



Mental Health Act 1983

1983 CHAPTER 20

PART V

MENTAL HEALTH REVIEW TRIBUNALS

Discharge of patients

72 Powers of tribunals.

- [^{F1}(1) Where application is made to [^{F2}the appropriate tribunal] by or in respect of a patient who is liable to be detained under this Act [^{F3}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 [^{F4}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 [^{F4}it is] not satisfied—
 - (i) that he is then suffering from [^{F5} 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 of 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]
 - ^{F6}(ia)
 - (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.

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- [the tribunal shall direct the discharge of a community patient if ^{F4}it is] not ^{F7}(c) 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.]]

^{F8}(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) ^{F9}

- (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 ^{F10}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.

^{F11}(3A) Subsection (1) above does not require a tribunal to direct the discharge of a patient just because ^{F12}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 ^{F13}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 ^{F14}it is] satisfied—
 - (a) that he is not then suffering from ^{F15}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) ^{F16}

(5) ^{F17}

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- (6) Subsections (1) to [F18(4)] above apply in relation to references to [F19the appropriate tribunal] as they apply in relation to applications made to [F20the 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

- F1** S. 72(1) substituted (26.11.2001) by S.I. 2001/3712, **art. 3**
- F2** 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)**
- F3** 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.)
- F4** 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)**
- F5** 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.)
- F6** S. 72(1)(b)(iia) 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.)
- F7** 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.)
- F8** 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.)
- F9** 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.)
- F10** 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)**
- F11** 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)
- F12** 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)**
- F13** 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)**
- F14** 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)**
- F15** 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.)
- F16** 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)
- F17** 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.)
- F18** 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.)
- F19** 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)**
- F20** 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)**

Modifications etc. (not altering text)

- C1** S. 72 applied (with modifications) (1.4.1996) by S.I. 1996/295, reg. 2, **Sch.**

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73 Power to discharge restricted patients.

- [^{F21}(1) Where an application to [^{F22}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 [^{F23}the appropriate tribunal], the tribunal shall direct the absolute discharge of the patient if—
- (a) [^{F24}the tribunal is] not satisfied as to the matters mentioned in paragraph (b) (i) [^{F25}, (ii) or (ia)] of section 72(1) above; and
 - (b) [^{F24}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 [^{F26}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.

Textual Amendments

- F21** S. 73(1)(2) substituted (26.11.2001) by S.I. 2001/3712, art. 4
- F22** 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)
- F23** 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)

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- F24** 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)**
- F25** 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.)
- F26** 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 [^{F27}the appropriate 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 [^{F29}the appropriate tribunal], the tribunal—
- shall notify the Secretary of State whether, in [^{F30}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 [^{F31}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 [^{F32}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 [^{F33}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 [^{F34}notifies] the Secretary of State that the patient would be entitled to be absolutely or conditionally discharged, the Secretary of State shall, unless [^{F35}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 [^{F36}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.
- [^{F37}(5A) Where [^{F38}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—
- 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

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- 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 [F39 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

- F27** 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\(a\)\(i\)](#)
- 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(1) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, [Sch. 3 para. 55\(a\)\(ii\)](#)
- F30** 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\(a\)\(iii\)](#)
- F31** 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\(a\)\(iv\)](#)
- F32** 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\(b\)](#)
- F33** 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\(c\)](#)
- F34** 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\(b\)](#)
- F35** 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\(c\)](#)
- F36** 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](#)
- F37** [S. 74\(5A\)](#) inserted (20.1.2004) by [Criminal Justice Act 2003 \(c. 44\)](#), [ss. 295](#), 336; S.I. 2004/81, [art. 2\(b\)](#)
- F38** 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\(c\)](#)
- F39** 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 [F40 the appropriate tribunal]; and

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- (b) section 70 above shall apply to the patient as if the relevant hospital order [^{F41}, 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 [^{F42}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 [^{F43}, limitation direction] or restriction direction to which he is subject shall cease to have effect;
- and if the tribunal [^{F44}gives] a direction under paragraph (b) above the patient shall cease to be liable to be detained by virtue of the relevant hospital order [^{F45}, hospital direction] or transfer direction.

Textual Amendments

- F40** 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)**
- F41** 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**
- F42** 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)**
- F43** 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)**
- F44** 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)**
- F45** 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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