

MENTAL HEALTH ACT 2007

EXPLANATORY NOTES

COMMENTARY

Part 1 – Amendments to Mental Health Act 1983

Chapter 5 - Mental Health Review Tribunals

Section 37: References

153. The MHRT is an independent judicial body with the power to order the discharge of a patient from detention for assessment and/or treatment and from guardianship under the 1983 Act. The MHRT reviews a patient's case either on application from the patient or the patient's NR, on referral from the Secretary of State (which function in relation to Wales is exercisable by the Welsh Ministers) or, if the MHRT has not reviewed the case within a given period, on referral by hospital managers. Under the 1983 Act, section 68 sets out the provisions for when hospital managers must make a referral. Section 37 of the 2007 Act amends this section so that it applies to a wider group of patients (those who are still subject to section 2 at the point of referral and patients who are on a CTO).
154. Under the 1983 Act as it stands, hospital managers are required to refer a patient's case to the MHRT at six months from the beginning of the detention for treatment or the patient's transfer from guardianship to hospital if the patient has not applied for a tribunal themselves, if an application has not been made on their behalf or if they have not been referred to the MHRT by the Secretary of State/Welsh Ministers. As a result of amendments made by section 37, hospital managers will be required to refer the patient at six months from the day on which the patient was first detained, whether under section 2 for assessment, section 3 for treatment, or the day on which they were detained in hospital following a transfer from guardianship (this is defined as the "applicable day" at section 68(5)). This will make the referral period the same for all patients whether they have first been detained for treatment or for assessment. This six month time period can be reduced by order of the Secretary of State or Welsh Ministers under new section 68A of the 1983 Act. The provision enables the order to include any consequential provisions that may be required to ensure that patients who are transferred from England to Wales or vice versa between the period of referral in one territory and the other do not miss out on a referral to the MHRT by virtue of the transfer.
155. [Section 37](#) also removes the requirement that hospital managers are only under a duty to make a subsequent referral to the MHRT upon the renewal of patient's detention. Under the 1983 Act, hospital managers are required to refer patients whose authority for detention has been renewed if three years have passed (or one year for patients aged under 16 years) and the MHRT has not reviewed the case in that time. In practice, it can be up to four years before a patient's case is considered by the MHRT if the patient does not apply, because a renewal only happens once a year, and the referral cannot take place until the detention is next renewed. By removing the link between renewal and subsequent referrals, the only requirement for subsequent referrals is that the MHRT has not considered the patient's case in three years (or one year). The requirement to

*These notes refer to the Mental Health Act 2007
(c.12) which received Royal Assent on 19 July 2007*

refer a patient aged under 16 years after one year is extended to those aged under 18 years. The order making power at section 68A will also enable the three year and one year period to be reduced. As a further consequence, patients who are absent without leave (AWOL) at the point at which they should be referred to the MHRT must be referred on their return to hospital.

156. The provision allowing a registered medical practitioner to visit and examine the patient for the purposes of gathering information in preparation for the MHRT is extended to allow ACs to visit and examine, and is extended to cover patients who are on a CTO.
157. Finally, section 37 amends Schedule 1 to the 1983 Act to ensure that the new provisions continue to apply where appropriate to unrestricted Part 3 patients (i.e. mentally disordered offenders not subject to the special restrictions under section 41 of the 1983 Act). Only those Part 3 patients who are transferred from a guardianship order to a hospital order qualify for a referral by the hospital managers after the first six months. Part 3 patients placed on a hospital order will not be entitled to a referral in the first six months of their detention, as their initial detention has been subject to judicial consideration by the sentencing court and they cannot themselves apply to the MHRT in that period. The referral at three years (or one year) will extend to all Part 3 patients detained in hospital or on SCT and not subject to restrictions.