



# Mental Health Act 1983

## 1983 CHAPTER 20

### PART V

#### MENTAL HEALTH REVIEW TRIBUNALS

##### *General*

#### 76 Visiting and examination of patients.

- (1) For the purpose of advising whether an application to a Mental Health Review Tribunal should be made by or in respect of a patient who is liable to be detained or subject to guardianship [<sup>F1</sup>or to after-care under supervision (or, if he has not yet left hospital, is to be subject to after-care under supervision after he leaves hospital)] under Part II of this Act or of furnishing information as to the condition of a patient for the purposes of such an application, any registered medical practitioner authorised by or on behalf of the patient or other person who is entitled to make or has made the application—
- (a) may at any reasonable time visit the patient and examine him in private, and
  - (b) may require the production of and inspect any records relating to the detention or treatment of the patient in any hospital [<sup>F2</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

**F1** Words in s. 76(1) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 11(a)

**F2** 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)

**C1** S. 76 applied (with modifications) (1.4.1996) by S.I. 1996/295, reg. 2, **Sch.**

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## 77 General provisions concerning tribunal applications.

- (1) No application shall be made to a Mental Health Review Tribunal by or in respect of a patient except in such cases and at such times as are expressly provided by this Act.
- (2) Where under this Act any person is authorised to make an application to a Mental Health Review Tribunal within a specified period, not more than one such application shall be made by that person within that period but for that purpose there shall be disregarded any application which is withdrawn in accordance with rules made under section 78 below.
- (3) Subject to subsection (4) below an application to a Mental Health Review Tribunal authorised to be made by or in respect of a patient under this Act shall be made by notice in writing addressed to the tribunal for the area in which the hospital in which the patient is detained is situated or in which the patient is residing under guardianship [<sup>F3</sup>or when subject to after-care under supervision (or in which he is to reside on becoming so subject after leaving hospital)] as the case may be.
- (4) Any application under section 75(2) above shall be made to the tribunal for the area in which the patient resides.

### Textual Amendments

**F3** Words in s. 77(3) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), Sch. 1, para. 12

## 78 Procedure of tribunals.

- (1) The Lord Chancellor may make rules with respect to the making of applications to Mental Health Review Tribunals and with respect to the proceedings of such tribunals and matters incidental to or consequential on such proceedings.
- (2) Rules made under this section may in particular make provision—
  - (a) for enabling a tribunal, or the chairman of a tribunal, to postpone the consideration of any application by or in respect of a patient, or of any such application of any specified class, until the expiration of such period (not exceeding 12 months) as may be specified in the rules from the date on which an application by or in respect of the same patient was last considered and determined by that or any other tribunal under this Act;
  - (b) for the transfer of proceedings from one tribunal to another in any case where, after the making of the application, the patient is removed out of the area of the tribunal to which it was made;
  - (c) for restricting the persons qualified to serve as members of a tribunal for the consideration of any application, or of an application of any specified class;
  - (d) for enabling a tribunal to dispose of an application without a formal hearing where such a hearing is not requested by the applicant or it appears to the tribunal that such a hearing would be detrimental to the health of the patient;
  - (e) for enabling a tribunal to exclude members of the public, or any specified class of members of the public, from any proceedings of the tribunal, or to prohibit the publication of reports of any such proceedings or the names of any persons concerned in such proceedings;
  - (f) for regulating the circumstances in which, and the persons by whom, applicants and patients in respect of whom applications are made to a tribunal

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- may, if not desiring to conduct their own case, be represented for the purposes of those applications;
- (g) for regulating the methods by which information relevant to an application may be obtained by or furnished to the tribunal, and in particular for authorising the members of a tribunal, or any one or more of them, to visit and interview in private any patient by or in respect of whom an application has been made;
  - (h) for making available to any applicant, and to any patient in respect of whom an application is made to a tribunal, copies of any documents obtained by or furnished to the tribunal in connection with the application, and a statement of the substance of any oral information so obtained or furnished except where the tribunal considers it undesirable in the interests of the patient or for other special reasons;
  - (i) for requiring a tribunal, if so requested in accordance with the rules, to furnish such statements of the reasons for any decision given by the tribunal as may be prescribed by the rules, subject to any provision made by the rules for withholding such a statement from a patient or any other person in cases where the tribunal considers that furnishing it would be undesirable in the interests of the patient or for other special reasons;
  - (j) for conferring on the tribunals such ancillary powers as the Lord Chancellor thinks necessary for the purposes of the exercise of their functions under this Act;
  - (k) for enabling any functions of a tribunal which relate to matters preliminary or incidental to an application to be performed by the chairman of the tribunal.
- (3) Subsections (1) and (2) above apply in relation to references to Mental Health Review Tribunals as they apply in relation to applications to such tribunals by or in respect of patients.
- (4) Rules under this section may make provision as to the procedure to be adopted in cases concerning restricted patients and, in particular—
- (a) for restricting the persons qualified to serve as president of a tribunal for the consideration of an application or reference relating to a restricted patient;
  - (b) for the transfer of proceedings from one tribunal to another in any case where, after the making of a reference or application in accordance with section 71(4) or 77(4) above, the patient ceases to reside in the area of the tribunal to which the reference or application was made.
- (5) Rules under this section may be so framed as to apply to all applications or references or to applications or references of any specified class and may make different provision in relation to different cases.
- (6) Any functions conferred on the chairman of a Mental Health Review Tribunal by rules under this section may, if for any reason he is unable to act, be exercised by another member of that tribunal appointed by him for the purpose.
- (7) A Mental Health Review Tribunal may pay allowances in respect of travelling expenses, subsistence and loss of earnings to any person attending the tribunal as an applicant or witness, to the patient who is the subject of the proceedings if he attends otherwise than as the applicant or a witness and to any person (other than counsel or a solicitor) who attends as the representative of an applicant.

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- (8) A Mental Health Review Tribunal may, and if so required by the High Court shall, state in the form of a special case for determination by the High Court any question of law which may arise before them.
- (9) [<sup>F4</sup>Part I of the Arbitration Act 1996] shall not apply to any proceedings before a Mental Health Review Tribunal except so far as any provisions of that Act may be applied, with or without modifications, by rules made under this section.

#### Textual Amendments

**F4** Words in s. 78(9) substituted (31.1.1997) by 1996 c. 23, s. 107(1), **Sch. 3**, para. 40; S.I. 1996/3146, **art. 3** (subject to savings in art. 4, **Sch. 2**)

VALID FROM 03/11/2008

#### **[<sup>F5</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

**F5** 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>F6</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—
- (a) is subject to a direction which by virtue of section 46(3) above has the same effect as a hospital order and a restriction order; or
  - (b) is treated as subject to a hospital order and a restriction order by virtue of an order under section 5(1) of the <sup>M1</sup>Criminal Procedure (Insanity) Act 1964 or section 6 or 14(1) of the <sup>M2</sup>Criminal Appeal Act 1968; or

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- (c) is treated as subject to a hospital order and a restriction order or to a transfer direction and a restriction direction by virtue of section 82(2) or 85(2) below or [F7 section 77(2) of the Mental Health (Scotland) Act 1984], 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” [F8], “the relevant hospital direction”] and “the relevant transfer direction”, in relation to a restricted patient, mean the hospital order [F8, the hospital direction] or transfer direction by virtue of which he is liable to be detained in a hospital.
- (3) In the case of a person within paragraph (a) of subsection (1) above, references in this Part of this Act to the relevant hospital order or restriction order shall be construed as references to the direction referred to in that paragraph.
- (4) In the case of a person within paragraph (b) of subsection (1) above, references in this Part of this Act to the relevant hospital order or restriction order shall be construed as references to the order under the provisions mentioned in that paragraph.
- (5) In the case of a person within paragraph (c) of subsection (1) above, references in this Part of this Act to the relevant hospital order, the relevant transfer direction, the restriction order or the restriction direction or to a transfer direction under section 48 above shall be construed as references to the hospital order, transfer direction, restriction order, 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.
- (6) In this Part of this Act, unless the context otherwise requires, “hospital” means a hospital [F9, and “the responsible medical officer” means the responsible medical officer.] within the meaning of Part II of this Act.
- [F10(7) In this Part of this Act any reference to the area of a tribunal is—
- (a) in relation to a tribunal for a region of England, a reference to that region; and
- (b) in relation to the tribunal for Wales, a reference to Wales.]

#### Textual Amendments

- F6** 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**
- F7** Words substituted by **Mental Health (Scotland) Act 1984** (c. 36, SIF 85), ss. 17(2), 127, **Sch. 3 para. 50**
- F8** 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**
- F9** Words in s. 79(6) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 13
- F10** S. 79(7) inserted (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8, **Sch. 1**, Pt. III para. 107(7)

#### Marginal Citations

- M1** 1964 c. 84.
- M2** 1968 c. 19.

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