

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 V1

Updated 9 April 2020 V2

Updated 24 April 2020 V3

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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 11 am 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 1.00 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.
6. All emails to the MHC should be deleted once the person sending the email is satisfied it has been received by the MHC.

Please note that the MHCs Data Protection Officer must be notified when documentation is received which is not password protected and we are keeping a log of all these cases.

Statutory Forms

The MHC revised the following and appear on the MHC website –

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

By way of reminder, the MHC sets the dates for hearing of each tribunal and will liaise with the parties to facilitate people where possible.

All Panel Members shall be receiving more **messages via CIS**. These are not repeat messages or reminders. Each message is providing you with more information / documentation, so please ensure to review.

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 CIS** 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 uploaded to CIS** 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. 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.
6. 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.
7. MHAAs must accommodate both LRs and ICPs in relation to the making of video calls – via WhatsApp or otherwise – to the patient.
8. The MHAA shall give a copy of the decision to the patient once the patient has spoken to their legal representative.

In relation to A. above, the MHC shall -

1. **The conference calls details will be made available to the MHAA, for both the patient and the RCP, on CIS.**
2. **The decision of the tribunal will be uploaded to CIS by the Chair** 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). **However, given an issue with the functionality of CIS, these shall be emailed to the MHAA and the LR password protected in the intervening period.**
3. The MHC shall, **if so required,** call the nominated person in the approved centre between 8.30 and 5.30pm confirming if the decision was to adjourn, affirm or revoke the order. If the decision is received after 5.30pm, the Chair, **if so required, shall** contact the Head of Legal who shall contact the Clinical Director for the approved centre.

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 may 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 **CIS**.
4. The RCP must attend the tribunal save that he / she cannot attend for Covid-19 reasons.
5. RCPs, if attending the tribunal, must be available for the entire tribunal, which includes the delivery of the tribunal decision. If for some exceptional reason, the RCP is not able to attend for the delivery of the decision, the RCP shall provide the Chair with contact details for the on call consultant to ensure that the decision is communicated to the approved centre.
6. The RCP’s report shall be available on **CIS** for the tribunal and the legal representative.

In relation to B. above, the MHC shall

1. The conference calls details will be made available to the MHAA, for both the patient and the RCP, on CIS.
2. The decision of the tribunal will be uploaded to CIS by the Chair 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). However, given an issue with the functionality of CIS, these shall be emailed to the MHAA and the LR password protected in the intervening period.

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 CIS.**
3. The legal representatives shall receive an extract from the patient's records **via CIS** 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 CIS.**
6. The legal representative shall receive the ICP's report **via CIS.**
7. The legal representative shall receive the RCP's report **via CIS.**
8. The patient may also provide a written submission to the tribunal via his/her legal representative.
9. The legal representative must ensure the patient is aware of the decision of the tribunal, when this is done, the legal representative should contact the MHAA who shall give a copy of the decision to the patient.

In relation to C. above, the MHC shall

1. The conference call details for the tribunal hearing will be made available on CIS.
2. The decision of the tribunal will be uploaded to CIS by the Chair 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). **However, given an issue with the functionality of CIS, these shall be emailed to the MHAA and the LR password protected in the intervening period.**

Note – Please refer to the Guidance for Legal Representatives and Independent Consultant Psychiatrists – Return to Approved Centres - Re the Covid-19 public health emergency V3 18 August 2020

Note – If a legal representative does not attend the Approved Centre in person, the approved centre 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. Such calls may be by telephone or video call. Video calls should be accommodated where possible.

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 CIS.**
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 CIS** as per pre Covid-19 procedures.

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

Note – ICPs should where possible make an attempt to speak to the patient by way of video link but this may not be possible in some cases. The approved centres have been asked to facilitate the calls / videos possible in terms of access to a phone / video and to ensure privacy.

(*)**Note** - In relation to the section 17 ICP reports, please note that we have had a further discussion with the HSE recently. In that regard we would note,

1. ICPs may use WhatsApp video calling for the purpose of carrying out the ICP report. This is only for the duration of the Covid-19 restrictions.
2. The Office of the Data Protection Commissioner has approved the use of WhatsApp generally for the duration of the Covid-19 restrictions.
3. If an ICP does not have WhatsApp on their phone, the MHC would suggest that they download the app for the purpose of carrying out the remote examination for the duration of the Covid-19 restrictions.
4. The ICP should record in his / her report if the patient has agreed to the use of WhatsApp for the purpose of the remote examination.
5. The HSE shall organise for WhatsApp to be made available to a patient, if the patient does not have the app on his/her phone, and will provide the patient with whatever supports are required.
6. The HSE shall record the patient's consent to using WhatsApp in the patient's chart.
7. When using WhatsApp there is no requirement to set up a group, a video call may be made without doing this. Furthermore, all parties - ICP, patient / approved centre - should delete the other parties' details when the video call has ended.

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 CIS.**
4. The tribunal shall be sent the ICP report **via CIS.**
5. On the day of the tribunal, the members shall be sent the patient records **via CIS.**
6. The tribunal shall be sent the RCP report **via CIS.**
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 tribunal shall reconvene after it has made its decision and deliver the decision to the patient, if present, the legal representative and the RCP, if present.
11. 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.
12. If the RCP is not able to attend when the decision is being delivered, the Chair shall contact the approved centre with the contact details provided to him / her or the Chair shall ask the MHC to contact the approved centre.
13. All hard copy documents should be sent back by the Chair to the MHC in the usual way.

Note – If a tribunal revokes an order after 5.30 pm, the Chair must contact Orla Keane, Head of Legal Services in the MHC, who shall contact the Clinical Director of the relevant approved centre.

In relation to E. above, the MHC shall -

1. **The conference call details for the tribunal hearing shall be made available on CIS.**
2. If the patient is not at the tribunal - on the conference call - the legal representative should arrange to inform the patient of the decision.
3. The MHC may share email and phone details of tribunal members prior to the tribunal where requested.

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 CIS**.
4. The tribunal shall be sent the ICP report **via CIS**.
5. On the day of the tribunal, the patient records shall be sent **via CIS**.
6. The tribunal shall be sent the RCP report **via CIS**.
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 CIS**.
 - 9.3 the tribunal shall record the content of any communication with the consultant referred to in 8.2 in its decision.
 - 9.4 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 reconvene after it has made its decision and deliver the decision to the patient, if present, the legal representative and the RCP, if present.
11. The tribunal shall return the Form 9 or the Form 8 with the full Record of the Proceedings password protected via email to decisions@mhcir.ie and send the password separately to decisionspp@mhcir.ie.
12. If the RCP is not able to attend when the decision is being delivered, the Chair shall contact the approved centre with the contact details provided to him / her or the Chair shall ask the MHC to contact the approved centre.
13. All hard copy documents should be sent back by the Chair to the MHC in the usual way.

Note – If a tribunal revokes an order after 5.30 pm, the Chair must contact Orla Keane, the Head of Legal Services in the MHC who shall contact the Clinical Director of the relevant approved centre.

In relation to the above, the MHC shall

1. The conference call details for the tribunal hearing shall be made available on CIS.

2. If the patient is not at the tribunal - on the conference call - the legal representative should arrange to inform the patient of the decision.
3. The MHC may share email and phone details of tribunal members prior to the tribunal where requested.

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. admission forms
2. medical notes
3. nursing notes
4. OT notes, social care notes etc.
5. medication chart
6. clinical practice forms
7. 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
8. 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: