Worcestershire Acute Hospitals NHS Trust

# Use of the Mental Health Act in an Acute Hospital Setting

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## Introduction and scope

### Introduction

The Worcestershire Acute Hospitals NHS Trust (WAHT) has a statutory obligation to ensure that its service users, who become subject to the Mental Health Act 1983; as amended by the Mental Health Act 2007 (here after referred to in this document as 'the Act'); are treated lawfully.

The main purpose of 'the Act' is to allow compulsory action to be taken, where necessary, to make sure that people with mental disorders get the care and treatment they need for their own health or safety, or for the protection of other people. It sets out the criteria that must be met before compulsory measures can be taken, along with protections and safeguards for patients.

Part 2 of 'the Act' sets out the civil procedures under which people can be detained in hospital for assessment or treatment of mental disorder. Detention under these procedures normally requires a formal application by either an Approved Mental Health Professional (AMHP) or the patient's nearest relative (NR), as described in 'the Act'. An application is founded on two medical recommendations made by two qualified medical practitioners, one of whom must be approved for the purpose under 'the Act'. Different procedures apply in the case of emergencies.

The registration process for health and adult social care requires that any hospital using the MHA to detain patients must be specifically registered to do so. The Act's Code of Practice identifies standards that mental health service providers should meet when they perform their responsibilities under 'the Act'. Although the Code of Practice is not legally enforceable, failure to follow it might be referred to in evidence in legal proceedings.

### Scope of this document

This policy sets out guidance on the use of 'the Act' within WAHT. It covers the role of Worcestershire Acute Hospitals NHS Trust and the staff employed within it when caring for patients under the MHA 1983. It covers what staff should know, admission, transfer, discharge and review. Further information is available in the Mental Health Act 1983 – Code of Practice (accessible through the trust intranet).

This policy applies to all staff working in the Acute Trust who may be involved in the care of patients detained under a section of the Mental Health Act and the management of the documentation related to their detention.

This policy applies to patients who are detained under any section of the MHA 1983 and are receiving care in the Acute Trust.

## Definitions

### The Act
Mental Health Act 1983, as amended by the Mental Health Act 2007

### Approved Clinician
A mental health professional approved by the Secretary of State under Section 12, to act as an approved clinician for the purposes of 'the Act'. Some decisions under 'the Act' can only be taken by people who are approved clinicians. All Responsible Clinicians (RC) must be approved clinicians

### Approved Mental Health Professional
A social worker or other professional approved by the local social services authority to carry out a variety of functions under 'the Act'.

### Capacity
The ability to take a decision about a particular matter at the time the decision needs to be made. Some people may lack capacity to take a particular decision because they cannot understand, retain, use or weigh the information relevant to the decision. A legal definition of lack of capacity for people aged 16 and over is set out in Section 2 of the Mental Capacity Act 2005.

### Consent
'Agreeing to allow someone else to do something to or for you', particularly consent to treatment. Valid consent requires that the person has the capacity to make the decision (or the competency to consent, if a child) and they are given the information they need to make the decision and that they are not under any duress or inappropriate pressure.

### Hospital Managers
The Organisation that is responsible for the operation of the Mental Health Act in a particular hospital.

### Independent Mental Health Advocate (IMHA)
An advocate available to offer help the service user under arrangements which are specifically required to be made under 'the Act'.

### Mental Capacity Act
The Mental Capacity Act 2005, which governs decision making on behalf of people who lack capacity.

### Mental Disorder
Any disorder or disability of the mind. As well as mental illnesses, it includes conditions like personality disorders, autistic spectrum disorders and learning disabilities but excludes dependence on drugs/alcohol and immoral conduct.

### Mental Health Review Tribunal
The first-tier Tribunal (Mental Health) hears applications and references for people detained under 'the Act'. The main purpose is to review the cases of patients detained under 'the Act' and to direct the discharge of any patients where the statutory criteria for detention are not met.

### Nearest Relative (NR)

A person defined by Section 26 of 'the Act' who has certain rights and powers under 'the Act' in respect of a service user for whom they are the nearest relative.

### Nominated Deputy
The consultant in charge of an in-patient's treatment can nominate a deputy to exercise section 5(2) powers in their absence. Only a doctor also on the staff of WAHT can be a nominated deputy. Only one deputy can be authorised at any one time.

### Responsible Clinician (RC)
The person in overall charge of the care of an individual who is subject to 'the Act'. This must be an Approved Clinician; this will be a Consultant Psychiatrist who will work closely with the consultant in charge of the physical treatment of the patient.

### Section
A specific piece of legislation within 'the Act', which pertains to the type of detention an individual is subject to.

### Abbreviations
AC - Approved Clinician
Admin - Administrator
ADRT - Advanced Decision to Refuse Treatment
AMHP - Approved Mental Health Professional
ASAP - As soon as possible
AWOL - Absent without leave
CQC - Care Quality Commission
DDN - Divisional Director of Nursing
ECT - Electro-convulsive therapy
GP - General Practitioner
HM - Hospital Managers
IMHA - Independent Mental Health Advocate
LPA - Lasting Power of Attorney
MHA - Mental Health Act
MHT - Mental Health Tribunal
NED - Non Executive Director
NIC - Nurse in charge
NR - Nearest relative
OOH - Out of hours
RC - Responsible Clinician
WAHT - Worcestershire Acute Hospitals NHS Trust
WHCT - Worcestershire Health and Care Trust

## Responsibility and Duties

**Trust Board** – for the purpose of 'the Act' is the "Hospital Managers" and have important statutory powers, responsibilities and duties concerning detained patients.

The following functions are delegated:

- To ensure that the grounds for admitting the patient are valid and that all relevant documents are in order
- To ensure that those formally delegated to receive documents, and those who are required to scrutinise them, have a thorough knowledge of 'the Act'.
- To review each patient's detention

- To ensure that any patient who wishes to apply to a Mental Health Review Tribunal is given the necessary assistance
- To authorise the transfer of certain patients to the care of another hospital or set of 'hospital managers'
- To consent to the rectification of certain kinds of error in statutory documents.

**Associate Hospital Managers –** for the purpose of 'the Act' exercise the function of "Hospital Managers" to discharging patients/renewing detention orders. They are responsible for managing a hearing when a request for such a review of their detention has been made by a patient. They must also undertake a review following the renewal/extension of a detention. This must be undertaken with other associate hospital managers who are not employed by the Trust – this service is commissioned from Worcestershire Health and Care Trust.

**Worcestershire Health & Care Trust (WHCT) MHA Administrators –** will provide via a service level agreement to WAHT, an MHA Administration service, including receipt, scrutiny and storage of section papers as appropriate:
To include; on receipt of detention paperwork;

- Administrative scrutiny of the paperwork to ensure validity of detention
- To arrange medical scrutiny of detention documentation (as appropriate)
- To write to detained person and nearest relative
- Creation of certified copies of paperwork for patient record or e-record
- Capacity forms to be provided to Clinician
- Patient rights leaflets (including IMHA contact) to be provided to ward staff
- Creation of a legal file for duration of detention and return to WAHT medical records once episode concluded
- Creation of detention diary to ensure consent/hearings dates adhered to
- To issue reminders to clinical staff in relation to statutory dates (section expiry, consent, etc)
- Ensure detention details entered on Datix, duration of detention noted and method of disposal
- Notification to designated WAHT lead (by phone and email), patient and nearest relative (by letter) when section declared invalid, complete incident report.

The MHA Administrators will:

- arrange return of authorised copies of the section papers to the ward for filing in the notes
- provide all reminders to the wards regarding statutory reviews
- administer any request for a hospital managers hearing and any mental health act tribunal
- will provide information required to complete the statutory return to the Department of Health.

**Divisional Manager –** are responsible for:-

- ensuring that an RC is appointed and that the responsible RC is clearly documented in the patient records
- ensuring all detained patients are being reviewed on a daily basis.

**Matron, Ward/Unit Manager or Deputy** – are responsible for:-

- discharging the delegated power of accepting the section papers by the Trust
- checking all documents related to the section and completing the form to accept receipt of patient or to initiate transfer –scrutiny of these papers will then be undertaken by WHCT MHA Administrators
- notification to Mental Health Liaison for any detained patient admitted to the Trust, or any patient subsequently assessed /detained whilst an inpatient
- discharge the delegated power of ensuring patient and nearest relative receives all appropriate information from MHL team and that the patient rights are re-presented weekly and recorded
- that documents are stored in accordance to the policy

- investigation of any incidents or complaints related to the use of the policy.

**Patient Safety Team -** is responsible for:-

- following up statutory notification to CQC by WHCT MHA Administrators of death of a detained patient

**Responsible Clinician –** is responsible for overseeing the treatment of the patient's mental disorder and must work closely with the consultant physician/surgeon to ensure that both physical and mental health needs are addressed; this must be a mental health professional approved by the Secretary of State. They are responsible for deciding, before a detention expires, whether the current period of detention should be renewed.

**Information Team -** Will complete the annual statutory KP90 return to Department of Health

**Key Documents Approval Group -** responsible for approving this policy

**Other staff members –** all clinical staff need to understand what it means when a patient is detained under a section of the Mental Health Act. This includes providing detained patients with information on their legal rights during the detention.

## Application of the Mental Health Act

### Guiding principles

In making any decisions under the Mental Health Act the guiding principles should be considered. These are laid out in Chapter 1 of the Mental Health Act Code of Practice and can be summarised as follows:-

- **Purpose:** Decisions under 'the Act' must be taken with a view to minimising the undesirable effects of mental disorder, by maximising the safety and wellbeing (mental and physical) of patients, promoting their recovery and protecting other people from harm.
- **Least restrictive**: People taking action without a patient's consent must attempt to keep to a minimum the restrictions they impose on the patient's liberty, having regard to the purpose for which restrictions are imposed.
- **Respect:** People taking decisions under 'the Act' must recognise and respect the diverse needs, values and circumstances of each patient, including their race, religion, culture, gender, age, sexual orientation and any disability. They must consider the patient's views, wishes and feelings (whether expressed at the time or in advance) so far as they are reasonably ascertainable and follow those wishes wherever practicable and consistent with the purpose of the decision. There must be no unlawful discrimination.
- **Participation:** Patient must be given the opportunity to be involved, as far as is practicable in the circumstances, in planning, developing and reviewing their own treatment and care to help ensure that it is delivered in a way that is as appropriate and effective for them as possible. The involvement of carers, family members and other people who have an interest in the patient's welfare should be encouraged (unless these are particular reasons to the contrary) and their views taken seriously.
- **Effectiveness, efficiency and equity:** People taking decisions under 'the Act' must seek to use the resources available to them and to patients in the most effective, efficient and equitable way, to meet the needs of patients and achieve the purpose for which the decision was taken.

Decisions made under the Mental Health Act must be supported and informed by the clinical assessment and care planning process and detention under the Mental Health Act is not a substitute for following these processes.

All staff should ensure that their decisions made and actions taken in respect of patients subject to the Mental Health Act follow procedures laid out in the legislation. All decisions made and actions taken should be in accordance with the Code of Practice and the Reference Guide unless there are robustly justified and documented reasons for deviation.

## Defining the detaining authority

*Section 17 leave* – allows a patient detained by another provider service to be admitted to WAHT for care of their physical health; whilst the responsibility for the patient's detention and treatment under the Act remains with the detaining organisation.

*Section 19 transfer* – a patient detained by another provider service is admitted to WAHT for care of their physical health and responsibility for the patient's detention and treatment under 'the Act' is transferred to WAHT. The RC retains responsibility for overseeing the care but WAHT has responsibility for funding any specialist nursing support for the patient.

*Section, 2, 3 or 5(2)* – when an inpatient at WAHT is detained either in an emergency under section 5(2) or for longer term for assessment section 2 or treatment section 3; WAHT is responsible for the patient's detention and treatment under 'the Act'. For Section 2 & 3 an RC must have responsibility for overseeing the care but WAHT has responsibility for funding any specialist nursing support for the patient.

*Other sections* – where a patient transferred from prison or other hospital is subject to detention under any other section of 'the Act' advice should be sought urgently from the Mental Health Liaison team.

***Patients should be transferred to a mental health unit as soon as their physical health permits, so they can receive the mental health care and treatment for which they have been detained.*** **A Section 19 transfer must be completed.**

## Consent to treatment

The Act enables patients to be treated against their will, but only for their mental disorder. The Act does not sanction treatment for physical disorders that are unconnected to the mental disorder, even where the patient is unable or unwilling to give consent. See ***Appendix 11*** Flow chart of consent to treatment under the Mental Health Act.

## Medical and administrative scrutiny and storage of section documents

The statutory (**pink)** forms must be used when a patient is subject to 'the Act'.

The Trust's Hospital Managers delegate their responsibilities to receive and check the accuracy of the statutory forms to WHCT MHA Administrators who will carry out the full scrutiny and rectification of the documentation in accordance with 'WHCT Mental Health Act 1983 Receipt and Scrutiny of Statutory Guidance' – CL-013. The statutory forms will be scrutinised for accuracy and completeness, to ensure they do not reveal any obvious infringement.

All original section papers must be sent to the Worcestershire Health and Care Trust Mental Health Act Administrators for scrutiny and safe storage. Copies will be taken, and returned to the ward to be filed in the medical record.

Medical recommendations must be scrutinised by an appropriate clinician with the expertise to check that the reasons for application are sufficient to support the detention of the individual.

## Electronic record of an individual's Mental Health Act activity

Whenever a patient who is subject to a section of 'the Act' is admitted or an inpatient becomes subject to detention under 'the Act' WHCT MHA Administrators will upload an entry on DATIX.

## Information about patients' rights

Those responsible for care should ensure that patients are made aware of their rights and the effects of 'the Act'. A record should be kept of how, when, where and by whom this information was given; this should include information on contacting an Independent Mental Health Advocate (IMHA). A monitoring form and standard leaflets to support this are available.

In addition the Mental Health Act Administrators will notify the 'Nearest Relative' of a patient's admission under 'the Act' as soon as possible; unless the patient requests otherwise.

## Procedures

***Appendices 2 – 15*** provide flow charts for managing various scenarios under 'the Act'.

## Appendix 2

## Key Actions for Managing ALL detained patients

Patient is admitted who is already detained under a Section of the MHA, or
Patient is subsequently assessed and detained under the MHA during admission

NB: - patients in ED are for the purposes of the 'Act' not yet *admitted*

Transfers in and patient already under Section - receiving Nurse signs **Form H4** to accept Section to WAHT

For ***all*** Sections – Mental Health Liaison (MHL) Team MUST be notified immediately –
WRH – bleep 195
ALEX – bleep 0234
(8am -10pm 7 day service)

Mental Health Liaison will collect from ward the original Section detention papers – a ***copy*** will be provided for the patient record. The original Section papers will be held with WHCT MHA Administrators. WHCT MHA Administrators will submit a Datix incident report for all MHA detentions and upload copies of all respective Section paperwork.

The Nurse in Charge must ensure that any instructions from MHL or the WHCT MHA Administrator team are acted upon within the timescales given.

In the event any patient detained under ***any section*** of the Mental Health Act dies whilst in hospital – the Mental Health Act Administrators should be notified ***immediately***:
WHCNHS.MHAAdminWHCT@nhs.net

WRH - Suzanne Rendall – ex 33344
ALEX – Sandy O'hare - 01527 488861

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## Appendix 3

**Section 5(2)**

- Inpatient (not in A&E or outpatient dept.) wanting to leave hospital premises
- Staff feel that the patient would be a risk to self or others if allowed to leave
- Staff have attempted to discuss /reason with the patient
- Patient is still refusing to stay on premises
- Staff have reason to believe the patient may have a mental health condition

↓

Request made to Consultant or nominated deputy to attend the ward as a matter of urgency

↓

After examination, does the Consultant /nominated deputy consider that detention under the MHA may be necessary and that a MHA assessment should take place?

YES ↓

Consultant /nominated deputy complete **Form H1** and makes a request for a MHA assessment.
NB: The patient can be detained with minimum force necessary for a ***maximum period of 72hrs*** or until a MHA assessment has taken place (whichever is the sooner) and is not subject to Part 1V consent rules therefore any treatment must be in accordance with common law consent or the Mental Capacity Act

NO ↓

Patient is free to leave unless the provisions of the Mental Capacity Act, Deprivation of Liberty Safeguards could be used to restrict the patient in their best interests

If prior to MHA assessment being completed the Consultant /nominated deputy decides further assessment and detention is not required **Form S23** should be completed and sent to WHCT MHA Administrators. This also applies if the AMHP does not believe further detention is required. Any decision to remove the Section must be clearly documented in the patients' health record including the time this occurred.

In the event any patient detained under ***any section*** of the Mental Health Act dies whilst in hospital – the Mental Health Act Administrators should be notified ***immediately***:
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**Appendix 4**

## Section 2 Admission for Assessment (the patient can be detained for up to 28 days and is subject to consent rules as per appendix 11.)

Doctors complete 1 x **Form A3** or 2 x **Form A4**

↓

AMHP completes **Form A2**. The AMHP informs the NR of application and their rights (including the right to IMHA). AMHP should check all forms for consistency and correctness.

↓

NIC notifies MHL that patient has been assessed and detained under Section 2:
WRH – bleep 195
ALEX –bleep 0234

↓

NIC completes **Form H3**.

↓

**Form H3** and the original Section detention papers will be collected by MHL and a copy provided for the patient records. The original papers will be held with WHCT MHA Administrators.

↓

MHL will ensure the patient is informed of their right to an IMHA, and their right to apply to the MHT within 14 days of admission under Section 2 and their right to appeal against their detention to the Hospital Managers at any time. The patient should be provided with the relevant leaflets.

↓

The NIC should ensure the patient is informed of their rights on a **weekly basis** and **Form WAHT132** completed on each occasion.

↓

At day 21 the RC should review whether the patient is to be assessed for Section 3 or discharged from Section 2.

**Assess for Section 3**

↓ Y

Follow S3 flowchart

**Assess for Section 3**

↓ N

RC completes **Form WAHT23**. RC informs the patient that they are an informal patient and what this means and documents in the patient record.

In the event any patient detained under ***any section*** of the Mental Health Act dies whilst in hospital – the Mental Health Act Administrators should be notified ***immediately***:
WHCNHS.MHAAdminWHCT@nhs.net

WRH - Suzanne Rendall – ex 33344
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**Appendix 5**

**Section 3**

## Admission for Treatment (patient can be detained for up to 6 months and is subject to consent rules as per Appendix 11)

Appropriateness of Section 3 agreed by all assessors

↓

Doctors agree where this treatment can be given and complete 1 x **Form A7** or 2 x **Form A8**, documenting all various alternatives on the paperwork.

↓

AMHP consults with NR. If this is not appropriate or possible, reasons must be documented. If the NR objects to the use of Section 3, the Section cannot be applied. If NR maintains objection AMHP should consider displacement under S29 if grounds are met (Appendix 17). AMHP consults their legal dept.

↓

AMHP completes **Form A6.** AMHP informs NR of their rights (including the right to refer to IMHA). AMHP should check all forms for consistency and correctness.

↓

NIC notifies Mental Health Liaison (MHL) team that patient has been assessed /detained under Section3
WRH –bleep 195
ALEX – bleep 0234
(8am -10pm 7 day service)

↓

NIC completes **Form H3 part 1a**.MHL will collect this form along with the original Section 3 detention papers – a copy will be provided for the patient record. The original Section papers will be held with WHCT MHA Administrators.

↓

MHL will ensure the patient is informed of their right to an IMHA, their right to apply to the MHT and their right to appeal against their detention to the Hospital Managers at any time. The patient should be provided with the relevant leaflets.

↓

The NIC should ensure the patient is informed of their rights on a **weekly basis** and **Form WAHT132** completed on each occasion.

In the event any patient detained under ***any section*** of the Mental Health Act dies whilst in hospital – the Mental Health Act Administrators should be notified ***immediately***:
WHCNHS.MHAAdminWHCT@nhs.net

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## Appendix 6

## Section 19 Transfer (internal and external)

Where a patient subject to MHA requires transfer (whether internal or external) the patient transfer Policy - incorporated into the capacity management policy, which can be found here: http://www.treatmentpathways.worcsacute.nhs.uk/key-documents/trustwide-documents/ should be followed, in addition:

From one Trust ward /unit to another Trust ward /unit

↓

NIC updates Datix information. Where the RC will change, **Form RC1** must also be completed.

From a Trust ward/unit to a hospital managed by a different Trust

↓

NIC speaks to proposed destination to ensure they can take a Sectioned patient. CQC registration should be checked as part of this process

↓

NIC completes **Form H4**

↓

NIC informs patient of their rights and documents on **Form WAHT132**

NIC notifies Mental Health Liaison (MHL) team and RC that patient is to be transferred out or to another ward /dept within the hospital
WRH –bleep 195
ALEX – bleep 0234
(8am -10pm 7 day service)

↓

Original Section papers and Form H4 should accompany the patient. In the event the transfer takes place out of hours copies should be sent, and contact details for WHCT MHA Administrators provided to receiving hospital:
WHCNHS.MHAAdminWHCT@nhs.net

WRH - Suzanne Rendall – ex 33344
ALEX – Sandy O'hare - 01527 488861

## Appendix 7

## Section 17 Leave of Absence

Patient attends WAHT for emergency care or outpatient investigation or treatment; whilst detained under a Section of the Act by another provider

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A copy of the Section 17 leave form should accompany the patient – the Section 17 leave documentation may include conditions that have to be complied with

↓

NIC should check what restrictions apply to the leave – must they be escorted at all times and if so, is this by accompanying staff member or family member

↓

Responsibility for the patient remains with the detaining hospital

↓

If subsequently the patient requires admission to WAHT the Trust doctor must discuss with the RC to establish if Section 17 leave will continue or if a transfer of care under Section 19 should take place.

↓

NIC notifies Mental Health Liaison (MHL) team that patient is to be admitted
WRH –bleep 195
ALEX – bleep 0234
(8am -10pm 7 day service)

In the event any patient detained under ***any section*** of the Mental Health Act dies whilst in hospital – the Mental Health Act Administrators should be notified ***immediately***:
WHCNHS.MHAAdminWHCT@nhs.net

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## Appendix 8

## Section 18 Absence without leave

Is the patient absent from the hospital without having Section 17 leave granted?

Missing in patient guidelines followed?

Inform the RC, Police, Mental Health Liaison Team and Social Services, (if appropriate) as soon as possible

NIC completes Datix incident form – to include Police incident number

Patient found. Police to be informed. If the patient is in a public place they can be picked up or if in a private residence a warrant can be applied for, to gain entry.

Dependent on a risk assessment the patient can be brought back to hospital by:

- AMHP
- Any member of staff from the ward/unit
- Police Officer
- Any other person authorised by the Hospital Managers

It is the responsibility of the detaining authority to arrange for the patient to be conveyed back to the place where they are liable to be detained. Transport will normally be arranged by the detaining ward (see Appendix 12)

NIC advises all relevant individuals (including the RC) of the patients return

In the event any patient detained under ***any section*** of the Mental Health Act dies whilst in hospital – the Mental Health Act Administrators should be notified ***immediately***:
WHCNHS.MHAAdminWHCT@nhs.net

WRH - Suzanne Rendall – ex 33344
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## Appendix 9

## Section 136 Police Holding Power

Police detain a patient in a public place whom they believe has a mental disorder and is a danger to themselves or others

Most appropriate place of safety has been identified as Emergency Dept if there is a physical injury or illness that requires immediate assessment /intervention

At triage, the time of arrival is completed on the Section 136 monitoring form

NIC to inform Mental Health Liaison that patient is detained under Section 136 in order for the AMHP to be contacted to commence the mental health assessment process and for the patient to be informed of their rights.**( N.B: AMHP only have *24 hours* to coordinate an assessment) .**

NIC completes an incident report on Datix

The Police should remain with the patient until the patient is deemed:

- **Medically stable to be transferred to the 136 Suite** –conveyance should be arranged in accordance with appendix 12.
- **By AMHP not to have a mental disorder** – the individual can no longer be detained and must be informed they are free to leave.

In the event any patient detained under ***any section*** of the Mental Health Act dies whilst in hospital – the Mental Health Act Administrators should be notified ***immediately***:
WHCNHS.MHAAdminWHCT@nhs.net

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ALEX – Sandy O'hare - 01527 488861

## Appendix 10

## Revoking of a Section

RC reviews patient detained under the Mental Health Act (Section 2, 3, 4, 5(2)) and determines that statutory criteria are no longer met

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RC completes **Form WAHT23**

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RC ensures the patient is aware they are no longer subject to detention

↓

If the patient consents, the NIC notifies the NR

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NIC updates Mental Health Liaison (MHL) that patient is no longer subject to detention
WRH – bleep 195
ALEX –bleep 0234

In the event any patient detained under ***any section*** of the Mental Health Act dies whilst in hospital – the Mental Health Act Administrators should be notified ***immediately***:
WHCNHS.MHAAdminWHCT@nhs.net

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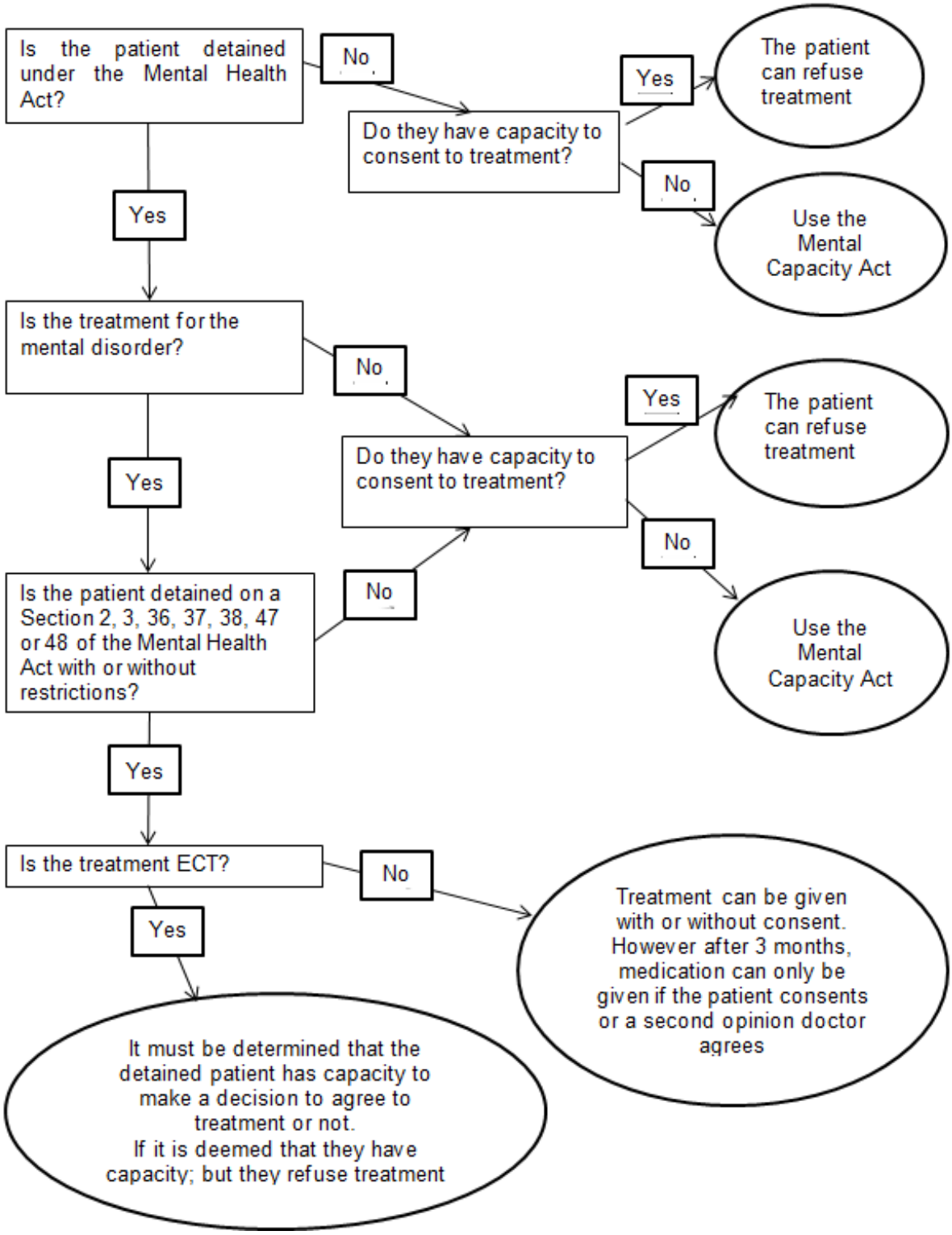
## Appendix 11

### Flow chart of consent to treatment under the Mental Health Act



## Appendix 12
## Conveyance

**Reference must also be made to:-**
West Midlands Ambulance Service, Mental Health Act Conveyance Policy & Procedure (available on Mental Health Act intranet page)

Patient needs conveying:
- Between hospitals
- When absent without leave (AWOL) to be brought back to ward
- Being taken to or transferred between places of safety

Factors for consideration of transport:
- Risk (full risk assessment should be undertaken). Ensure details on **Authority to Convey Form** available.
- Privacy and dignity of the patient – the most humane and least threatening method of transport should be used
- The wishes of the patient and any family/ friends
- Aggression
- Alcohol/ drugs
- Urgency of the transport
- CS sprayed

West Midland Ambulance Service will assist with the conveyance of patients with mental disorder where it is confirmed that this is required/the most appropriate alternative.
Ambulance to be arranged if:
- Patient sedated
- Police are assisting (as police vehicles not suitable)
- Need due to physical condition

In order to protect members of the public, multi-agency staff and the patient, West Mercia Police will respond to requests for assistance with the conveyance of a mentally disordered patient in violent circumstances or where the patient is likely to become violent. In these situations the responsibility of West Midlands Police is to assist in conveyance to a place of safety. There is **no responsibility** to convey patients between hospitals. ( In this situation sedation/ private secure transport may be required.)
Contact should be made via the Force Control Room.
Police to assist if:
- Patient violent or dangerous
- Risk assessment suggests potential for violence or aggression.

A patient should only be taken by car if everyone is completely satisfied that this is the most appropriate method and there is an escort other than the driver. It may be appropriate for the patient to be transferred in a taxi if sufficient staff are available.

A healthcare professional or AMHP should accompany a patient during conveyance. The authority to convey an individual can be conferred using **Authority to Convey Form**

Only such force as is necessary, justifiable and proportionate should be used giving due regard to the dignity of the individual.

**AWOL Patients:** It is the responsibility of the detaining authority to arrange and fund appropriate transport.

**Appendix 13**

## Mental Health Tribunal

Patients should be regularly informed of their rights and confirmation of this discussion recorded on **Form WAHT132.**

Patient requests a Tribunal

NIC notifies Mental health Liaison (MHL) that patient is requesting a Tribunal
WRH – bleep 195
ALEX –bleep 0234

MHL notify WHCT MHA Administrators who will then manage process and arrange for requests to be made for any supporting documentation, and ensure all parties are aware of date, time, and venue.

The decision of the Tribunal will be verbally shared at the end of the hearing to all present and a written decision will be sent to all parties concerned within 7 days of receipt

If the patient asks to withdraw their application at any time the WHCT MHA Administrators should be informed immediately:
WHCNHS.MHAAdminWHCT@nhs.net

WRH - Suzanne Rendall – ex 33344
ALEX – Sandy O'hare - 01527 488861

## Hospital Managers review meetings and appeal hearings

Patients should be regularly informed of their rights and confirmation of this discussion recorded on **Form WAHT132.** This discussion should include information regarding the patient's right to apply to the Hospital Managers. Patient should be referred to an IMHA unless they object

**Patient /NR requests a hearing**

NIC informs WHCT MHA Administrators within 1 working day:
WHCNHS.MHAAdminWHCT@nhs.net

WRH - Suzanne Rendall – ex 33344
ALEX – Sandy O'hare - 01527 488861

And, Mental Health Liaison team
WRH – bleep 195
ALEX –bleep 0234

WHCT MHA Administrators will request and co-ordinate reports, date, time, venue.

The decision of the panel will be announced verbally at the end of the review meeting/appeal hearing to all present. WHCT MHA Administrators will record the decision. Chair of Hospital Managers Panel completes relevant decision form.

**Appendix 15**

## Change of Responsible Clinician (RC)

On admission under detention an Approved Clinician is assigned as the patients Responsible Clinician (RC).

The name of the patients RC should be clearly recorded on the medical record and known to staff caring for the patient.

The functions that can only be undertaken by an RC are:

- Granting Section 17 leave
- Renewal of detention
- Discharge from detention(other than by Hospital Managers, Mental Health Tribunal or Nearest Relative)

In the event the name of the RC changes, the ward will be advised by WHCT MHA Administrators

In the event any patient detained under ***any section*** of the Mental Health Act dies whilst in hospital – the Mental Health Act Administrators should be notified ***immediately***:
WHCNHS.MHAAdminWHCT@nhs.net

WRH - Suzanne Rendall – ex 33344
ALEX – Sandy O'hare - 01527 488861

## Appendix 16

## Death of a Detained Patient

Patient who is detained under ***any part*** of the MHA dies in hospital

↓

Care of the deceased patient procedures followed

↓

NIC / Consultant in Charge of patients care inform the RC (via Mental Health Liaison team) and WHCT MHA Administrators who will update the MHA detention Datix with the statutory notification information:
WHCNHS.MHAAdminWHCT@nhs.net

WRH - Suzanne Rendall – ex 33344
ALEX – Sandy O'hare - 01527 488861

Mental Health Liaison team
WRH – bleep 195
ALEX –bleep 0234

↓

RC informs the Coroner

↓

WHCT MHA Administrators notify CQC and Head of Safeguarding and Legal Services WAHT.

↓

Head of Safeguarding WAHT notifies WAHT Patient Safety Team

## Appendix 17

### Section 29 Displacement of Nearest Relative

The NR is established using a set hierarchy. The NR is the first individual on the following list:

- Relative that the individual ordinarily resides with (over 18)
- Husband, wife, civil partner (or living with as such for at least 6 months)
- Son / daughter (over 18)
- Father / mother (if born out of wedlock – father can only qualify as NR if parental responsibility has been officially assigned to him)
- Brother / sister (over 18)
- Grandparent
- Grandchild (over 18)
- Uncle / aunt
- Nephew / niece (over 18)
- Non-relative that the patient has been living with for at least 5 years

In establishing complex situations:

- Whole blood relatives rank higher than half blood relatives
- The eldest of several relatives covered by the same bullet pint ranks highest
- Step relatives DO NOT count as relatives
- Individuals living outside the UK do not count (where the patient is ordinarily resident in the UK)

The NIC may bring to the attention of the AHMP any case where they believe the patient's NR is not appropriate.
An AMHP must decide for themselves at any time that a patient's nearest relative is nor appropriate. Possible reasons include:

- Abuse / domestic violence
- NR not known to the patient
- NR is unreasonably objecting to Section 3 against patient's best interests
- NR is incompetent due to mental illness
- Patient does not want NR to perform that role
- NR does not want to perform that role

If appropriate talk to NR and see if NR will authorise someone else to perform role. **Form NR1** to be completed – this can be revoked at any time

If the patient does not have NR the AMHP should advise then of their right to have one appointed and instigate proceedings. Ensure referral to IMHA made unless patient objects

If the patient states that they don't want their NR to perform the role but the AMHP believes the NR is appropriate advise the patient of their right to initiate displacement proceedings or the NR could authorise someone else by completing **Form NR1**

AMHP to consider all the circumstances of the case and use their discretion as to whether to instigate proceedings

Advice to be sought by AMPH from Local Authority Legal Department

**Appendix 18**

**Associated Documentation**

**Statutory Forms**

| Code | Name | Applicable to |
|---|---|---|
| **A2** | Application by AMPH for admission for assessment | Section 2 |
| **A3** | Joint medical recommendation for admission for assessment | Section 2 |
| **A4** | Medical recommendation for admission for assessment | Section 2 |
| **A6** | Application by AMPH for admission for treatment | Section 3 |
| **A7** | Joint medical recommendation for admission for treatment | Section 3 |
| **A8** | Medical recommendation for admission for treatment | Section 3 |
| **H1** | Report on hospital in-patient | Section 5(2) |
| **H3** | Record of detention in hospital | Sections 2, 3, 4 & 5(2) |
| **H4** | Authority for transfer from one hospital to another under different managers | Section 19 |
| **H5** | Renewal of authority for detention | Section 20 |

**Other External Forms**

| Name | Applicable to |
|---|---|
| **CQC AWOL Notification** | Section 2, 3, 4, 5(2), 135 & 136 |
| **CQC Notification of in-patient death** | Section 2, 3, 4, 5(2), 135 & 136 |
| **Section 136 monitoring form** | Section 136 |

**Internal Forms**

| | | |
|---|---|---|
| | Checklist for detention documents | |
| | Authority to convey | Section 2, 3, 4 & 136 |
| **WAHT23** | Notification of expiry or revoking of section regarding a patient detained under the Mental health Act, 1983 | Section 2, 3, 4 & 5(2) |
| **NR1** | Nearest relative's delegation of responsibility | Section 2, 3 & 4 |
| **WAHT132** | Record of rights explained to patient and r Record of patient's decision regarding information to nearest relative | Section 2, 3, 4 & 136 |

| MONITORING AND COMPLIANCE | | | | |
|---|---|---|---|---|
| **This section should identify how the Trusts plan to monitor compliance with and the effectiveness of this Key Document Page. It should include auditable standards and/or key performance indicators (KPIs) and details on the methods for monitoring compliance** | | | | |
| **What** | **How** | **Who** | **Where** | **When** |
| *These are the 'key' parts of the process that we are relying on to manage risk.* | *What are we going to do to make sure the key parts of the process we have identified are being followed?* | *Who is responsible for the check?* | *Who will receive the monitoring results?* | *Set achievable frequencies.* |
| Board Report | Each board report deadline met | WAHT contract manager | Executive Leads – Chief Nurse, Chief Medical Officer | Annual |
| Advice on the day of request | 95% | WHCT KPI to report | Safeguarding Committee | Quarterly |
| Arranging hospital manager reviews and tribunal hearings | 100% compliance | WHCT KPI to report | Safeguarding Committee | Quarterly |
| Patient being read their rights /recorded | 100% compliance | WHCT KPI to report | Safeguarding Committee and CCGs | Quarterly |
| Section expiry dates review within statutory timeframes | 100% compliance | WHCT KPI to report | Safeguarding Committee and CCGs | Quarterly |
| Completing statutory notification to CQC of death of a detained patient or detention of under 18 year olds | 100% compliance | WHCT KPI to report | Safeguarding Committee and CCGs | Quarterly |
| Annual return NHS Digital | 100% compliance | WAHT Head of Safeguarding / Senior Information Analyst | NHS Digital | Annual |

| **This Key Document Page has been circulated to the following individuals for consultation** |
|---|
| **Designation** |
| Director of Nursing |
| Matrons |
| Ward Managers |
| Clinicians |
| Head of Clinical Governance and Risk Management |
| Adult protection Lead Officer |
| PCT and Worcestershire County Council |
| Safeguarding Adults Committee (Acute subcommittee to Worcestershire Safeguarding Board) |
| **This key document page has been circulated to the chair(s) of the following committee's / groups;** |
| Safeguarding Adults Committee |
| Safeguarding Children's sub group |
| Senior Nurse, AHP Meeting |

| **Plan for implementation** |
|---|
| *How are you going to implement and ensure all relevant staff are aware of this pathway?* |
| Included in content of training sessions |
| Part of the safeguarding pathway |
| Notified to all divisional leads |

## EQUALITY IMPACT ASSESSMENT

***To be completed by the Treatment pathway owner and submitted to the appropriate committee for consideration and approval.***

| | | **Yes/No** |
|---|---|---|
| 1. | Does the treatment pathway affect one group less or more favourably than another on the basis of: | |
| | Race | **No** |
| | Ethnic origins (including gypsies and travellers) | **No** |
| | Nationality | **No** |
| | Gender | **No** |
| | Culture | **No** |
| | Religion or belief | **No** |
| | Sexual Orientation | **No** |
| | Age | **No** |
| 2. | Is there any evidence that some groups are affected differently? | **No** |
| 3. | If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable? | **No** |
| 4. | Is the impact of the policy/guidance likely to be negative?<br>If so can the impact be avoided? | **No** |
| 5. | What alternatives are there to achieving the policy/guidance without the impact? | **No** |
| 6. | Can we reduce the impact by taking different action? | **No** |
| 7. | Other comments | |

If you have identified a potential discriminatory impact of this key document, please refer it to Human Resources, together with any suggestions as to the action required to avoid/reduce this impact.

For advice in respect of answering the above questions, please contact Human Resources.

## FINANCIAL IMPACT STATEMENT

***To be completed by the Treatment pathway owner and submitted to the appropriate committee for consideration and approval.***

| | | **Yes/No** |
|---|---|---|
| 1. | Does the implementation of this document require any additional Capital resources | **No** |
| 2. | Does the implementation of this document require additional revenue | **No** |
| 3. | Does the implementation of this document require additional manpower | **No** |
| 4. | Does the implementation of this document release any manpower costs through a change in practice | **No** |
| 5. | Are there additional staff training costs associated with implementing this document which cannot be delivered through current training programmes or allocated training times for staff | **No** |
| 6. | Other comments | |

If the response to any of the above is yes, please complete a business case and which is signed by your Finance Manager and Directorate Manager for consideration by the Accountable Director before progressing to the relevant committee for approval