



2016 CHAPTER 18

PART 2

LACK OF CAPACITY: PROTECTION  
FROM LIABILITY, AND SAFEGUARDS

CHAPTER 7

RIGHTS OF REVIEW OF AUTHORISATION

*Applications to the Tribunal*

**Right to apply to Tribunal**

45.—(1) Where an event mentioned in the first column of the following table occurs, a qualifying person may apply to the Tribunal within the period mentioned in the corresponding entry of the second column of the table.

<i>Event</i>	<i>Period for making application</i>
The grant of an authorisation under paragraph 15 of Schedule 1	The period of 6 months beginning with the date the authorisation is granted
The grant of an interim authorisation under paragraph 20 of that Schedule	The period of 28 days beginning with the date the interim authorisation is granted
The grant of an authorisation under Schedule 2	The period of 28 days beginning with the date of admission (as defined by paragraph 14(3) of Schedule 2)
The extension under Chapter 6 of the period of an authorisation under paragraph 15 of Schedule 1	The period—

<i>Event</i>	<i>Period for making application</i>
	(a) beginning with the date when the period of the authorisation is extended; and
	(b) ending with the end of the period for which the authorisation is extended

(2) In this section “a qualifying person” means—

- (a) the person to whom the authorisation relates (“P”); or
- (b) subject to subsection (3), a person who is P’s nominated person.

(3) If P has capacity in relation to whether an application under this section should be made, P’s nominated person may make an application only with P’s consent.

(4) No application under this section may be made in respect of an authorisation that—

- (a) has ceased to be effective by virtue of section 29(4) or 32(4) or paragraph 23 of Schedule 1 (effect on authorisation of discharge from detention etc); or
- (b) for any other reason is no longer in force.

### **Applications: visiting and examination**

**46.—**(1) A medical practitioner who is authorised—

- (a) by or on behalf of a person (“P”) to whom an authorisation under Schedule 1 or 2 relates, or
- (b) by P’s nominated person,

may, for a purpose mentioned in subsection (2), do anything within section 275 (visiting etc powers) in relation to P.

(2) The purposes are—

- (a) the purpose of advising whether an application to the Tribunal under section 45 should be made by or in respect of P;
- (b) the purpose of providing information as to the condition of P for the purposes of an application.

### *References to the Tribunal*

### **Power of certain persons to refer case to Tribunal**

**47.—**(1) At any time when an authorisation under Schedule 1 or 2 is in force, a person within subsection (2) may refer to the Tribunal the question whether the authorisation is appropriate.

(2) The persons are—

- (a) the Attorney General;
- (b) the Department;
- (c) the Master (Care and Protection), acting on the direction of the court.

(3) For the purpose of providing information for the purposes of a reference under this section, any medical practitioner authorised by or on behalf of the person to whom the authorisation relates may do anything within section 275 (visiting etc powers) in relation to the person.

### **Duty of HSC trust to refer case to Tribunal**

**48.**—(1) Where—

- (a) on any date (“the extension date”), the period of an authorisation under Schedule 1 is extended under section 38 or Schedule 3,
  - (b) the authorisation has been in force throughout the relevant period (see subsection (2)), and
  - (c) the Tribunal has not considered the person’s case at any time in that period,
- the relevant trust must as soon as practicable refer the person’s case to the Tribunal.

(2) The “relevant period” is—

- (a) if the person to whom the authorisation relates (“the person”) is under 18, the period of one year ending with the extension date;
- (b) otherwise, the period of two years ending with the extension date.

(3) For the purpose of providing information for the purposes of a reference under this section, any medical practitioner authorised by or on behalf of the person may do anything within section 275 (visiting etc powers) in relation to the person.

(4) In this section—

“the person’s case” means the question whether the authorisation is appropriate;

“the relevant trust” means—

- (a) where the extension is wholly or partly for the purposes of continuing the person’s detention in a place, the HSC trust in whose area that place is situated;
- (b) where the extension is wholly or partly for the purposes of continuing the provision to the person of treatment specified by the authorisation or a requirement to attend for such treatment and paragraph (a) does not apply, the HSC trust in whose area the treatment is provided;

- (c) where the extension is for the purposes of continuing a community residence requirement and paragraph (b) does not apply, the HSC trust in whose area the place where the person is required by the community residence requirement to live is situated.

(5) The Department may by regulations amend subsection (2) so as to alter any period mentioned there.

### **References etc to Tribunal: persons formerly detained under the Mental Health Order**

**49.**—(1) This section applies where—

- (a) immediately before the day a person reaches the age of 16 (“the relevant day”), the person is liable to be detained under Part 2 of the Mental Health Order; and
- (b) on that day, there is in force an authorisation under Schedule 1 to this Act (“the authorisation”) that authorises the detention of the person in circumstances amounting to a deprivation of liberty.

(2) If an application to the Tribunal by the person, or a reference of the person’s case to the Tribunal, was made under Part 5 of the Mental Health Order before the relevant day but has not been dealt with by that day, the matters to be considered by the Tribunal include the question whether the authorisation is appropriate.

(3) If—

- (a) on any date when the person is under 17, the period of the authorisation is extended (under section 37 or 38 or Schedule 3),
- (b) a relevant authority has been in force throughout the period of one year ending with that date, and
- (c) the Tribunal has not considered the person’s case at any time in that period,

the relevant trust must as soon as practicable refer to the Tribunal the question whether the authorisation is appropriate.

(4) In this section—

“the person’s case”—

- (a) in relation to any time when the person was under 16, has the same meaning as in Part 5 of the Mental Health Order;
- (b) in relation to any time when the person is 16 or over, means the question whether the authorisation is appropriate;

“relevant authority”—

- (a) in relation to any time when the person was under 16, means an authority under Part 2 of the Mental Health Order for the detention of the person;

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*Status: This is the original version (as it was originally enacted).*

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(b) in relation to any time when the person is 16 or over, means the authorisation;

“the relevant trust” has the same meaning as in section 48.

### **Duty of HSC trust to notify the Attorney General**

**50.**—(1) This section applies if—

- (a) the period of an authorisation under Schedule 1 has been extended (under section 38 or Schedule 3) for a period of one year;
- (b) the authorisation authorises a measure within section 41(2)(b) or (d) (deprivation of liberty or community residence requirement); and
- (c) at the relevant time, it appears to the relevant trust that the person to whom the authorisation relates lacks (or probably lacks) capacity in relation to whether an application under section 45 (applications to Tribunal) should be made.

(2) The relevant trust must as soon as practicable give the Attorney General—

- (a) notice of the matters mentioned in subsection (1)(a) to (c); and
- (b) any prescribed information.

(3) In this section—

“the relevant time” means the time 6 months after the beginning of the one year period mentioned in subsection (1)(a);

“the relevant trust” has the same meaning as in section 48.

### *Powers of the Tribunal*

#### **Powers of Tribunal in relation to authorisation under Schedule 1**

**51.**—(1) Where an application or reference to the Tribunal is made under this Chapter in relation to an authorisation under Schedule 1, the Tribunal must do one of the following—

- (a) revoke the authorisation;
- (b) if the authorisation authorises more than one measure (as defined by subsection (4)), vary the authorisation by cancelling any provision of it which authorises a measure;
- (c) decide to take no action in respect of the authorisation.

(2) In the case of an authorisation under paragraph 15 of Schedule 1, the Tribunal—

- (a) may vary the authorisation only if satisfied that the criteria for authorisation are met in respect of each measure that will remain authorised by the authorisation;

- (b) may decide as mentioned in subsection (1)(c) only if satisfied that the criteria for authorisation are met in respect of each measure that is authorised by the authorisation.
- (3) In the case of an interim authorisation under paragraph 20 of Schedule 1, the Tribunal—
- (a) may vary the authorisation only if satisfied that there is a good prospect of it being established that the criteria for authorisation are met in respect of each measure that will remain authorised by the authorisation;
- (b) may decide as mentioned in subsection (1)(c) only if satisfied that there is a good prospect of it being established that the criteria for authorisation are met in respect of each measure that is authorised by the authorisation.
- (4) For the purposes of this section each of the following is a “measure”—
- (a) the provision to P of treatment specified by the authorisation;
- (b) the detention of P in a place in circumstances amounting to a deprivation of liberty;
- (c) a requirement to attend at a particular place at particular times or intervals for the purpose of being given treatment specified by the authorisation;
- (d) a community residence requirement.
- (5) In this section “the criteria for authorisation”, in relation to a measure, means the criteria for authorisation for that measure as set out in Part 3 of Schedule 1.
- (6) In paragraphs 11(a) and 12(a) and (b) of that Schedule as they apply for the purposes of this section, the references to imposing a requirement include continuing the requirement.

### **Powers of Tribunal in relation to authorisation under Schedule 2**

**52.—**(1) Where an application or reference to the Tribunal is made under this Chapter in relation to an authorisation under Schedule 2, the Tribunal must either—

- (a) revoke the authorisation; or
- (b) decide to take no action in respect of the authorisation.
- (2) The Tribunal may decide as mentioned in subsection (1)(b) only if it is satisfied that the condition in paragraph 12 of Schedule 2 is met.

### **Sections 51 and 52: additional powers of Tribunal**

**53.—**(1) This section applies where, under section 51 or 52, the Tribunal decides to do anything other than revoke the authorisation.

(2) The Tribunal may, with a view to facilitating the ending at a future date of a measure still authorised by the authorisation—

- (a) recommend the taking of specified actions in relation to P; and
  - (b) further consider P's case in the event of any recommendation not being complied with.
- (3) Where the Tribunal further considers P's case under subsection (2)(b), section 51 or (as the case may be) section 52 applies.