GIG CYMRU NHS WALES | Bwrdd Iechyd Prifysgol Caerdydd a'r Fro | Cardiff and Vale University Health Board	**Reference Number: UHB 491** **Version Number:** 2 **Date of Next Review: 30/03/2029** **Previous Trust/LHB Reference Number: n/a**

CONSENT TO EXAMINATION OR TREATMENT UNDER THE MENTAL HEALTH ACT 1983

Introduction and Aim

This policy has been developed in line with the Mental Health Act (MHA) 1983, the Human Rights Act 1998, the MHA Regulations 2008 and the MHA Code of Practice for Wales 2016 (The Code).

Objectives

This policy is required to ensure that decisions made by an Approved Clinician (AC) and other health professionals under the Consent to Treatment Provisions (Part 4 & Part 4A) of the Mental Health Act are in line with the legal and good practice framework.

Scope

This policy is applicable to all employees who are prescribing and administering medication for mental disorder under The Mental Health Act 1983.

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 from being implemented.
Documents to read alongside this Procedure	• Mental Health Act 1983 (as amended by the Mental Health Act 2007) • Mental Health Act 1983, Code of Practice for Wales Revised 2016 • Mental Health (hospital, guardianship, community treatment and consent to treatment) (Wales) regulations 2008 • The Human Rights Act 1998 (and the European Convention on Human Rights)
Approved by	Mental Health Act Policy Group Mental Health Legislation Committee

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Disclaimer

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Summary of reviews/amendments			
Version Number	**Date Review Approved**	**Date Published**	**Summary of Amendments**
1			
2	30/03/2026	30/03/2026	*Change Mental Health and Capacity Legislation Committee to Mental Health Legislation Committee throughout.* *Updated sections throughout for clarity.*

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1. Introduction

1.1. Part 4 of the Mental Health Act 1983 (MHA) applies to patients who are detained in law or are "liable to be detained" (i.e. those granted leave under section 17 of the MHA). This also includes patients who have been recalled to hospital from Community Treatment Order's (CTO).

1.2. Part 4A of the MHA sets out different rules for treatment of patients on a CTO who have not been recalled to hospital by their Responsible Clinician (RC).

1.3. In the MHA 'medical treatment' includes nursing, psychological interventions and specialist mental health habilitation, rehabilitation and care.

1.4. The MHA defines medical treatment for mental disorders as medical treatment which is for the purpose of alleviating or preventing a worsening of a mental disorder or one or more of its symptoms or manifestations.

1.5. This includes treatment of physical health problems only to the extent that such treatment is part of, or ancillary to, treatment for mental disorder, e.g. treating wounds self-inflicted as a result of mental disorder. The MHA doesn't authorise medical treatment for physical health problems.

1.6. Some treatments given to detained patients can be given without their consent: e.g. treatment with medication for the first three months of detention. Other treatment, including treatment with medication after three months, requires the patient's consent or a second opinion.

1.7. The requirement for consent and/or a second opinion can be summarised as follows:

- Section 57 requires a patient's consent and a second opinion, e.g. psychosurgery and the surgical implantation of hormones for the reduction of the male sex drive.
- Section 58 and 58A requires the patient's consent or a second opinion, e.g. treatment with medication beyond the three-month period and treatment for Electroconvulsive Therapy (ECT) at any time.

1.8. Patients who do not come within the scope of Part 4 can be treated for both mental and physical disorders under common law rules if they have capacity to consent and are consenting to the treatment, and under the Mental Capacity Act 2005 if they lack capacity to make a decision relating to the treatment in question and the treatment is in their best interests.

2. Procedure Statement

2.1. The procedure relates to Part 4 and 4A (Consent to Treatment Provisions) associated with the MHA. The purpose of this procedure is to clarify what treatment can be imposed on patients who are liable to be detained under the MHA, which includes patients subject to a CTO. The Code identifies standards of practice that should be met when carrying out responsibilities under the MHA. The Code is not legally enforceable, but it is a statutory document and failure to follow it could be referred to in legal proceedings.

3. Scope

3.1. The aim of this procedure is to improve knowledge and ensure that staff are aware of their responsibilities and the legal framework in which patients can be treated for their mental disorder under the MHA.

3.2. This document sets out to:

- Ensure staff are aware of their responsibilities and requirements as per the Code.
- Ensure staff protect patient's rights.
- Ensure staff protect themselves and Cardiff and Vale UHB from legal liability.

3.3. In order to achieve this, the following must be established:

- Effective communication processes must be provided to ensure compliance and adherence to this procedure.
- Ensure arrangements are in place for enforcing and monitoring the use of the procedure.
- Provide adequate training and support to staff delegated to undertake the task.

3.4. Approved Clinicians (AC) have specific powers and duties under the MHA. These include the authority to treat patients with or without their consent. Therefore, they must ensure all legal criteria and statutory forms are completed.

3.5. The MHA includes patient safeguards which must be met for the protection of the patient and for the protection of the UHB and delegated staff who are responsible for ensuring compliance with the MHA.

4. Patients to whom Part 4 does not apply

4.1. Part 4 applies to all forms of medical treatment for mental disorder. Patients who are not subject to these provisions are those patients detained under sections 4, 5(2) or 5(4), 35, 135, 136, or by virtue of a direction for their detention in a place of safety under section 37(4) or 45A(5), and also includes restricted patients conditionally discharged under section 42(2) or section 73 and 74. In addition to these groups, Part 4 does not apply to patients on guardianship or those subject to CTO.

4.2. These patients can only be treated if they have capacity and are consenting or in accordance with the Mental Capacity Act (MCA) 2005 if they lack capacity to make decisions in relation to their medical treatment.

5. Approved Clinician in charge of treatment

5.1. Part 4 & 4A of the MHA refers to the "AC or person in charge of the treatment", where the treatment in question is a form of treatment to which section 58 or 58A applies. In the majority of cases the AC will be the patient's RC, but where, for example, the RC is not qualified to make decisions about a particular treatment (if the RC is not a doctor or a nurse prescriber) then another appropriately qualified professional will be in charge of that treatment, with the RC continuing to retain overall responsibility for the patient's case.

6. What is capacity and consent?

6.1. The MHA frequently requires healthcare professionals to determine whether a patient has the capacity to consent to a particular form of medical treatment, and if so, whether the patient does in fact consent. A patient is presumed to have capacity unless it is determined that they don't.

- Capacity – Capacity to consent is variable in people with a mental disorder. A person lacks capacity in relation to a matter if, at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain. The impairment or disturbance does not have to be permanent. A person may also lack capacity to make a decision about one issue but not about others.

- Consent - Consent is the voluntary and continuing permission of the patient to receive a particular treatment and is based on an adequate knowledge of the purpose, nature, likely effects and risks of that treatment including the likelihood of its success and any alternatives to it. Permission given under any unfair or undue pressure is not 'consent'.

7. Medication – the '3-month rule'

7.1. Under the MHA treatment for mental disorder can be given to detained patients, either with or without their consent. This period lasts for the first three months minus a day and starts from the first day on which any form of medication for mental disorder was first administered whilst the patient was detained under the MHA. This only applies to sections to which Part 4 provisions apply. This is often referred to as the "3-month rule".

7.2. We calculate the '3-month rule' date from the beginning of the first section the patient has been detained under which Part 4 provisions apply, e.g.

Patient admitted informally on 01/05/2021
Patient held under section 5(2) on 10/05/2021
Patient detained under section 2 on 11/05/2021
Patient detained under section 3 on 03/06/2021

The '3-month rule' start date for the above example would be 11/05/2021, when the patient is detained under section 2 as a patient isn't detained if they are informal and section 5(2) doesn't come under Part 4 provisions. The end of the '3-month rule' would be 10/08/2021. After this time, we would need a certificate as listed below.

7.3. There can only be one three-month period for such treatment in any continuous period of detention, including when one period of detention is immediately followed by another. A fresh period will only begin if there is a break in the patient's detention without becoming a CTO patient, or in the case of a restricted patient, if they had been conditionally discharged.

7.4. After the "3-month rule", further treatment will need the patient's consent and authorisation by or under the direction of the AC in charge of the patient's treatment, or in the absence of the patient's consent or capacity under the authorisation of a second opinion appointed doctor (SOAD).

7.5. The certificate requirement does not apply to a patient any time during the first 1 month, beginning on the day on which a CTO was made, for any section 58 & 58A treatment.

8. Section 58 – Medication for mental disorder requiring consent or a second opinion

8.1. Section 58 is concerned with the administration of medication to detained patients beyond the period of three months.

8.2. Before the three-month period ends, the AC will have received automated daily PARIS reports informing them of the upcoming '3-month rule' end date for their patients. The Mental Health Act Department will also inform the AC of this date. It is then the AC's responsibility to ensure all the relevant forms listed in 22.3 below are received in good time of this end date.

8.3. The AC should personally confirm the patient's capacity and seek the patient's consent to the administration of medication. The AC must either complete a Record of Capacity to Consent form if the patient has capacity and consents or refuses to consent. If the patient lacks capacity, then a Mental Capacity Assessment needs to be completed on PARIS under clinical information. In both cases a Consent to Treatment memo will be required.

8.4. Treatment to which section 58 applies cannot be given unless:

- The AC in charge of the treatment, or a SOAD, certifies that the patient has the capacity to consent and properly does so by completing form CO2, or
- A SOAD certifies that the treatment is appropriate, and either that the patient does not have the capacity to consent, or the patient has the capacity to consent but has refused to do so by completing form CO3.

8.5. On the issued certificates the AC and SOAD should indicate all mental health drugs proposed, including medication given "as required" and those prescribed for side effects. The drugs must be recorded by name or by classes of drug as described in the British National Formulary (BNF or eBNF). If drugs are specified by class, the certificate should state clearly the number of drugs authorised in each class, and whether any drugs within the class are excluded. The BNF maximum dosage and the route of administration should be clearly indicated for each drug or category of drug proposed. This can exceed the dosages listed in the BNF, but this will need to be clearly stated on the certificate, e.g. 200% max dosage and a case note provided.

8.6. A Section 58 certificate ceases to apply to a treatment if:

- The patient withdraws consent, or loses the capacity to consent to it,
- There is a change in the drug or dose that isn't covered by the existing certificate,
- There is a permanent change of the AC in charge of the treatment,
- The patient is no longer detained under the Mental Health Act.

In the first two categories only, the AC will need to complete a new form CO2 or an Electronic SOAD Request form depending on the patient's capacity/consent status along with the documentation stated in 22.3 and 22.4 below. An Urgent Treatment form - section 62/62A may also be appropriate.

In the third category the AC can complete a Review of Treatment (Section 61) form or a new CO2 as stated in 11.4 and 11.5 below.

Once a certificate ceases to apply, the Mental Health Act Department will mark it 'treatment no longer authorised' on the original certificate and PARIS. Ward staff are to ensure all certificates marked 'treatment no longer authorised' are removed from the patient's medication file.

8.7 A CO2 and CO3 can run concurrently if the AC has assessed the patient and confirmed their capacity/consent status. In these instances, the AC will need to provide detailed case notes.

9. Section 58A – Electro-Convulsive Therapy (ECT)

9.1. Section 58A applies to ECT and to medication administered as part of ECT. Treatment given under this section may only be given to the patient if:

- The AC in charge of the treatment, or a SOAD, certifies that the patient has the capacity to consent and properly does so by completing form CO4, or
- A SOAD has certified that the patient does not have the capacity to consent and that it is appropriate for the treatment to be given by completing form CO6.

9.2. This section applies to adult detained patients, apart from those who are subject to a CTO and to all patients under the age of 18 (whether or not they are detained). The key differences from section 58 are that:

- Patients who have the capacity to consent to treatment may not be given treatment under section 58A unless they consent.
- No patient aged under 18 can be given treatment under section 58A unless a SOAD has certified that the treatment is appropriate.
- There is no initial three-month period during which a certificate is not needed (even for the medication administered as part of the ECT).

9.3. A patient who lacks capacity to consent may only be given treatment for ECT if it is certified by a SOAD that the patient is "not capable of understanding the nature, purpose and likely effects of the treatment" and that it is appropriate for the treatment to be given. This can also be authorised through section 62A – see point 12 below.

9.4. If the patient's capacity changes after receiving ECT treatment, the AC will be required to complete the relevant form along with local documents stated in 9.5 below. A CO4/CO6 cannot run concurrently for ECT.

9.5. In all cases form CO4/CO6 certificate must clearly indicate the maximum number of ECT treatments it approves, which is 12 and any medication that may be given relating to the administration of ECT.

9.6. The AC must complete a Record of Capacity to Consent form if the patient has capacity and consents. If the patient lacks capacity, then a Mental Capacity Assessment needs to be completed on PARIS under clinical information. In both cases a Consent to Treatment memo will be required.

10. Section 60 - Withdrawal of consent

10.1. Section 60 provides for a patient to withdraw their consent to treatment or to a plan of treatment. The withdrawal of consent can be made in writing, verbally or through the patient's behaviour, e.g. physically resisting the administration of the treatment.

10.2. If a mentally capable patient who has consented to a section 58 or 58A treatment removes their consent or loses their capacity to consent, the patient is to be treated as having withdrawn their consent to the treatment.

10.3. If a section 58 or 58A treatment is being given to a mentally incapable patient by using a CO3 form, but before the treatment has been completed, the patient becomes mentally capable of consenting to the treatment and does consent, the remainder of the treatment is to be treated as a separate form of treatment. This means the AC must complete a CO2 along with a Record of Capacity to Consent form and a Consent to Treatment memo.

10.4. The patient's withdrawal of consent and explanation given to the patient in light of that withdrawal of consent must be clearly documented in the patient's case notes.

11. Section 61 – Review of treatment

11.1. The MHA does not give any specific timeframes of when certificates are to be reviewed. This section provides for the regular review by Healthcare Inspectorate Wales of treatment which is being given under Part 4 & 4A of the MHA.

11.2. Best practice is for AC to review all patients' treatment at yearly intervals for patients detained in hospital and those subject to a Community Treatment Order.

11.3. AC will receive automated daily PARIS reports informing them when reviews are due for their patients. The Mental Health Act Department will also inform AC when a review is due.

11.4. If the patient has a SOAD certificate (CO3/CO7) in place and the treatment authorised is still appropriate, a new SOAD request will not be needed and treatment can continue using the original SOAD certificate (CO3/CO7) as long as the AC completes a Review of Treatment (Section 61) form along with either a Record of Capacity to Consent form if the patient refuses to consent or a Mental Capacity Assessment on PARIS under clinical information if the patient lacks capacity. In both cases a Consent to Treatment memo will be required.

11.5. If the patient has a CO2/CO8 in place, the AC must complete a new certificate authorising treatment if the patient still has capacity and is consenting along with a Record of Capacity to Consent form and a Consent to Treatment memo.

12. Section 62/62A & 64G – Inpatient and community urgent Treatment

12.1. This section provides the authorisation for treatment to be given to a patient detained in hospital (and those who have been recalled to hospital) under section 62/62A and those subject to a CTO under section 64G in response to an immediate emergency. Section 58 & 58A above do not apply if the treatment in question is:

- Immediately necessary to save the patient's life,

- A treatment which is not irreversible, but which is immediately necessary to prevent a serious deterioration of the patient's condition,
- A treatment which is not irreversible or hazardous, but which is immediately necessary to alleviate serious suffering by the patient; or
- A treatment which is not irreversible or hazardous, but which is immediately necessary to prevent the patient from behaving violently or being a danger to himself or to others and represents the minimum interference necessary to do so.

If the treatment is for ECT ((s58A) or medication administered as part of ECT), only the first two categories above apply. Only **one** session of ECT can be authorised on each Urgent Treatment form - section 62/62A, therefore a new form will be required for each continuing session of ECT.

12.2. Section 62 can be used to administer medication if the patient is refusing to consent or lacks the capacity to consent. Section 62A can be used to administer ECT only if the patient lacks capacity. Section 64G can be used to administer medication only if the patient lacks capacity, there are no exceptions to this rule even in an emergency, i.e. if the patient is refusing.

12.3. These are strict tests. Urgent treatment under these sections can only continue for as long as it remains immediately necessary. When it is no longer immediately necessary, the requirements of section 58 and 58A apply.

12.4. The use of section 62/62A & 64G is monitored by the Mental Health Act Department on behalf of the Hospital Managers to ensure they are not being used inappropriately or excessively.

12.5. AC should record the use of this section on Urgent Treatment form - section 62/62A for detained patients (and those who have been recalled to hospital) and on Urgent Treatment form - section 64G for CTO patients (not recalled to hospital) including a case note on PARIS. When completing the urgent treatment forms, **all** mental health medication ~~is to~~ must be listed along with route and dose as indicated in 8.5 above. This must be sent to the Mental Health Act Department as soon as possible in order to process.

13. Section 63 – Treatment not requiring consent

13.1. This section allows the consent of a patient to not be required for any medical treatment given to him for his mental disorder within the first 3 months of detention, referred to as the '3-month rule' for which section 58 and 58A above do not apply.

13.2. Medical treatment for the mental disorder is a range of acts ancillary to the core treatment that the patient is receiving. The treatment of a physical issue is capable of being ancillary to the core treatment if it is relieving the symptoms of the mental disorder just as much as its underlying cause. Treatment for a physical disorder will not amount to a treatment for a mental disorder where the treatment for the physical disorder is entirely unconnected with the pre-existing mental disorder.

13.3. There is no statutory form to complete when administering treatment under this section, but AC **must make detailed** case notes on PARIS and inform the Mental Health Act Department.

14. Section 64B/64C – Adult community patients

14.1. This section provides authority to treat a patient who is subject to a CTO, who is over the age of 16 if:

- The AC in charge of the treatment certifies that the patient has the capacity to consent and properly does so by completing form CO8, or
- A SOAD certifies that the patient does not have the capacity to consent and that the treatment is appropriate by completing form CO7.

14.2. The patient may not be given the treatment unless they consent or lack capacity. There are no exceptions to this rule even in an emergency.

14.3. If the AC completes a CO8, a Record of Capacity to Consent form must be completed as the patient has capacity and consents. If the AC has completed an Electronic SOAD Request form and therefore, a CO7 has been issued, due to the patient lacking capacity, then a Mental Capacity Assessment needs to be completed on PARIS under clinical information. In both cases a Consent to Treatment memo will be required.

14.4. The certificate requirement does not apply to a patient any time during the first 1 month, beginning on the day on which a CTO was made, for any section 58 & 58A treatment.

14.5. If a community patient is recalled to hospital, they are subject to sections 58/58A in the same way as any other detained inpatient. The AC may continue to treat the patient using the SOAD certificate (CO7) if they consider that discontinuing the treatment would cause the patient serious suffering or if the appropriate treatment is already explicitly authorised upon recall on the SOAD certificate (CO7). A new certificate will only be required if the AC wants to administer new medication which isn't already authorised on the CO7 or whereby a patients CO8 certificate becomes no longer authorised due to the patient no longer consenting to their treatment. In this case a Urgent Treatment form - section 62/62A will be needed.

14.6. A revoked community patient may continue to be treated using the SOAD certificate (CO7) if the AC considers that discontinuing the treatment would cause the patient serious suffering. This only remains valid while the AC is seeking to obtain a new SOAD certificate. A new certificate will only be required if the AC wants to administer new medication which isn't already authorised on the CO7, in this case a Urgent Treatment form - section 62/62A will be needed. If the patient has capacity and consents to the medication, a CO2 will need to be completed along with a Record of Capacity to Consent form and a Consent to Treatment memo, as soon as practicable as the CO8 will no longer authorise treatment once revoked.

15. Second opinion appointed doctor (SOAD)

15.1. The role of the SOAD under Part 4 and 4A of the MHA is to provide an additional safeguard to protect patients' rights. The SOAD will act as an individual and reach their own professional judgement on whether the proposed treatment is appropriate for the condition and patient.

15.2. The fact that a SOAD has authorised a particular treatment does not mean that it will be appropriate to administer that treatment. The AC will remain responsible for deciding whether to administer that treatment.

16. Requesting a SOAD visit

16.1. The AC will be notified 3 weeks prior to the upcoming '3-month rule' end date by the Mental Health Act Department. They will also have had the automated daily PARIS reports informing them of the upcoming end date.

16.2. At the 3 week point they should assess the patient and if it is determined that a SOAD visit is needed to authorise treatment, they should complete the relevant document in 16.3 below. This should be done in good time before the end of the '3-month rule' to avoid issuing a certificate under section 62. The use of section 62 is monitored by the Mental Health Act Department on behalf of the Hospital Managers and Healthcare Inspectorate Wales to ensure that it is used appropriately and only in an urgent situation when immediately necessary.

16.3. To request a SOAD visit the AC will complete an Electronic SOAD Request Form stating the diagnosis and summary of history of the patient along with the proposed treatment and names of at least 3 statutory consultees that could be contacted. Best practice is for the AC to inform the consultees they have been named and will potentially receive a call from a SOAD in order for them to be prepared. It is the responsibility of the AC to send this along with copies of the patients' medication chart to the Mental Health Act Department to process.

17. Visit of the SOAD

17.1. Before the SOAD issues a certificate, they will check the relevant documents and information relating to the patient. They will need to satisfy themselves that the patient's detention and CTO papers are in order, check the patient's case notes and medication chart and they will interview the patient along with the AC to ensure the proposed treatment plan is appropriate for that patient. The Mental Health Act Department will provide the case notes and current detention papers to HIW.

18. Statutory consultees

18.1. Before issuing a certificate approving treatment, SOAD's must consult with 2 persons (statutory consultees) who have been professionally concerned with the patient's treatment. Where section 58 or 58A applies, one of the consultees must be a nurse, the other must not be a nurse or a medical doctor. When considering issuing a Part 4A certificate, at least one of the statutory consultees must not be a medical doctor and doesn't need to be a nurse. Neither consultee for a Part 4 and 4A certificate may be the clinician in charge of treatment or the RC.

18.2. The MHA doesn't specify who should be named as a statutory consultee, but the patients care coordinator, if they have one, may be well placed to act as a consultee or a mental health pharmacist who has been involved in a recent review of the treatment. Other consultees could include a social worker, occupational therapist, psychologist or others that are professionally registered and involved in the patients care. If a consultee doesn't

feel they are able to fulfil the role, they should make this known to the AC, the Mental Health Act Department and the SOAD in good time.

18.3. Consultees should expect the following to be discussed with the SOAD:

- The proposed treatment and the patient's ability to consent to it,
- The statutory consultees' understanding of the past and present views and wishes of the patient,
- Other treatment options and the way in which the decision on the treatment proposal was arrived at,
- The facts of the case, the patient's progress, the views of the patient's carers,
- Where relevant, the implications of imposing treatment on a patient who does not want it and the reasons for the patient's refusal of treatment,
- Any other matter relating to the patient's care on which the "consultee" wishes to comment.

18.4. The Mental Health Act Department will send the named statutory consultees a Record of Discussion form that must be completed and returned as soon as practicable after the discussion to keep in the patients records, this is a requirement of Healthcare Inspectorate Wales.

19. The SOAD's decision

19.1. The SOAD must decide whether it is clinically appropriate to the patient's mental disorder for treatment to be given and its appropriateness in light of other circumstances, e.g. alternative forms of treatment, therapeutic efficacy, side effects and the patients view on the proposed treatment.

19.2. Once the SOAD has decided to issue the certificate, they will complete the appropriate form and must provide written reasons in support of their decision, either on the form itself or separately.

19.3. The AC is personally responsible for communicating the decision of the SOAD to the patient, unless they deem it not appropriate. In these instances they will need to record the reasons on a Consent to Treatment memo. Before the memo can be completed, a Mental Capacity Assessment must be completed on PARIS under clinical information.

20. Administration of medication

20.1. A certificate issued by an AC or by a SOAD is not an instruction to administer treatment. Those administering the treatment must still satisfy themselves that the treatment is appropriate for that particular patient.

20.2. It is the responsibility of the nurse administering the prescribed medication to ensure that all necessary legal requirements have been met.

20.3. Following the three-month period the legal authority is embodied in forms CO2/CO3, together with the medication chart. A copy of form CO2/CO3 must always be kept with the medication chart and referred to at the time that any mental health medication is administered. Only medication certified on form CO2/CO3 is authorised to be administered unless the treatment comes under the scope of section 62 above.

20.4. Before administering medication, the nurse should:

- Check the medication chart for date of entry of prescription for the medication, its dose and route of administration,
- Ensure that the three-month period has not been exceeded by,
- Ensure that, where a patient has consented to medication beyond the three-month period, the form CO2 is in place and correctly completed,
- Ensure that, where a second opinion has been obtained, the form CO3 is in place and correctly completed,
- Ensure the patients capacity and consent status hasn't changed.

20.5. If at any time the AC amends the drug, route or dose on a patients medication chart, and it is not within the scope of the already authorised treatment, a new form CO2/CO3 must be completed in line with the legal requirements. If the AC is waiting for a SOAD authorisation and they feel the treatment is immediately necessary, an Urgent Treatment form - section 62/2A can be completed if appropriate.

20.6. Part 4 does not apply to the treatment of physical disorders unless it can reasonably be said that the physical disorder is a symptom or underlying cause of the mental disorder (See section 63 above).

20.7. Any concerns regarding the legality of administering the treatment must be brought to the attention of the AC in charge of the treatment and the Mental Health Act Manager/Administrators.

21. Covert Medication

21.1. Covert medication is the administration of medication in disguised form without the patient's knowledge or consent. This would usually involve disguising the medication in food or drink. Due to this, the patient is unknowingly taking the medication.

21.2. Medication given covertly can only be given to detained patients within the first 3 months of detention (3-month rule) or if authorised by a SOAD when either the patient does not have the capacity to consent or the patient has the capacity to consent but has refused to do so. The AC should discuss with the SOAD the possibility of including covert medication on form CO3.

21.3. Before administrating medication covertly, the AC should consider:

- Why it is not practicable to seek the patients consent
- Whether, for the purposes of art.8 (2) of the ECHR, the giving of covert medication is a proportionate response to the aim of improving the patient's health or reducing the risk posed by the patient.
- If administering medication covertly, would it be less invasive of the patient's physical integrity.

21.4. Once the AC has considered the above issues, it should be recorded in detail in the patient's case notes. Please see the covert medication guidance for more information.

22. Documentation

22.1. The correct statutory documentation must be completed in all instances when administering medication under the MHA, not including medication that comes under the scope of section 63 (above) where medication can be given with or without consent for the first 3 months (3 month rule) and where the treatment of a physical issue is capable of being ancillary to the core treatment.

22.2. The Mental Health Act Department has copies of the relevant documentation needed. The AC will be prompted by the automated daily PARIS reports and the Mental Health Act Department to complete these forms. Once completed, the forms will be e-mailed to the ward or CMHT for them to be printed and must be kept with the patients' medication chart. Original completed documentation must always be sent to the Mental Health Act Department to check it meets the legal requirements of the MHA, where it will be kept in the patients file and uploaded to PARIS.

22.3. In order to comply with the Code of Practice and the Mental Health (Hospital, Guardianship, Community Treatment and Consent to Treatment) (Wales) Regulations 2008 the following documentation will need to be completed:

Medication

Part 4 – detained patients			Part 4A – community patients	
Patient has the capacity and consents	Patient has capacity but refuses	Patient lacks the capacity to consent	Patient has the capacity and consents	Patient lacks the capacity to consent
CO2 – AC	CO3 – SOAD	CO3 – SOAD	CO8 – AC	CO7 - SOAD

ECT

Part 4 – detained patients	
Patient has the capacity and consents	Patient lacks the capacity to consent
CO4 – AC	CO6 - SOAD

22.4. In addition to the statutory forms listed above, CAV have created some local forms for both Part 4 and 4A patients:

- For a patient that has capacity to consent and properly does so or a patient that has the capacity to consent but has refused to do so, a Record of Capacity to Consent form will be completed.
- For a patient that does not have the capacity to consent a Mental Capacity Assessment will need to be completed via clinical information on PARIS.
- For all capacity/consent statuses a Consent to Treatment memo will need to be completed.

The local forms in 22.4 above will need to be completed every time a new certificate is issued by an AC or SOAD.

23. Audit

23.1. The Mental Health Act Manager, Deputy Mental Health Act Manager and Mental Health Act Team Lead will monitor the progress of the implementation of the policy.

23.2. The Mental Health Act Department will undertake periodic audits of all Consent to Treatment certificates on wards and in CMHT's to ensure they are compliant with the Mental Health (Wales) Regulations 2008 and the Mental Health Act.

23.3. The UHB, Mental Health Legislation and Governance Group and Mental Health Legislation Committee will conduct and formally review the effectiveness of the Consent to examination or treatment under the Mental Health Act 1983 policy.

23.4. The following indicators will be used to monitor the effectiveness of the policy:

- Delegated staff, awareness of the policy
- Compliance with the policy
- Monitoring of statutory forms received by delegated members of staff

23.5. Audit findings will be reported quarterly to the Mental Health Legislation Committee.

24. References/Further Information

- Mental Health Act 1983
- Mental Health Act 2007
- Mental Health Act Manual, Richard Jones
- Mental Health Act 1983, Code of Practice for Wales, Revised 2016
- The Mental Health Regulations 2008
- The Human Rights Act 2005

25. Distribution

25.1. This policy will be made available on the Mental Health Act SharePoint page and UHB SharePoint pages and be circulated to individual delegated Departments and managers of delegated Departments.

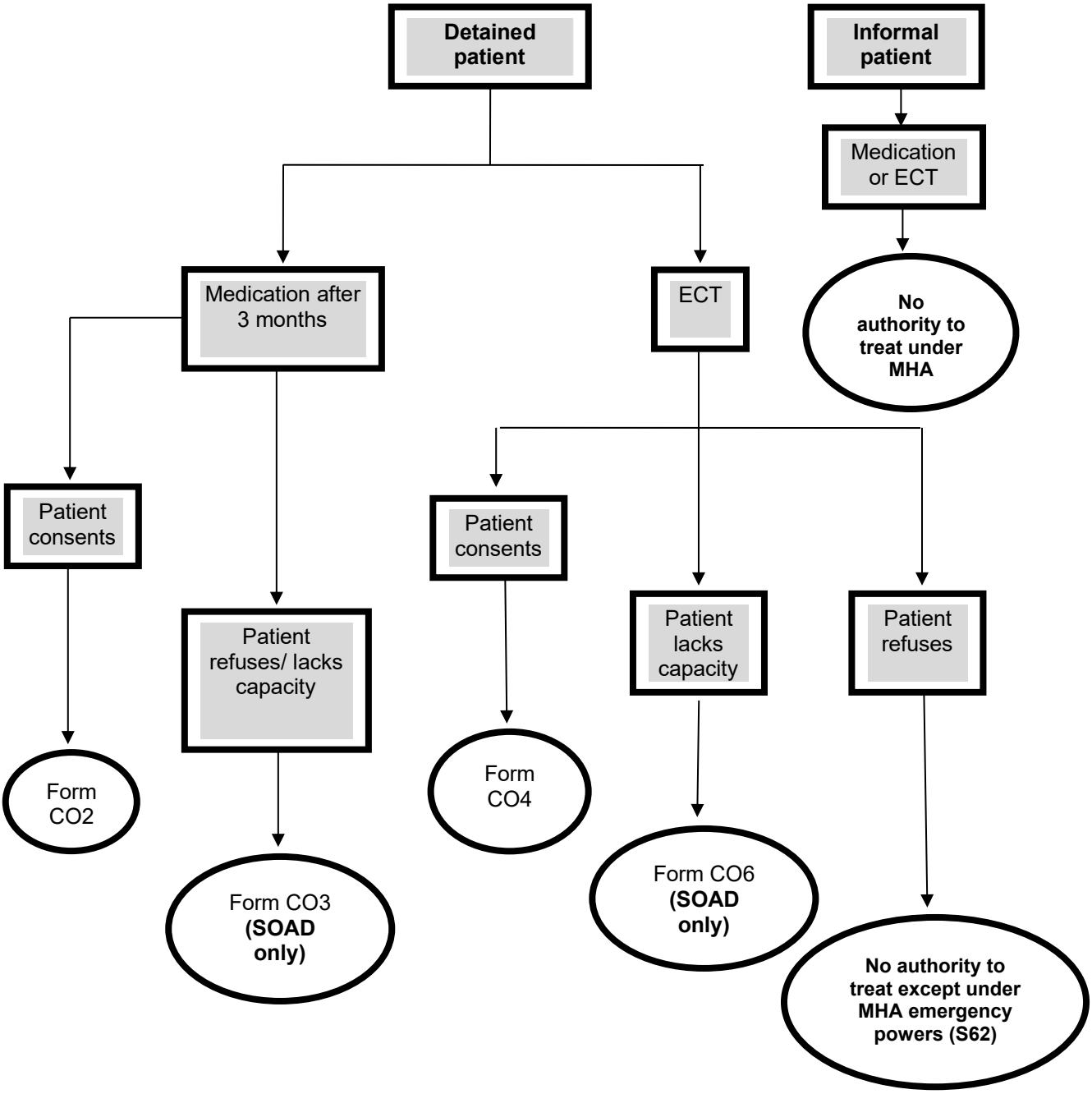
25.2. All employees within Cardiff and Vale UHB should be aware of this policy to ensure those who are prescribing and administering medication for mental disorder under The Mental Health Act 1983 are in line with the legal and good practice framework.

26. Review

26.1. This policy will be reviewed in 3 years' time, or earlier if required by changes to terms and conditions of legislation.

Appendix 1

Certification of Treatment Flowchart - Inpatients



KEY:

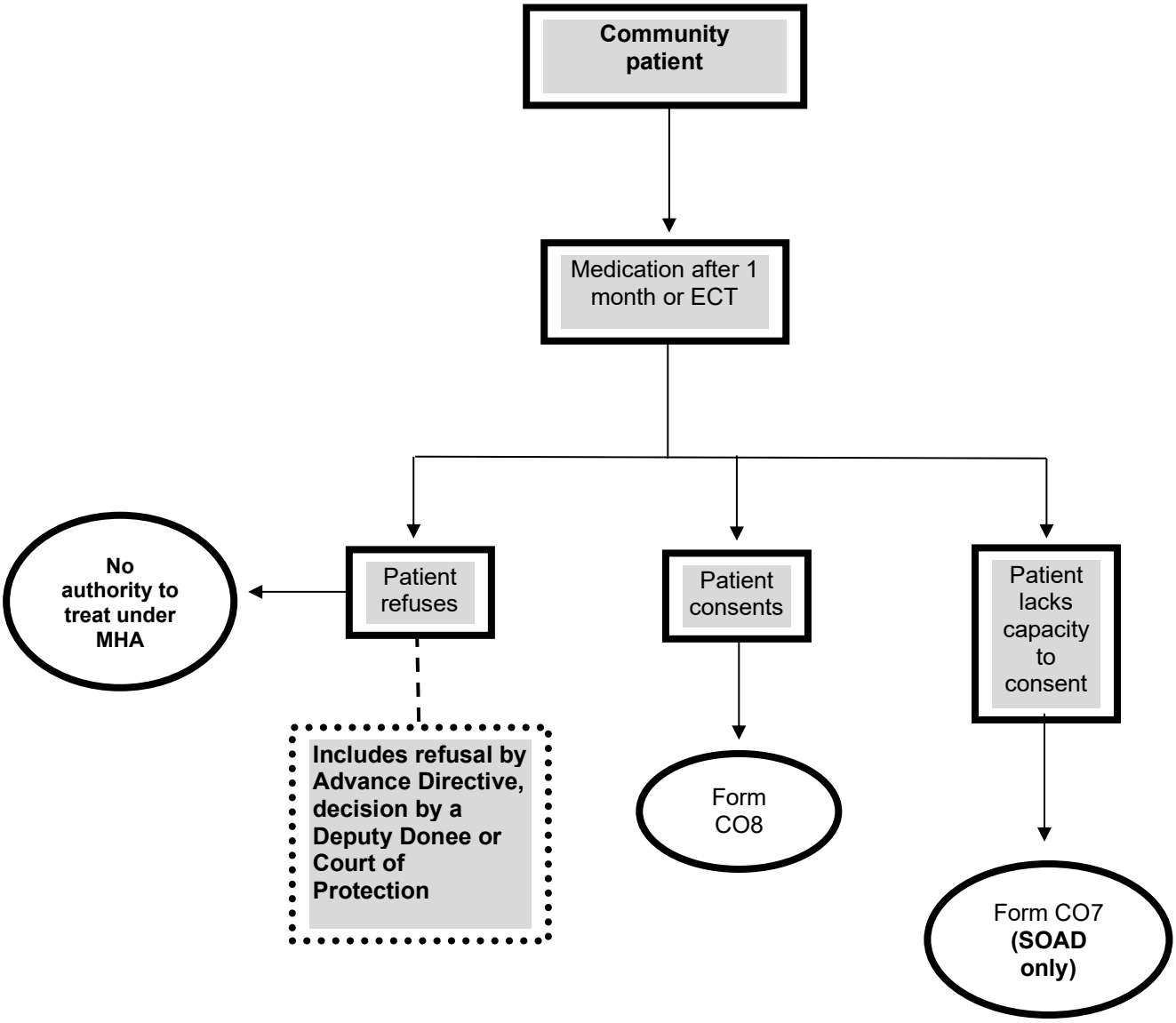
s62 Urgent treatment

CO2 Certificate of consent to treatment

CO3 Certificate of second opinion

CO4 Certificate of consent to treatment (patients at least 18 years of age)
CO6 Certificate of second opinion (patients who are not capable of understanding the nature, purpose and likely effects of treatment)

Certification of Treatment Flowchart – Community



KEY:

s64 Urgent treatment

CO7 Certificate of appropriateness of treatment to be given to a community patient (Part 4A certificate)

CO8 Certificate of consent to treatment for community patient (AC Part 4A certificate

Administration of medicine for mental disorder guidance

(The guidance issued by the Care Quality Commission in England is acknowledged by Healthcare Inspectorate Wales as a measure of good practice for the administration of medication where patients detained under certain sections of the MHA 1983 are subject to Part 4 Consent to Treatment provisions under the MHA.)

LEGISLATION and LEGAL DOCUMENTATION	PROCEDURAL GUIDANCE
The three month rule For a period of three months from when it was first administered, medication for mental disorder may be administered in the absence of consent without the need for certification, under the direction of the AC in charge of the treatment and the patient is detained under a section to which Part 4 applies: ss. 2, 3, 36, 37, 38, 47 and 48 (with or without restrictions). **Treatment following the first three months** Once the three-month period has expired: • Medication for mental disorder may be administered to a patient who has given capable consent which is recorded on statutory form CO2 either by the AC in charge of the patient's treatment or a SOAD. • Medication for mental disorder may be administered to a patient who is either not capable of consenting or is refusing medication as long as the giving of the medication is authorised by a SOAD and recorded on statutory form CO3. • Regularly administered "as required" **(PRN)** medication should be included on the form CO2 or CO3. If it is not included it may only be given under s.62 urgent provisions. **Legal documentation** • Forms CO2 and CO3 represent the **legal authority** to continue administering medication to patients who are subject to consent to treatment provisions under s. 58 (*treatment requiring consent or a second opinion*). • It is **unlawful** to administer medication for mental disorder to patients detained under sections: 2, 3, 36, 37, 38, 47 and 48 (with or without restrictions) unless it is covered by a form CO2 or CO3. • A copy of the **current** CO2 and/or CO3 **must** be kept with the medicine card and a second copy **must** be retained in the patient's record. • Non-current copies of CO2/CO3 forms **must not** be removed from the patient record. However they **must** be clearly marked "VOIDED" and dated as such. • The current version must always be filed securely uppermost.	**Each time, before administering medication for mental disorder the nurse must:** • Check the medicine card for date of entry of a prescription for the medicine, for its dose and for the route of administration. • Check the date of the first administration to ensure that the three month period has not been exceeded. • Where a patient has consented to medication beyond the three month period, ensure that a Form CO2 is in place and correctly completed, and that the patient still consents. • Where a form CO2 is in place, check that the medication prescribed on the medicine card has been authorised by the AC in charge of the patient's treatment or the SOAD • Where a second opinion has been obtained, ensure that the form CO3 is in place and is correctly completed, and if the patient is certified as incapable of giving consent, that the patient remains incapacitated. • Where a form CO3 is in place, check that the medication prescribed on the medicine card has been authorised by the SOAD. **N.B.** Forms CO2 and CO3 can run concurrently where a mentally capable patient consents to some of the treatment but not to all of the treatment. Where a Form CO2 or CO3 has not been completed even though required, the administration of medication for mental disorder may constitute an assault. **The only exception** is in the case of **urgent treatment** where s.62, MHA 1983 may apply.