



Mental Health Act 1983

1983 CHAPTER 20

PART V

MENTAL HEALTH REVIEW TRIBUNALS

Discharge of patients

74 Restricted patients subject to restriction directions.

- (1) Where an application to [^{F1}the appropriate tribunal] is made by a restricted patient who is subject to [^{F2}a limitation direction or] a restriction direction, or where the case of such a patient is referred to [^{F3}the appropriate tribunal], the tribunal—
 - (a) shall notify the Secretary of State whether, in [^{F4}its] opinion, the patient would, if subject to a restriction order, be entitled to be absolutely or conditionally discharged under section 73 above; and
 - (b) if [^{F5}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—
 - (a) the tribunal [^{F6}notifies] the Secretary of State that the patient would be entitled to be absolutely or conditionally discharged; and
 - (b) 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 [^{F7}the tribunal has] made a recommendation under subsection (1)(b) above, transfer the

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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 [^{F8}notifies] the Secretary of State that the patient would be entitled to be absolutely or conditionally discharged, the Secretary of State shall, unless [^{F9}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 [^{F10}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.
- [^{F11}(5A) Where [^{F12}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 [^{F13}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

- F1** 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\(a\)\(i\)](#)
- F2** 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](#)
- F3** 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\(a\)\(ii\)](#)
- F4** 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\(a\)\(iii\)](#)
- F5** 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\(a\)\(iv\)](#)
- F6** 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\(b\)](#)
- F7** 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\(c\)](#)

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- F8** 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)**
- F9** 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)**
- F10** 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**
- F11** S. 74(5A) inserted (20.1.2004) by Criminal Justice Act 2003 (c. 44), **ss. 295, 336**; S.I. 2004/81, **art. 2(b)**
- F12** 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)**
- F13** 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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Changes and effects yet to be applied to :

- s. 74(5A)(a) words inserted by [2015 c. 2 Sch. 3 para. 3\(1\)](#)
- s. 74(5A)(b) words inserted by [2015 c. 2 Sch. 3 para. 3\(2\)](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

- Act applied by [1996 c. 46 Sch. 2 para. 9](#)(replacing 1968 c 20 s. 23) (Act applied (prosp.) by 1968 c. 20, s. 23(4) (as substituted (prosp.) by 1996 c. 46, ss. 8, 36(2), Sch. 2, para. 9 which said amending provision was repealed (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(2), 60, Sch. 11; S.I. 2005/579, art. 3(h)(i)(ix)))
- Act applied by [1996 c. 46 Sch. 2 para. 4](#)(replacing 1957 c 53 s. 63) (Act applied (prosp.) by 1957 c. 53, s. 63C(6) (as substituted (prosp.) by 1996 c. 46, ss. 8, 36(2), Sch. 2, para. 4 which said amending provision was repealed (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(2), 60, Sch. 11; S.I. 2005/579, art. 3(h)(i)(ix)))
- Act applied by [1996 c. 46 Sch. 2 para. 1](#)(replacing 1955 c 19 s. 116) (Act applied (prosp.) by 1955 c. 19, s. 116C(6) (as substituted (prosp.) by 1996 c. 46, ss. 8, 36(2), Sch. 2 para. 1 which said amending provision was repealed (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(2), 60, Sch. 11; S.I. 2005/579, art. 3(h)(i)(ix)))
- Act applied by [1996 c. 46 Sch. 2 para. 1](#)(replacing 1955 c 18 s 116) (Act applied (prosp.) by 1955 c. 18, s. 116C(6) (as substituted (prosp.) by 1996 c. 46, ss. 8, 36(2), Sch. 2 para. 1 which said amending provision was repealed (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(2), 60, Sch. 11; S.I. 2005/579, art. 3(h)(i)(ix)))
- Act power to applied by [1996 c. 46 Sch. 2 para. 4](#)(replacing 1957 c 53 s. 63) (Act: Power to apply conferred (prosp.) by 1957 c. 53, s. 63B(4)(c) (as substituted (prosp.) by 1996 c. 46, ss. 8, 36(2), Sch. 2, para. 4 which said amending provision was repealed (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(2), 60, Sch. 11; S.I. 2005/579, art. 3(h)(i)(ix)))
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Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 74(8) inserted by [2015 c. 2 Sch. 3 para. 3\(3\)](#)