



# Mental Health Act 1983

## 1983 CHAPTER 20

### PART V

#### MENTAL HEALTH REVIEW TRIBUNALS

##### *Discharge of patients*

#### 72 Powers of tribunals.

- (1) Where application is made to a Mental Health Review Tribunal by or in respect of a patient who is liable to be detained under this Act, the tribunal may in any case direct that the patient be discharged, and—
  - (a) the tribunal shall direct the discharge of a patient liable to be detained under section 2 above 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 2 above if they are satisfied—
    - (i) that he is not then suffering from mental illness, psychopathic disorder, severe mental impairment or 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
    - (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 by virtue of paragraph (g) of section 66(1) above, that the patient, if released, would not be likely to act in a manner dangerous to other persons or to himself.

*Status: Point in time view as at 04/11/1994.*

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- (2) In determining whether to direct the discharge of a patient detained otherwise than under section 2 above in a case not falling within paragraph (b) of subsection (1) above, 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 case he needs or to guard himself against serious exploitation.
- (3) A tribunal may under subsection (1) above 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) Where application is made to a Mental Health Review Tribunal by or in respect of a patient who is subject to guardianship under this Act, the tribunal may in any case direct that the patient be discharged, and shall so direct if they are satisfied—
  - (a) that he is not then suffering from mental illness, psychopathic disorder, severe mental impairment or mental impairment; or
  - (b) that it is not necessary in the interests of the welfare of the patient, or for the protection of other persons, that the patient should remain under such guardianship.
- (5) Where application is made to a Mental Health Review Tribunal under any provision of this Act by or in respect of a patient and the tribunal do not direct that the patient be discharged, the tribunal may, if satisfied that the patient is suffering from a form of mental disorder other than the form specified in the application, order or direction relating to him, direct that that application, order or direction be amended by substituting for the form of mental disorder specified in it such other form of mental disorder as appears to the tribunal to be appropriate.
- (6) Subsections (1) to (5) above apply in relation to references to a Mental Health Review Tribunal as they apply in relation to applications made to such a tribunal by or in respect of a patient.
- (7) Subsection (1) above shall not apply in the case of a restricted patient except as provided in sections 73 and 74 below.

### **73 Power to discharge restricted patients.**

- (1) Where an application to a Mental Health Review Tribunal is made by a restricted patient who is subject to a restriction order, or where the case of such a patient is referred to such a tribunal, the tribunal shall direct the absolute discharge of the patient if satisfied—
  - (a) as to the matters mentioned in paragraph (b)(i) or (ii) or section 72(1) above; and

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- (b) that it is not appropriate for the patient to remain liable to be recalled to hospital for further treatment.
- (2) Where in the case of any such patient as is mentioned in subsection (1) above the tribunal are satisfied as to the matters referred to in paragraph (a) of that subsection but not as to the matter referred to in paragraph (b) of that subsection the tribunal shall direct the conditional discharge of the patient.
- (3) Where a patient is absolutely discharged under this section he shall thereupon cease to be liable to be detained by virtue of the relevant hospital order, and the restriction order shall cease to have effect accordingly.
- (4) Where a patient is conditionally discharged under this section—
  - (a) he may be recalled by the Secretary of State under subsection (3) of section 42 above as if he had been conditionally discharged under subsection (2) of that section; and
  - (b) the patient shall comply with such conditions (if any) as may be imposed at the time of discharge by the tribunal or at any subsequent time by the Secretary of State.
- (5) The Secretary of State may from time to time vary any condition imposed (whether by the tribunal or by him) under subsection (4) above.
- (6) Where a restriction order in respect of a patient ceases to have effect after he has been conditionally discharged under this section the patient shall, unless previously recalled, be deemed to be absolutely discharged on the date when the order ceases to have effect and shall cease to be liable to be detained by virtue of the relevant hospital order.
- (7) A tribunal may defer a direction for the conditional discharge of a patient until such arrangements as appear to the tribunal to be necessary for that purpose have been made to their satisfaction; and where by virtue of any such deferment no direction has been given on an application or reference before the time when the patient's case comes before the tribunal on a subsequent application or reference, the previous application or reference shall be treated as one on which no direction under this section can be given.
- (8) This section is without prejudice to section 42 above.

#### **74 Restricted patients subject to restriction directions.**

- (1) Where an application to a Mental Health Review Tribunal is made by a restricted patient who is subject to a restriction direction, or where the case of such a patient is referred to such a tribunal, the tribunal—
  - (a) shall notify the Secretary of State whether, in their 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 they notify 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 notify the Secretary of State that the patient would be entitled to be absolutely or conditionally discharged; and

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- (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 the tribunal have made a recommendation under subsection (1)(b) above, transfer the 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 notify the Secretary of State that the patient would be entitled to be absolutely or conditionally discharged, the Secretary of State shall, unless the tribunal have 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 the relevant transfer direction and the restriction direction shall cease to have effect on his arrival in the prison or other institution.
- (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 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.

## **75 Applications and references concerning conditionally discharged restricted patients.**

- (1) Where a restricted patient has been conditionally discharged under section 42(2), 73 or 74 above and is subsequently recalled to hospital—
- (a) the Secretary of State shall, within one month of the day on which the patient returns or is returned to hospital, refer his case to a Mental Health Review Tribunal; and
  - (b) section 70 above shall apply to the patient as if the relevant hospital order or transfer direction had been made on that day.
- (2) Where a restricted patient has been conditionally discharged as aforesaid but has not been recalled to hospital he may apply to a Mental Health Review Tribunal—
- (a) in the period between the expiration of 12 months and the expiration of two years beginning with the date on which he was conditionally discharged; and
  - (b) in any subsequent period of two years.
- (3) Sections 73 and 74 above shall not apply to an application under subsection (2) above but on any such application the tribunal may—

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- (a) vary any condition to which the patient is subject in connection with his discharge or impose any condition which might have been imposed in connection therewith; or
- (b) direct that the restriction order or restriction direction to which he is subject shall cease to have effect;

and if the tribunal give a direction under paragraph (b) above the patient shall cease to be liable to be detained by virtue of the relevant hospital order or transfer direction.

**Status:**

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