

Section 67 of the Mental Health Act 1983

*References by the Secretary of State for Health
to the First-tier Tribunal*

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Prepared by

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References by the Secretary of State for Health to the First-tier Tribunal

Under section 67, the Secretary of State for Health can refer the following patients to the Tribunal on any occasion when he considers it appropriate to do so:

- any patient detained in hospital as a result of an application for assessment or treatment under sections 2, 3 or 4 of the Act
- most patients detained in hospital by the courts or as a result of being transferred by the Secretary of State for Justice from prison – except those subject to special restrictions (restricted patients)
- any patient on supervised community treatment (community treatment orders) under the Act
- any patient subject to guardianship under the Act
- some patients who are detained under other legislation but who are treated as if they are subject to an unrestricted hospital or guardianship order under section 37 of the Act.

The Secretary of State for Justice considers requests under section 71 for references to the Tribunal in respect of restricted patients. The Tribunal does not deal with people who are remanded by the courts for report under section 35 or under section 36 for treatment, or who are on interim hospital orders under section 38.

Information about the role of the First-tier Tribunal (Mental Health) is available via the following link: www.justice.gov.uk/tribunals/mental-health

Requests for references under section 67

Anyone may ask the Secretary of State for Health to make a reference for any reason at any time. In practice, requests are most commonly made in cases where:

- a patient detained under section 2 misses the 14-day deadline for applying to the Tribunal through no fault of their own and there is still time for a hearing to be arranged before the section 2 is due to expire;
- a patient's detention under section 2 has been extended pending resolution of proceedings under section 29 to displace their nearest relative (the Act does not give patients the right to apply directly to the Tribunal in these circumstances).

These examples do not preclude references from being made under section 67 in other situations.

Requests for references under section 67 of the Act should be sent to the following address:

Department of Health
Mental Health Legislation
Area 313A, 3rd Floor, Richmond House
79 Whitehall
London
SW1A 2NS

Email: mentalhealthact2007@dh.gsi.gov.uk

Fax: 020 7210 5805

Information required to support the request

Your letter will need to set out clearly why a Secretary of State's reference under section 67 is being sought. You will need to read the guidance and complete the tribunal **referral** form and **not** the application form on the Ministry of Justice website <http://www.justice.gov.uk/forms/hmcts/ts-mh> when requesting a s67 reference and attach it to your letter. Please do not sign or date the **referral** form. In addition to the information to be given in the form, please indicate in your letter, the length of time the patient has been on the section of the Act.

The issues that the Secretary of State for Health will take into account when considering making a reference under section 67

The issues that the Secretary of State for Health will take into account include but are not limited to:

- the reason for the request;
- the length of time since the case was last considered by a Tribunal (if ever);
- the length of time it may be before an application may (or a reference must) be made under other sections of the Act; and
- whether any decision being sought falls within the remit of a Tribunal.

These are not, however, the only factors. Each case will be considered on its merits. The Secretary of State will not refer cases where the patient has already been discharged from their section.

If the Secretary of State makes a reference under section 67, he will ask the Tribunal Secretariat to make the necessary arrangements, and the person who made the request will be informed.

Applications for a Tribunal hearing by the patient and/or their nearest relative

It is of course far more common for patients (and, in some instances, their nearest relatives) to make their own applications for a Tribunal hearing. Wherever they can make an application, they should do so rather than seek a reference under section 67.