



# 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 <sup>[F<sup>1</sup>the appropriate tribunal]</sup> should be made by or in respect of a patient who is liable to be detained or subject to guardianship <sup>F<sup>2</sup></sup> . . . under Part II of this Act [<sup>F<sup>3</sup>or a community patient,]</sup> or of furnishing information as to the condition of a patient for the purposes of such an application, any registered medical practitioner [<sup>F<sup>4</sup>or approved clinician]</sup> 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>F<sup>5</sup>or to any after-care services provided for the patient under section 117 below.].</sup>
- (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)(a) substituted (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 6, **Sch. 3 para. 57**
- F2** Words in s. 76(1) repealed (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 55, 56, **Sch. 11 Pt. 5** (with Sch. 10); [S.I. 2008/1210](#), **art. 2(d)** (with art. 4)
- F3** 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.)
- F4** 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.)

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**F5** 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.**

**C2** 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>F6</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>F7</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>F8</sup>Tribunal Procedure Rules or] rules made under section 78 below.
- (3) Subject to subsection (4) below an application to [<sup>F9</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>F10</sup>(a) in the case of a patient who is liable to be detained in a hospital, [<sup>F11</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>F12</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>F13</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].]
- (4) Any application under section 75(2) above shall be made [<sup>F14</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**

- F6** 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)**
- F7** 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)**
- F8** 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)
- F9** 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)**
- F10** 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)
- F11** 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)**
- F12** 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)**

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**F13** 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)**

**F14** 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)**

**C3** 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>F15</sup>Mental Health Review Tribunal for Wales].**

- (1) The Lord Chancellor may make rules with respect to the making of applications to <sup>F16</sup>the Mental Health Review Tribunal for Wales] and with respect to the proceedings of <sup>F17</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>F18</sup>the tribunal], or the <sup>F19</sup>President] of <sup>F18</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>F20</sup>under this Act by the tribunal or the First-tier Tribunal];
  - <sup>F21</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>F18</sup>the tribunal] for the consideration of any application, or of an application of any specified class;
  - (d) for enabling <sup>F18</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 to the tribunal that such a hearing would be detrimental to the health of the patient;
  - (e) for enabling <sup>F18</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>F18</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>F18</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>F18</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

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- the tribunal considers it undesirable in the interests of the patient or for other special reasons;
- (i) for requiring [<sup>F18</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>F22</sup>tribunal] such ancillary powers as the Lord Chancellor thinks necessary for the purposes of the exercise of [<sup>F23</sup>its] functions under this Act;
  - (k) for enabling any functions of [<sup>F18</sup>the tribunal] which relate to matters preliminary or incidental to an application to be performed by the [<sup>F24</sup>President] of the tribunal.
- (3) Subsections (1) and (2) above apply in relation to references to [<sup>F25</sup>the Mental Health Review Tribunal for Wales] as they apply in relation to applications to [<sup>F26</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 [<sup>F27</sup>chairman] of [<sup>F28</sup>the tribunal] for the consideration of an application or reference relating to a restricted patient;
    - [<sup>F29</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.
  - (6) Any functions conferred on the [<sup>F30</sup>President] of [<sup>F31</sup>the Mental Health Review Tribunal for Wales] by rules under this section may [<sup>F32</sup>. . . be exercised by another member of that tribunal appointed by him for the purpose.
  - (7) [<sup>F33</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 [<sup>F34</sup>an authorised person (within the meaning of Part 3)]) who attends as the representative of an applicant.
  - (8) [<sup>F35</sup> . . . . .
  - (9) [<sup>F36</sup>Part I of the Arbitration Act 1996] shall not apply to any proceedings before [<sup>F37</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

- F15** 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\(1\)](#)

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- F16** 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)**
- F17** 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)**
- F18** 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)**
- F19** Word in s. 78(2)(a) substituted (1.12.2017) by Mental Health Act 2007 (c. 12), **ss. 38(3)(a)**, 56(1); S.I. 2017/1038, art. 2
- F20** 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)**
- F21** 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)**
- F22** 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)**
- F23** 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)**
- F24** Word in s. 78(2)(k) substituted (1.12.2017) by Mental Health Act 2007 (c. 12), **ss. 38(3)(a)**, 56(1); S.I. 2017/1038, art. 2
- F25** 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)**
- F26** 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)**
- F27** Word in s. 78(4)(a) substituted (1.12.2017) by Mental Health Act 2007 (c. 12), **ss. 38(3)(d)**, 56(1); S.I. 2017/1038, art. 2
- F28** 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)**
- F29** 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)**
- F30** Word in s. 78(6) substituted (1.12.2017) by Mental Health Act 2007 (c. 12), **ss. 38(3)(a)**, 56(1); S.I. 2017/1038, art. 2
- F31** 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)**
- F32** 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.**)
- F33** 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)**
- F34** Words in s. 78(7) substituted (1.1.2010) by Legal Services Act 2007 (c. 29), **ss. 208**, 211, **Sch. 21 para. 60** (with **ss. 29**, 192, 196); S.I. 2009/3250, **art. 2(h)** (subject to arts. 6, 9)
- F35** 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)**
- F36** 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**)
- F37** 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>F38</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.

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- (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

**F38** 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>F39</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>F40</sup>(a) is treated by virtue of any enactment as subject to a hospital order and a restriction order; or]
  - (b) [<sup>F41</sup> .....
  - [<sup>F42</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>F43</sup>, “the relevant hospital direction”] and “the relevant transfer direction”, in relation to a restricted patient, mean the hospital order [<sup>F43</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.
- (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>F44</sup>the relevant hospital direction,] the relevant transfer direction, the restriction order [<sup>F45</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>F46</sup>hospital direction,] transfer direction, restriction order, [<sup>F47</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.

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[<sup>F48</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>F49</sup>, and “the responsible clinician” means the responsible clinician,] within the meaning of Part II of this Act.

[<sup>F50</sup>(7) <sup>F51</sup>.....]

#### Textual Amendments

- F39** 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**
- F40** 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)**
- F41** 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)**
- F42** 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)**
- F43** 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**
- F44** Words in s. 79(5) inserted (1.10.2007) by Mental Health Act 2007 (c. 12), ss. 39, 56, **Sch. 5 para. 19(3)(a)** (with Sch. 10); S.I. 2007/2798, **art. 2(c)(viii)**
- F45** Words in s. 79(5) inserted (1.10.2007) by Mental Health Act 2007 (c. 12), ss. 39, 56, **Sch. 5 para. 19(3)(b)** (with Sch. 10); S.I. 2007/2798, **art. 2(c)(viii)**
- F46** Words in s. 79(5) inserted (1.10.2007) by Mental Health Act 2007 (c. 12), ss. 39, 56, **Sch. 5 para. 19(3)(c)** (with Sch. 10); S.I. 2007/2798, **art. 2(c)(viii)**
- F47** Words in s. 79(5) inserted (1.10.2007) by Mental Health Act 2007 (c. 12), ss. 39, 56, **Sch. 5 para. 19(3)(d)** (with Sch. 10); S.I. 2007/2798, **art. 2(c)(viii)**
- F48** 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)**
- F49** 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.)
- F50** 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))

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**F51** 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**



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