



# Mental Health Act 1983

## 1983 CHAPTER 20

### PART V

#### MENTAL HEALTH REVIEW TRIBUNALS

##### *Discharge of patients*

#### 72 Powers of tribunals.

[<sup>F1</sup>(1) Where application is made to [<sup>F2</sup>the appropriate tribunal] by or in respect of a patient who is liable to be detained under this Act [<sup>F3</sup>or is a community patient] , 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 [<sup>F4</sup>it is] not satisfied—

(i) that he is 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 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 [<sup>F4</sup>it is] not satisfied—

(i) that he is then suffering from [<sup>F5</sup> mental disorder or from mental 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 necessary for the health of safety of the patient or for the protection of other persons that he should receive such treatment; or

[ that appropriate medical treatment is available for him; or ]

<sup>F6</sup>(ia)

(iii) in the case of an application by virtue of paragraph (g) of section 66(1) above, that the patient, if released, would be likely to act in a manner dangerous to other persons or to himself.

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- [ the tribunal shall direct the discharge of a community patient if <sup>F4</sup>it is] not <sup>F7</sup>(c) satisfied—
  - (i) that he is then suffering from mental disorder or mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment; or
  - (ii) that it is necessary for his health or safety or for the protection of other persons that he should receive such treatment; or
  - (iii) that it is necessary that the responsible clinician should be able to exercise the power under section 17E(1) above to recall the patient to hospital; or
  - (iv) that appropriate medical treatment is available for him; or
  - (v) in the case of an application by virtue of paragraph (g) of section 66(1) above, that the patient, if discharged, would be likely to act in a manner dangerous to other persons or to himself.]]

<sup>F8</sup>(1A) In determining whether the criterion in subsection (1)(c)(iii) above is met, the tribunal shall, in particular, consider, having regard to the patient's history of mental disorder and any other relevant factors, what risk there would be of a deterioration of the patient's condition if he were to continue not to be detained in a hospital (as a result, for example, of his refusing or neglecting to receive the medical treatment he requires for his mental disorder).]

(2) <sup>F9</sup> .....

- (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 <sup>F10</sup>does 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.

<sup>F11</sup>(3A) Subsection (1) above does not require a tribunal to direct the discharge of a patient just because <sup>F12</sup>it thinks] it might be appropriate for the patient to be discharged (subject to the possibility of recall) under a community treatment order; and a tribunal—

- (a) may recommend that the responsible clinician consider whether to make a community treatment order; and
- (b) may (but need not) further consider the patient's case if the responsible clinician does not make an order.]

- (4) Where application is made to <sup>F13</sup>the appropriate 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 <sup>F14</sup>it is] satisfied—
  - (a) that he is not then suffering from <sup>F15</sup>mental disorder] ; 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.

(4A) <sup>F16</sup> .....

(5) <sup>F17</sup> .....

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- (6) Subsections (1) to [F18(4)] above apply in relation to references to [F19the appropriate tribunal] as they apply in relation to applications made to [F20the appropriate 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.

#### Textual Amendments

- F1** S. 72(1) substituted (26.11.2001) by S.I. 2001/3712, **art. 3**
- F2** Words in s. 72(1) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 6, **Sch. 3 para. 53(a)**
- F3** Words in s. 72(1) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 21(2)(a)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F4** Words in s. 72(1)(a)-(c) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 6, **Sch. 3 para. 53(b)**
- F5** Words in s. 72(1)(b)(i) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 1, 56, **Sch. 1 para. 14(a)** (with Sch. 10); S.I. 2008/1900, **art. 2(a)** (with art. 3, Sch.)
- F6** S. 72(1)(b)(ia) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), **ss. 4(8)(a)**, 56 (with Sch. 10); S.I. 2008/1900, **art. 2(b)** (with art. 3, Sch.)
- F7** S. 72(1)(c) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 21(2)(b)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F8** S. 72(1A) inserted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 21(3)** (with Sch. 10); S.I. 2008/1900, **art. 2(i)** (with art. 3, Sch.)
- F9** S. 72(2) repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 4(8)(b), 55, 56, **Sch. 11 Pt. 2** (with Sch. 10); S.I. 2008/1900, **art. 2(b)(p)** (with art. 3, Sch.)
- F10** Words in s. 72(3) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 6, **Sch. 3 para. 53(c)**
- F11** S. 72(3A) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 32, 56, **Sch. 3 para. 21(4)** (with Sch. 10); S.I. 2008/1210, **art. 2(b)** (with art. 4)
- F12** Words in s. 72(3A) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 6, **Sch. 3 para. 53(d)**
- F13** Words in s. 72(4) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 6, **Sch. 3 para. 53(a)**
- F14** Words in s. 72(4) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 6, **Sch. 3 para. 53(b)**
- F15** Words in s. 72(4)(a) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 1, 56, **Sch. 1 para. 14(b)** (with Sch. 10); S.I. 2008/1900, **art. 2(a)** (with art. 3, Sch.)
- F16** S. 72(4A) repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 55, 56, **Sch. 11 Pt. 5** (with Sch. 10); S.I. 2008/1210, **art. 2(d)** (with art. 4)
- F17** S. 72(5) repealed (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 55, 56, **Sch. 11 Pt. 1** (with Sch. 10); S.I. 2008/1900, **art. 2(a)** (with art. 3, Sch.)
- F18** Word in s. 72(6) substituted (3.11.2008) by Mental Health Act 2007 (c. 12), ss. 1, 56, **Sch. 1 para. 14(c)** (with Sch. 10); S.I. 2008/1900, **art. 2(a)** (with art. 3, Sch.)
- F19** Words in s. 72(6) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 6, **Sch. 3 para. 53(a)**
- F20** Words in s. 72(6) substituted (3.11.2008) by The Transfer of Tribunal Functions Order 2008 (S.I. 2008/2833), art. 6, **Sch. 3 para. 53(e)**

#### Modifications etc. (not altering text)

- C1** S. 72 applied (with modifications) (1.4.1996) by S.I. 1996/295, reg. 2, **Sch.**

**Changes to legislation:**

Mental Health Act 1983, Section 72 is up to date with all changes known to be in force on or before 02 November 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

View outstanding changes

**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\(h\)\(i\)\(ix\)\)](#))
- Act power to applied by [1996 c. 46 Sch. 2 para. 1](#)(replacing [1955 c 19 s. 116](#)) (Act: Power to apply conferred (prosp.) by [1955 c. 19, s. 116B\(4\)\(c\)](#) (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. 1](#)(replacing [1955 c 18 s 116](#)) (Act: Power to apply conferred (prosp.) by [1955 c. 18, s. 116B\(4\)\(c\)](#) (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\(h\)\(i\)\(ix\)\)](#))

**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\(3\)](#)