

Mental Health Commission

**Guidance for Mental Health Tribunals
Re the Emergency Measures in the Public Interest Act
2020 and the Covid-19 public health emergency**

Effective 30 March 2020

Guidance in relation to the requirements of the Emergency Measures in the Public Interest (Covid-19) Act 2020 as it relates to mental health tribunals

The Mental Health Commission (MHC) is issuing the following guidance to assist all parties.

Introduction

As of Monday 30 March 2020, all mental health tribunals (tribunals) shall be held remotely.

We have consulted with the HSE on this Guidance, as it is imperative that while the review process continues approved centres can also continue to provide care and treatment to patients.

Establishing Tribunals

Please note that there is a provision in the amending legislation to allow the MHC to move from a three member tribunal to a one member tribunal if due to the exigencies of the public health emergency, a three member tribunal cannot be appointed. The MHC has agreed a test, which it shall apply to determine when the one member tribunal shall be utilised.

Scheduling Tribunals

Insofar as this is possible, it is proposed that tribunals shall take place after 12 noon each day, in order to facilitate the approved centres to copy records and provide the RCP report, as required. No tribunal shall be arranged before 2.30 pm on a Monday or a Tuesday after a bank holiday.

Preliminary Note re Confidentiality and Data Protection for All Parties

1. All panel members, legal representatives and approved centres shall continue to apply data protection legislation and procedures.
2. When working from your office or from home all parties need to do so in a room away from other people. It is imperative that confidentiality and privacy is maintained at all times.
3. All paperwork in your office or at home must be kept in a secure locked location.
4. All paperwork should be stapled together rather than clipped or left in loose pages
5. All applications and devices relating to MHC work when not in use must be fully turned off.

Statutory Forms

The MHC has revised the following, which shall be sent to the Chairpersons via the secure messaging centre (SMC) and shall appear on the MHC website –

1. Form 9
2. Form 8
3. Records of the Proceedings

You can contact the Mental Health Tribunal division within the Mental Health Commission on **01 636 2400**.

Please note: This is a guidance document only and it is not a legal interpretation of the changes, so please do not rely on it for advice.

A. Mental Health Act Administrators (MHAAs)

1. MHAAs shall submit the statutory forms **plus** the Patient Notification Form to the MHC via the secure fax inbox as per pre Covid-19 procedures.
2. MHAAs shall be informed by the MHC of the date when the Independent Consultant Psychiatrist (ICP) is doing his / her report and shall copy the extracts from the patient's records (See Appendix A) – this shall consist of records **from** the date of the making of the order **to** the date of receipt of the MHC's request for the patient's records. The MHAA shall send the records to the MHC as per the below
3. MHAAs shall be informed of the date of the tribunal and shall copy the extracts from the patient's records – these shall be the patient records **from** the date of the making of the order up **to** 5 pm the day before the tribunal or 10 am on the day of the tribunal if the tribunal is on a Monday or a Tuesday after a bank holiday. The MHAA shall send the records to the MHC in accordance with A.4 below.
4. The patient records should be sent either by 5 pm the day before the tribunal or 10 am on the day of the tribunal if the tribunal is on a Monday or a Tuesday after a bank holiday.
5. All records must be sent password protected to the MHC to the following email address – records@mhcir.ie
6. The password for records must be sent separately to the MHC by way of email to recordspp@mhcir.ie or the MHAA in each approved centre may fix a password for the month and provide same to the nominated MHC person or persons by telephone - Julianne Casey (01 6362404) and in the alternate [Aoife Murphy \(01 6362416\)](mailto:Aoife.Murphy@mhcir.ie). The MHC shall store the passwords in a secure location.
7. The MHAA shall organise with the relevant persons within the approved centre for a telephone to be made available to the patient so that he / she may attend the hearing of the tribunal if he / she wishes.
8. If an MHAA is unavailable due to the public health emergency to carry out this task, it shall be done by another person duly authorised by the Registered Proprietor / Clinical Director to carry out this task.

Note – It is imperative that the records are password protected, as all parties must apply data protection requirements notwithstanding these exceptional circumstances.

In relation to A. above, the MHC shall

1. Send the MHAA for the patient and / or RCP, the conference call details for the remote tribunal via the SMC.
2. When the MHC receives the decision of the tribunal, it will be uploaded to the SMC and will be available for review and / or printing by the MHAA / RCP for one full working day (this will include tribunals concluded after 5 pm on Fridays).

B. Responsible Consultant Psychiatrists (RCPs)

1. RCPs shall make themselves available to be interviewed by the ICP. This shall be done remotely. The ICP and the RCP shall contact each other as per pre Covid-19 procedures.
2. The RCP shall provide a report to the tribunal. If the RCP is attending the tribunal that report shall be a short pro forma report. If the RCP is not attending the tribunal he / she shall set out in full the basis as to why he / she believes the patient continues to suffer from a mental disorder as per section 3 of the Mental Health Act 2001. This report is to be **provided no earlier than the day before the date of the relevant tribunal** (See Appendix B).
3. The RCP's report shall be sent to the MHC via RCPreport@mhcirl.ie. If the report does not contain any identifiable sensitive personal data, it can be emailed directly to the MHC without a password. If it does contain identifiable sensitive personal data, it must be password protected and the password should be sent to RCPreportpp@mhcirl.ie.
4. The MHC shall immediately forward the RCP's report to the tribunal and to the legal representative.

In relation to B above, the MHC shall

1. Send the MHAA for the patient and / or RCP, conference call details for the remote tribunal via the secure messaging system (SMC).
2. When the MHC receives the decision of the tribunal, it will be uploaded to the SMC and will be available for review and / or printing by the MHAA / RCP for one full working day (this will include tribunals concluded after 5 pm on Fridays).

C. Legal Representatives

1. Legal representatives shall continue to be appointed to represent the interests of patients involuntarily detained as per pre Covid-19 procedures.
2. Legal representatives shall be sent the statutory forms **plus** the Patient Notification Form at the outset of the case via the SMC.
3. The legal representatives shall receive an extract from the patient's records at the same time as the ICP as per A.2. above
4. The legal representatives shall receive a further more complete extract from the patients' records at the same time as the tribunal as per A.3. above.
5. Patients are entitled to refuse their legal representative access to their records if they so wish. The MHC must be notified in writing by the legal representative if consent has been refused. If consent has not been obtained then the records shall not be sent to the legal representative. The legal representative shall be required to make a written submission to the tribunal for access to the records and the tribunal shall have to make a decision in relation to the matter. If the tribunal decides to grant the legal representative access to the patient's records, the tribunal shall call the MHC and the MHC shall immediately provide the records to the legal representative via the SMC.
6. The legal representative shall receive the ICP's report via the SMC.
7. The legal representative shall receive the RCP's report via the SMC.
8. The patient may also provide a written submission to the tribunal via his/her legal representative.

In relation to C above, the MHC shall

1. Send the legal representative the conference call details for the remote tribunal via the SMC.
2. When the MHC receives the decision of the tribunal, it will upload it onto the SMC and it will be available for review and / or printing by the LR for one full working day (this will include tribunals concluded after 5 pm on Fridays).

Note – The Approved Centres shall facilitate the legal representative and the patient in speaking to each other in relation to the tribunal where requested – either by the legal representative or the patient or both.

Note – If a legal representative wishes to visit a patient in person, that is a matter for the legal representative, however, the legal representative should contact the approved centre in advance to see if that is in fact possible and ascertain any criteria with regard to admission to see the patient. Please note that in the current public health emergency, there is no expectation that a legal representative would attend an approved centre.

D. Independent Consultant Psychiatrists (ICPs)

1. The ICP shall be assigned to a case by the MHC as per pre Covid-19 procedures.
2. The ICP shall –
 - 2.1 Examine the patient – this shall now be done remotely by whatever means possible.
 - 2.2 Interview the consultant psychiatrist responsible for the care and treatment of the patient - this shall now be done remotely by whatever means possible, and
 - 2.3 Review the records relating to the patient.If the ICP is unable to carry out the examination of the patient at all due to the current public health emergency, this **must to be expressly addressed in the ICP report.**
3. The patient's records shall be provided to the ICP as per A.2. above. The patient records shall only relate to the period of the current order. The patient records shall be accessed via the SMC.
4. The ICP should complete the standard format Section 17 report and, where they have not been able to examine the patient, set out the specific reasons for not being able to do the examination. At the end of the report, the ICP should include a statement that the report has been completed in accordance with the **Emergency Measures in the Public Interest (Covid-19) Act 2020.**
5. The Section 17 report should be submitted to the MHC via the SMC as per pre Covid-19 procedures.

Note – ICPs should not save the patient records on their desktop/laptop or other devices.

E. Three Member Tribunal

1. A date shall be fixed by the MHC for the tribunal as per pre Covid-19 procedures.
2. The MHC shall assign the tribunal members as per pre Covid-19 procedures.
3. The tribunal shall be sent the statutory forms **plus** the Patient Notification Form via the SMC.
4. The tribunal shall be sent the ICP report via the SMC.
5. On the day of the tribunal, the members shall be sent the patient records via the SMC.
6. The tribunal shall be sent the RCP report via the SMC.
7. The tribunal shall convene by way of conference call and shall meet one hour in advance of the scheduled hearing time as per pre Covid-19 procedures.
8. The Tribunal shall consider the following –
 - 8.1 The statutory forms
 - 8.2 The ICP report
 - 8.3 The RCP report and the evidence of the RCP if he/ she attends
 - 8.4 The patient records, and
 - 8.5 Any oral / written submission from the patient and his / her legal representative.
9. The tribunal shall make their decision as per Section 18 of the 2001 Act.
10. The Chair of the tribunal shall return the Form 9 or the Form 8 with the full Record of the Proceedings password protected via email to decisions@mhcirl.ie and send the password separately to decisionspp@mhcirl.ie to the MHC.

In relation to E. above, the MHC shall

1. Send the tribunal members the conference call details via the SMC.
2. Send the host code for the conference call to the Chairperson separately via the SMC
3. When the MHC receives the decision of the tribunal, it will upload it onto the SMC and it will be available for review by the legal representative and the MHAA / RCP for one full working day (this will include tribunals concluded after 5 pm on Fridays).
4. If the patient is not at the tribunal - on the conference call - the legal representative should arrange to inform the patient of the decision.

Note – The Tribunal members should not save any patient records on their desktop/ laptop or other devices.

F. One Member Tribunal

1. A date shall be fixed by the MHC for the tribunal as per pre Covid-19 procedures.
2. In the event that the MHC is unable to assign a three member tribunal due to the public health emergency, the MHC shall assign a one member tribunal further to approval by the MHT Manager and/ or the Division Lead in accordance to a procedure agreed by the Senior Management Team in the MHC.
3. The tribunal shall be sent the statutory forms **plus** the Patient Notification Form via the SMC.
4. The tribunal shall be sent the ICP report via the SMC.
5. On the day of the tribunal, the patient records shall be sent via the SMC.
6. The tribunal shall be sent the RCP report via the SMC.
7. The one member tribunal shall convene at the time allocated and shall consider the following –
 - 7.1 The statutory forms
 - 7.2 The ICP report
 - 7.3 The RCP report and the evidence of the RCP if he / she attends
 - 7.4 The patient records, and
 - 7.5 Any oral / written submission from the patient and his /her legal representative.
8. The tribunal concerned shall consult with a consultant psychiatrist as per section 18(3A), other than ICP or RCP for the purpose of making a decision under section 18(1) where –
 - 8.1 the opinions expressed in the RCP and ICP reports as to whether the patient is suffering from a mental disorder differ, or
 - 8.2 it otherwise considers that it would be necessary in the interests of the patient to do so. The MHC shall arrange to appoint a person from the MHC's existing panels, if available, to consult with the tribunal to address these issues as per section 49(12) and provide that person will all relevant documentation via SMC.
 - 8.3 the tribunal shall record the content of any communication with the consultant referred to in 8.2 in its decision.
 - 8.4 in the event that the tribunal is unable to consult with a consultant psychiatrist in accordance with section 18(3A) due to the exigencies of the public health emergency, then it shall record the reasons in its decision.
9. The tribunal shall make its decision as per Section 18 of the 2001 Act.
10. The tribunal shall return the Form 9 or the Form 8 with the full Record of the Proceedings password protected via email to decisions@mhcirl.ie and send the password separately to decisionspp@mhcirl.ie .

In relation to the above, the MHC shall

1. Send the tribunal member the conference call details and the host coded via the SMC.
2. When the MHC received the decision of the tribunal, it will upload it onto the SMC and it will be available for review by the legal representative and the RCP for one full working day (this will include tribunals concluded after 5 pm on Fridays).
3. If the patient is not at the tribunal - on the conference call - the legal representative should arrange to inform the patient of the decision.

Note – The Tribunal should not save any patient records on their desktop/laptop or other devices.

APPENDIX A

Patient records shall be from the date of the making of the order -

to the day of the request from the MHC for the records for the ICP or to the day of the tribunal

- and will include, but not be limited to:

1. medical notes
2. nursing notes
3. OT notes, social care notes etc.
4. medication chart
5. clinical practice forms
6. all documents that relate to the provisions of sections 9, 10, 12, 14, 15 and 16 of the Mental Health Act 2001 as amended, and
7. other *relevant* correspondence.

The statutory forms and the patient notification form do not need to be included as they will already have been provided.

APPENDIX B

SAMPLE TEMPLATE REPORT

Case ID:

Date of Examination:

Date of Report:

Tribunal Date:

Report from the Responsible Consultant Psychiatrist pursuant to section 17(1) (d) of the Mental Health Act 2001 as amended by the Emergency Measures in the Public Interest Act 2020

History of the patient relevant to this admission

Options –

- 1. Provide details or**
- 2. State – I will address this at the hearing of the tribunal**

Diagnosis

Options –

- 1. Provide details or**
- 2. State – I will address this at the hearing of the tribunal**

Treatment

Options –

- 1. Provide details or**
- 2. State – I will address this at the hearing of the tribunal**

Why the patient meets the criteria in section 3 of the Mental Health Act 2001?

Options –

- 1. Provide details or**

2. State – I will address this at the hearing of the tribunal

Why the patient cannot be made voluntary?

Options –

1. Provide details or

2. State – I will address this at the hearing of the tribunal

Any other relevant information?

Options –

1. Provide details or

2. State – I will address this at the hearing of the tribunal

Conclusion

Options –

1. Provide details or

2. State – I will address this at the hearing of the tribunal

Name of Responsible Consultant Psychiatrist:

Signature: