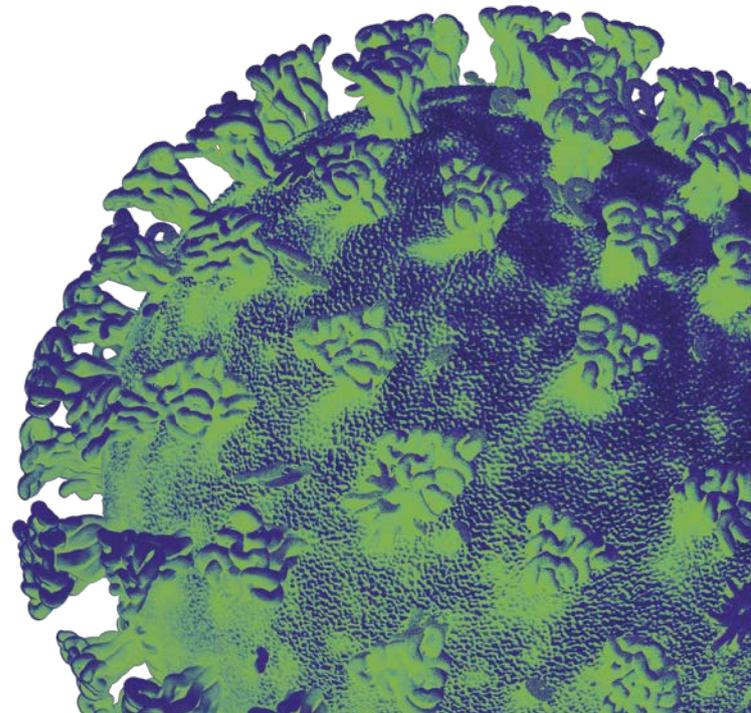
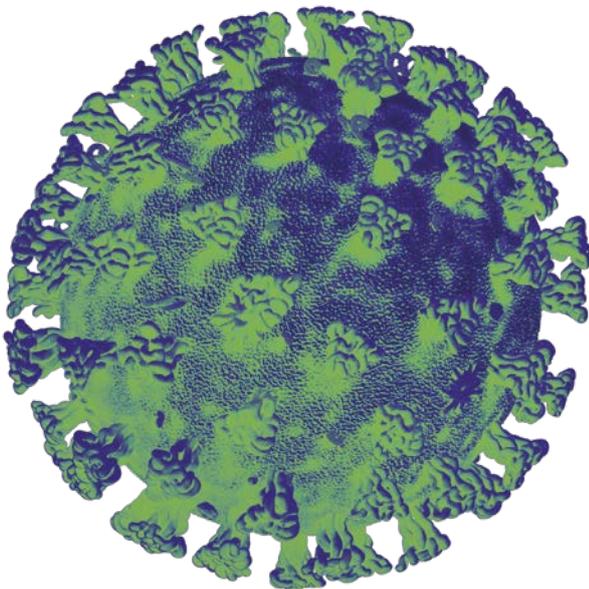
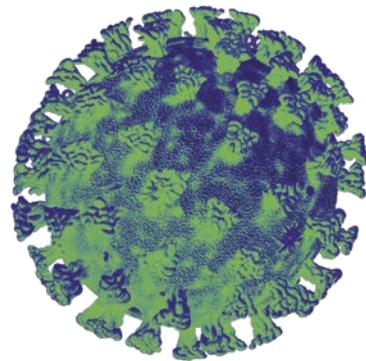




Llywodraeth Cymru  
Welsh Government

# Coronavirus: guidance for Local Health Boards and Independent Hospitals in Wales exercising Hospital Managers' discharge powers under the Mental Health Act 1983.

April 2020



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## Introduction

- This guidance is provided to assist Local Health Boards (LHB's) and Independent Hospitals in Wales exercising Hospital Managers' discharge powers under the Mental Health Act 1983 (the Act) during this exceptional period.
- During the Coronavirus (COVID-19) pandemic, it may be necessary for Hospital Managers' hearings, also known as Associate Managers' hearings, to adjust their ways of working to limit the spread of the virus and manage their workloads appropriately. . This is an ongoing and developing situation. This document provides some guidance but cannot cover everything and will reviewed as and when circumstances develop.

## Hospital Managers' discharge power

- Hospital Managers have a central role in operating the provisions of the Act. Hospital Managers discharge powers are set out in section 23 of the Act. They have the authority to discharge most unrestricted patients from detention and all patients subject to a community treatment order (CTO). (Discharge of a restricted patient requires the consent of the Secretary of State for Justice.) In practice, most Hospital Managers' arrange for their power of discharge to be delegated to a hospital managers' discharge panel.
- Associate Hospital Managers (HMs) must continue to have regard to the guidance contained in the Mental Health Act 1983 Code of Practice for Wales 2016 (the Code of Practice for Wales) in particular chapter 38 " Hospital Managers' discharge powers".
- Hospital Managers panel hearings should also ensure that guiding principles set out in chapter 1 of the Code of Practice for Wales are applied.

## Coronavirus Act 2020

- The Coronavirus Act 2020 includes temporary measures to change to the Act<sup>1</sup> due to concern that COVID-19 will reduce the number of mental health professionals available to help people whose mental health places them at risk. Those temporary provisions under the Mental Health Act 1983 (other than modifications for the Mental Health Review Tribunal for Wales) have not yet come into force. The Welsh Government will make formal announcements in the event that the emergency provisions are enacted alongside separate guidance.

For clarity HM's discharge powers under Section 23 of the Act remain unchanged by the Coronavirus Act 2020. **Composition of HMs panels**

- Section 23 of the Act enables the board of the LHB and independent hospital to authorise three or more people, as HM panel members.
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- The requirement in section 23 that HMs panel should consist of at least three members remains. This quorum of three is the minimum and each of the three have to agree to support an order for discharge.<sup>2</sup>
- It should also be borne in mind that non - executive directors of LHBs and independent hospitals can be members of the HM panel.
- On 23 March 2020, the government published [full guidance](#) on staying at home and away from others. It is likely that, for the foreseeable future, some HM panel hearings will need to be adjourned or to take place remotely. All HM panel members are reminded to read the latest information about [prevention, treatment, travel and staying at home](#).
- Given that a number of HMs may not be available due to either illness or self-isolation, LHBs and independent hospitals could give consideration to forming HM consortia. Such consortia can be formed by each LHB and independent hospital appointing the HMs panels of neighbouring LHBs and independent hospitals to be part of *their* panel. In such arrangements, the policies for each LHB and independent hospital would stay the same and new members would need to be appraised of them.

#### **When to conduct a review of detention or CTO**

- Paragraph 38.9 of the Code of Practice for Wales states:  
 "Hospital managers:
  - may undertake a review of whether or not a patient should be discharged at any time at their discretion
  - must undertake a review if the patient's responsible clinician submits a report to them under section 20 of the Act, renewing detention or under section 20A, extending a CTO
  - should consider holding a review when they receive a request from a patient. Such a request may be supported by a carer, their independent mental health advocate (IMHA) (see Chapter 6), independent mental capacity advocate (IMCA), by their attorney or deputy (see Chapter 7)
  - must consider holding a review when the responsible clinician makes a report to them under section 25(1) barring an order by the nearest relative to discharge a patient."
- The Code of Practice for Wales also sets out that: "In the last two cases, when deciding whether to consider the case, HMs should take into account whether the Mental Health Review Tribunal for Wales (MHRT for Wales) has recently considered the patient's case or is due to do so in the near future".

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<sup>2</sup> R.(on the application of Tagoe-Thompson) v The Hospital Managers of the Park Royal Centre [2003] EWCA Civ 300

- During the current COVID-19 crisis, it is suggested that a panel should not sit if the MHRT for Wales has considered the patient's case in the last six weeks or is due to do so in the next eight weeks. This is in order to avoid duplication of effort and to save staff time. The patients' right to liberty as set out in Article 5 (4) is protected by the MHRT for Wales, not the HMs.

### **Section 2 Mental Health Act 1983 cases**

- If a patient requests a hearing, it should be suggested that he or she makes an application to the MHRT for Wales, if the timescale for making such an application can be satisfied. If the patient has already made an application to the MHRT for Wales, the HM panel should not sit.

### **Time limits**

- There is no requirement in the Act for a HM panel to sit within a particular timescale. In particular, it is lawful to undertake a review of a section 20 or section 20A renewal case after the current period of detention or the CTO period has expired.
- Hearings should take place as soon as it is practicable for the hearing to be arranged.

### **Hearings**

- The procedure to be adopted at a hearing is a matter for the HMs to decide. The procedure should be fair, reasonable and lawful.
- HM panels are charged with responsibility for conducting a review of detention or CTO a cohort of people in circumstances where a range of fundamental rights and freedoms risk may be compromised. The HMs decide how the hearing is run, but need to take a proportionate approach balancing the rigour demanded by the importance of the task, in light of the updated government advice on the COVID-19 pandemic.
- HM panels will need to take into account the impact of the pandemic when assessing what steps may be taken. It is likely that, for the foreseeable future, some hearings will need to be adjourned or to take place remotely, via video conference and/ or telephone and other technology. LHBs and independent hospitals should make best possible use of the equipment currently available.
- The decision as to how a HM panel is conducted is a matter for the panel, who will determine how best to uphold the interests of justice. In considering the suitability of video/audio, the HM panel should consider issues such as the nature of the matters at stake; any issues the use of video/audio technology may present for participants in the hearing, having regard to individuals' needs; and any issues around participation in the hearing.
- Audio and video hearings may not be suitable for everyone. HMs should consider if there are circumstances which may affect or impair the patients' ability to participate effectively in an audio or video hearing. Reasonable adjustments should be made. This will inform the panels' decision.

- A number of further constraints may impact on what can realistically be done, in terms of procedure, in response to the possible effects of COVID-19. For example:
  - not all HM panel members may have ready access to video conferencing equipment;
  - HM need documents to be scanned and applications to be emailed to them, this will depend on there being sufficient staff and equipment available in those offices to carry out these tasks;
  - not all hard copy documents received in a case are capable of being transformed into a digital format;
  - if case files/hearing related documents, which are not available in digital format, are needed this will depend in some instances on secure delivery services being available to transport those documents;

### **Uncontested hearings**

- If the patient does not wish to contest their detention or CTO, the hearing should be conducted by telephone, video conferencing or via email.
- Relevant reports should be sent to the HMs by secure email.
- The chair of the panel would communicate the decision of the panel to hospital management.

### **Contested hearings**

- If the patient wishes to contest their detention or CTO, if it is not reasonable practicable for the hearing to take place by video conference or by telephone, the panel will meet in a suitable room which would enable safe spacing to be observed. Up to date government [guidance on security, cleaning and social-distancing arrangements in court and tribunal buildings during the coronavirus pandemic](#) should be followed.
- The patient and a nurse will attend the hearing. As an alternative to attending the hearing, a conference call facility could be used by the witnesses.
- The patient's legal representative and the patient's advocate can chose to either attend the hearing or to attend via the conference call.
- Where a contested case becomes uncontested or where an in-person hearing could be converted to a telephone hearing or hearing by other electronic means the parties should indicate this as soon as that becomes clear

**Final Note:** Under s.23 of the Mental Health Act 1983 there is no explicit requirement that a hearing is convened and held. However Local Health Boards and Independent Hospitals need to be aware there is a reasonable expectation that a hearing is held, and it would be highly advisable to take separate legal advice on taking any decisions to stand down all Hospital Managers' hearings during the Covid-19 pandemic.