



# Mental Health (Amendment) Act 1982

## 1982 CHAPTER 51

### PART V

#### MENTAL HEALTH REVIEW TRIBUNALS

#### **39 Powers and procedure of tribunals**

- (1) At the end of section 122(2) of the principal Act (which provides that where a person is authorised to make an application within a specified period not more than one such application shall be made by him within that period) there shall be added the words " but for that purpose there shall be disregarded any application which is withdrawn in accordance with rules made under section 124 of this Act. "
- (2) In section 123(1) of the principal Act (cases in which tribunal is to direct discharge of patient) for the words from "and shall so direct" onwards there shall be substituted the words "and—
  - (a) the tribunal shall direct the discharge of a patient liable to be detained under section 25 of this Act if they are satisfied—
    - (i) that he is not 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 not 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 25 of this Act if they are satisfied—
    - (i) that he is not then suffering from mental illness, psychopathic disorder, mental impairment or severe mental impairment or from any of those forms of disorder of a nature or degree which makes it appropriate for him to be liable to be detained in a hospital for medical treatment; or

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*Status: This is the original version (as it was originally enacted). This item of legislation is currently only available in its original format.*

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- (ii) that it is not necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment; or
  - (iii) in the case of an application under section 48(3) of this Act, that the patient, if released, would not be likely to act in a manner dangerous to other persons or to himself.”
- (3) After section 123(1) of the principal Act there shall be inserted—
  - “(1A) In determining whether to direct the discharge of a patient detained otherwise than under section 25 of this Act in a case not falling within paragraph (b) of subsection (1) of this section, the tribunal shall have regard—
    - (a) to the likelihood of medical treatment alleviating or preventing a deterioration of the patient's condition ; and
    - (b) in the case of a patient suffering from mental illness or severe mental impairment, to the likelihood of the patient, if discharged, being able to care for himself, to obtain the care he needs or to guard himself against serious exploitation.
  - (1B) A tribunal may under subsection (1) of this section direct the discharge of a patient on a future date specified in the direction; and where a tribunal do not direct the discharge of a patient under that subsection the tribunal may—
    - (a) with a view to facilitating his discharge on a future date, recommend that he be granted leave of absence or transferred to another hospital or into guardianship; and
    - (b) further consider his case in the event of any such recommendation not being complied with.”
- (4) In section 123(2)(b) of the principal Act (discharge of patient subject to guardianship) for the words " the interests of the patient" there shall be substituted the words " the interests of the welfare of the patient ".
- (5) In section 124(2) of the principal Act (matters capable of being dealt with by rules) after paragraph (j) there shall be inserted—
  - “(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.”
- (6) Any functions conferred on the chairman of a Mental Health Review Tribunal by rules under section 124 of the principal Act 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.