

THE MHRT WALES

EXTRACTS OF RELEVANT SECTIONS OF MENTAL HEALTH ACT 1983

s. 65 MENTAL HEALTH REVIEW TRIBUNAL FOR WALES.

(1) There shall be a Mental Health Review Tribunal for Wales.

(1A) The purpose of that tribunal is to deal with applications and references by and in respect of patients under the provisions of this Act.

(2) The provisions of Schedule 2 to this Act shall have effect with respect to the constitution of the Mental Health Review Tribunal for Wales.

(3) Subject to the provisions of Schedule 2 to this Act, and to rules made by the Lord Chancellor under this Act, the jurisdiction of the Mental Health Review Tribunal for Wales may be exercised by any three or more of its members, and references in this Act to the Mental Health Review Tribunal for Wales shall be construed accordingly.

DEFINITION

s.1 “MENTAL DISORDER”.

(1) The provisions of this Act shall have effect with respect to the reception, care and treatment of mentally disordered patients, the management of their property and other related matters.

(2) In this Act “mental disorder” means any disorder or disability of the mind; and “mentally disordered” shall be construed accordingly;

(4) **“Learning Disability”** means a state of arrested or incomplete development of the mind which includes significant impairment of intelligence and social functioning

(2A) But a person with learning disability shall not be considered by reason of that disability to be—

(a) suffering from mental disorder unless that disability is associated with abnormally aggressive or seriously irresponsible conduct on his part, for the purposes of the provisions mentioned in subsection (2B) below, namely:

(a) sections 3, 7, 17A, 20 and 20A below;

(b) sections 35 to 38, 45A, 47, 48 and 51 below; and

(c) section 72(1)(b) and (c) and (4) below.

(3) Dependence on alcohol or drugs is not considered to be a disorder or disability of the mind for the purposes of subsection (2) above.

s.4 ADMISSION FOR ASSESSMENT IN CASES OF EMERGENCY.

(1) In any case of urgent necessity, an application for admission for assessment may be made in respect of a patient in accordance with the following provisions of this section, and any application so made is in this Act referred to as “an emergency application”.

(2)An emergency application may be made either by an approved mental health professional or by the nearest relative of the patient; and every such application shall include a statement that it is of urgent necessity for the patient to be admitted and detained under section 2 above, and that compliance with the provisions of this Part of this Act relating to applications under that section would involve undesirable delay.

(4)An emergency application shall cease to have effect on the expiration of a period of 72 hours from the time when the patient is admitted to the hospital unless—

(a) the second medical recommendation required by section 2 is given and received by the managers within that period; and

(b) that recommendation and the recommendation referred to in subsection (3) above together comply with all the requirements of section 12 below (other than the requirement as to the time of signature of the second recommendation).

s.2 ADMISSION FOR ASSESSMENT.

(1) A patient may be admitted to a hospital and detained there for the period allowed by subsection (4) below in pursuance of an application made in accordance with subsections (2) and (3) below.

(2)An application for admission for assessment may be made in respect of a patient on the grounds that—

(a) he is suffering from mental disorder of a nature or degree which warrants the detention of the patient in a hospital for assessment (or for assessment followed by medical treatment) for at least a limited period; and

(b) he ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons.

(3)An application for admission for assessment shall be founded on the written recommendations in the prescribed form of two registered medical practitioners, including in each case a statement that in the opinion of the practitioner the conditions set out in subsection (2) above are complied with.

(4) Subject to the provisions of section 29(4) below, a patient admitted to hospital in pursuance of an application for admission for assessment may be detained for a period not exceeding 28 days beginning with the day on which he is admitted, but shall not be detained after the expiration of that period unless before it has expired he has become liable to be detained by virtue of a subsequent application, order or direction under the following provisions of this Act.

s.3 ADMISSION FOR TREATMENT.

(1) A patient may be admitted to a hospital and detained there for the period allowed by the following provisions of this Act in pursuance of an application (in this Act referred to as “an application for admission for treatment”) made in accordance with this section.

(2) An application for admission for treatment may be made in respect of a patient on the grounds that—

(a) he is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment in a hospital; and

(b). . . (no longer applicable) . . .

(c) it is necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment and it cannot be provided unless he is detained under this section, and

(d) appropriate medical treatment is available for him.

(3) An application for admission for treatment shall be founded on the written recommendations in the prescribed form of two registered medical practitioners, including in each case a statement that in the opinion of the practitioner the conditions set out in subsection (2) above are complied with; and each such recommendation shall include—

(a) such particulars as may be prescribed of the grounds for that opinion so far as it relates to the conditions set out in paragraphs (a) and (d) of that subsection; and

(b) a statement of the reasons for that opinion so far as it relates to the conditions set out in paragraph (c) of that subsection, specifying whether other methods of dealing with the patient are available and, if so, why they are not appropriate.

(4) In this Act, references to appropriate medical treatment, in relation to a person suffering from mental disorder, are references to medical treatment which is appropriate in his case, taking into account the nature and degree of the mental disorder and all other circumstances of his case.

s.6 EFFECT OF APPLICATION FOR ADMISSION.

(1) An application for the admission of a patient to a hospital under this Part of this Act, duly completed in accordance with the provisions of this Part of this Act, shall be sufficient authority for the applicant, or any person authorised by the applicant, to take the patient and convey him to the hospital at any time within the following period, that is to say—

(a) in the case of an application other than an emergency application, the period of 14 days beginning with the date on which the patient was last examined by a registered medical practitioner before giving a medical recommendation for the purposes of the application;

(b) in the case of an emergency application, the period of 24 hours beginning at the time when the patient was examined by the practitioner giving the medical recommendation which is referred to in section 4(3) above, or at the time when the application is made, whichever is the earlier.

(2) Where a patient is admitted within the said period to the hospital specified in such an application as is mentioned in subsection (1) above, ... the application shall be sufficient authority for the managers to detain the patient in the hospital in accordance with the provisions of this Act.

(4) Where a patient is admitted to a hospital in pursuance of an application for admission for treatment, any previous application under this part of this Act by virtue of which he was liable to be detained in a hospital or subject to guardianship shall cease to have effect.

s.7 APPLICATION FOR GUARDIANSHIP.

(1) A patient who has attained the age of 16 years may be received into guardianship, for the period allowed by the following provisions of this Act, in pursuance of an application (in this Act referred to as “a guardianship application”) made in accordance with this section.

(2) A guardianship application may be made in respect of a patient on the grounds that—

(a) he is suffering from mental disorder, . . . of a nature or degree which warrants his reception into guardianship under this section; and

(b) it is necessary in the interests of the welfare of the patient or for the protection of other persons that the patient should be so received.

(3) A guardianship application shall be founded on the written recommendations in the prescribed form of two registered medical practitioners, including in each case a statement that in the opinion of the practitioner the conditions set out in subsection (2) above are complied with; and each such recommendation shall include—

(a) such particulars as may be prescribed of the grounds for that opinion so far as it relates to the conditions set out in paragraph (a) of that subsection; and

(b) a statement of the reasons for that opinion so far as it relates to the conditions set out in paragraph (b) of that subsection.

s.17 LEAVE OF ABSENCE FROM HOSPITAL.

(1) The responsible clinician (RC) may grant to any patient who is for the time being liable to be detained in a hospital under this Part of this Act leave to be absent from the hospital subject to such conditions (if any) as that clinician considers necessary in the interests of the patient or for the protection of other persons.

(2) Leave of absence may be granted to a patient under this section either indefinitely or on specified occasions or for any specified period; and where leave is so granted for a specified period, that period may be extended by further leave granted in the absence of the patient.

(4) In any case where a patient is absent from a hospital in pursuance of leave of absence granted under this section, and it appears to the RC that it is necessary so to do in the interests of the patient's health or safety or for the protection of other persons, that clinician may, subject to subsection (5) below, by notice in writing given to the patient or to the person for the time being in charge of the patient, revoke the leave of absence and recall the patient to the hospital.

s. 23 DISCHARGE OF PATIENTS.

(1) Subject to the provisions of this section and section 25 below, a patient who is for the time being liable to be detained or subject to guardianship under this Part of this Act shall cease to be so liable or subject if an order in writing discharging him absolutely from detention or guardianship is made in accordance with this section

(1A) Subject to the provisions of this section and section 25 below, a community patient shall cease to be liable to recall under this Part of this Act, and the application for admission for treatment cease to have effect, if an order in writing discharging him from such liability is made in accordance with this section.

(2) An order for discharge may be made in respect of a patient—

(a) where the patient is liable to be detained in a hospital in pursuance of an application for admission for assessment or for treatment by the RC, by the managers or by the nearest relative of the patient (NR);

(b) where the patient is subject to guardianship, by the RC, by the responsible local social services authority or by the nearest relative of the patient (NR);

(c) where the patient is a community patient, by the RC, by the managers of the responsible hospital or by the nearest relative of the patient (NR).

s.25 RESTRICTIONS ON DISCHARGE BY NEAREST RELATIVE.

(1) An order for the discharge of a patient who is liable to be detained in a hospital shall not be made under section 23 above by his nearest relative except after giving not less than 72 hours' notice in writing to the managers of the hospital;

and if, within 72 hours after such notice has been given, the RC furnishes to the managers a report certifying that in the opinion of that clinician the patient, if discharged, would be likely to act in a manner dangerous to other persons or to himself —

(a) any order for the discharge of the patient made by that relative in pursuance of the notice shall be of no effect; and

(b) no further order for the discharge of the patient shall be made by that relative during the period of six months beginning with the date of the report.

(1A) Subsection (1) above shall apply to an order for the discharge of a community patient as it applies to an order for the discharge of a patient who is liable to be detained in a hospital, but with the reference to the managers of the hospital being read as a reference to the managers of the responsible hospital.

(2) In any case where a report under subsection (1) above is furnished in respect of a patient who is liable to be detained in pursuance of an application for admission for treatment or in respect of a community patient, the managers shall cause the nearest relative of the patient to be informed.

s.37 POWERS OF COURTS TO ORDER HOSPITAL ADMISSION OR GUARDIANSHIP.

(1) Where a person is convicted before the Crown Court of an offence punishable with imprisonment other than an offence the sentence for which is fixed by law, or is convicted by a magistrates' court of an offence punishable on summary conviction with imprisonment, and the conditions mentioned in subsection (2) below are satisfied, the court may by order authorise his admission to and detention in such hospital as may be specified in the order or, as the case may be, place him under the guardianship of a local social services authority or of such other person approved by a local social services authority as may be so specified.

(2) The conditions referred to in subsection (1) above are that—

(a) the court is satisfied, on the written or oral evidence of two registered medical practitioners, that the offender is suffering from mental disorder and that either—

(i) the mental disorder from which the offender is suffering is of a nature or degree which makes it appropriate for him to be detained in a hospital for medical treatment and appropriate medical treatment is available for him; or

(ii) in the case of an offender who has attained the age of 16 years, the mental disorder is of a nature or degree which warrants his reception into guardianship under this Act; and

(b) the court is of the opinion, having regard to all the circumstances including the nature of the offence and the character and antecedents of the offender, and to the other available methods of dealing with him, that the most suitable method of disposing of the case is by means of an order under this section.

(3) Where a person is charged before a magistrates' court with any act or omission as an offence and the court would have power, on convicting him of that offence, to make an order under subsection (1) above in his case . . . , then, if the court is satisfied that the accused did the act or made the omission charged, the court may, if it thinks fit, make such an order without convicting him.

(4) An order for the admission of an offender to a hospital (in this Act referred to as "a hospital order") shall not be made under this section unless the court is satisfied on the written or oral evidence of the approved clinician who would have overall responsibility for his case or of some other person representing the managers of the hospital that arrangements have been made for his admission to that hospital, and for his admission to it within the period of 28 days beginning with the date of the making of such an order.

S.41 POWER OF HIGHER COURTS TO RESTRICT DISCHARGE FROM HOSPITAL.

(1)Where a hospital order is made in respect of an offender by the Crown Court, and it appears to the court, having regard to the nature of the offence, the antecedents of the offender and the risk of his committing further offences if set at large, that it is necessary for the protection of the public from serious harm so to do, the court may, subject to the provisions of this section, further order that the offender shall be subject to the special restrictions set out in this section F1. . . ; and an order under this section shall be known as “a restriction order”.

(2)A restriction order shall not be made in the case of any person unless at least one of the registered medical practitioners whose evidence is taken into account by the court under section 37(2)(a) above has given evidence orally before the court.

(3)The special restrictions applicable to a patient in respect of whom a restriction order is in force are as follows—

(a) none of the provisions of Part II of this Act relating to the duration, renewal and expiration of authority for the detention of patients shall apply, and the patient shall continue to be liable to be detained by virtue of the relevant hospital order until he is duly discharged under the said Part II or absolutely discharged under section 42, 73, 74 or 75 below;

(aa)none of the provisions of Part II of this Act relating to community treatment orders and community patients shall apply;

(b)no application shall be made to the appropriate tribunal in respect of a patient under section 66 or 69(1) below;

(c) the following powers shall be exercisable only with the consent of the Secretary of State:

(i) power to grant leave of absence to the patient under section 17 above;

(ii) power to transfer the patient in pursuance of regulations under section 19 above or in pursuance of subsection 3 of that section; and

(iii) power to order the discharge of the patient under section 23 above;

and if leave of absence is granted under the said section 17 power to recall the patient under that section shall vest in the Secretary of State as well as the RC ; and

(d) the power of the Secretary of State to recall the patient under the said section 17 and power to take the patient into custody and return him under section 18 above may be exercised at any time;

and in relation to any such patient section 40(4) above shall have effect as if it referred to Part II of Schedule 1 to this Act instead of Part I of that Schedule.

(4)A hospital order shall not cease to have effect under section 40(5) above if a restriction order in respect of the patient is in force at the material time.

(5)Where a restriction order in respect of a patient ceases to have effect while the relevant hospital order continues in force, the provisions of section 40 above and Part I of Schedule 1 to this Act shall apply to the patient as if he had been admitted to the hospital in pursuance of a hospital order (without a restriction order) made on the date on which the restriction order ceased to have effect.

(6)While a person is subject to a restriction order the RC shall at such intervals (not exceeding one year) as the Secretary of State may direct examine and report to the Secretary of State on that person; and every report shall contain such particulars as the Secretary of State may require.

s.42 POWER OF MoJ IN RESPECT OF PATIENTS SUBJECT TO RESTRICTION ORDERS.

(1) If the Secretary of State is satisfied that in the case of any patient a restriction order is no longer required for the protection of the public from serious harm, he may direct that the patient shall cease to be subject to the special restrictions set out in section 41(3) above; and where the Secretary of State so directs, the restriction order shall cease to have effect, and section 41(5) above shall apply accordingly.

(2) At any time while a restriction order is in force in respect of a patient, the Secretary of State may, if he thinks fit, by warrant discharge the patient from hospital, either absolutely or subject to conditions; and where a person is absolutely discharged under this subsection, 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.

(3) The Secretary of State may at any time during the continuance in force of a restriction order in respect of a patient who has been conditionally discharged under subsection (2) above by warrant recall the patient to such hospital as may be specified in the warrant.

s. 45A POWER OF HIGHER COURTS TO DIRECT HOSPITAL ADMISSION.

(3)The court may give a direction that the offender be removed to and detained in such hospital as may be specified and (b) a direction that the offender be subject to the special restrictions set out in section 41 above (in this Act referred to as a “limitation direction”).

s. 66 APPLICATIONS TO TRIBUNALS.

(1)Where—

(a) a patient is admitted to hospital in pursuance of an application for admission for assessment; or

(b) a patient is admitted to a hospital in pursuance of an application for admission for treatment; or

(c) a patient is received into guardianship in pursuance of a guardianship application; or

(ca) a community treatment order is made (or revoked) in respect of a patient; or

(e) a patient is transferred from guardianship to a hospital in pursuance of regulations under s. 19 above; or

(g) a report is furnished under section 25 above in respect of a patient who is detained in pursuance of an application for admission for treatment;

(and various other scenarios)

an application may be made to the appropriate tribunal within the relevant period—

(i) by the patient (except in the cases mentioned in paragraphs (g) and (h) above . .

(ii) in the cases mentioned in paragraphs (g) and (h) above, by his nearest relative.

(2)In subsection (1) above “the relevant period” means—

(a)in the case mentioned in paragraph (a) of that subsection, 14 days beginning with the day on which the patient is admitted as so mentioned;

(b)in the case mentioned in paragraph (b) or (c) of that subsection, six months beginning with the day on which the patient is admitted as so mentioned;

d) in the case mentioned in paragraph (g) of that subsection, 28 days beginning with the day on which the applicant is informed that the report has been furnished;

(g) in the case mentioned in paragraph (h) of that subsection, 12 months beginning with the date of the order, and in any subsequent period of 12 months during which the order continues in force.

s.71 REFERENCES BY SECRETARY OF STATE CONCERNING RESTRICTED PATIENTS.

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

s. 72 POWERS OF TRIBUNALS.

(1) Where application is made to the appropriate tribunal by or in respect of a patient who is liable to be detained under this Act 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 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 it is not satisfied—

(i) that he is then suffering from 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 or safety of the patient or for the protection of other persons that he should receive such treatment; or

(iia) that appropriate medical treatment is available for him; or

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

(c) the tribunal shall direct the discharge of a community patient if it is not 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 RC 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.

(1A) ...

(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 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.

(3A)Subsection (1) above does not require a tribunal to direct the discharge of a patient just because 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 RC consider whether to make a community treatment order; and (b) may (but need not) further consider the patient's case if the RC does not make an order.

(4) Where application is made to 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 it is satisfied—

(a)that he is not then suffering from 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.

(7)Subsection (1) above shall not apply in the case of a restricted patient except as provided in sections 73 and 74 below.

S. 73 POWER TO DISCHARGE RESTRICTED PATIENTS.

(1)Where an application to the appropriate 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 appropriate tribunal, the tribunal shall direct the absolute discharge of the patient if—

(a) the tribunal is NOT satisfied as to the matters mentioned in paragraph (b)(i) (ii) or (iia) of section 72(1) above (namely):

(i) that he is then suffering from 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 or safety of the patient or for the protection of other persons that he should receive such treatment; or

(iia) that appropriate medical treatment is available for him; or

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 subsection (1) above—

(a) paragraph (a) of that subsection applies; but

(b) paragraph (b) of that subsection does not apply,

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 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 section can be given.

s.75 APPLICATIONS AND REFERENCES CONCERNING CONDITIONALLY DISCHARGED RESTRICTED PATIENTS.

(1) Where a restricted patient has been conditionally discharged under section 42(2) (by the Sec of State), 73 (by the Tribunal ref restricted patient) or 74 (by the Tribunal ref hybrid orders under s.45A) 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 the appropriate tribunal; and
- (b) section 70 above shall apply to the patient as if the relevant hospital order, hospital direction 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 appropriate 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—

- (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 limitation direction or restriction direction to which he is subject shall cease to have effect;

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

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