

Appendix IIA Mental Health Act 1983

PART I — APPLICATION OF THE ACT

Application of Act: "mental disorder"

1.—(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 mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind and "mentally disordered" shall be construed accordingly;

"severe mental impairment" means a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned and "seriously mentally impaired" shall be construed accordingly;

"mental impairment" means a state of arrested or incomplete development of mind (not amounting to severe mental impairment) which includes significant impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned and "mentally impaired" shall be construed accordingly;

"psychopathic disorder" means a persistent disorder or disability of mind (whether or not including significant impairment of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the person concerned;

and other expressions shall have the meanings assigned to them in section 145 below.

(3) Nothing in subsection (2) above shall be construed as implying that a person may be dealt with under this Act as suffering from mental disorder, or from any form of mental disorder described in this section, by reason only of promiscuity or other immoral conduct, sexual deviancy or dependence on alcohol or drugs.

Constitution, etc.

Mental Health Review Tribunals

65.—(1) There shall continue to be tribunals, known as a Mental Health Review Tribunals, for the purpose of dealing with applications and references by and in respect of patients under the provisions of this Act.

(1A) There shall be—

- (a) one tribunal for each region of England, and
- (b) one tribunal for Wales.

(1B) The Secretary of State—

- (a) shall by order determine regions for the purpose of subsection (1A)(a) above; and
- (b) may by order vary a region determined for that purpose;

and the Secretary of State shall act under this subsection so as to secure that the regions together comprise the whole of England.

(1C) Any order made under subsection (1B) above may make such transitional, consequential, incidental or supplemental provision as the Secretary of State considers appropriate.

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

(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 a Mental Health Review Tribunal may be exercised by any three or more of its members, and references in this Act to a Mental Health Review Tribunal shall be construed accordingly.

(4) The Secretary of State may pay to the members of Mental Health Review Tribunals such remuneration and allowances as he may with the consent of the Treasury determine, and defray the expenses of such tribunals to such amount as he may with the consent of the Treasury determine, and may provide for each such tribunal such officers and servants, and such accommodation, as the tribunal may require.

Applications to tribunals

66.—(1) Where—

- (a) a patient is admitted to a 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
- (d) a report is furnished under section 16 above in respect of a patient; or
- (e) a patient is transferred from guardianship to a hospital in pursuance of regulations made under section 19 above; or
- (f) a report is furnished under section 20 above in respect of a patient and the patient is not discharged; or
- (fa) a report is furnished under subsection (2) of section 21B above in respect of a patient and subsection (5) of that section applies (or subsections (5) and (6)(b) of that section apply) in the case of the report; or
- (fb) a report is furnished under subsection (2) of section 21B above in respect of a patient and subsection (8) of that section applies in the case of the report; 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; or
- (ga) a supervision application is accepted in respect of a patient; or
- (gb) a report is furnished under section 25F above in respect of a patient; or
- (gc) a report is furnished under section 25G above in respect of a patient; or
- (h) an order is made under section 29 above in respect of a patient who is or subsequently becomes liable to be detained or subject to guardianship under Part II of this Act,

an application may be made to a Mental Health Review Tribunal within the relevant period—

- (i) by the patient (except in the cases mentioned in paragraphs (g) and (h) above) or, in the cases mentioned in paragraphs (d), (ga), (gb) and (gc), by his nearest relative if he has been (or was entitled to be) informed under this Act of the report or acceptance.
- (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;
 - (b) in the case mentioned in paragraph (b) of that subsection, six months beginning with the day on which the patient is admitted as so mentioned;
 - (c) in the cases mentioned in paragraph (c) and (ga) of that subsection, six months beginning with the day on which the application is accepted;
 - (d) in the cases mentioned in paragraphs (d), (fb), (g) and (gb) of that subsection, 28 days beginning with the day on which the applicant is informed that the report has been furnished;
 - (e) in the case mentioned in paragraph (e) of that subsection, six months beginning with the day on which the patient is transferred;
 - (f) in the case mentioned in paragraph (f) or (fa) of that subsection, the period or periods for which authority for the patient's detention or guardianship is renewed by virtue of the report;
 - (fa) in the case mentioned in paragraph (gc) of that subsection, the further period for which the patient is made subject to after-care under supervision by virtue of the report;
 - (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.
- (3) Section 32 above shall apply for the purposes of this section as it applies for the purposes of Part II of this Act.

Application of section 66 to Part III patients

Section 66 applies to Part III patients subject to the modifications set out in Part I of Schedule 1 to the Act. As modified, the section reads as follows:

- 66.—(1) Where—
- (d) a report is furnished under section 16 above in respect of a patient, or
 - (e) a patient is transferred from guardianship to a hospital in pursuance of regulations made under section 19 above; or
 - (f) a report is furnished under section 20 above in respect of a patient and the patient is not discharged; or
 - (fa) a report is furnished under subsection (2) of section 21B above in respect of a patient and subsection (5) of that section applies (or subsections (5) and (6)(b) of that section apply) in the case of the report; or
 - (fb) a report is furnished under subsection (2) of section 21B above in respect of a patient and subsection (8) of that section applies in the case of the report; or
 - (ga) a supervision application is accepted in respect of a patient; or
 - (gb) a report is furnished under section 25F above in respect of a patient; or

- (gc) a report is furnished under section 5G above in respect of a patient; or
- an application may be made to a Mental Health Review Tribunal within the relevant period—
- (i) by the patient; or, in the cases mentioned in paragraphs (d), (ga), (gb) and (gc), by his nearest relative if he has been (or was entitled to be) informed under this Act of the report or acceptance.
- (2) In subsection (1) above "the relevant period" means—
- (d) in the cases mentioned in paragraphs (d), (fb) and (gb) of that subsection, 28 days beginning with the day on which the applicant is informed that the report has been furnished;
 - (e) in the case mentioned in paragraph (e) of that subsection, six months beginning with the day on which the patient is transferred;
 - (f) in the case mentioned in paragraph (f) or (fa) of that subsection, the period or periods for which authority for the patient's detention or guardianship is renewed by virtue of the report;
 - (fa) in the case mentioned in paragraph (gc) of that subsection, the further period for which the patient is made subject to after-care under supervision by virtue of the report;
- (3) Section 32 above shall apply for the purposes of this section as it applies for the purposes of Part II of this Act.

References to tribunals by Secretary of State concerning Part II patients

- 67.—(1) The Secretary of State may, if he thinks fit, at any time refer to a Mental Health Review Tribunal the case of any patient who is liable to be detained or subject to guardianship or to after-care under supervision under Part II of this Act.
- (2) For the purpose of furnishing information for the purposes of a reference under subsection (1) above any registered 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 or to any after-care services provided for the patient under s.117 below.
- (3) Section 32 above shall apply for the purposes of this section as it applies for the purposes of Part II of this Act.

Duty of managers of hospitals to refer cases to tribunal

68.—(1) Where a patient who is admitted to a hospital in pursuance of an application for admission for treatment or a patient who is transferred from guardianship to hospital does not exercise his right to apply to a Mental Health Review Tribunal under section 66(1) above by virtue of his case falling within paragraph (b) or, as the case may be, paragraph (e) of that section, the managers of the hospital shall at the expiration of the period for making such an application refer the patient's case to such a tribunal unless an application or reference in respect of the patient's case to be made under section 66(1) above by virtue of his case falling within paragraph (d), (g) or (h) of that section or under section 67(1) above.

(2) If the authority for the detention of a patient in a hospital is revoked under section 20 or 21B above and a period of three years (or, if the patient has not attained the age of sixteen years, one year) has elapsed since his case was last considered by a Mental Health Review Tribunal, whether on his own application or otherwise, the managers of the hospital shall refer his case to such a tribunal.

(3) For the purpose of furnishing information for the purpose of any reference under this section, any registered medical practitioner authorised by or on behalf of the patient may at any reasonable time visit and examine the patient in private and require the production of and inspect any records relating to the detention or treatment of the patient in any hospital or to any after-care services provided for the patient under section 117 above.

(4) The Secretary of State may by order vary the length of the periods mentioned in subsection (2) above.

(5) For the purposes of subsection (1) above a person who applies to a tribunal but subsequently withdraws his application shall be treated as not having exercised his right to apply, and where a person withdraws his application on a date after the expiration of the period mentioned in that subsection, the managers shall refer the patient's case as soon as possible after that date.

Applications and References Concerning Part III Patients

Applications to tribunals concerning patients subject to hospital and guardianship orders

69.—(1) Without prejudice to any provision of section 66(1) above as applied by section 40(4) above, an application to a Mental Health Review Tribunal may also be made—

(a) in respect of a patient admitted to a hospital in pursuance of a hospital order, by the nearest relative of the patient in the period between the expiration of six months and the expiration of 12 months beginning with the date of the order and in any subsequent period of 12 months; and

(b) in respect of a patient placed under guardianship by a guardianship order—

(i) by the patient, within the period of six months beginning with the date of the order;

(ii) 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.

(2) Where a person detained in a hospital—

(a) is treated as subject to a hospital order or transfer direction by virtue of section 41(5) above, 82(2) or 85(2) below, section 77(2) of the Mental Health (Scotland) Act 1984 or section 5(1) of the Criminal Procedure (Insanity) Act 1964; or

(b) is subject to a direction having the same effect as a hospital order by virtue of section [45B(2),] 46(3), 47(3) or 48(3) above,

then, without prejudice to any provision of Part II of this Act as applied by section 40 above, that person may make an application to a Mental Health Review Tribunal in the period of six months beginning with the date of the order or direction mentioned in paragraph (a) above or, as the case may be, the date of the direction mentioned in paragraph (b) above.

Applications to tribunals concerning restricted patients

70. A patient who is a restricted patient within the meaning of section 79 below and is detained in a hospital may apply to a Mental Health Review Tribunal—

(a) in the period between the expiration of six months and the expiration of 12 months beginning with the date of the relevant hospital order [, hospital direction] or transfer direction; and

(b) in any subsequent period of 12 months.

References by Secretary of State concerning restricted patients

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

(2) The Secretary of State shall refer to a Mental Health Review 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.

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

(4) Any reference under subsection (1) above in respect of a patient who has been conditionally discharged and not recalled to hospital shall be made to the tribunal for the area in which the patient resides.

(5) Where a person who is treated as subject to a hospital order and a restriction order by virtue of an order under section 5(1) of the Criminal Procedure (Insanity) Act 1964 does not exercise his right to apply to a Mental Health Review Tribunal in the period of six months beginning with the date of that order, the Secretary of State shall at the expiration of that period refer his case to a tribunal.

(6) For the purposes of subsection (5) above a person who applies to a tribunal but subsequently withdraws his application shall be treated as not having exercised his right to apply, and where a patient withdraws his application on a date after the expiration of the period there mentioned the Secretary of State shall refer the case as soon as possible after that date.

Powers of tribunals

72.—(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.

(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 care 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.

(3A) Where, in the case of an application to a tribunal by or in respect of a patient who is liable to be detained in pursuance of an application for admission for treatment or by virtue of an order or direction for his admission or removal to hospital under Part III of this Act, the tribunal do not direct the discharge of the patient under subsection (1) above, the tribunal may—

(a) recommend that the responsible medical officer consider whether to make a supervision application in respect of the patient; and

(b) further consider his case in the event of no such application being made.

(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.

(4A) Where application is made to a Mental Health Review Tribunal by or in respect of a patient who is subject to after-care under supervision (or, if he has not yet left hospital, is to be so subject after he leaves hospital), the tribunal may in any case direct that the patient shall cease to be so subject (or not become so subject), and shall so direct if they are satisfied—

(a) in a case where the patient has not yet left hospital, that the conditions set out in section 25A(4) above are not complied with; or

(b) in any other case, that the conditions set out in section 25G(4) above are not complied with.

(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 or, if he is (or is to be) subject to after-care under supervision, that he cease to be so subject (or not become so subject), 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.

Power to discharge restricted patients

73.—(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) of section 72(1) above; and

(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.

Restricted patients subject to restriction directions

74.—(1) Where an application to a Mental Health Review Tribunal is made by a restricted patient who is subject to [a limitation direction or] 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

(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 hospital direction and the limitation direction or, as the case may be,] 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 (5) 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 hospital direction and the limitation direction or, as the case may be,] the transfer direction and the restriction direction.

(7) This section is without prejudice to sections 50 to 53 above in the application to patients who are not discharged under this section.

Applications and references concerning conditionally discharged restricted patients

75.—(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 [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 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—

(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.

General

Visiting and examination of patients

76.—(1) For the purpose of advising whether an application to a Mental Health Review Tribunal should be made by or in respect of a patient who is liable to be detained or subject to guardianship or to after-care under supervision (or, if he has not yet left hospital, is to be subject to after-care under supervision after he leaves hospital) under Part II of this Act or of furnishing information as to the condition of a patient for the purposes of such an application, any registered 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 or to any after-care services provided for the patient under section 117 below.

(2) Section 32 above shall apply for the purposes of this section as it applies for the purposes of Part II of this Act.

General provisions concerning tribunal applications

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

(2) Where under this Act any person is authorised to make an application to a Mental Health 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 section 78 below.

(3) Subject to subsection (4) below an application to a Mental Health Review Tribunal authorised to be made by or in respect of a patient under this Act shall be made by notice in writing addressed to the tribunal for the area in which the hospital in which the patient is detained is situated or in which the patient is residing under guardianship or when subject to after-care under supervision (or in which he is to reside on becoming so subject after leaving hospital) as the case may be.

(4) Any application under section 75(2) above shall be made to the tribunal for the area in which the patient resides.

Procedure of tribunals

78.—(1) The Lord Chancellor may make rules with respect to the making of applications to Mental Health Review Tribunals and with respect to the proceedings of such tribunals and matters incidental to or consequential on such proceedings.

(2) Rules made under this section may in particular make provision—

(a) for enabling a tribunal, or the chairman of a 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 that or any other tribunal under this Act;

(b) for the transfer of proceedings from one tribunal to another in any case where, after the making of the application, the patient is removed out of the area of the tribunal to which it was made;

- 77(4) above, the patient or to reside in the area of the tribunal to which the reference or application was made.
- (5) Rules under this section may be so framed as to apply to all applications or references or to applications or references of any specified class and may make different provision in relation to different cases.
- (6) Any functions conferred on the chairman of a Mental Health Review Tribunal by rules under this section may, if for any reason he is unable to act, be exercised by another member of that tribunal appointed by him for the purpose.
- (7) A Mental Health 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.
- (8) A Mental Health Review Tribunal may, and if so required by the High Court shall, state in the form of a special case for determination by the High Court any question of law which may arise before them.
- (9) The Arbitration Act 1950 shall not apply to any proceedings before a Mental Health Review Tribunal except so far as any provisions of that Act may be applied, with or without modifications, by rules made under this section.

Interpretation of Part V

- 79.—(1) In this Part of this Act "restricted patient" means a patient who is subject to a restriction order [, limitation direction] or restriction direction and this Part of this Act shall, subject to the provisions of this section, have effect in relation to any person who—
- (a) is subject to a direction which by virtue of section 46(3) above has the same effect as a hospital order and a restriction order; or
- (b) is treated as subject to a hospital order and a restriction order by virtue of an order under section 5(1) of the Criminal Procedure (Insanity) Act 1964 or section 6 or 14(1) of the Criminal Appeal Act 1968; or
- (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 82(2) or 85(2) below or section 73(2) of the Mental Health (Scotland) Act 1984,
- as it has effect in relation to a restricted patient.
- (2) Subject to the following provisions of this section, in this Part of this Act "the relevant hospital order" [, "the relevant hospital direction"] and "the relevant transfer direction," in relation to a restricted patient, mean the hospital order [the hospital direction] or transfer direction by virtue of which he is liable to be detained in a hospital.

- (c) for restricting the persons qualified to serve as members of a tribunal for the consideration of any application, or of an application of any specified class;
- (d) for enabling a tribunal to dispose of an application without a formal hearing where such a hearing is not requested by the applicant or it appears to the tribunal that such a hearing would be detrimental to the health of the patient;
- (e) for enabling a 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;
- (f) for regulating the circumstances in which, and the persons by whom, applicants and patients in respect of whom applications are made to a tribunal may, if not desiring to conduct their own case, be represented for the purposes of those applications;
- (g) 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 a 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;
- (h) for making available to any applicant, and to any patient in respect of whom an application is made to a 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 so obtained or furnished except where the tribunal considers it undesirable in the interests of the patient or for other special reasons;
- (i) for requiring a 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;
- (j) for conferring on the tribunals such ancillary powers as the Lord Chancellor thinks necessary for the purposes of the exercise of their functions under this Act;
- (k) for enabling any functions of a tribunal which relate to matters preliminary or incidental to an application to be performed by the chairman of the tribunal.
- (3) Subsections (1) and (2) above apply in relation to references to Mental Health Review Tribunals as they apply in relation to applications to such tribunals by or in respect of patients.
- (4) Rules under this section may make provision as to the procedure to be adopted in cases concerning restricted patients and, in particular—
- (a) for restricting the persons qualified to serve as president of a tribunal for the consideration of an application or reference relating to a restricted patient;
- (b) for the transfer of proceedings from one tribunal to another in any case where, after the making of a reference or application in accordance with section 71(4) or

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

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

(5) In the case of a person within paragraph (c) of subsection (1) above, references in this Part of this Act to the relevant hospital order, the relevant transfer direction, the restriction order or the restriction direction or to a transfer direction under section 48 above shall be construed as references to the hospital order, transfer direction, restriction order, restriction direction or transfer direction under that section to which that person is treated as subject by virtue of the provisions mentioned in that paragraph.

(6) In this Part of this Act, unless the context otherwise requires, "hospital" means a hospital and the "responsible medical officer" means the responsible medical officer, within the meaning of Part II of this Act.

(7) In this Part of this Act any reference to the area of a tribunal is—

- (a) in relation to a tribunal for a region of England, a reference to that region; and
- (b) in relation to the tribunal for Wales, a reference to Wales.

PART VI — REMOVAL AND RETURN OF PATIENTS WITHIN UNITED KINGDOM, etc.

Removal of aliens

Removal of alien patients

86.—(1) This section applies to any patient who is neither a British citizen nor a Commonwealth citizen having the right of abode in the United Kingdom by virtue of section 2(1)(b) of the Immigration Act 1971, being a patient who is receiving treatment for mental illness as an in-patient in a hospital in England and Wales or a hospital within the meaning of the Mental Health Act (Northern Ireland) Order 1986 and is detained pursuant to—

- (a) an application for admission for treatment or a report under Article 12(1) or 13 of that Order;
- (b) a hospital order under section 37 above or Article 44 of that Order; or

(c) an order or direction under this Act (other than under section 35, 36 or 38 above) or under that Order (other than under Article 42, 43 or 45 of that Order) having the same effect as such a hospital order.

(2) If it appears to the Secretary of State that proper arrangements have been made for the removal of a patient to whom this section applies to a country or territory outside the United Kingdom, the Isle of Man and the Channel Islands and for his care or treatment there and that it is in the interests of the patient to remove him, the Secretary of State may, subject to subsection (3) below—

(a) By warrant authorise the removal of the patient from the place where he is receiving treatment as mentioned in subsection (1) above, and

(b) give such directions as the Secretary of State thinks fit for the conveyance of the patient to his destination in that country or territory and for his detention in any place or on board any ship or aircraft until his arrival at any specified port or place in any such country or territory.

(3) The Secretary of State shall not exercise his powers under subsection (2) above in the case of any patient except with the approval of a Mental Health Review Tribunal or, as the case may be, of the Mental Health Review Tribunal for Northern Ireland.

Supplemental

Interpretation

145.—(1) In this Act, unless the context otherwise requires—

"absent without leave" has the meaning given to it by section 18 above and related expressions shall be construed accordingly;

"application for admission for assessment" has the meaning given in section 2 above;

"application for admission for treatment" has the meaning given in section 3 above;

"approved social worker" means an officer of a local social services authority appointed to act as an approved social worker for the purposes of this Act;

"hospital" means—

- (a) any health service hospital within the meaning of the National Health Service Act 1977; and
- (b) any accommodation provided by a local authority and used as a hospital or on behalf of the Secretary of State under that Act;

and "hospital within the meaning of Part II of this Act" has the meaning given in section 34 above;

["hospital direction" has the meaning given in section 45A(3)(a) above;]

"hospital order" and "guardianship order" have the meanings respectively given in section 37 above;

"interim hospital order" has the meaning given in section 38 above;

["limitation direction" has the meaning given in section 45A(3)(b) above;]

"local social services authority" means a council which is a local authority for the purpose of the Local Authority Social Services Act 1970;

"the managers" means—

(a) in relation to a hospital vested in the Secretary of State for the purposes of his functions under the National Health Service Act 1977, and in relation to any accommodation provided by a local authority and used as a hospital by or on behalf of the Secretary of State under that Act, the Health Authority or Special Health Authority responsible for the administration of the hospital;

(b) in relation to a special hospital, the Secretary of State;

(bb) in relation to a hospital vested in a National Health Service trust, the directors of the trust;

(c) in relation to a mental nursing home registered in pursuance of the Registered Homes Act 1984, the person or persons registered in respect of the home;

and in this definition "hospital" means a hospital within the meaning of Part II of this Act;

"medical treatment" includes nursing, and also includes care, habilitation and rehabilitation under medical supervision;

"mental disorder" "severe mental impairment" "mental impairment" and "psychopathic disorder" have the meanings given in section 1 above;

"mental nursing home" has the same meaning as in the Registered Homes Act 1984;

"nearest relative", in relation to a patient, has the meaning given in Part II of this Act;

"patient" (except in Part VII of this Act) means a person suffering or appearing to be suffering from mental disorder;

the "responsible after-care bodies" has the meaning given in Part II of this Act;

"restriction direction" has the meaning given to it by section 49 above;

"restriction order" has the meaning given to it by section 41 above;

"Special Health Authority" means a Special Health Authority established under section 11 of the National Health Service Act 1977.

"special hospital" has the same meaning as in the National Health Service Act 1977;

"supervision application" has the meaning given in section 25A above.

"transfer direction" has the meaning given to it by section 47 above.

(3) In relation to a person who is liable to be detained or subject to guardianship by virtue of an order or direction under Part III of this Act (other than under section 35, 36, or 38), any reference in this Act to any enactment contained in Part II of this Act or in section 66 or 67 above shall be construed as a reference to that enactment as it applies to that person by virtue of Part III of this Act.

SCHEDULE 2 — MENTAL HEALTH REVIEW TRIBUNALS

1. Each of the Mental Health Review Tribunals shall consist of—

(a) a number of persons (referred to in this Schedule as "the legal members") appointed by the Lord Chancellor and having such legal experience as the Lord Chancellor considers suitable;

(b) a number of persons (referred to in this Schedule as "the medical members") being registered medical practitioners appointed by the Lord Chancellor after consultation with the Secretary of State; and

(c) a number of persons appointed by the Lord Chancellor after consultation with the Secretary of State and having such experience in administration, such knowledge of social services or such other qualifications or experience as the Lord Chancellor considers suitable.

2. The members of Mental Health Review Tribunals shall hold and vacate office under the terms of the instrument under which they are appointed, but may resign office by notice in writing to the Lord Chancellor; and any such member who ceases to hold office shall be eligible for re-appointment.

3. One of the legal members of each Mental Health Review Tribunal shall be appointed by the Lord Chancellor as chairman of the Tribunals.

4. Subject to rules made by the Lord Chancellor under section 78() above, the members who are to constitute a Mental Health Review Tribunal for the purposes of any proceedings or class or group of proceedings under this Act shall be appointed by the chairman of the tribunal or, if for any reason he is unable to act, by another member of the tribunal appointed for the purpose by the chairman; and of the members so appointed—

- (a) one or more shall be appointed from the legal members;
- (b) one or more shall be appointed from the medical members; and
- (c) one or more shall be appointed from the members who are neither legal nor medical members.

5. A member of a Mental Health Review Tribunal for any area may be appointed under paragraph 4 above as one of the persons to constitute a Mental Health Review Tribunal for any other area for the purposes of any proceedings or class or group of proceedings; and for the purposes of this Act, a person so appointed shall, in relation to the proceedings for which he was appointed be deemed to be a member of that other tribunal.

6. Subject to any rules made by the Lord Chancellor under section 78(4)(a) above, where the chairman of the tribunal is included among the persons appointed under paragraph 4 above, he shall be president of the tribunal; and in any other case the president of the tribunal shall be such one of the members so appointed (being one of the legal members) as the chairman may nominate.

Appendix IIB The 1983 Rules

THE MENTAL HEALTH REVIEW TRIBUNAL RULES 1983

(Statutory Instrument 1983 No. 942)

Dated June 28 1983 and made by the Lord Chancellor under the Mental Health Act 1983, s. 78.

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