)

F11 Words in s. 67(2) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), Sch. 1, para. 8(3)

68 Duty of managers of hospitals to refer cases to tribunal.

- (1) Where a patient who is admitted to a hospital in pursuance of an application for admission for treatment or a patient who is transferred from guardianship to hospital does not exercise his right to apply to a Mental Health Review Tribunal under section 66(1) above by virtue of his case falling within paragraph (b) or, as the case may be, paragraph (e) of that section, the managers of the hospital shall at the expiration of the period for making such an application refer the patient's case to such a tribunal unless an application or reference in respect of the patient has then been made under section 66(1) above by virtue of his case falling within paragraph (d), (g) or (h) of that section or under section 67(1) above.
- (2) If the authority for the detention of a patient in a hospital is renewed under section 20 [^{F12} or 21B] above and a period of three years (or, if the patient has not attained the age of sixteen years, one year) has elapsed since his case was last considered by a Mental Health Review Tribunal, whether on his own application or otherwise, the managers of the hospital shall refer his case to such a tribunal.
- (3) For the purpose of furnishing information for the purposes of any reference under this section, any registered medical practitioner authorised by or on behalf of the patient may at any reasonable time visit and examine the patient in private and require the production of and inspect any records relating to the detention or treatment of the patient in any hospital [^{F13} or to any after-care services provided for the patient under section 117 below].
- (4) The Secretary of State may by order vary the length of the periods mentioned in subsection (2) above.
- (5) For the purposes of subsection (1) above a person who applies to a tribunal but subsequently withdraws his application shall be treated as not having exercised his right to apply, and where a person withdraws his application on a date after the expiration of the period mentioned in that subsection, the managers shall refer the patient's case as soon as possible after that date.

Textual Amendments

F12 Words in s. 68(2) inserted (1.4.1996) by 1995 c. 52, ss. 2(7), 7(2),

F13 Words in s. 68(3) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), Sch. 1, para. 9

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VALID FROM 03/11/2008

[^{F14}68A Power to reduce periods under section 68

- (1) The appropriate national authority may from time to time by order amend subsection (2) or (6) of section 68 above so as to substitute for a period mentioned there such shorter period as is specified in the order.
- (2) The order may include such transitional, consequential, incidental or supplemental provision as the appropriate national authority thinks fit.
- (3) The order may, in particular, make provision for a case where—
 - (a) a patient in respect of whom subsection (1) of section 68 above applies is, or is about to be, transferred from England to Wales or from Wales to England; and
 - (b) the period by reference to which subsection (2) or (6) of that section operates for the purposes of the patient's case is not the same in one territory as it is in the other.
- (4) A patient is transferred from one territory to the other if—
 - (a) he is transferred from a hospital, or from guardianship, in one territory to a hospital in the other in pursuance of regulations made under section 19 above;
 - (b) he is removed under subsection (3) of that section from a hospital or accommodation in one territory to a hospital or accommodation in the other;
 - (c) he is a community patient responsibility for whom is assigned from a hospital in one territory to a hospital in the other in pursuance of regulations made under section 19A above;
 - (d) on the revocation of a community treatment order in respect of him under section 17F above he is detained in a hospital in the territory other than the one in which the responsible hospital was situated; or
 - (e) he is transferred or removed under section 123 below from a hospital in one territory to a hospital in the other.
- (5) Provision made by virtue of subsection (3) above may require or authorise the managers of a hospital determined in accordance with the order to refer the patient's case to [^{F15}the appropriate tribunal].
- (6) In so far as making provision by virtue of subsection (3) above, the order—
 - (a) may make different provision for different cases;
 - (b) may make provision which applies subject to specified exceptions.
- (7) Where the appropriate national authority for one territory makes an order under subsection (1) above, the appropriate national authority for the other territory may by order make such provision in consequence of the order as it thinks fit.
- (8) An order made under subsection (7) above may, in particular, make provision for a case within subsection (3) above (and subsections (4) to (6) above shall apply accordingly).
- (9) In this section, “the appropriate national authority” means—
 - (a) in relation to a hospital in England, the Secretary of State;

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(b) in relation to a hospital in Wales, the Welsh Ministers.]

Textual Amendments

- F14** Ss. 68, 68A substituted (3.11.2008) for s. 68 by [Mental Health Act 2007 \(c. 12\)](#), [ss. 37\(3\)](#), 56 (with [Sch. 10](#)); [S.I. 2008/1900](#), [art. 2\(1\)](#) (with [art. 3](#), [Sch.](#))
- F15** Words in s. 68A(5) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), [art. 6](#), [Sch. 3 para. 49](#)

Applications and references concerning Part III patients

69 Applications to tribunals concerning patients subject to hospital and guardianship orders.

- (1) Without prejudice to any provision of section 66(1) above as applied by section 40(4) above, an application to a Mental Health Review Tribunal may also be made—
- (a) in respect of a patient admitted to a hospital in pursuance of a hospital order, by the nearest relative of the patient in the period between the expiration of six months and the expiration of 12 months beginning with the date of the order and in any subsequent period of 12 months; and
 - (b) in respect of a patient placed under guardianship by a guardianship order—
 - (i) by the patient, within the period of six months beginning with the date of the order;
 - (ii) by the nearest relative of the patient, within the period of 12 months beginning with the date of the order and in any subsequent period of 12 months.
- (2) Where a person detained in a hospital—
- (a) is treated as subject to a hospital order [^{F16} hospital direction] or transfer direction by virtue of section 41(5) above, 82(2) or 85(2) [^{F17}below or] , [^{F18}article 2(2) of the Mental Health (Care and Treatment)(Scotland) Act 2003 (Consequential Provisions) Order 2005]^{F19} . . . ; or
 - (b) is subject to a direction having the same effect as a hospital order by virtue of section [^{F20}45B(2)] 46(3), 47(3) or 48(3) above,

then, without prejudice to any provision of Part II of this Act as applied by section 40 above, that person may make an application to a Mental Health Review Tribunal in the period of six months beginning with the date of the order or direction mentioned in paragraph (a) above or, as the case may be, the date of the direction mentioned in paragraph (b) above.

Textual Amendments

- F16** Words in s. 69(2)(a) inserted (1.10.2007) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 39](#), 56, [Sch. 5 para. 18\(a\)](#) (with [Sch. 10](#)); [S.I. 2007/2798](#), [art. 2\(c\)\(vii\)](#)
- F17** Words in s. 69(2)(a) substituted (31.3.2005) by [Domestic Violence, Crime and Victims Act 2004 \(c. 28\)](#), [ss. 58\(1\)](#), 60, [Sch. 10 para. 19\(a\)](#) (with [Sch. 12 para. 8](#)); [S.I. 2005/579](#), [art. 3\(g\)\(k\)](#)
- F18** Words in s. 69(2)(a) substituted (5.10.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Consequential Provisions\) Order 2005 \(S.I. 2005/2078\)](#), [art.15](#), [Sch. 1 para. 2\(2\)](#)

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- F19** Words in s. 69(2)(a) repealed (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58, 60, Sch. 10 para. 19(b), **Sch. 11** (with Sch. 12 para. 8); S.I. 2005/579, **art. 3(g)(i)(vi)(k)**
- F20** Words in s. 69(2)(b) inserted (1.10.1997) by 1997 c. 43, s. 55, **Sch. 4 para. 12(8)**; S.I. 1997/2200, **art. 2**

70 Applications to tribunals concerning restricted patients.

A patient who is a restricted patient within the meaning of section 79 below and is detained in a hospital may apply to a Mental Health Review Tribunal—

- (a) in the period between the expiration of six months and the expiration of 12 months beginning with the date of the relevant hospital order [^{F21}, hospital direction] or transfer direction; and
- (b) in any subsequent period of 12 months.

Textual Amendments

- F21** Words in s. 70(a) inserted (1.10.1997) by 1997 c. 43, s. 55, **Sch. 4 para. 12(9)**; S.I. 1997/2200, art. 2

71 References by Secretary of State concerning restricted patients.

- (1) The Secretary of State may at any time refer the case of a restricted patient to a Mental Health Review Tribunal.
- (2) The Secretary of State shall refer to a Mental Health Review Tribunal the case of any restricted patient detained in a hospital whose case has not been considered by such a tribunal, whether on his own application or otherwise, within the last three years.
- (3) The Secretary of State may by order vary the length of the period mentioned in subsection (2) above.
- (4) Any reference under subsection (1) above in respect of a patient who has been conditionally discharged and not recalled to hospital shall be made to the tribunal for the area in which the patient resides.
- (5) ^{F22}
- (6) ^{F22}

Textual Amendments

- F22** S. 71(5)(6) repealed (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58, 60, Sch. 10 para. 20, **Sch. 11** (with Sch. 12 para. 8); S.I. 2005/579, **art. 3(g)(i)(vi)(k)**

Discharge of patients

72 Powers of tribunals.

- [^{F23}(1) Where application is made to a Mental Health Review Tribunal by or in respect of a patient who is liable to be detained under this Act, the tribunal may in any case direct that the patient be discharged, and—

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- (a) the tribunal shall direct the discharge of a patient liable to be detained under section 2 above if they are not satisfied—
 - (i) that he is then suffering from mental disorder or from mental disorder of a nature or degree which warrants his detention in a hospital for assessment (or for assessment followed by medical treatment) for at least a limited period; or
 - (ii) that his detention as aforesaid is justified in the interests of his own health or safety or with a view to the protection of other persons;
 - (b) the tribunal shall direct the discharge of a patient liable to be detained otherwise than under section 2 above if they are not satisfied—
 - (i) that he is then suffering from mental illness, psychopathic disorder, severe mental impairment or mental impairment or from any of those forms of disorder of a nature or degree which makes it appropriate for him to be liable to be detained in a hospital for medical treatment; or
 - (ii) that it is necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment; or
 - (iii) in the case of an application by virtue of paragraph (g) of section 66(1) above, that the patient, if released, would be likely to act in a manner dangerous to other persons or to himself.]
- (2) In determining whether to direct the discharge of a patient detained otherwise than under section 2 above in a case not falling within paragraph (b) of subsection (1) above, the tribunal shall have regard—
- (a) to the likelihood of medical treatment alleviating or preventing a deterioration of the patient's condition; and
 - (b) in the case of a patient suffering from mental illness or severe mental impairment, to the likelihood of the patient, if discharged, being able to care for himself, to obtain the case he needs or to guard himself against serious exploitation.
- (3) A tribunal may under subsection (1) above direct the discharge of a patient on a future date specified in the direction; and where a tribunal do not direct the discharge of a patient under that subsection the tribunal may—
- (a) with a view to facilitating his discharge on a future date, recommend that he be granted leave of absence or transferred to another hospital or into guardianship; and
 - (b) further consider his case in the event of any such recommendation not being complied with.
- [^{F24}(3A) Where, in the case of an application to a tribunal by or in respect of a patient who is liable to be detained in pursuance of an application for admission for treatment or by virtue of an order or direction for his admission or removal to hospital under Part III of this Act, the tribunal do not direct the discharge of the patient under subsection (1) above, the tribunal may—
- (a) recommend that the responsible medical officer consider whether to make a supervision application in respect of the patient; and
 - (b) further consider his case in the event of no such application being made.]
- (4) Where application is made to a Mental Health Review Tribunal by or in respect of a patient who is subject to guardianship under this Act, the tribunal may in any case direct that the patient be discharged, and shall so direct if they are satisfied—

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- (a) that he is not then suffering from mental illness, psychopathic disorder, severe mental impairment or mental impairment; or
 - (b) that it is not necessary in the interests of the welfare of the patient, or for the protection of other persons, that the patient should remain under such guardianship.
- [^{F25}(4A) Where application is made to a Mental Health Review Tribunal by or in respect of a patient who is subject to after-care under supervision (or, if he has not yet left hospital, is to be so subject after he leaves hospital), the tribunal may in any case direct that the patient shall cease to be so subject (or not become so subject), and shall so direct if they are satisfied—
- (a) in a case where the patient has not yet left hospital, that the conditions set out in section 25A(4) above are not complied with; or
 - (b) in any other case, that the conditions set out in section 25G(4) above are not complied with.]
- (5) Where application is made to a Mental Health Review Tribunal under any provision of this Act by or in respect of a patient and the tribunal do not direct that the patient be discharged [^{F26}or, if he is (or is to be) subject to after-care under supervision, that he cease to be so subject (or not become so subject)], the tribunal may, if satisfied that the patient is suffering from a form of mental disorder other than the form specified in the application, order or direction relating to him, direct that that application, order or direction be amended by substituting for the form of mental disorder specified in it such other form of mental disorder as appears to the tribunal to be appropriate.
- (6) Subsections (1) to (5) above apply in relation to references to a Mental Health Review Tribunal as they apply in relation to applications made to such a tribunal by or in respect of a patient.
- (7) Subsection (1) above shall not apply in the case of a restricted patient except as provided in sections 73 and 74 below.

Textual Amendments

F23 S. 72(1) substituted (26.11.2001) by S.I. 2001/3712, art. 3

F24 S. 72(3A) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), Sch. 1, para. 10(2)

F25 S. 72(4A) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), Sch. 1, para. 10(3)

F26 Words in s. 72(5) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), Sch. 1, para. 10(4)

Modifications etc. (not altering text)

C2 S. 72 applied (with modifications) (1.4.1996) by S.I. 1996/295, reg. 2, Sch.

73 Power to discharge restricted patients.

[^{F27}(1) Where an application to a Mental Health Review Tribunal is made by a restricted patient who is subject to a restriction order, or where the case of such a patient is referred to such a tribunal, the tribunal shall direct the absolute discharge of the patient if—

- (a) the tribunal are not satisfied as to the matters mentioned in paragraph (b)(i) or (ii) of section 72(1) above; and
- (b) the tribunal are satisfied that it is not appropriate for the patient to remain liable to be recalled to hospital for further treatment.

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- (2) Where in the case of any such patient as is mentioned in subsection (1) above—
 - (a) paragraph (a) of that subsection applies; but
 - (b) paragraph (b) of that subsection does not apply,
 the tribunal shall direct the conditional discharge of the patient.]
- (3) Where a patient is absolutely discharged under this section he shall thereupon cease to be liable to be detained by virtue of the relevant hospital order, and the restriction order shall cease to have effect accordingly.
- (4) Where a patient is conditionally discharged under this section—
 - (a) he may be recalled by the Secretary of State under subsection (3) of section 42 above as if he had been conditionally discharged under subsection (2) of that section; and
 - (b) the patient shall comply with such conditions (if any) as may be imposed at the time of discharge by the tribunal or at any subsequent time by the Secretary of State.
- (5) The Secretary of State may from time to time vary any condition imposed (whether by the tribunal or by him) under subsection (4) above.
- (6) Where a restriction order in respect of a patient ceases to have effect after he has been conditionally discharged under this section the patient shall, unless previously recalled, be deemed to be absolutely discharged on the date when the order ceases to have effect and shall cease to be liable to be detained by virtue of the relevant hospital order.
- (7) A tribunal may defer a direction for the conditional discharge of a patient until such arrangements as appear to the tribunal to be necessary for that purpose have been made to their satisfaction; and where by virtue of any such deferment no direction has been given on an application or reference before the time when the patient's case comes before the tribunal on a subsequent application or reference, the previous application or reference shall be treated as one on which no direction under this section can be given.
- (8) This section is without prejudice to section 42 above.

Textual Amendments

F27 S. 73(1)(2) substituted (26.11.2001) by S.I. 2001/3712, art. 4

74 Restricted patients subject to restriction directions.

- (1) Where an application to a Mental Health Review Tribunal is made by a restricted patient who is subject to [^{F28}a limitation direction or] a restriction direction, or where the case of such a patient is referred to such a tribunal, the tribunal—
 - (a) shall notify the Secretary of State whether, in their opinion, the patient would, if subject to a restriction order, be entitled to be absolutely or conditionally discharged under section 73 above; and
 - (b) if they notify him that the patient would be entitled to be conditionally discharged, may recommend that in the event of his not being discharged under this section he should continue to be detained in hospital.

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- (2) If in the case of a patient not falling within subsection (4) below—
- (a) the tribunal notify the Secretary of State that the patient would be entitled to be absolutely or conditionally discharged; and
 - (b) within the period of 90 days beginning with the date of that notification the Secretary of State gives notice to the tribunal that the patient may be so discharged,
- the tribunal shall direct the absolute or, as the case may be, the conditional discharge of the patient.
- (3) Where a patient continues to be liable to be detained in a hospital at the end of the period referred to in subsection (2)(b) above because the Secretary of State has not given the notice there mentioned, the managers of the hospital shall, unless the tribunal have made a recommendation under subsection (1)(b) above, transfer the patient to a prison or other institution in which he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been so removed.
- (4) If, in the case of a patient who is subject to a transfer direction under section 48 above, the tribunal notify the Secretary of State that the patient would be entitled to be absolutely or conditionally discharged, the Secretary of State shall, unless the tribunal have made a recommendation under subsection (1)(b) above, by warrant direct that the patient be remitted to a prison or other institution in which he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been so removed.
- (5) Where a patient is transferred or remitted under subsection (3) or (4) above [^{F29}the relevant hospital direction and the limitation direction or, as the case may be,] the relevant transfer direction and the restriction direction shall cease to have effect on his arrival in the prison or other institution.
- [^{F30}(5A) Where the tribunal have made a recommendation under subsection (1)(b) above in the case of a patient who is subject to a restriction direction or a limitation direction—
- (a) the fact that the restriction direction or limitation direction remains in force does not prevent the making of any application or reference to the Parole Board by or in respect of him or the exercise by him of any power to require the Secretary of State to refer his case to the Parole Board, and
 - (b) if the Parole Board make a direction or recommendation by virtue of which the patient would become entitled to be released (whether unconditionally or on licence) from any prison or other institution in which he might have been detained if he had not been removed to hospital, the restriction direction or limitation direction shall cease to have effect at the time when he would become entitled to be so released.]
- (6) Subsections (3) to (8) of section 73 above shall have effect in relation to this section as they have effect in relation to that section, taking references to the relevant hospital order and the restriction order as references to [^{F31}the hospital direction and the limitation direction or, as the case may be, to] the transfer direction and the restriction direction.
- (7) This section is without prejudice to sections 50 to 53 above in their application to patients who are not discharged under this section.

Status: Point in time view as at 01/12/2007. This version of this part contains provisions that are not valid for this point in time.

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Textual Amendments

- F28** Words in s. 74(1) inserted (1.10.1997) by 1997 c. 43, s. 55, **Sch. 4 para. 12(10)**; S.I. 1997/2200, **art. 2**
- F29** Words in s. 74(5) inserted (1.10.1997) by 1997 c. 43, s. 55, **Sch. 4 para. 12(11)**; S.I. 1997/2200, **art. 2**
- F30** S. 74(5A) inserted (20.1.2004) by Criminal Justice Act 2003 (c. 44), **ss. 295, 336**; S.I. 2004/81, **art. 2(b)**
- F31** Words in s. 74(6) inserted (1.10.1997) by 1997 c. 43, s. 55, **Sch. 4 para. 12(12)**; S.I. 1997/2200, **art. 2**

75 Applications and references concerning conditionally discharged restricted patients.

- (1) Where a restricted patient has been conditionally discharged under section 42(2), 73 or 74 above and is subsequently recalled to hospital—
- (a) the Secretary of State shall, within one month of the day on which the patient returns or is returned to hospital, refer his case to a Mental Health Review Tribunal; and
 - (b) section 70 above shall apply to the patient as if the relevant hospital order [^{F32}, hospital direction] or transfer direction had been made on that day.
- (2) Where a restricted patient has been conditionally discharged as aforesaid but has not been recalled to hospital he may apply to a Mental Health Review Tribunal—
- (a) in the period between the expiration of 12 months and the expiration of two years beginning with the date on which he was conditionally discharged; and
 - (b) in any subsequent period of two years.
- (3) Sections 73 and 74 above shall not apply to an application under subsection (2) above but on any such application the tribunal may—
- (a) vary any condition to which the patient is subject in connection with his discharge or impose any condition which might have been imposed in connection therewith; or
 - (b) direct that the restriction order [^{F33}, limitation direction] or restriction direction to which he is subject shall cease to have effect;

and if the tribunal give a direction under paragraph (b) above the patient shall cease to be liable to be detained by virtue of the relevant hospital order [^{F34}, hospital direction] or transfer direction.

Textual Amendments

- F32** Words in s. 75(1)(b) inserted (1.10.1997) by 1997 c. 43, s. 55, **Sch. 4 para. 12(13)**; S.I. 1997/2200, **art. 2**
- F33** Words in s. 75(3)(b) inserted (1.10.2007) by Mental Health Act 2007 (c. 12), **ss. 41(a), 56** (with Sch. 10); S.I. 2007/2798, **art. 2(e)**
- F34** Words in s. 75(3) inserted (1.10.2007) by Mental Health Act 2007 (c. 12), **ss. 41(b), 56** (with Sch. 10); S.I. 2007/2798, **art. 2(e)**

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General

76 Visiting and examination of patients.

- (1) For the purpose of advising whether an application to a Mental Health Review Tribunal should be made by or in respect of a patient who is liable to be detained or subject to guardianship [^{F35}or to after-care under supervision (or, if he has not yet left hospital, is to be subject to after-care under supervision after he leaves hospital)] under Part II of this Act or of furnishing information as to the condition of a patient for the purposes of such an application, any registered medical practitioner authorised by or on behalf of the patient or other person who is entitled to make or has made the application—
 - (a) may at any reasonable time visit the patient and examine him in private, and
 - (b) may require the production of and inspect any records relating to the detention or treatment of the patient in any hospital [^{F36}or to any after-care services provided for the patient under section 117 below.].
- (2) Section 32 above shall apply for the purposes of this section as it applies for the purposes of Part II of this Act.

Textual Amendments

F35 Words in s. 76(1) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 11(a)

F36 Words in s. 76(1)(b) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 11(b)

Modifications etc. (not altering text)

C3 S. 76 applied (with modifications) (1.4.1996) by S.I. 1996/295, reg. 2, **Sch.**

77 General provisions concerning tribunal applications.

- (1) No application shall be made to a Mental Health Review Tribunal by or in respect of a patient except in such cases and at such times as are expressly provided by this Act.
- (2) Where under this Act any person is authorised to make an application to a Mental Health Review Tribunal within a specified period, not more than one such application shall be made by that person within that period but for that purpose there shall be disregarded any application which is withdrawn in accordance with rules made under section 78 below.
- (3) Subject to subsection (4) below an application to a Mental Health Review Tribunal authorised to be made by or in respect of a patient under this Act shall be made by notice in writing addressed to the tribunal for the area in which the hospital in which the patient is detained is situated or in which the patient is residing under guardianship [^{F37}or when subject to after-care under supervision (or in which he is to reside on becoming so subject after leaving hospital)] as the case may be.
- (4) Any application under section 75(2) above shall be made to the tribunal for the area in which the patient resides.

Textual Amendments

F37 Words in s. 77(3) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 12

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78 Procedure of tribunals.

- (1) The Lord Chancellor may make rules with respect to the making of applications to Mental Health Review Tribunals and with respect to the proceedings of such tribunals and matters incidental to or consequential on such proceedings.
- (2) Rules made under this section may in particular make provision—
 - (a) for enabling a tribunal, or the chairman of a tribunal, to postpone the consideration of any application by or in respect of a patient, or of any such application of any specified class, until the expiration of such period (not exceeding 12 months) as may be specified in the rules from the date on which an application by or in respect of the same patient was last considered and determined by that or any other tribunal under this Act;
 - (b) for the transfer of proceedings from one tribunal to another in any case where, after the making of the application, the patient is removed out of the area of the tribunal to which it was made;
 - (c) for restricting the persons qualified to serve as members of a tribunal for the consideration of any application, or of an application of any specified class;
 - (d) for enabling a tribunal to dispose of an application without a formal hearing where such a hearing is not requested by the applicant or it appears to the tribunal that such a hearing would be detrimental to the health of the patient;
 - (e) for enabling a tribunal to exclude members of the public, or any specified class of members of the public, from any proceedings of the tribunal, or to prohibit the publication of reports of any such proceedings or the names of any persons concerned in such proceedings;
 - (f) for regulating the circumstances in which, and the persons by whom, applicants and patients in respect of whom applications are made to a tribunal may, if not desiring to conduct their own case, be represented for the purposes of those applications;
 - (g) for regulating the methods by which information relevant to an application may be obtained by or furnished to the tribunal, and in particular for authorising the members of a tribunal, or any one or more of them, to visit and interview in private any patient by or in respect of whom an application has been made;
 - (h) for making available to any applicant, and to any patient in respect of whom an application is made to a tribunal, copies of any documents obtained by or furnished to the tribunal in connection with the application, and a statement of the substance of any oral information so obtained or furnished except where the tribunal considers it undesirable in the interests of the patient or for other special reasons;
 - (i) for requiring a tribunal, if so requested in accordance with the rules, to furnish such statements of the reasons for any decision given by the tribunal as may be prescribed by the rules, subject to any provision made by the rules for withholding such a statement from a patient or any other person in cases where the tribunal considers that furnishing it would be undesirable in the interests of the patient or for other special reasons;
 - (j) for conferring on the tribunals such ancillary powers as the Lord Chancellor thinks necessary for the purposes of the exercise of their functions under this Act;
 - (k) for enabling any functions of a tribunal which relate to matters preliminary or incidental to an application to be performed by the chairman of the tribunal.

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- (3) Subsections (1) and (2) above apply in relation to references to Mental Health Review Tribunals as they apply in relation to applications to such tribunals by or in respect of patients.
- (4) Rules under this section may make provision as to the procedure to be adopted in cases concerning restricted patients and, in particular—
 - (a) for restricting the persons qualified to serve as president of a tribunal for the consideration of an application or reference relating to a restricted patient;
 - (b) for the transfer of proceedings from one tribunal to another in any case where, after the making of a reference or application in accordance with section 71(4) or 77(4) above, the patient ceases to reside in the area of the tribunal to which the reference or application was made.
- (5) Rules under this section may be so framed as to apply to all applications or references or to applications or references of any specified class and may make different provision in relation to different cases.
- (6) Any functions conferred on the chairman of a Mental Health Review Tribunal by rules under this section may, if for any reason he is unable to act, be exercised by another member of that tribunal appointed by him for the purpose.
- (7) A Mental Health Review Tribunal may pay allowances in respect of travelling expenses, subsistence and loss of earnings to any person attending the tribunal as an applicant or witness, to the patient who is the subject of the proceedings if he attends otherwise than as the applicant or a witness and to any person (other than counsel or a solicitor) who attends as the representative of an applicant.
- (8) A Mental Health Review Tribunal may, and if so required by the High Court shall, state in the form of a special case for determination by the High Court any question of law which may arise before them.
- (9) [^{F38}Part I of the Arbitration Act 1996] shall not apply to any proceedings before a Mental Health Review Tribunal except so far as any provisions of that Act may be applied, with or without modifications, by rules made under this section.

Textual Amendments

F38 Words in s. 78(9) substituted (31.1.1997) by 1996 c. 23, s. 107(1), Sch. 3, para. 40; S.I. 1996/3146, art. 3 (subject to savings in art. 4, Sch. 2)

VALID FROM 03/11/2008

[^{F39}78A Appeal from the Mental Health Review Tribunal for Wales to the Upper Tribunal

- (1) A party to any proceedings before the Mental Health Review Tribunal for Wales may appeal to the Upper Tribunal on any point of law arising from a decision made by the Mental Health Review Tribunal for Wales in those proceedings.
- (2) An appeal may be brought under subsection (1) above only if, on an application made by the party concerned, the Mental Health Review Tribunal for Wales or the Upper Tribunal has given its permission for the appeal to be brought.

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- (3) Section 12 of the Tribunals, Courts and Enforcement Act 2007 (proceedings on appeal to the Upper Tribunal) applies in relation to appeals to the Upper Tribunal under this section as it applies in relation to appeals to it under section 11 of that Act, but as if references to the First-tier Tribunal were references to the Mental Health Review Tribunal for Wales.]

Textual Amendments

- F39** S. 78A inserted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, Sch. 3 para. 60

79 Interpretation of Part V.

- (1) In this Part of this Act “restricted patient” means a patient who is subject to a restriction order [^{F40}, limitation direction]or restriction direction and this Part of this Act shall, subject to the provisions of this section, have effect in relation to any person who—
- [^{F41}(a) is treated by virtue of any enactment as subject to a hospital order and a restriction order; or]
- (b) ^{F42}
- [^{F43}(c) is treated as subject to a hospital order and a restriction order, or to a hospital direction and a limitation direction, or to a transfer direction and a restriction direction, by virtue of any provision of Part 6 of this Act (except section 80D(3), 82A(2) or 85A(2) below),]
- as it has effect in relation to a restricted patient.
- (2) Subject to the following provisions of this section, in this Part of this Act “the relevant hospital order”[^{F44}, “the relevant hospital direction”]and “the relevant transfer direction”, in relation to a restricted patient, mean the hospital order [^{F44}, the hospital direction]or transfer direction by virtue of which he is liable to be detained in a hospital.
- (3) In the case of a person within paragraph (a) of subsection (1) above, references in this Part of this Act to the relevant hospital order or restriction order shall be construed as references to the direction referred to in that paragraph.
- (4) In the case of a person within paragraph (b) of subsection (1) above, references in this Part of this Act to the relevant hospital order or restriction order shall be construed as references to the order under the provisions mentioned in that paragraph.
- (5) In the case of a person within paragraph (c) of subsection (1) above, references in this Part of this Act to the relevant hospital order, [^{F45}the relevant hospital direction,] the relevant transfer direction, the restriction order [^{F46}, the limitation direction] or the restriction direction or to a transfer direction under section 48 above shall be construed as references to the hospital order, [^{F47}hospital direction,] transfer direction, restriction order, [^{F48}limitation direction,] restriction direction or transfer direction under that section to which that person is treated as subject by virtue of the provisions mentioned in that paragraph.
- [^{F49}(5A) Section 75 above shall, subject to the modifications in subsection (5C) below, have effect in relation to a qualifying patient as it has effect in relation to a restricted patient who is conditionally discharged under section 42(2), 73 or 74 above.

Status: Point in time view as at 01/12/2007. This version of this part contains provisions that are not valid for this point in time.

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- (5B) A patient is a qualifying patient if he is treated by virtue of section 80D(3), 82A(2) or 85A(2) below as if he had been conditionally discharged and were subject to a hospital order and a restriction order, or to a hospital direction and a limitation direction, or to a transfer direction and a restriction direction.
- (5C) The modifications mentioned in subsection (5A) above are—
- (a) references to the relevant hospital order, hospital direction or transfer direction, or to the restriction order, limitation direction or restriction direction to which the patient is subject, shall be construed as references to the hospital order, hospital direction or transfer direction, or restriction order, limitation direction or restriction direction, to which the patient is treated as subject by virtue of section 80D(3), 82A(2) or 85A(2) below; and
 - (b) the reference to the date on which the patient was conditionally discharged shall be construed as a reference to the date on which he was treated as conditionally discharged by virtue of a provision mentioned in paragraph (a) above.]
- (6) In this Part of this Act, unless the context otherwise requires, “hospital” means a hospital ^[F50], and “the responsible medical officer” means the responsible medical officer.]within the meaning of Part II of this Act.
- [F51(7) In this Part of this Act any reference to the area of a tribunal is—
- (a) in relation to a tribunal for a region of England, a reference to that region; and
 - (b) in relation to the tribunal for Wales, a reference to Wales.]

Textual Amendments

- F40** Words in s. 79(1) inserted (1.10.1997) by 1997 c. 43, s. 55, **Sch. 4**, para. 12(14); S.I. 1997/2200, **art. 2**
- F41** S. 79(1)(a) substituted (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(1), 60, **Sch. 10 para. 21(a)** (with Sch. 12 para. 8); S.I. 2005/579, **art. 3(g)(k)**
- F42** S. 79(1)(b) repealed (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58, 60, Sch. 10 para. 19(b), **Sch. 11** (with Sch. 12 para. 8); S.I. 2005/579, **art. 3(g)(i)(vi)(k)**
- F43** S. 79(1)(c) substituted (1.10.2007) by Mental Health Act 2007 (c. 12), ss. 39, 56, **Sch. 5 para. 19(2)** (with Sch. 10); S.I. 2007/2798, **art. 2(c)(viii)**
- F44** Words in s. 79(2) inserted (1.10.1997) by 1997 c. 43, s. 55(2), **Sch. 4**, para. 12(15)(a)(b); S.I. 1997/2200, **art. 2**
- F45** Words in s. 79(5) inserted (1.10.2007) by Mental Health Act 2007 (c. 12), ss. 39, 56, **Sch. 5 para. 19(3)(a)** (with Sch. 10); S.I. 2007/2798, **art. 2(c)(viii)**
- F46** Words in s. 79(5) inserted (1.10.2007) by Mental Health Act 2007 (c. 12), ss. 39, 56, **Sch. 5 para. 19(3)(b)** (with Sch. 10); S.I. 2007/2798, **art. 2(c)(viii)**
- F47** Words in s. 79(5) inserted (1.10.2007) by Mental Health Act 2007 (c. 12), ss. 39, 56, **Sch. 5 para. 19(3)(c)** (with Sch. 10); S.I. 2007/2798, **art. 2(c)(viii)**
- F48** Words in s. 79(5) inserted (1.10.2007) by Mental Health Act 2007 (c. 12), ss. 39, 56, **Sch. 5 para. 19(3)(d)** (with Sch. 10); S.I. 2007/2798, **art. 2(c)(viii)**
- F49** S. 79(5A)-(5C) inserted (1.10.2007) by Mental Health Act 2007 (c. 12), ss. 39, 56, **Sch. 5 para. 19(4)** (with Sch. 10); S.I. 2007/2798, **art. 2(c)(viii)**
- F50** Words in s. 79(6) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 13
- F51** S. 79(7) inserted (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8, **Sch. 1**, Pt. III para. 107(7)

Status:

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