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REVIEW OF DETENTION AND COMMUNITY TREATMENT ORDER, MENTAL HEALTH ACT 1983 PROCEDURE	
Introduction and Aim This document is to ensure staff are aware of their individual and collective responsibilities when reviewing detention and Community Treatment Order's (CTO) under the Mental Health Act 1983 (MHA) To provide clear direction and guidance to staff in relation to their legal responsibilities under the MHA as amended by the MHA 2007. To ensure that statutory requirements under the MHA are met.	
Objectives This procedure describes the following with regard to reviewing detention and extending a CTO. • The purpose of reviewing the detention and the CTO • The process for reviewing the detention and the CTO • The duties of the practitioners and agencies involved in the management of reviewing the detention and the CTO Practitioners must have due regard to the MHA Code of Practice for Wales 2016 (the Code) generally and specifically to the Guiding Principles when they are reviewing the detention or the CTO. This will ensure that considerations are given as to whether the objectives can be met in a less restrictive way.	
Scope This procedure applies to all of our staff in any inpatient or community setting where a person is liable to be detained or who is subject to a CTO and the MHA Associate Hospital Managers who have delegated responsibility from the Board.	
Equality and Health Impact Assessment	There is potential for both positive and negative impact. The procedure is aimed at improving services and meeting diverse needs. Mitigation actions are already in place to offset any potential negative outcome, e.g. through the monitoring of the procedure. There is nothing, at this time, to stop the procedure being implemented.

Documents to read alongside this Procedure	• The Mental Health Act 1983 (as amended by the Mental Health Act 2007) • Mental Health (hospital, guardianship, community treatment and consent to treatment) (Wales) regulations 2008 • The Mental Capacity Act 2005 (including the Deprivation of Liberty Safeguards delegated to this Act under the Mental Health Act 2007) • The respective Codes of Practice of the above Acts of Parliament • The Human Rights Act 1998 (and the European Convention on Human Rights) • Domestic Violence, Crime and Victims Act, 2004 All Cardiff and Vale procedures on the Mental Health Act 1983 as appropriate including: Review of Detention and Community Treatment Order Procedure Community Treatment Order Procedure Hospital Managers' Scheme of Delegation Procedure Section 5(4) Nurses' Holding Power Procedure Section 5(2) Doctors' Holding Power Procedure
Approved by	Controlled Documents Oversight Group (CDOG) Mental Health Clinical Board

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Disclaimer

If the review date of this document has passed please ensure that the version you are using is the most up to date either by contacting the document author or the [Governance Directorate](#).

Summary of reviews/amendments			
Version Number	Date of Review Approved	Date Published	Summary of Amendments
1	12/02/2019		<i>New document</i>
2	25/10/2022		<i>Removal of glossary</i> <i>Expanded on paragraphs throughout for easier reading</i>

			<i>Expanded on who can be consulted when renewing a detention/extending a CTO</i> <i>Added section relating to patients who are absent without leave (AWOL)</i>
3	26/05/2026	03/07/2026	<i>Changed Mental Health and Capacity Legislation Committee to Mental Health Legislation Committee throughout</i> <i>Combined and clarified paragraphs for easier reading</i> <i>Expanded paragraphs about furnishing to MHA Department for clarity</i>

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1. INTRODUCTION

The MHA gives the Hospital Managers the power to renew detention and extend a CTO. These persons are known as Associate Hospital Managers or

the Power of Discharge Group. Some functions of the Hospital Managers are also delegated to the Mental Health Act Department (MHA Department), such as accepting detention papers and renewal reports that have been furnished to the Hospital Managers. This does not apply to restricted patients without the consent of the Secretary of State for Justice (Ministry of Justice). This procedure is to ensure that the Health Board meets its responsibilities in relation to renewing detention and extending CTO.

2. PROCEDURE STATEMENT

This procedure has been developed to guide staff on the management of patients considered for renewal of detention or extension of CTO. This guidance has been developed in line with the MHA Code of Practice for Wales 2016.

It provides guidance on the role and responsibilities of the Responsible Clinician (RC), other professionals involved and the role of the patient's nearest relative. Due consideration should be given to the use of the option with the least possible restrictions.

3. SCOPE

This procedure applies to all staff working in Cardiff and Vale University Local Health Board whose role involves the care and treatment of patients/service users covered under the MHA and the Associate Hospital Managers who have delegated responsibility from the Board.

The Health Board has in place appropriate governance arrangements to monitor and review the exercise of functions under the MHA on its behalf. The Mental Health Legislation Committee is specifically for this purpose.

4. DECIDING WHETHER TO RENEW OR EXTEND

Before a patient's detention or CTO expires, the RC must decide whether the patient's current period of detention should be renewed or CTO extended. The RC must examine the patient and decide whether the criteria for renewing detention under section 20 of the MHA or extending the CTO under section 20A of the MHA are met, or whether discharge is appropriate.

If a patient refuses to be examined or is assessed as being either too ill or too disturbed to be examined, the RC's examination of the patient could comprise of:

- Their observations of the patient
- A consideration of the patient's medical history and prognosis
- An evaluation of the patient's current condition in an MDT case conference

The examination could take place on an out-patient basis if the patient is on section 17 leave.

A mandatory condition of a CTO is that a patient must make themselves available for examination under Section 20A, as requested.

The RC should discuss their decision to renew/extend with the patient and must consult one or more other people who have been professionally concerned with the patient's medical treatment. The RC should also consult the wider multi-disciplinary team (MDT). Where appropriate, this should include the nearest relative, the independent mental health advocate (IMHA) and/or other representatives, and any other key service providers.

The MHA Department will advise the RC via email, and they will also receive the PARIS daily report confirming that the detention or CTO is due to expire within 2 months and that the patient needs to be examined in order to renew the detention or extend the CTO.

If the RC renews the detention/extends the CTO, the MHA Department will arrange a hearing date for the Associate Hospital Managers (Power of Discharge Group) to sit and review the patients' case. They will either support the renewal of detention/extension of CTO or they will exercise their power of discharge. Please see 18 below for further information.

5. RENEWAL OF DETENTION (SECTION 20)

In order to renew detention, the patients RC must submit Form HO15 to the Hospital Managers (MHA Department) confirming that the following conditions are satisfied:

- The patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment in a hospital; and
- It is necessary for the health or safety of the patient or for the protection of other persons that he should receive such treatment and that it cannot be provided unless he continues to be detained; and
- Appropriate medical treatment is available to him

Where the RC is satisfied that the criteria for renewing the patient's detention are met, they must complete part 1 of the statutory renewal report (Form HO15), which includes naming a person who the RC has consulted with, and which can be different to the person who signs part 2. Part 1 must be completed before part 2.

Before the RC can submit the statutory renewal of detention report Form HO15), they are required to consult with one or more other persons and obtain the written agreement of another person that the criteria are met. The other person must be professionally concerned with the patient's treatment and must not belong to the same profession as the RC.

The involvement of a second professional is intended to provide an additional safeguard for patients by ensuring:

- Renewal is formally agreed by at least two suitably qualified and competent professionals who are familiar with the patient's case
- Those two professionals are different disciplines, and so bring different complementary, professional perspectives to bear
- The two professionals are able to reach their own decisions independently of one another

The second professional should:

- Have sufficient experience and expertise to decide whether the patients' continued detention is necessary and lawful
- Have been actively involved in the planning, management or delivery of the patients care and treatment
- Have had sufficient recent contact with the patient to be able to make an informed judgement about the patient's case.

Second professionals should satisfy themselves; they have sufficient information on which to make the decision or whether they need to meet separately with the patient. RCs should ensure the second professional is given enough notice to be able to interview or examine the patient if appropriate.

If the second professional agrees with the RC, they must complete part 2 of the statutory renewal report (Form HO15). The person who signs part 2 can be a different person to the one named in part 1. The RC is now able to complete part 3 of the form and furnish to the Hospital Managers (MHA Department) who will complete part 4 of the form.

It is submitted that in the event of the second professional deciding that the grounds for renewal are not satisfied, the agreement of another second professional could be sought even if there are no "exceptional circumstances".

6. EXTENDING A CTO (SECTION 20A)

In order to extend a CTO, the patients RC must submit Form CP3 to the Hospital Managers (Mental Health Act Department) confirming that the following conditions are satisfied:

- The patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment.
- It is necessary for his health or safety or for the protection of other persons that he should receive such treatment.
- Subject to his continuing to be liable to recall, such treatment can be provided without his being detained in hospital;
- It is necessary that the RC should continue to be able to exercise the power under section 17E(1) above to recall the patient to hospital; and
- Appropriate medical treatment is available for him

They must also consult with one or more other people who have been professionally concerned with the patient's medical treatment.

Where the RC is satisfied that the criteria for extending the patient's CTO are met, they must complete part 1 of the statutory report (Form CP3) before part 2 below can be completed.

Before the RC can submit the report (Form CP3), they must obtain the written agreement of an AMHP. The RC should ensure the AMHP is given enough notice to be able to interview the patient if appropriate, however, interviewing the patient isn't a requirement.

The AMHP does not have to be the same AMHP who originally agreed the patient should become a CTO patient. It may (but need not) be an AMHP who is already involved in the patient's care and treatment. It can be an AMHP acting on behalf of any willing local authority. If no other local authority is willing, responsibility for ensuring that an AMHP considers the case should lie with the local authority which is responsible under section 117 for the patient's after-care.

If the AMHP agrees with the RC, they must complete part 2 of the statutory report (Form CP3). The RC is now able to complete part 3 of the form by naming a person they have consulted with, which must be a different person to the AMHP named in part 2 unless they have been professionally concerned with the patient's treatment. The report is then furnished to the Hospital Managers (MHA Department) who will complete part 4 of the form.

7. PATIENTS WHO ARE AWOL AND RETURN WITHIN 28 DAYS (SECTION 21A)

If a patient is AWOL (absent without leave) during the week before the detention expires and returns to hospital within 28 days, section 21A applies for the purpose of renewal. The detention is extended for up to 1 week (under section 21) after the patient's return to hospital to enable the RC to examine the patient and a renewal report under section 20 (Form HO15) as above completed, if appropriate. The renewal has effect from the date when the authority for detention would have expired if it had not been extended.

8. PATIENTS WHO ARE AWOL AND RETURN MORE THAN 28 DAYS (SECTION 21B)

In order to renew the detention of a patient who has been AWOL (absent without leave) for more than 28 days, section 21B applies for the purpose of renewal and requires an examination to take place by the RC. This must be

done within 1 week (under section 21) of the patient's return and the statutory renewal report (Form HO16) must be completed.

Where the RC is satisfied that the criteria for renewing the patient's detention are met, they must complete part 1 of the statutory renewal report (Form HO16), which includes naming an AMHP and another person who the RC has consulted with. The RC is now able to furnish the form to the Hospital Managers (Mental Health Act Department).

A failure by the RC to complete the statutory renewal report (Form HO16) within that week will result in the automatic expiry of that detention.

9. FURNISHING THE REPORT TO THE HOSPITAL MANAGERS

A report is furnished to the Hospital Managers (MHA Department) when it is committed to the internal mailing system, including being sent by email or alternatively handed to a person authorised by the Hospital Managers to receive it for the purposes of renewal of detention or extending a CTO. Authorised persons are the MHA Department only (see Hospital Managers Scheme of Delegation Policy).

If the report is being furnished through the internal mailing system, it must first be scanned and emailed to the MHA Department generic account - Mentalhealthact.Team.CAV@wales.nhs.uk.

The furnishing of the RC's report gives authority for continued detention/extension of CTO of the patient. If the authorised period of detention expires without there being a report duly furnished, any detention after the expiry date will be unlawful and renders the Hospital Managers at risk of successful challenge.

10. NOT HOLDING A REVIEW BEFORE DETENTION/CTO EXPIRES

If authority for detention is not renewed and the patient continues to be kept in circumstances which amount to a deprivation of liberty this will be a breach of the patients' rights under Article 5 of the European Court of Human Rights (ECHR).

The RC should notify the Hospital Managers (MHA Department) immediately. The Mental Health Act Manager should report the breach to Healthcare Inspectorate Wales (HIW) as a serious incident and complete a DATIX.

The patient must be informed and either immediately discharged or there must be lawful authority to continue to detain the patient, for example, the use of holding powers under the MHA. If necessary, a new application for admission for assessment or treatment should be made. The Hospital Managers (MHA Department) should ensure a review is undertaken immediately to determine

why this has happened and what actions have been taken to resolve this and to ensure that it won't happen again in the future.

11. RESPONSIBLE CLINICIANS POWER OF DISCHARGE

Section 23 of the MHA allows RCs to discharge Part 2 patients, unrestricted Part 3 patients and all CTO patients by completing a discharge order in writing. As RC's have the power to discharge patients, they must keep under review the appropriateness of using that power. If, at any time, a RC concludes that the criteria which would justify renewing a patient's detention or extending the patient's CTO are not met, they should exercise their power of discharge by completing Form HO17 for inpatients or a CP8 for a patient on a CTO and posting to the MHA Department, but it must first be scanned and emailed to the generic account - Mentalhealthact.Team.CAV@wales.nhs.uk. The RC should not wait until the patient's detention or CTO is due to expire to discharge.

12. NEAREST RELATIVE'S POWER OF DISCHARGE

A patient detained for assessment or treatment under Part 2 of the Act may also be discharged by their nearest relative. The Hospital Managers (MHA Department) and/or detaining AMHP should ensure the nearest relative is aware of this power and how to use it.

The nearest relative must give the Hospital Managers (MHA Department) at least 72 hours' notice in writing, specifying that as the nearest relative, they are using their powers of discharge of their intention to discharge the patient.

The 72-hour period starts from the date/time when the notice is received by an authorised person on behalf of the Hospital Managers, which is either the MHA Department or shift coordinator.

During that period the patient's RC can block the discharge by issuing a 'barring report' (Form NR1) stating that, if discharged, the patient is likely to act in a manner dangerous to themselves or others.

The barring report should also detail the likelihood and nature of such dangerous acts, such as causing serious physical injury or lasting psychological harm and, not merely the patient's and others general need for safety and protection. If a RC wishes to block a patient's discharge by issuing a barring report, a copy should be given to the patient and to the nearest relative.

It will only be in the most exceptional circumstances that a copy would not be given, e.g. details in the report contain the patient's stated intention to harm the nearest relative.

The Mental Health Act Department will liaise with the RC to ensure the patient is examined within the 72 hours and a decision is made as to whether a barring

notice will be issued by the RC, or not. If not issued this would mean the current detention is discharged and the patient free to leave hospital. If a barring order is issued this stops the nearest relative from exercising their power to discharge for 6 months. This period includes if the patient is discharged and re-detained.

If a barring order is issued the MHA Department will make arrangements for an Associate Hospital Manager's hearing to be held within four weeks (or as close as possible) of the barring order being issued.

13. DISCHARGE BY THE HOSPITAL MANAGERS AND THE MENTAL HEALTH REVIEW TRIBUNAL FOR WALES

Patients may also be discharged by the Hospital Managers (Power of Discharge Group) or by the Mental Health Review Tribunal for Wales. See Power of Discharge Associate Hospital Managers Hearing Protocol and the Mental Health Review Tribunal Procedure.

14. HOSPITAL MANAGERS' DISCHARGE POWER

Hospital Managers (MHA Department) should ensure all relevant parties, nearest relatives and, if different, their carers are aware that patients have the right to seek discharge by the Associate Hospital Managers (Power of Discharge Group). They also need to understand the distinction between this right and the right to apply to the Mental Health Review Tribunal for Wales.

Associate 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 RC submits a report to them under section 20 of the Act for renewing detention or under section 20A extending the CTO.
- Should consider holding a review when they receive request from the patient. Such a request may be supported by a carer, their independent mental health advocate (IMHA), independent mental capacity advocate, by their attorney or deputy.
- Must consider holding a review when the RC makes a report to them under section 25(1) barring an order by the nearest relative to discharge a patient.

In the last two cases, when deciding whether to consider the case, Associate Hospital Managers should take into account whether the MHRT for Wales has recently considered the patient's case or is due to do so imminently. The decision reached should be recorded in writing. If the decision is not to consider the case the reasons why not should be documented. This will be facilitated by the Mental Health Act Department.

In these cases, the patient, or the nearest relative, will be actively seeking discharge. Where the RC submits a report renewing detention or extending a CTO, the Associate Hospital Managers must consider the renewal or extension even if the patient does not object to it.

A restricted patient is entitled to ask the Associate Hospital Managers to consider whether they should conduct a review of his or her detention, although the Associate Hospital Managers may not discharge the patient following any such review without the consent of the Secretary of State for Justice (Ministry of Justice).

15. HOSPITAL MANAGERS HEARING

When a hearing is due to be arranged, the MHA Department will request a date from the RC and social worker/social work lead and send report requests to the professionals. Reports are required from the RC, allocated social worker or CPN and primary ward nurse or care coordinator 2 weeks before the hearing. These reports get sent to the Associate Hospital Managers panel in advance of the hearing along with the advocate (if they have one), the patient and the nearest relative (if the patient consents to it). With these reports, there must be an up to date WARRN and care and treatment plan provided.

The patient's RC, allocated social worker or CPN and primary ward nurse or care coordinator must attend the hearing to represent their report. If they are unavailable due to sickness, then a professional who knows the patient can attend on their behalf. They must be familiar with the patient's case and have met the patient prior to the hearing. The patient's nearest relative will be informed of the review and invited to attend, provided that the patient consents.

16. TRAINING

The Health Board will provide ongoing training for staff who have a delegated duty under the scheme of delegation. Details of training courses available can be found by contacting the Mental Health Act Department or looking on the [Mental Health Act Departments SharePoint page](#).

17. IMPLEMENTATION

This document will be widely disseminated to staff in Cardiff and Vale University Health Board. It will be published on the organisations SharePoint pages and referred to during training relevant to the MHA.

18. RESPONSIBILITIES

18.1 Chief Executive

The Chief Executive Officer has overarching responsibility for ensuring that Cardiff and Vale University Health Board is compliant with the law in relation to the MHA.

18.2 Chief Operating officer

The Chief Operating Officer is the Executive Lead for Mental Health. They have overarching responsibility for ensuring compliance with the contents of this procedure.

18.3 Designated Individuals

This procedure applies to all professionals who have defined responsibilities under the provisions of the MHA.

19. REFERENCES

Mental Health MHA 1983 - www.legislation.gov.uk/ukpga/1983/20/contents

Mental Capacity MHA 2005 - www.legislation.gov.uk/ukpga/2005/9/schedule/7

Mental Health Review Tribunal for Wales - www.justice.gov.uk/tribunals/mental-health

Human Rights MHA 1998 - www.legislation.gov.uk/ukpga/1998/42/contents

Mental Health MHA 1983, Code of Practice for Wales, Revised 2016 - <https://gov.wales/docs/dhss/publications/160920mentalMHAen.pdf>