

Tribiwnlys Adolygu
Iechyd Meddwl Cymru

Mental Health Review
Tribunal for Wales

Guidance on Applying to the Tribunal

Mental Health Review Tribunal for Wales
2nd Floor, Crown Buildings
Cathays Park
Cardiff
CF10 3NQ
Telephone: 0300 025 5328
Fax: 0300 025 7331
Email: mhrt@wales.gsi.gov.uk
Version 1.4 – Ebrill 2017

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What is the Mental Health Act?

The Mental Health Act (MHA) was first introduced in 1959, was replaced in 1983 and amended in 2007. It sets out the law relating to how you can be detained and treated for a mental disorder without your consent. It also explains what your rights are.

It details what legal powers doctors and Approved Mental Health Professionals (AMHPs) have to detain you in a hospital against your will or make you subject to any other provision of the Act, for example, Guardianship (where you will be subject to certain restrictions including a requirement to live at a specified address) or a Community Treatment Order (where you will be required to make yourself available for examination and may be recalled to hospital by your RC). The Act outlines a legal framework, which has to be followed to ensure your rights are protected. It sets out:

- When you can be taken into hospital against your will
- When you can be given treatment against your will.
- What your rights are.
- What safeguards there are to make sure your rights are protected.

Before you can be made subject to a Section, two doctors have to agree that you need to be subject to the Act. They will either be approved under the Mental Health Act or one can be a doctor who already knows you (such as your GP).

The role of the Approved Mental Health Professional (AMHP) is to ensure that it is a necessary course of action and that there is no 'less restrictive' form of intervention that can be used. The doctors and AMHP must be satisfied that your mental disorder puts you at risk of harming your own health or safety or that there is a risk that you are likely to harm someone else.

The Act lays down what doctors and AMHP can and can't do and what rights you and your relatives have.

An application for your mental health to be assessed will be made on the basis of the type (for example a diagnosis of mental disorder or past history) or severity of your disorder (which is the extent to which your mental disorder is affecting you and the risks it poses to you and others).

The Act is divided into sections. You can be kept in hospital under different sections so you can be assessed or treated for a mental disorder. Different sections of the Act last for different lengths of time.

When can I apply to the Tribunal?

This depends on what section or order you are subject to. Below is a summary of some of the more frequently used Sections/Orders. If you are subject to a different Section, please see our Eligibility Table to find out when you can apply.

- Section 2: you may apply only within the first 14 days of your section;
- Sections 3 or 17a (Community Treatment Order/CTO): you may apply once in the first 6 months of the Section/Order, once in the second 6 months, and once every year after that;
- Section 37: you cannot apply in the first 6 months of the section. You may then apply once between 6 and 12 months from the start of the section, then once during each 12 month period after that;
- Section 37/41: you cannot apply in the first 6 months of detention. You may apply once between 6 and 12 months of detention, and once every year thereafter;
- Section 41 (Conditionally discharged). You cannot apply in the first year after conditional discharge. You may apply once in the second year after conditional discharge. You may then apply once every 2 years thereafter.
- Section 7 (Guardianship). You may apply once in the first 6 months of the Order, once in the second 6 months and once during each 12 month period after that.

If you are not sure if you can apply, ask your advocate (IMHA), the Mental Health Act Administrator at the hospital, your legal representative, or a member of your care team.

How do I apply to the Tribunal?

You can fill out an application form (MHRTW1), write to us, or ask your legal representative to make an application for you. The application form can be found in the Applications section of this website, or you can ask your advocate (IMHA), the Mental Health Act Administrator, social worker or ward staff to provide one.

If you do not want to complete a form, you can write to us to tell us that you want a Tribunal. We will need to know your full name and the address and ward of the hospital if you're detained there, or the house or care home where you reside. If you can, please include details of the Section you are subject to, but do not worry if you don't know.

The law says we cannot accept an unsigned application, so please remember to sign the form or letter. If you do not want to sign your application, please confirm in writing that you have authorised someone else to sign it on your behalf. If you have a legal representative, they can make an application for you and sign the letter themselves if that is what you would prefer.

The Tribunal office can accept applications by email, fax or post. Our contact details can be found at the end of this Guidance document, on the application form, and on the Contact page of our website.

Legal representation

Free legal representation by a specialist solicitor is available to anyone who has applied for a Tribunal. The Tribunal office has a list of specialist mental health solicitors which you can find on this website; your advocate (IMHA), Mental Health Act Administrator, or staff on the ward can also give you a copy of this list. You can be legally represented by anyone you like, if they are willing, except another patient at the same hospital as you or someone who is also subject to the Mental Health Act.

What happens after an application is made?

The Tribunal office will acknowledge receipt of your application and make arrangements for a hearing to take place. Nearer the time of the hearing you or your legal representative will receive copies of the reports written by your care team. Shortly before the hearing the Tribunal's Medical member will make arrangements to see you for what is called the 'preliminary examination' this is a meeting where the medical member talks with you.

When will the hearing happen?

This depends on which Section/Order you are subject to:

- Section 2: within 7 days of the Tribunal office receiving your application;
- All other non-restricted sections (e.g. Section 3, 37, CTO or Guardianship) within 8 weeks;
- A restriction order (e.g. Section 37/41, 47/49 or Section 41-conditional discharge) within 14 weeks.

What if I change my mind about applying?

If you decide you do not want to have a hearing after all, you can make a request to withdraw your application. If you are legally represented, you should speak to your legal representative first and ask them to make a request to withdraw. If you are not represented, a Legal member of the Tribunal will meet with you to ensure that you understand the implications of withdrawing. The request to withdraw your application needs to be made in writing using form MHRTW18. Guidance on how to complete this form is at MHRTW18A. The Tribunal then considers your request and will let you or your legal representative know if it has been accepted.

What if I have additional needs

The Tribunal will do their best to accommodate additional needs, but you must make sure you give details when you send us your application or as soon as possible after. For example you should say if you need a signer or an interpreter at your hearing and the Tribunal will arrange for this.

Nearest Relative

The Mental Health Act provides information on who your nearest relative should be. There are exceptions to these rules if you are under 18 and further advice can be provided by the hospital Mental Health Act Administrator, your social worker, care co-ordinator or legal representative.

Can I Change my Nearest Relative

If you do not think your nearest relative is suitable to carry out this role you can ask a County Court to change this. Your nearest relative can tell a court if they think they should stay as your nearest relative it will take this into account when making a decision.

If they agree it will make an order saying that someone else should be your nearest relative and you can tell the Court who you wish this to be.

A mental health professional, another relative of yours or the person who lives with you (or lived with you prior to hospital admission) can also ask the County Court to change your nearest relative.

Can my Nearest Relative make someone else my Nearest Relative

No. They cannot make someone else your nearest relative, but they can say that someone else should carry out that role. This is called delegating their rights and they must tell you if they have done this.

What if I don't have a Nearest Relative

You can ask the County Court to make someone your nearest relative but only if you do not have a nearest relative or no-one can identify who your nearest relative is. Those listed above can ask the court to do this (as in changing your nearest relative). The Court would then make an order saying who should be your nearest relative.

Nearest Relative Applications

If you are the nearest relative of someone subject to the Mental Health Act you can apply to the Tribunal by completing application form MHRTW02 or by writing to us or instruct a Legal Representative to do so. When writing, please include your name, the name of your relative, where they are detained/residing, the Section/Order to which they are subject, and state that you wish to make an application to the Tribunal as Nearest Relative.

The Tribunal office can accept applications or letters by email, fax or post. Our contact details can be found at the end of this Guidance document, on the Application Form, and on the Contact page of our website.

You can find more information on the role of the Nearest Relative in our Guidance for Nearest Relatives in the Tribunal Hearing section of our website.

When can I apply to the Tribunal?

As the Nearest Relative of someone subject to the Mental Health Act, you may make an application to the Tribunal if your relative is subject to **Section 3** or **Section 17a** (a Community Treatment Order) and:

- you have notified the hospital managers of your intention to discharge your relative under Section 23, and
- the Responsible Clinician has issued a barring certificate.

You must make your application to the Tribunal within 28 days of being notified that a barring certificate has been issued.

If your relative is been subject to **Section 37** of the Mental Health Act you may apply to the Tribunal once between 6 and 12 months of the Order being in place and then once in each 12 month period after.

For full details of nearest relatives' entitlement to apply please see the eligibility table under guidance and forms on this web site.

Displaced Nearest Relative - When can I apply to the Tribunal?

A displaced nearest relative of someone subject to Section 3, Section 17a (Community Treatment Order), or Section 7 (Guardianship Order) may make an application to the Tribunal once during the first 12 months of their relative's Section/Order, and once during each year thereafter.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

This document is also available in Welsh.

The Mental Health Review Tribunal for Wales welcomes receiving correspondence in Welsh or English. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding. The Tribunal also welcomes phone calls in Welsh or English.

You may submit forms, documents and make written representations to the Mental Health Tribunal in Welsh or English.