
STATUTORY INSTRUMENTS

1986 No. 595

The Mental Health (Northern Ireland) Order 1986

PART V

THE MENTAL HEALTH REVIEW TRIBUNAL FOR NORTHERN IRELAND

Constitution

Constitution of the Review Tribunal

70.—(1) The Mental Health Review Tribunal for Northern Ireland shall be constituted in accordance with Schedule 3.

(2) The Department may pay to the members of the Review Tribunal such remuneration and allowances as the Department, with the approval of the Department of Finance and Personnel, may determine, and defray the expenses of the tribunal to such amount as the Department, with the approval of the Department of Finance and Personnel, may determine, and may provide for the tribunal such officers and servants, and such accommodation, as the tribunal may require.

Modifications etc. (not altering text)

- C1** [Art. 70\(2\)](#): functions transferred from Department of Health, Social Services and Public Safety to Department of Justice (1.4.2011) by [Departments \(Transfer of Functions\) Order \(Northern Ireland\) 2011 \(S.R. 2011/44\)](#), arts. 1(2), **6(b)** (with art. 8(2))

Applications and references concerning Part II patients

Applications to the tribunal under Part II

71.—(1) Where a patient is detained in a hospital by virtue of any report under Article 9 or 12(1), he may apply to the Review Tribunal within the period of 6 months beginning with the date of admission.

(2) Where a patient is received into guardianship in pursuance of a guardianship application, he may apply to the Review Tribunal within the period of 6 months beginning with the day on which the application is accepted.

(3) Where the authority for the detention of a patient is renewed under Article 13 or the authority for the guardianship of a patient is renewed under Article 23, the patient may apply to the Review Tribunal at any time before the expiration of the period for which the authority is so renewed.

(4) Where—

- (a) a report is furnished under Article 14(4) in respect of a patient; or
- (b) reports are furnished under both sub-paragraph (a) and sub-paragraph (b) of paragraph (4) of Article 24 in respect of a patient,

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the nearest relative of the patient may apply to the Review Tribunal in respect of the patient within the period of 28 days beginning with the day on which he is informed of that fact under Article 14(7) or, as the case may be, Article 24(7).

(5) Where an order is made under Article 36 in respect of a patient who is or subsequently becomes liable to be detained or subject to guardianship under Part II, the nearest relative of the patient may apply to the Review Tribunal in respect of the patient within the period of 12 months beginning with the date of the order and in any subsequent period of 12 months during which the order continues in force.

References of cases of Part II patients to the tribunal

72.—(1) The Attorney General, the Department or, on the direction of the High Court, the Master (Care and Protection) may at any time refer to the Review Tribunal the case of any patient who is liable to be detained or subject to guardianship under Part II.

(2) For the purpose of furnishing information for the purposes of a reference under paragraph (1) any medical practitioner authorised by or on behalf of the patient may at any reasonable time visit the patient and examine him in private and require the production of and inspect any records relating to the detention or treatment of the patient in any hospital.

Duty on Boards to refer cases to the tribunal

73.—(1) If the authority for the detention of a patient in a hospital or his guardianship under Part II is renewed under Article 13 or 23 and a period of 2 years (or, if the patient has not attained the age of 16 years, one year) has elapsed since his case was last considered by the Review Tribunal, whether on his own application or otherwise, the responsible^{F1} authority] shall refer his case to the tribunal.

(2) For the purpose of furnishing information for the purposes of any reference under this Article, any medical practitioner authorised by or on behalf of the patient may at any reasonable time visit the patient and examine him in private and require the production of and inspect any records relating to the detention or treatment of the patient in any hospital.

(3) The Department may by order vary the length of the periods mentioned in paragraph (1).

F1 [1994 NI 2](#)

Applications and references concerning Part III patients

Applications and references to the tribunal concerning patients subject to hospital and guardianship orders, other than restricted patients

74.—(1) Articles 71(3), 72 and 73 shall apply in relation to a patient admitted to a hospital in pursuance of a hospital order or placed under guardianship by a guardianship order as they apply to a patient detained in hospital or subject to guardianship under Part II.

(2) Without prejudice to paragraph (1), an application to the Review Tribunal may also be made in respect of a patient admitted to a hospital in pursuance of a hospital order or placed under guardianship by a guardianship order, as follows, that is to say—

- (a) by the patient, within the period of 6 months beginning with the date of the order; and
- (b) by the nearest relative of the patient, within the period of 12 months beginning with the date of the order and in any subsequent period of 12 months.

(3) In this Article any reference to a hospital order or guardianship order shall include a reference to any order or direction under Part III or any other statutory provision having the same effect as such an order.

(4) This Article does not apply in the case of a patient who is a restricted patient within the meaning of Article 84.

Applications to the tribunal concerning restricted patients

75. A patient who is a restricted patient within the meaning of Article 84 and is detained in a hospital may apply to the Review Tribunal—

- (a) within the period of 6 months beginning with the date of the relevant hospital order or transfer direction;
- (b) within the period between the expiration of 6 months and the expiration of 12 months beginning with the date of the relevant hospital order or transfer direction; and
- (c) within any subsequent period of 12 months.

References by Secretary of State concerning restricted patients

76.—(1) The Secretary of State may at any time refer the case of a restricted patient to the Review Tribunal.

(2) The Secretary of State shall refer to the Review Tribunal the case of any restricted patient detained in a hospital whose case has not been considered by the tribunal, whether on his own application or otherwise, within the last 2 years.

(3) The Secretary of State may by order vary the length of the period mentioned in paragraph (2).

Discharge of patients

Power to discharge patients other than restricted patients

77.—[^{F2}(1) Where application is made to the Review Tribunal by or in respect of a patient who is liable to be detained under this Order, the tribunal may in any case direct that the patient be discharged, and shall so direct if—

- (a) the tribunal is not satisfied that he is then suffering from mental illness or severe mental impairment or from either of those forms of mental disorder of a nature or degree which warrants his detention in hospital for medical treatment; or
- (b) the tribunal is not satisfied that his discharge would create a substantial likelihood of serious physical harm to himself or to other persons; or
- (c) in the case of an application by virtue of Article 71(4)(a) in respect of a report furnished under Article 14(4)(b), the tribunal is satisfied that he would, if discharged, receive proper care.]

(2) A tribunal may under paragraph (1) direct the discharge of a patient on a future date specified in the direction; and where the tribunal does not direct the discharge of a patient under that paragraph 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.

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(3) Where application is made to the Review Tribunal by or in respect of a patient who is subject to guardianship under this Order, the tribunal may in any case direct that the patient be discharged, and shall so direct if it is satisfied—

- (a) that he is not then suffering from mental illness or severe mental handicap or from either of those forms of mental disorder of a nature or degree which warrants his remaining under guardianship; or
- (b) that it is not necessary in the interests of the welfare of the patient that he should remain under guardianship.

(4) Paragraphs (1) to (3) apply in relation to references to the Review Tribunal as they apply in relation to applications made to the tribunal by or in respect of a patient.

(5) Paragraph (1) shall not apply in the case of a restricted patient except as provided in Articles 78 and 79.

F2 2004 NI 8

Power to discharge restricted patients subject to restriction orders

78.—^{F3}(1) Where an application to the 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 the tribunal, the tribunal shall direct the absolute discharge of the patient if—

- (a) the tribunal is not satisfied as mentioned in paragraph (1)(a) or (b) of Article 77; and
- (b) the tribunal is satisfied 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 paragraph (1)—

- (a) sub-paragraph (a) of that paragraph applies; but
- (b) sub-paragraph (b) of that paragraph does not apply,

the tribunal shall direct the conditional discharge of the patient.]

(3) Where a patient is absolutely discharged under this Article 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 Article—

- (a) he may be recalled by the Secretary of State under paragraph (3) of Article 48 as if he had been conditionally discharged under paragraph (2) of that Article; 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 paragraph (4).

(6) Where a restriction order in respect of a patient ceases to have effect after he has been conditionally discharged under this Article 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) The 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 its 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 Article can be given.

(8) This Article is without prejudice to Article 48.

F3 2004 NI 8

Powers in relation to restricted patients subject to restriction directions

79.—(1) Where an application to the 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 the tribunal, the tribunal—

- (a) shall notify the Secretary of State whether, in its opinion, the patient would, if subject to a restriction order, be entitled to be absolutely or conditionally discharged under Article 78; and
- (b) if it 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 Article he should continue to be detained in hospital.

(2) If in the case of a patient not falling within paragraph (4)—

- (a) the tribunal 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 paragraph (2)(b) because the Secretary of State has not given the notice there mentioned, the responsible^[F4] authority shall, unless the tribunal has made a recommendation under paragraph (1)(b), 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 Article 54, the tribunal notifies the Secretary of State that the patient would be entitled to be absolutely or conditionally discharged, the Secretary of State shall, unless the tribunal has made a recommendation under paragraph (1)(b), 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 paragraph (3) or (4) the relevant transfer direction and the restriction direction shall cease to have effect on his arrival in the prison or other institution.

^[F5](5A) Where the tribunal have made a recommendation under paragraph (1)(b) in the case of a patient who is subject to a restriction direction—

- (a) the fact that the restriction direction remains in force does not prevent—
 - (i) the making of any application or reference to the Life Sentence Review Commissioners 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 those Commissioners, or
 - (ii) the making of any application by him to the Sentence Review Commissioners, and
- (b) if—

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- (i) the Life Sentence Review Commissioners give a direction by virtue of which the patient would become entitled to be released (whether unconditionally or on licence) from any prison or juvenile justice centre in which he might have been detained if the transfer direction had not been given, or
- (ii) the Sentence Review Commissioners grant a declaration by virtue of which he would become so entitled,

the restriction direction shall cease to have effect at the time at which he would become so entitled.]

(6) Paragraphs (3) to (8) of Article 78 shall have effect in relation to this Article as they have effect in relation to that Article, taking references to the relevant hospital order and the restriction order as references to the transfer direction and the restriction direction.

(7) This Article is without prejudice to Articles 56 to 59 in their application to patients who are not discharged under this Article.

F4	1994 NI 2
F5	2003 c. 44

Applications and references concerning conditionally discharged restricted patients

80.—(1) Where a restricted patient has been conditionally discharged under Article 48(2), 78 or 79 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 the Review Tribunal; and
- (b) Article 75 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 the Review Tribunal—

- (a) within the period of 12 months beginning with the date on which he was conditionally discharged; and
- (b) in any subsequent period of 12 months.

(3) Articles 78 and 79 shall not apply to an application under paragraph (2) but on any such application the tribunal may—

- (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 gives a direction under sub-paragraph (b) the patient shall cease to be liable to be detained by virtue of the relevant hospital order or transfer direction.

General

Visiting and examination of patients

81. For the purpose of advising whether an application to the Review Tribunal should be made by or in respect of a patient who is liable to be detained or subject to guardianship under this Order or of furnishing information as to the condition of a patient for the purposes of such an application,

any medical practitioner authorised by or on behalf of the patient or other person who is entitled to make or has made the application—

- (a) may at any reasonable time visit the patient and examine him in private, and
- (b) may require the production of and inspect any records relating to the detention or treatment of the patient in any hospital.

Applications to the tribunal

82.—(1) No application shall be made to the Review Tribunal by or in respect of a patient except in such cases and at such times as are expressly provided by this Order.

(2) Where under this Order any person is authorised to make an application to the Review Tribunal within a specified period, not more than one such application shall be made by that person within that period but for that purpose there shall be disregarded any application which is withdrawn in accordance with rules made under Article 83.

(3) An application to the Review Tribunal authorised to be made by or in respect of a patient under this Order shall be made by notice in writing addressed to the tribunal.

Procedure of tribunal

83.—(1) The Lord Chancellor may^{F6} make rules with respect to the making of applications to the Review Tribunal and with respect to the proceedings of the tribunal and matters incidental to or consequential on such proceedings.

^{F6}(2) Rules made under this Article may in particular make provision—

- (a) for enabling the tribunal, or the chairman of the tribunal, to postpone the consideration of any application by or in respect of a patient, or of any such application of any specified class, until the expiration of such period (not exceeding 12 months) as may be specified in the rules from the date on which an application by or in respect of the same patient was last considered and determined by the tribunal under this Order;
- (b) for restricting the persons qualified to serve as members of the tribunal for the consideration of any application, or of an application of any specified class;
- (c) for enabling the tribunal to dispose of an application without a formal hearing where such a hearing is not requested by the applicant, where the proceedings are of a specified class or where it appears to the tribunal that such a hearing would be detrimental to the health of the patient;
- (d) for enabling the tribunal to exclude members of the public, or any specified class of members of the public, from any proceedings of the tribunal, or to prohibit the publication of reports of any such proceedings or the names of any persons concerned in such proceedings;
- (e) for regulating the circumstances in which, and the persons by whom, applicants and patients in respect of whom applications are made to the tribunal may, if not desiring to conduct their own case, be represented for the purposes of those applications;
- (f) for regulating the methods by which information relevant to an application may be obtained by or furnished to the tribunal, and in particular for authorising the members of the tribunal, or any one or more of them, to visit and interview in private any patient by or in respect of whom an application has been made;
- (g) for making available to any applicant, and to any patient in respect of whom an application is made to the tribunal, copies of any documents obtained by or furnished to the tribunal in connection with the application, and a statement of the substance of any oral information

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so obtained or furnished except where the tribunal considers it undesirable in the interests of the patient or for other special reasons;

- (h) for requiring the tribunal, if so requested in accordance with the rules, to furnish such statements of the reasons for any decision given by the tribunal as may be prescribed by the rules, subject to any provision made by the rules for withholding such a statement from a patient or any other person in cases where the tribunal considers that furnishing it would be undesirable in the interests of the patient or for other special reasons;
- (i) for conferring on the tribunal such ancillary powers as the Lord Chancellor thinks necessary for the purposes of the exercise of its functions under this Order.

(3) Paragraphs (1) and (2) apply in relation to references to the Review Tribunal as they apply in relation to applications to the tribunal by or in respect of patients.

(4) Rules under this Article may make provision as to the procedure to be adopted in cases concerning restricted patients and, in particular, for restricting the persons qualified to serve as president of the tribunal for the consideration of an application or reference relating to a restricted patient.

(5) Any functions conferred on the chairman of the Review Tribunal by this Order or by rules under this Article may, if for any reason he is unable to act, be exercised by the deputy chairman.

(6) The Review Tribunal may pay allowances in respect of travelling expenses, subsistence and loss of earnings to any person attending the tribunal as an applicant or witness, to the patient who is the subject of the proceedings if he attends otherwise than as the applicant or a witness and to any person (other than counsel or a solicitor) who attends as the representative of an applicant.

(7) The Review Tribunal may, and if so required by the Court of Appeal shall, state in the form of a special case for determination by the Court of Appeal any question of law which may arise before it and the decision of the Court of Appeal shall be final.

(8) [^{F7}Part I of the Arbitration Act 1996] shall not apply to any proceedings before the Review Tribunal except so far as any provisions of that Act may be applied, with or without modifications, by rules made under this Article.

F6 prosp. insertion by 2005 c. 4

F7 1996 c. 23

Interpretation of Part V

84.—(1) In this Part “restricted patient” means a patient who is subject to a restriction order or restriction direction and this Part shall, subject to the provisions of this Article, have effect in relation to any person who—

- (a) is subject to a direction which by virtue of Article 52(3) has the same effect as a hospital order and a restriction order; or
- (b) is subject to an order which by virtue of Article [^{F8} 50A(3) shall be treated] as a hospital order and a restriction order (including an order made under Article [^{F8} 50A(2)] by virtue of section 11 or 13(5A) of the Criminal Appeal (Northern Ireland) Act 1980);
- (c) is treated as subject to a hospital order and a restriction order or to a transfer direction and a restriction direction by virtue of section 81(2) of the Mental Health Act 1983 or [^{F9} article 4(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005],

as it has effect in relation to a restricted patient.

(2) Subject to the following provisions of this Article in this Part “the relevant hospital order” and “the relevant transfer direction”, in relation to a restricted patient, mean the hospital order or transfer direction by virtue of which he is liable to be detained in a hospital.

(3) In the case of a person within paragraph (1)(a), references in this Part to the relevant hospital order or restriction order shall be construed as references to the direction referred to in paragraph (1) (a).

(4) In the case of a person within paragraph (1)(b), references in this Part to the relevant hospital order or restriction order shall be construed as references to the order under the provisions mentioned in paragraph (1)(b).

(5) In the case of a person within paragraph (1)(c), references in this Part to the relevant hospital order, the relevant transfer direction, the restriction order or the restriction direction or to a transfer direction under Article 54 shall be construed as references to the hospital order, transfer direction, restriction order, restriction direction or transfer direction under that Article to which that person is treated as subject by virtue of the provisions mentioned in paragraph (1)(c).

F8	1996 NI 24
F9	SI 2005/2078

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