



# Mental Health Act 2007

## 2007 CHAPTER 12

### PART 1

#### AMENDMENTS TO MENTAL HEALTH ACT 1983

### CHAPTER 5

#### MENTAL HEALTH REVIEW TRIBUNALS

#### 37 References

- (1) The 1983 Act is amended as follows.
- (2) In section 21 (special provision as to patients absent without leave), after subsection (2) insert—
  - “(3) Where a patient is absent without leave on the day on which (apart from this section) the managers would be required under section 68 below to refer the patient's case to a Mental Health Review Tribunal, that requirement shall not apply unless and until—
    - (a) the patient is taken into custody under section 18 above and returned to the hospital where he ought to be; or
    - (b) the patient returns himself to the hospital where he ought to be within the period during which he can be taken into custody under section 18 above.”
- (3) For section 68 substitute—

#### “68 Duty of managers of hospitals to refer cases to tribunal

- (1) This section applies in respect of the following patients—
  - (a) a patient who is admitted to a hospital in pursuance of an application for admission for assessment;

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- (b) a patient who is admitted to a hospital in pursuance of an application for admission for treatment;
  - (c) a community patient;
  - (d) a patient whose community treatment order is revoked under section 17F above;
  - (e) a patient who is transferred from guardianship to a hospital in pursuance of regulations made under section 19 above.
- (2) On expiry of the period of six months beginning with the applicable day, the managers of the hospital shall refer the patient's case to a Mental Health Review Tribunal.
- (3) But they shall not do so if during that period—
- (a) any right has been exercised by or in respect of the patient by virtue of any of paragraphs (b), (ca), (cb), (e), (g) and (h) of section 66(1) above;
  - (b) a reference has been made in respect of the patient under section 67(1) above, not being a reference made while the patient is or was liable to be detained in pursuance of an application for admission for assessment; or
  - (c) a reference has been made in respect of the patient under subsection (7) below.
- (4) A person who applies to a tribunal but subsequently withdraws his application shall be treated for these purposes as not having exercised his right to apply, and if he withdraws his application on a date after expiry of the period mentioned in subsection (2) above, the managers shall refer the patient's case as soon as possible after that date.
- (5) In subsection (2) above, “the applicable day” means—
- (a) in the case of a patient who is admitted to a hospital in pursuance of an application for admission for assessment, the day on which the patient was so admitted;
  - (b) in the case of a patient who is admitted to a hospital in pursuance of an application for admission for treatment—
    - (i) the day on which the patient was so admitted; or
    - (ii) if, when he was so admitted, he was already liable to be detained in pursuance of an application for admission for assessment, the day on which he was originally admitted in pursuance of the application for admission for assessment;
  - (c) in the case of a community patient or a patient whose community treatment order is revoked under section 17F above, the day mentioned in sub-paragraph (i) or (ii), as the case may be, of paragraph (b) above;
  - (d) in the case of a patient who is transferred from guardianship to a hospital, the day on which he was so transferred.
- (6) The managers of the hospital shall also refer the patient's case to a Mental Health Review Tribunal if a period of more than three years (or, if the patient has not attained the age of 18 years, one year) has elapsed since his case was last considered by such a tribunal, whether on his own application or otherwise.

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- (7) If, in the case of a community patient, the community treatment order is revoked under section 17F above, the managers of the hospital shall also refer the patient's case to a Mental Health Review Tribunal as soon as possible after the order is revoked.
- (8) For the purposes of furnishing information for the purposes of a reference under this section, a registered medical practitioner or approved clinician authorised by or on behalf of the patient may at any reasonable time—
  - (a) visit and examine the patient in private; and
  - (b) require the production of and inspect any records relating to the detention or treatment of the patient in any hospital or any after-care services provided for him under section 117 below.
- (9) Reference in this section to the managers of the hospital—
  - (a) in relation to a community patient, is to the managers of the responsible hospital;
  - (b) in relation to any other patient, is to the managers of the hospital in which he is liable to be detained.

#### **68A Power to reduce periods under section 68**

- (1) The appropriate national authority may from time to time by order amend subsection (2) or (6) of section 68 above so as to substitute for a period mentioned there such shorter period as is specified in the order.
- (2) The order may include such transitional, consequential, incidental or supplemental provision as the appropriate national authority thinks fit.
- (3) The order may, in particular, make provision for a case where—
  - (a) a patient in respect of whom subsection (1) of section 68 above applies is, or is about to be, transferred from England to Wales or from Wales to England; and
  - (b) the period by reference to which subsection (2) or (6) of that section operates for the purposes of the patient's case is not the same in one territory as it is in the other.
- (4) A patient is transferred from one territory to the other if—
  - (a) he is transferred from a hospital, or from guardianship, in one territory to a hospital in the other in pursuance of regulations made under section 19 above;
  - (b) he is removed under subsection (3) of that section from a hospital or accommodation in one territory to a hospital or accommodation in the other;
  - (c) he is a community patient responsibility for whom is assigned from a hospital in one territory to a hospital in the other in pursuance of regulations made under section 19A above;
  - (d) on the revocation of a community treatment order in respect of him under section 17F above he is detained in a hospital in the territory other than the one in which the responsible hospital was situated; or
  - (e) he is transferred or removed under section 123 below from a hospital in one territory to a hospital in the other.

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- (5) Provision made by virtue of subsection (3) above may require or authorise the managers of a hospital determined in accordance with the order to refer the patient's case to a Mental Health Review Tribunal.
- (6) In so far as making provision by virtue of subsection (3) above, the order—
  - (a) may make different provision for different cases;
  - (b) may make provision which applies subject to specified exceptions.
- (7) Where the appropriate national authority for one territory makes an order under subsection (1) above, the appropriate national authority for the other territory may by order make such provision in consequence of the order as it thinks fit.
- (8) An order made under subsection (7) above may, in particular, make provision for a case within subsection (3) above (and subsections (4) to (6) above shall apply accordingly).
- (9) In this section, “the appropriate national authority” means—
  - (a) in relation to a hospital in England, the Secretary of State;
  - (b) in relation to a hospital in Wales, the Welsh Ministers.”
- (4) In section 71 (references by Secretary of State concerning restricted patients), after subsection (3) insert—
 

“(3A) An order under subsection (3) above may include such transitional, consequential, incidental or supplemental provision as the Secretary of State thinks fit.”
- (5) In section 143 (general provisions as to regulations, orders and rules)—
  - (a) in subsection (2)—
    - (i) after “order made” insert “ by the Secretary of State ”, and
    - (ii) after “54A” insert “ or 68A(7) ”, and
  - (b) in subsection (3)—
    - (i) after “made” insert “ by the Secretary of State ”, and
    - (ii) for “68(4)” substitute “ 68A(1) ”.
- (6) In Part 1 of Schedule 1 to that Act (application of certain provisions to patients subject to hospital and guardianship orders: patients not subject to special restrictions)—
  - (a) in paragraph 2—
    - (i) for “and 66” substitute “ , 66 and 68 ”, and
    - (ii) for “to 9” substitute “ to 10 ”, and
  - (b) after paragraph 9 insert—
 

“10 In section 68—

    - (a) in subsection (1) paragraph (a) shall be omitted; and
    - (b) subsections (2) to (5) shall apply if the patient falls within paragraph (e) of subsection (1), but not otherwise.”

## 38 Organisation

- (1) The 1983 Act is amended as follows.

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(2) In section 65 (Mental Health Review Tribunals), for subsections (1) to (1C) substitute—

“(1) There shall be—

- (a) a Mental Health Review Tribunal for England; and
- (b) a Mental Health Review Tribunal for Wales.

(1A) The purpose of the Mental Health Review Tribunals is to deal with applications and references by and in respect of patients under the provisions of this Act.”

(3) In section 78 (procedure of tribunals)—

- (a) in subsections (2)(a) and (k) and (6), for “chairman” substitute “ President ”,
- (b) <sup>F1</sup> .....
- (c) <sup>F1</sup> .....
- (d) in subsection (4)(a), for “president” substitute “ chairman ”, and
- (e) in subsection (6) omit “, if for any reason he is unable to act,”.

(4) <sup>F1</sup> .....

(5) Schedule 2 (Mental Health Review Tribunals) is amended as set out in subsections (6) to (9).

(6) For paragraph 3 substitute—

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- (1) The Lord Chancellor shall appoint one of the legal members of the Mental Health Review Tribunal for England to be the President of that tribunal.
- (2) The Lord Chancellor shall appoint one of the legal members of the Mental Health Review Tribunal for Wales to be the President of that tribunal.”

(7) In paragraph 4—

- (a) for “chairman”, in each place, substitute “ President ”, and
- (b) omit “, if for any reason he is unable to act,”.

(8) <sup>F1</sup> .....

(9) In paragraph 6—

- (a) for “chairman”, in each place, substitute “ President ”, and
- (b) for “president”, in each place, substitute “ chairman ”.

#### Textual Amendments

**F1** S. 38(3)(b)(c)(4)(8) repealed (3.11.2008) by [The Transfer of Tribunal Functions Order 2008 \(S.I. 2008/2833\)](#), art. 9(1), [Sch. 3 para. 228\(p\)](#)

#### Commencement Information

- I1** S. 38 not in force at Royal Assent see s. 56(1); s. 38(1)(2)(3)(e)(5)(7)(b) in force for specified purposes and jurisdictions at 3.11.2008 by [S.I. 2008/1900](#), [art. 2\(n\)](#)
- I2** S. 38(3)(a)(d)(6)(7)(a)(9) in force at 1.12.2017 by [S.I. 2017/1038](#), [art. 2](#) (with arts. 3, 4)
- I3** S. 38(5) in force at 1.12.2017 in so far as not already in force by [S.I. 2017/1038](#), [art. 2](#)

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