



# Mental Health Act 1983

## 1983 CHAPTER 20

### PART V

#### MENTAL HEALTH REVIEW TRIBUNALS

##### *Constitution etc.*

#### 65 Mental Health Review [<sup>F1</sup>Tribunal for Wales].

[<sup>F2</sup>(1) There shall [<sup>F3</sup>be a Mental Health Review Tribunal for Wales.]

(1A) The purpose of [<sup>F4</sup>that tribunal] is to deal with applications and references by and in respect of patients under the provisions of this Act.]

(2) The provisions of Schedule 2 to this Act shall have effect with respect to the constitution of [<sup>F5</sup>the Mental Health Review Tribunal for Wales].

(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 [<sup>F6</sup>the Mental Health Review Tribunal for Wales] may be exercised by any three or more of its members, and references in this Act to [<sup>F6</sup>the Mental Health Review Tribunal for Wales] shall be construed accordingly.

[<sup>F7</sup>(4) The Welsh Ministers may pay to the members of the Mental Health Review Tribunal for Wales such remuneration and allowances as they may determine, and defray the expenses of that tribunal to such amount as they may determine, and may provide for that tribunal such officers and servants, and such accommodation, as that tribunal may require.]

#### Textual Amendments

**F1** S. 65: word in title substituted (3.11.2008) for words by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, [Sch. 3 para. 45\(a\)](#)

**F2** S. 65(1)(1A) substituted (3.11.2008) for s. 65(1)-(1C) by [Mental Health Act 2007 \(c. 12\)](#), ss. [38\(2\)](#), 56 (with [Sch. 10](#)); [S.I. 2008/1900](#), [art. 2\(m\)](#) (with art. 3, [Sch.](#))

*Status: Point in time view as at 01/06/2009.*

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- F3** Words in s. 65(1) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 45(b)**
- F4** Words in s. 65(1A) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 45(c)**
- F5** Words in s. 65(2) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 45(d)**
- F6** Words in s. 65(3) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 45(e)**
- F7** S. 65(4) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 45(f)**

**Modifications etc. (not altering text)**

- C1** S. 65(1): functions transferred (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), arts. 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
- [<sup>F8</sup>(ca) a community treatment order is made in respect of a patient; or
- (cb) a community treatment order is revoked under section 17F above in respect of a patient; or]
- (d) <sup>F9</sup> .....
- (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 [<sup>F10</sup>under section 23 above] ; or
- [<sup>F11</sup>(fza) a report is furnished under section 20A above in respect of a patient and the patient is not discharged under section 23 above; or]
- [<sup>F12</sup>(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]
- [<sup>F13</sup>(faa) a report is furnished under subsection (2) of section 21B above in respect of a community patient and subsection (6A) of that section applies (or subsections (6A) and (6B)(b) of that section apply) in the case of the report; or]
- (fb) <sup>F14</sup> .....
- (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 [<sup>F15</sup>or a community patient] ; or
- (ga) <sup>F16</sup> .....
- (gb) <sup>F16</sup> .....
- (gc) <sup>F16</sup> .....

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- (h) an order is made under section 29 above [<sup>F17</sup>on the ground specified in paragraph (c) or (d) of subsection (3) of that section] in respect of a patient who is or subsequently becomes liable to be detained or subject to guardianship under Part II of this Act [<sup>F18</sup>or who is a community patient] ,  
an application may be made to [<sup>F19</sup>the appropriate tribunal] within the relevant period—
  - (i) by the patient (except in the cases mentioned in paragraphs (g) and (h) above [<sup>F20</sup> . . . . .
  - (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 [<sup>F21</sup>case mentioned in paragraph (c)] of that subsection, six months beginning with the day on which the application is accepted;
  - [<sup>F22</sup>(ca) in the case mentioned in paragraph (ca) of that subsection, six months beginning with the day on which the community treatment order is made;
  - (cb) in the case mentioned in paragraph (cb) of that subsection, six months beginning with the day on which the community treatment order is revoked;]
  - (d) [<sup>F23</sup>in the case mentioned in paragraph (g)] [<sup>F24</sup> . . . 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) [<sup>F25</sup>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;
  - [<sup>F26</sup>(fza) in the cases mentioned in paragraphs (fza) and (faa) of that subsection, the period or periods for which the community treatment period is extended by virtue of the report;]
  - (fa) [<sup>F27</sup> . . . . .
  - (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.
- [<sup>F28</sup>(2A) Nothing in subsection (1)(b) above entitles a community patient to make an application by virtue of that provision even if he is admitted to a hospital on being recalled there under section 17E above.]
- (3) Section 32 above shall apply for the purposes of this section as it applies for the purposes of Part II of this Act.
- [<sup>F29</sup>(4) In this Act “the appropriate tribunal” means the First-tier Tribunal or the Mental Health Review Tribunal for Wales.
- (5) For provision determining to which of those tribunals applications by or in respect of a patient under this Act shall be made, see section 77(3) and (4) below.]

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### Textual Amendments

- F8** S. 66(1)(ca)(cb) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 18(2)(a)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F9** S. 66(1)(d) and word "or" at end of paragraph repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 55, 56, **Sch. 11 Pt. 1** (with Sch. 10); S.I. 2008/1900, **art. 2(p)** (with art. 3, Sch.)
- F10** Words in s. 66(1)(f) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 18(2)(b)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F11** S. 66(1)(fza) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 18(2)(c)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F12** S. 66(1)(fa)(fb) inserted (1.4.1996) by 1995 c. 52, **ss. 2(6)(a)**, 7(2)
- F13** S. 66(1)(faa) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 18(2)(d)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F14** S. 66(1)(fb) and word "or" at end of paragraph repealed (3.11.2005) by Mental Health Act 2007 (c. 12), ss. 55, 56, **Sch. 11 Pt. 1** (with Sch. 10); S.I. 2008/1900, **art. 2(p)** (with art. 3, Sch.)
- F15** Words in s. 66(1)(g) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 18(2)(e)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F16** S. 66(1)(ga)(gb)(gc) and the word "or" at the end of each paragraph repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 55, 56, **Sch. 11 Pt. 5** (with Sch. 10); S.I. 2008/1210, **art. 2(d)** (with art. 4)
- F17** Words in s. 66(1)(h) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), **ss. 25**, 56 (with Sch. 10); S.I. 2008/1900, **art. 2(f)** (with art. 3, Sch.)
- F18** Words in S. 66(1)(h) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 18(2)(f)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F19** Words in s. 66(1) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), **art. 6, Sch. 3 para. 46(a)**
- F20** Words in s. 66(1)(i) repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 55, 56, **Sch. 11 Pt. 5** (with Sch. 10); S.I. 2008/1210, **art. 2(d)** (with art. 4)
- F21** Words in s. 66(2)(c) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), **ss. 36(3)**, 56 (with Sch. 10); S.I. 2008/1210, **art. 2(c)** (with art. 4)
- F22** S. 66(2)(ca)(cb) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 18(3)(a)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F23** Words in s. 66(2)(d) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 1, 56, **Sch. 1 para. 13** (with Sch. 10); S.I. 2008/1210, **art. 2(a)** (with art. 4)
- F24** Words in s. 66(2)(d) repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 55, 56, **Sch. 11 Pt. 5** (with Sch. 10); S.I. 2008/1210, **art. 2(d)** (with art. 4)
- F25** Words in s. 66(2)(f) substituted (1.4.1996) by 1995 c. 52, **ss. 2(6)(b)**, 7(2),
- F26** S. 66(2)(fza) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 18(3)(b)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F27** S. 66(2)(fa) repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 55, 56, **Sch. 11 Pt. 5** (with Sch. 10); S.I. 2008/1210, **art. 2(d)** (with art. 4)
- F28** S. 66(2A) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 18(4)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F29** S. 66(4)(5) inserted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), **art. 6, Sch. 3 para. 46(b)**

### Modifications etc. (not altering text)

- C2** S. 66 modified (3.11.2008) by The Mental Health Act 2007 (Commencement No. 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions) Order 2008 (S.I. 2008/1210), **art. 6(f)**

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## 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 [<sup>F30</sup>the appropriate tribunal] the case of any patient who is liable to be detained or subject to guardianship <sup>F31</sup> . . . under Part II of this Act [<sup>F32</sup>or of any community patient] .
- (2) For the purpose of furnishing information for the purposes of a reference under subsection (1) above any registered medical practitioner [<sup>F33</sup>or approved clinician] authorised by or on behalf of the patient may, at any reasonable time, visit the patient and examine him in private and require the production of and inspect any records relating to the detention or treatment of the patient in any hospital [<sup>F34</sup>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

- F30** Words in s. 67(1) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), [art. 6](#), [Sch. 3 para. 47](#)
- F31** Words in s. 67(1) repealed (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 55, 56](#), [Sch. 11 Pt. 5](#) (with [Sch. 10](#)); [S.I. 2008/1210](#), [art. 2\(d\)](#) (with [art. 4](#))
- F32** Words in s. 67(1) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 32, 56](#), [Sch. 3 para. 19](#) (with [Sch. 10](#)); [S.I. 2008/1900](#), [art. 2\(i\)](#) (with [art. 3](#), [Sch.](#))
- F33** Words in s. 67(2) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 13\(2\)\(a\)](#), [56](#) (with [Sch. 10](#)); [S.I. 2008/1900](#), [art. 2\(b\)](#) (with [art. 3](#), [Sch.](#))
- F34** Words in s. 67(2) inserted (1.4.1996) by [1995 c. 52](#), [ss. 1\(2\), 7\(2\)](#), [Sch. 1](#), [para. 8\(3\)](#)

### Modifications etc. (not altering text)

- C3** [S. 67\(1\)](#) modified (3.11.2008) by [The Mental Health Act 2007 \(Commencement No. 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions\) Order 2008 \(S.I. 2008/1210\)](#), [art. 6\(g\)](#)

## <sup>F35</sup>68 Duty of managers of hospitals to refer cases to tribunal.

- (1) This section applies in respect of the following patients—
  - (a) a patient who is admitted to a hospital in pursuance of an application for admission for assessment;
  - (b) a patient who is admitted to a hospital in pursuance of an application for admission for treatment;
  - (c) a community patient;
  - (d) a patient whose community treatment order is revoked under section 17F above;
  - (e) a patient who is transferred from guardianship to a hospital in pursuance of regulations made under section 19 above.
- (2) On expiry of the period of six months beginning with the applicable day, the managers of the hospital shall refer the patient's case to [<sup>F36</sup>the appropriate tribunal].
- (3) But they shall not do so if during that period—
  - (a) any right has been exercised by or in respect of the patient by virtue of any of paragraphs (b), (ca), (cb), (e), (g) and (h) of section 66(1) above;

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- (b) a reference has been made in respect of the patient under section 67(1) above, not being a reference made while the patient is or was liable to be detained in pursuance of an application for admission for assessment; or
  - (c) a reference has been made in respect of the patient under subsection (7) below.
- (4) A person who applies to a tribunal but subsequently withdraws his application shall be treated for these purposes as not having exercised his right to apply, and if he withdraws his application on a date after expiry of the period mentioned in subsection (2) above, the managers shall refer the patient's case as soon as possible after that date.
- (5) In subsection (2) above, “the applicable day” means—
- (a) in the case of a patient who is admitted to a hospital in pursuance of an application for admission for assessment, the day on which the patient was so admitted;
  - (b) in the case of a patient who is admitted to a hospital in pursuance of an application for admission for treatment—
    - (i) the day on which the patient was so admitted; or
    - (ii) if, when he was so admitted, he was already liable to be detained in pursuance of an application for admission for assessment, the day on which he was originally admitted in pursuance of the application for admission for assessment;
  - (c) in the case of a community patient or a patient whose community treatment order is revoked under section 17F above, the day mentioned in subparagraph (i) or (ii), as the case may be, of paragraph (b) above;
  - (d) in the case of a patient who is transferred from guardianship to a hospital, the day on which he was so transferred.
- (6) The managers of the hospital shall also refer the patient's case to [<sup>F37</sup>the appropriate tribunal] if a period of more than three years (or, if the patient has not attained the age of 18 years, one year) has elapsed since his case was last considered by such a tribunal, whether on his own application or otherwise.
- (7) If, in the case of a community patient, the community treatment order is revoked under section 17F above, the managers of the hospital shall also refer the patient's case to [<sup>F38</sup>the appropriate tribunal] as soon as possible after the order is revoked.
- (8) For the purposes of furnishing information for the purposes of a reference under this section, a registered medical practitioner or approved clinician authorised by or on behalf of the patient may at any reasonable time—
- (a) visit and examine the patient in private; and
  - (b) require the production of and inspect any records relating to the detention or treatment of the patient in any hospital or any after-care services provided for him under section 117 below.
- (9) Reference in this section to the managers of the hospital—
- (a) in relation to a community patient, is to the managers of the responsible hospital;
  - (b) in relation to any other patient, is to the managers of the hospital in which he is liable to be detained.]

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### Textual Amendments

- F35** 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.](#))
- F36** Words in s. 68(2) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), [art. 6](#), [Sch. 3 para. 48](#)
- F37** Words in s. 68(6) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), [art. 6](#), [Sch. 3 para. 48](#)
- F38** Words in s. 68(7) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), [art. 6](#), [Sch. 3 para. 48](#)

### [<sup>F39</sup> 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 [<sup>F40</sup>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.

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

#### Textual Amendments

- F39** 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.](#))
- F40** 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 <sup>F41</sup>[the appropriate tribunal] may also be made—
- <sup>F42</sup>(a) in respect of a patient liable to be detained in pursuance of a hospital order or a community patient who was so liable immediately before he became a community patient, by the nearest relative of the patient in any period in which an application may be made by the patient under any such provision as so applied;]
  - (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 <sup>F43</sup>[hospital direction] or transfer direction by virtue of section 41(5) above <sup>F44</sup>[or section 80B(2), 82(2) or 85(2) below.] ; or
  - (b) is subject to a direction having the same effect as a hospital order by virtue of section <sup>F45</sup>... 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 <sup>F46</sup>[the appropriate 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.
- <sup>F47</sup>(3) The provisions of section 66 above as applied by section 40(4) above are subject to subsection (4) below.
- (4) If the initial detention period has not elapsed when the relevant application period begins, the right of a hospital order patient to make an application by virtue of



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paragraph (ca) or (cb) of section 66(1) above shall be exercisable only during whatever remains of the relevant application period after the initial detention period has elapsed.

(5) In subsection (4) above—

- (a) “hospital order patient” means a patient who is subject to a hospital order, excluding a patient of a kind mentioned in paragraph (a) or (b) of subsection (2) above;
- (b) “the initial detention period”, in relation to a hospital order patient, means the period of six months beginning with the date of the hospital order; and
- (c) “the relevant application period” means the relevant period mentioned in paragraph (ca) or (cb), as the case may be, of section 66(2) above.]

#### Textual Amendments

- F41** Words in s. 69(1) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 50**
- F42** S. 69(1)(a) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 32, 56, **Sch. 3 para. 20(a)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F43** 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)**
- F44** Words in s. 69(2)(a) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 39, 56, **Sch. 5 para. 18(b)** (with Sch. 10); S.I. 2008/1900, **art. 2(n)** (with art. 3, Sch.)
- F45** Words in s. 69(2)(b) repealed (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 32, 55, 56, Sch. 3 para. 20(b), **Sch. 11 Pt. 5** (with Sch. 10); S.I. 2008/1210, **art. 2(d)** (with art. 4)
- F46** Words in s. 69(2) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 50**
- F47** S. 69(3)-(5) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 32, 56, **Sch. 3 para. 20(c)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)

## 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 [<sup>F48</sup>the appropriate 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 [<sup>F49</sup>, hospital direction] or transfer direction; and
- (b) in any subsequent period of 12 months.

#### Textual Amendments

- F48** Words in s. 70 substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 51**
- F49** 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 [<sup>F50</sup>the appropriate tribunal].

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- (2) The Secretary of State shall refer to [F50 the appropriate 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.
- [F51(3A) An order under subsection (3) above may include such transitional, consequential, incidental or supplemental provision as the Secretary of State thinks fit.]
- (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) F52 .....
- (6) F52 .....

#### Textual Amendments

- F50** Words in s. 71(1)(2) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 52**
- F51** S. 71(3A) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. **37(4)**, 56 (with Sch. 10); S.I. 2008/1900, **art. 2(1)** (with art. 3, Sch.)
- F52** 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.

- [F53(1) Where application is made to [F54 the appropriate tribunal] by or in respect of a patient who is liable to be detained under this Act [F55 or is a community patient] , the tribunal may in any case direct that the patient be discharged, and—
- (a) the tribunal shall direct the discharge of a patient liable to be detained under section 2 above if [F56 it is] 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 [F56 it is] not satisfied—
- (i) that he is then suffering from [F57 mental disorder or from mental 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
- [ that appropriate medical treatment is available for him; or]
- F58 (ia)

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(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.

<sup>F59</sup>(c) [ the tribunal shall direct the discharge of a community patient if <sup>F56</sup>it is] not satisfied—

- (i) that he is then suffering from mental disorder or mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment; or
- (ii) that it is necessary for his health or safety or for the protection of other persons that he should receive such treatment; or
- (iii) that it is necessary that the responsible clinician should be able to exercise the power under section 17E(1) above to recall the patient to hospital; or
- (iv) that appropriate medical treatment is available for him; or
- (v) in the case of an application by virtue of paragraph (g) of section 66(1) above, that the patient, if discharged, would be likely to act in a manner dangerous to other persons or to himself.]]

<sup>F60</sup>(1A) In determining whether the criterion in subsection (1)(c)(iii) above is met, the tribunal shall, in particular, consider, having regard to the patient's history of mental disorder and any other relevant factors, what risk there would be of a deterioration of the patient's condition if he were to continue not to be detained in a hospital (as a result, for example, of his refusing or neglecting to receive the medical treatment he requires for his mental disorder).]

(2) <sup>F61</sup> .....

(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 <sup>F62</sup>does 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.

<sup>F63</sup>(3A) Subsection (1) above does not require a tribunal to direct the discharge of a patient just because <sup>F64</sup>it thinks] it might be appropriate for the patient to be discharged (subject to the possibility of recall) under a community treatment order; and a tribunal—

- (a) may recommend that the responsible clinician consider whether to make a community treatment order; and
- (b) may (but need not) further consider the patient's case if the responsible clinician does not make an order.]

(4) Where application is made to <sup>F65</sup>the appropriate 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 <sup>F66</sup>it is] satisfied—

- (a) that he is not then suffering from <sup>F67</sup>mental disorder] ; 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.

(4A) <sup>F68</sup> .....

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- (5) <sup>F69</sup> .....
- (6) Subsections (1) to [<sup>F70</sup>(4)] above apply in relation to references to [<sup>F71</sup>the appropriate tribunal] as they apply in relation to applications made to [<sup>F72</sup>the appropriate 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

- F53** S. 72(1) substituted (26.11.2001) by S.I. 2001/3712, **art. 3**
- F54** Words in s. 72(1) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 6, **Sch. 3 para. 53(a)**
- F55** Words in s. 72(1) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 21(2)(a)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F56** Words in s. 72(1)(a)-(c) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 6, **Sch. 3 para. 53(b)**
- F57** Words in s. 72(1)(b)(i) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 1, 56, **Sch. 1 para. 14(a)** (with Sch. 10); S.I. 2008/1900, **art. 2(a)** (with art. 3, Sch.)
- F58** S. 72(1)(b)(ia) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 4(8)(a), 56 (with Sch. 10); S.I. 2008/1900, **art. 2(b)** (with art. 3, Sch.)
- F59** S. 72(1)(c) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 21(2)(b)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F60** S. 72(1A) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 21(3)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F61** S. 72(2) repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 4(8)(b), 55, 56, **Sch. 11 Pt. 2** (with Sch. 10); S.I. 2008/1900, **art. 2(b)(p)** (with art. 3, Sch.)
- F62** Words in s. 72(3) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 6, **Sch. 3 para. 53(c)**
- F63** S. 72(3A) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 21(4)** (with Sch. 10); S.I. 2008/1210, **art. 2(b)** (with art. 4)
- F64** Words in s. 72(3A) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 6, **Sch. 3 para. 53(d)**
- F65** Words in s. 72(4) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 6, **Sch. 3 para. 53(a)**
- F66** Words in s. 72(4) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 6, **Sch. 3 para. 53(b)**
- F67** Words in s. 72(4)(a) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 1, 56, **Sch. 1 para. 14(b)** (with Sch. 10); S.I. 2008/1900, **art. 2(a)** (with art. 3, Sch.)
- F68** S. 72(4A) repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 55, 56, **Sch. 11 Pt. 5** (with Sch. 10); S.I. 2008/1210, **art. 2(d)** (with art. 4)
- F69** S. 72(5) repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 55, 56, **Sch. 11 Pt. 1** (with Sch. 10); S.I. 2008/1900, **art. 2(a)** (with art. 3, Sch.)
- F70** Word in s. 72(6) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 1, 56, **Sch. 1 para. 14(c)** (with Sch. 10); S.I. 2008/1900, **art. 2(a)** (with art. 3, Sch.)
- F71** Words in s. 72(6) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 6, **Sch. 3 para. 53(a)**
- F72** Words in s. 72(6) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 6, **Sch. 3 para. 53(e)**

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**Modifications etc. (not altering text)**

C4 S. 72 applied (with modifications) (1.4.1996) by S.I. 1996/295, reg. 2, Sch.

**73 Power to discharge restricted patients.**

- [<sup>F73</sup>(1) Where an application to [<sup>F74</sup>the appropriate 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 [<sup>F75</sup>the appropriate tribunal], the tribunal shall direct the absolute discharge of the patient if—
- (a) [<sup>F76</sup>the tribunal is] not satisfied as to the matters mentioned in paragraph (b) (i) [<sup>F77</sup>, (ii) or (ia)] of section 72(1) above; and
  - (b) [<sup>F76</sup>the tribunal is] satisfied that it is not appropriate for the patient to remain liable to be recalled to hospital for further treatment.
- (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 [<sup>F78</sup>its 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.

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#### Textual Amendments

- F73** S. 73(1)(2) substituted (26.11.2001) by S.I. 2001/3712, **art. 4**
- F74** Words in s. 73(1) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), **art. 6, Sch. 3 para. 54(a)(i)**
- F75** Words in s. 73(1) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), **art. 6, Sch. 3 para. 54(a)(ii)**
- F76** Words in s. 73(1) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), **art. 6, Sch. 3 para. 54(a)(iii)**
- F77** Words in s. 73(1)(a) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), **ss. 4(9), 56** (with Sch. 10); S.I. 2008/1900, **art. 2(b)** (with art. 3, Sch.)
- F78** Words in s. 73(7) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), **art. 6, Sch. 3 para. 54(b)**

#### 74 Restricted patients subject to restriction directions.

- (1) Where an application to [<sup>F79</sup>the appropriate tribunal] is made by a restricted patient who is subject to [<sup>F80</sup>a limitation direction or] a restriction direction, or where the case of such a patient is referred to [<sup>F81</sup>the appropriate tribunal], the tribunal—
- shall notify the Secretary of State whether, in [<sup>F82</sup>its] opinion, the patient would, if subject to a restriction order, be entitled to be absolutely or conditionally discharged under section 73 above; and
  - if [<sup>F83</sup>the tribunal notifies] 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.
- (2) If in the case of a patient not falling within subsection (4) below—
- the tribunal [<sup>F84</sup>notifies] the Secretary of State that the patient would be entitled to be absolutely or conditionally discharged; and
  - 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 [<sup>F85</sup>the tribunal has] 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 [<sup>F86</sup>notifies] the Secretary of State that the patient would be entitled to be absolutely or conditionally discharged, the Secretary of State shall, unless [<sup>F87</sup>the tribunal has] 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 [<sup>F88</sup>the relevant hospital direction and the limitation direction or, as the casemay be,] the

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relevant transfer direction and the restriction direction shall cease to have effect on his arrival in the prison or other institution.

- [<sup>F89</sup>(5A) Where [<sup>F90</sup>the tribunal has] 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 [<sup>F91</sup>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.

#### Textual Amendments

- F79** Words in s. 74(1) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, [Sch. 3 para. 55\(a\)\(i\)](#)
- F80** 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](#)
- F81** Words in s. 74(1) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, [Sch. 3 para. 55\(a\)\(ii\)](#)
- F82** Words in s. 74(1) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, [Sch. 3 para. 55\(a\)\(iii\)](#)
- F83** Words in s. 74(1) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, [Sch. 3 para. 55\(a\)\(iv\)](#)
- F84** Words in s. 74(2) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, [Sch. 3 para. 55\(b\)](#)
- F85** Words in s. 74(3) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, [Sch. 3 para. 55\(c\)](#)
- F86** Words in s. 74(4) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, [Sch. 3 para. 55\(b\)](#)
- F87** Words in s. 74(4) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, [Sch. 3 para. 55\(c\)](#)
- F88** 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](#)
- F89** S. 74(5A) inserted (20.1.2004) by [Criminal Justice Act 2003 \(c. 44\)](#), [ss. 295](#), 336; S.I. 2004/81, [art. 2\(b\)](#)
- F90** Words in s. 74(5A) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, [Sch. 3 para. 55\(c\)](#)
- F91** 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](#)

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## 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 [<sup>F92</sup>the appropriate tribunal]; and
  - (b) section 70 above shall apply to the patient as if the relevant hospital order [<sup>F93</sup>, 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 [<sup>F94</sup>the appropriate 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 [<sup>F95</sup>, limitation direction] or restriction direction to which he is subject shall cease to have effect;
 

and if the tribunal [<sup>F96</sup>gives] a direction under paragraph (b) above the patient shall cease to be liable to be detained by virtue of the relevant hospital order [<sup>F97</sup>, hospital direction] or transfer direction.

### Textual Amendments

- F92** Words in s. 75(1)(a) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 56(a)**
- F93** 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**
- F94** Words in s. 75(2) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 56(a)**
- F95** 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)**
- F96** Word in s. 75(3) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 56(b)**
- F97** 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)**

### General

## 76 Visiting and examination of patients.

- (1) For the purpose of advising whether an application to [<sup>F98</sup>the appropriate tribunal] should be made by or in respect of a patient who is liable to be detained or subject to guardianship [<sup>F99</sup> . . . under Part II of this Act [<sup>F100</sup>or a community patient,] or of furnishing information as to the condition of a patient for the purposes of such an



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application, any registered medical practitioner [<sup>F101</sup>or approved clinician] 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 [<sup>F102</sup>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

- F98** Words in s. 76(1)(a) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), [art. 6](#), [Sch. 3 para. 57](#)
- F99** Words in s. 76(1) repealed (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 55, 56](#), [Sch. 11 Pt. 5](#) (with [Sch. 10](#)); [S.I. 2008/1210](#), [art. 2\(d\)](#) (with [art. 4](#))
- F100** Words in s. 76(1) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 32, 56](#), [Sch. 3 para. 22](#) (with [Sch. 10](#)); [S.I. 2008/1900](#), [art. 2\(i\)](#) (with [art. 3](#), [Sch.](#))
- F101** Words in s. 76(1) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 13\(2\)\(b\)](#), 56 (with [Sch. 10](#)); [S.I. 2008/1900](#), [art. 2\(b\)](#) (with [art. 3](#), [Sch.](#))
- F102** 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)

- C5** [S. 76](#) applied (with modifications) (1.4.1996) by [S.I. 1996/295](#), [reg. 2](#), [Sch.](#)
- C6** [S. 76\(1\)](#) modified (3.11.2008) by [The Mental Health Act 2007 \(Commencement No. 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions\) Order 2008 \(S.I. 1210/2008\)](#), [art. 6\(h\)](#)

## 77 General provisions concerning tribunal applications.

- (1) No application shall be made to [<sup>F103</sup>the appropriate tribunal by or in respect of a patient under this Act] 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 [<sup>F104</sup>the appropriate 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 [<sup>F105</sup>Tribunal Procedure Rules or] rules made under section 78 below.
- (3) Subject to subsection (4) below an application to [<sup>F106</sup>a tribunal] authorised to be made by or in respect of a patient under this Act shall be made by notice in writing addressed
  - <sup>F107</sup>(a) in the case of a patient who is liable to be detained in a hospital, [<sup>F108</sup>to the First-tier Tribunal where that hospital is in England and to the Mental Health Review Tribunal for Wales where that hospital is in Wales];
  - (b) in the case of a community patient, [<sup>F109</sup>to the First-tier Tribunal where the responsible hospital is in England and to the Mental Health Review Tribunal for Wales where that hospital is in Wales];
  - (c) in the case of a patient subject to guardianship, [<sup>F110</sup>to the First-tier Tribunal where the patient resides in England and to the Mental Health Review Tribunal for Wales where the patient resides in Wales.].

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- (4) Any application under section 75(2) above shall be made [<sup>F111</sup>to the First-tier Tribunal where the patient resides in England and to the Mental Health Review Tribunal for Wales where the patient resides in Wales].

#### Textual Amendments

- F103** Words in s. 77(1) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 58(a)**
- F104** Words in s. 77(2) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 58(b)**
- F105** Words in s. 77(2) inserted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 5(1)(2), **Sch. 1 para. 161** (with Sch. 5)
- F106** Words in s. 77(3) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 58(c)(i)**
- F107** S. 77(3)(a)(b)(c) substituted (3.11.2008) for words in s. 77(3) by [Mental Health Act 2007 \(c. 12\)](#), ss. 32, 56, **Sch. 3 para. 23** (with Sch. 10); S.I. 2008/1210, **art. 2(b)** (with art. 4)
- F108** Words in s. 77(3)(a) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 58(c)(ii)**
- F109** Words in s. 77(3)(b) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 58(c)(iii)**
- F110** Words in s. 77(3)(c) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 58(c)(iv)**
- F111** Words in s. 77(4) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 58(d)**

#### Modifications etc. (not altering text)

- C7** S. 77(3) modified (3.11.2008) by [The Mental Health Act 2007 \(Commencement No. 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions\) Order 2008 \(S.I. 1210/2008\)](#), **art. 6(i)**

## 78 Procedure of [<sup>F112</sup>Mental Health Review Tribunal for Wales].

- (1) The Lord Chancellor may make rules with respect to the making of applications to [<sup>F113</sup>the Mental Health Review Tribunal for Wales] and with respect to the proceedings of [<sup>F114</sup>that tribunal] and matters incidental to or consequential on such proceedings.
- (2) Rules made under this section may in particular make provision—
- (a) for enabling [<sup>F115</sup>the tribunal], or the chairman of [<sup>F115</sup>the 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 [<sup>F116</sup>under this Act by the tribunal or the First-tier Tribunal];
  - [<sup>F117</sup>(b) for the transfer of proceedings to or from the Mental Health Review Tribunal for Wales in any case where, after the making of the application, the patient is moved into or out of Wales;]
  - (c) for restricting the persons qualified to serve as members of [<sup>F115</sup>the tribunal] for the consideration of any application, or of an application of any specified class;
  - (d) for enabling [<sup>F115</sup>the tribunal] to dispose of an application without a formal hearing where such a hearing is not requested by the applicant or it appears

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- to the tribunal that such a hearing would be detrimental to the health of the patient;
- (e) for enabling [<sup>F115</sup>the 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 [<sup>F115</sup>the 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 [<sup>F115</sup>the 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 [<sup>F115</sup>the 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 [<sup>F115</sup>the 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 [<sup>F118</sup>tribunal] such ancillary powers as the Lord Chancellor thinks necessary for the purposes of the exercise of [<sup>F119</sup>its] functions under this Act;
  - (k) for enabling any functions of [<sup>F115</sup>the tribunal] which relate to matters preliminary or incidental to an application to be performed by the chairman of the tribunal.
- (3) Subsections (1) and (2) above apply in relation to references to [<sup>F120</sup>the Mental Health Review Tribunal for Wales] as they apply in relation to applications to [<sup>F121</sup>that tribunal] 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 [<sup>F122</sup>the tribunal] for the consideration of an application or reference relating to a restricted patient;
  - [<sup>F123</sup>(b) for the transfer of proceedings to or from the tribunal in any case where, after the making of a reference or application in accordance with section 71(4) or 77(4) above, the patient begins or ceases to reside in Wales.]
- (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.

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- (6) Any functions conferred on the chairman of [<sup>F124</sup>the Mental Health Review Tribunal for Wales] by rules under this section may <sup>F125</sup> . . . be exercised by another member of that tribunal appointed by him for the purpose.
- (7) [<sup>F126</sup>The Mental Health Review Tribunal for Wales] 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) <sup>F127</sup> . . . . .
- (9) [<sup>F128</sup>Part I of the Arbitration Act 1996] shall not apply to any proceedings before [<sup>F129</sup>the Mental Health Review Tribunal for Wales] except so far as any provisions of that Act may be applied, with or without modifications, by rules made under this section.

#### Textual Amendments

- F112** Words in s. 78 heading substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 59(1)**
- F113** Words in s. 78(1) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 59(2)(a)**
- F114** Words in s. 78(1) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 59(2)(b)**
- F115** Words in s. 78(2) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 59(3)(a)**
- F116** Words in s. 78(2)(a) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 59(3)(b)**
- F117** S. 78(2)(b) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 59(3)(c)**
- F118** Word in s. 78(2)(j) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 59(3)(d)(i)**
- F119** Word in s. 78(2)(j) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 59(3)(d)(ii)**
- F120** Words in s. 78(3) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 59(4)(a)**
- F121** Words in s. 78(3) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 59(4)(b)**
- F122** Words in s. 78(4) substituted (3.11.2008) by virtue of [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 59(5)(a)**
- F123** S. 78(4)(b) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 59(5)(b)**
- F124** Words in s. 78(6) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 59(6)**
- F125** Words in s. 78(6) repealed (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 38(3)(e), 55, 56, **Sch. 11 Pt. 6** (with Sch. 10); [S.I. 2008/1900](#), **art. 2(m)(p)** (with art. 3, Sch.)
- F126** Words in s. 78(7) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 59(7)**
- F127** S. 78(8) omitted (3.11.2008) by virtue of [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 59(8)**
- F128** 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)

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**F129** Words in s. 78(9) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, [Sch. 3 para. 59\(9\)](#)

[<sup>F130</sup>**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.
- (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**

**F130** 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 [<sup>F131</sup>, 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—
  - [<sup>F132</sup>(a) is treated by virtue of any enactment as subject to a hospital order and a restriction order; or]
  - (b) <sup>F133</sup> .....
  - [<sup>F134</sup>(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” [<sup>F135</sup>, “the relevant hospital direction”] and “the relevant transfer direction”, in relation to a restricted patient, mean the hospital order [<sup>F135</sup>, 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.

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- (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, [<sup>F136</sup>the relevant hospital direction,] the relevant transfer direction, the restriction order [<sup>F137</sup>, 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, [<sup>F138</sup>hospital direction,] transfer direction, restriction order, [<sup>F139</sup>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.
- [<sup>F140</sup>(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.
- (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 [<sup>F141</sup>, and “the responsible clinician” means the responsible clinician,] within the meaning of Part II of this Act.
- [<sup>F142</sup>(7) [<sup>F143</sup>.....].]

#### Textual Amendments

- F131** 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**
- F132** 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)**
- F133** 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)**
- F134** 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)**
- F135** 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**
- F136** 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(e)(viii)**
- F137** 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(e)(viii)**
- F138** 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(e)(viii)**

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- F139** 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)**
- F140** 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)**
- F141** Words in s. 79(6) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), **ss. 13(3)**, 56 (with Sch. 10); S.I. 2008/1900, **art. 2(b)**, (with art. 3, Sch.)
- F142** S. 79(7) substituted (prosp.) by Mental Health Act 2007 (c. 12), **ss. 38(4)**, 56 (with Sch. 10) (which substituting provisions were repealed (3.11.2008) by S.I. 2008/2833, Sch. 3 para. 228(p))
- F143** S. 79(7) omitted (3.11.2008) by virtue of The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 6, **Sch. 3 para. 61**

**Status:**

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**Changes to legislation:**

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