



**GIG**  
CYMRU  
**NHS**  
WALES

Bwrdd Iechyd Prifysgol  
Caerdydd a'r Fro  
Cardiff and Vale  
University Health Board

**Reference Number:** *UHB 491*  
**Version Number:** 1  
**Date of Next Review:** *24.02.2025*  
**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.

**Objectives**

This policy is required to ensure that decisions made by approved clinicians 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 Clinical Board Quality & Safety Committee

Document Title: <b>Consent to examination or treatment under the Mental Health Act 1983</b>	2 of 20	Approval Date: 26 04 2022
Reference Number: 1		Next Review Date: 24 02 2025
Version Number:		Date of Publication: 27 04 2022
Approved By: <i>Mental Health Legislation and Mental Capacity Act Committee</i>		

<b>Accountable Executive or Clinical Board Director</b>	<i>Mental Health Clinical Board</i>
<b>Author(s)</b>	<i>Mental Health Act Manager</i>
<b><u>Disclaimer</u></b> <b>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 <u>Governance Directorate.</u></b>	

<b>Summary of reviews/amendments</b>			
<b>Version Number</b>	<b>Date Review Approved</b>	<b>Date Published</b>	<b>Summary of Amendments</b>
1	<i>26.04.22</i>	<i>27.04.22</i>	

Document Title: <b>Consent to examination or treatment under the Mental Health Act 1983</b>	3 of 20	Approval Date: 26 04 2022
Reference Number: 1		Next Review Date: 24 02 2025
Version Number:		Date of Publication: 27 04 2022
Approved By: <i>Mental Health Legislation and Mental Capacity Act Committee</i>		

<b>CONTENTS</b>	<b>PAGE</b>
1. Introduction	4
2. Procedure Statement	4
3. Scope	5
4. Patients to whom Part 4 does not apply	5
5. Approved clinician in charge of treatment	5
6. What is consent and capacity?	6
7. Medication after 3 months	6
8. Section 58 – Medication for mental disorder requiring consent or a second opinion	7
9. Section 58A – Electro-Convulsive Therapy (ECT)	8
10. Section 60 - Withdrawal of consent	9
11. Section 61 – Review of treatment	9
12. Section 62/62A & 64G – Urgent Treatment	10
13. Section 63 – Treatment not requiring consent	11
14. Section 64B/64C – Adult community patients	11
15. Second opinion appointed doctor (SOAD)	12
16. Requesting a SOAD visit	12
17. Visit of the SOAD	13
18. Statutory consultees	13
19. The SOAD's decision	14
20. Administration of medication	14
21. Covert Medication	15
22. Documentation	15
23. Audit	17
24. References/Further Information	17
25. Distribution	17
26. Review	17
Appendix 1 – Certification of Treatment Flowchart – Inpatients	18
Appendix 2 – Certification of Treatment Flowchart – Community	19
Appendix 3 – Administration of medicine for mental disorder guidance	20

Document Title: <b>Consent to examination or treatment under the Mental Health Act 1983</b>	4 of 20	Approval Date: 26 04 2022
Reference Number: 1		Next Review Date: 24 02 2025
Version Number:		Date of Publication: 27 04 2022
Approved By: <i>Mental Health Legislation and Mental Capacity Act Committee</i>		

## 1. Introduction

- 1.1. Part 4 of the Mental Health Act 1983 applies to patients who are detained in law or are “liable to be detained” (i.e. those granted leave under section 17 of the Act). This also includes patients who have been recalled to hospital from Community Treatment Order’s.
- 1.2. Part 4A of the Mental Health Act 1983 sets out different rules for treatment of patients on a Community Treatment Order who has not been recalled to hospital by their responsible clinician.
- 1.3. In the Act ‘medical treatment’ includes nursing, psychological interventions and specialist mental health habilitation, rehabilitation and care.
- 1.4. The Act 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 Act doesn’t authorise medical treatment for physical health problems.
- 1.6. Some treatments given to detained patients can be given without their consent: for example, 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 ECT (Electroconvulsive Therapy) 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 are mentally capable of consenting to the treatment, and under the Mental Capacity Act 2005 if they are mentally incapable of making 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 Mental Health Act 1983. The purpose of this procedure is to clarify what treatment can be imposed on patients who are liable to be detained under the Act, which includes patients subject to a Community Treatment Order. The Code identifies standards of practice that should be met

Document Title: <b>Consent to examination or treatment under the Mental Health Act 1983</b>	5 of 20	Approval Date: 26 04 2022
Reference Number: 1		Next Review Date: 24 02 2025
Version Number:		Date of Publication: 27 04 2022
Approved By: <i>Mental Health Legislation and Mental Capacity Act Committee</i>		

when carrying out responsibilities under the Act. 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 Act.

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 the 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 have specific powers and duties under the Act. 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 1983 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 Act.

### **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.

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**

Document Title: <b>Consent to examination or treatment under the Mental Health Act 1983</b>	6 of 20	Approval Date: 26 04 2022
Reference Number: 1		Next Review Date: 24 02 2025
Version Number:		Date of Publication: 27 04 2022
Approved By: <i>Mental Health Legislation and Mental Capacity Act Committee</i>		

- 5.1. Part 4 & 4A of the Act refers to the “approved clinician 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 approved clinician will be the patient’s responsible clinician, 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 Act 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.
- Capacity – Capacity to consent is variable in people with 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 Act 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 Act. This only applies to sections to which Part 4 provisions apply. This is often referred to as the “3 month rule”.
- 7.2. In CAV 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 detained 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.

Document Title: <b>Consent to examination or treatment under the Mental Health Act 1983</b>	7 of 20	Approval Date: 26 04 2022
Reference Number: 1		Next Review Date: 24 02 2025
Version Number:		Date of Publication: 27 04 2022
Approved By: <i>Mental Health Legislation and Mental Capacity Act Committee</i>		

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 Community Treatment Order 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 approved clinician 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 Community Treatment Order 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, approved clinicians will have received automated daily PARIS reports informing them of the upcoming '3 month rule' end date for their patients. The Mental Health Act Office will also inform approved clinicians of this date. It is then the approved clinician'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 approved clinician should personally confirm the patient's capacity and seek the patient's consent to the administration of medication. The approved clinician 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 approved clinician 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 approved clinician 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

Document Title: <b>Consent to examination or treatment under the Mental Health Act 1983</b>	8 of 20	Approval Date: 26 04 2022
Reference Number: 1		Next Review Date: 24 02 2025
Version Number:		Date of Publication: 27 04 2022
Approved By: <i>Mental Health Legislation and Mental Capacity Act Committee</i>		

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 approved clinician in charge of the treatment;
  - The patient is no longer detained under the Mental Health Act;

In the first two categories only, the approved clinician 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 approved clinician 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 Office 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 approved clinician has assessed the patient and confirmed their capacity/consent status. In these instances the approved clinician 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 approved clinician 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 Community Treatment Orders 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.



Document Title: <b>Consent to examination or treatment under the Mental Health Act 1983</b>	9 of 20	Approval Date: 26 04 2022
Reference Number: 1		Next Review Date: 24 02 2025
Version Number:		Date of Publication: 27 04 2022
Approved By: <i>Mental Health Legislation and Mental Capacity Act Committee</i>		

- 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.
- 9.4. If the patient’s capacity changes after receiving ECT treatment, the approved clinician 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. Each certificate must also state whether the treatment is unilateral or bilateral.
- 9.6. The approved clinician 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. On the withdrawal of consent, the remainder of the treatment must be considered as a separate treatment.
- 10.2. If a mentally capable patient who has consented to a section 58 or 58A treatment 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 but, before the treatment has been completed, the patient becomes mentally capable of consenting to the treatment, the remainder of the treatment is to be treated as a separate form of treatment for the purposes of certification under those sections. Fresh consent for the further administration of treatment will then be required.
- 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 health record.

## 11. Section 61 – Review of treatment

- 11.1. The Act 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 Act.

Document Title: <b>Consent to examination or treatment under the Mental Health Act 1983</b>	10 of 20	Approval Date: 26 04 2022
Reference Number: 1		Next Review Date: 24 02 2025
Version Number:		Date of Publication: 27 04 2022
Approved By: <i>Mental Health Legislation and Mental Capacity Act Committee</i>		

- 11.2. In CAV best practice is for approved clinicians to review all patients' treatment at yearly intervals for patients detained in hospital and those subject to a Community Treatment Order.
- 11.3. Approved clinicians will receive automated daily PARIS reports informing them when reviews are due for their patients. The Mental Health Act Office will also inform approved clinicians 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 approved clinician 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 approved clinician 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 Community Treatment under section 64G in response to an immediate emergency. Section 58 & 58A above to 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.

Document Title: <b>Consent to examination or treatment under the Mental Health Act 1983</b>	11 of 20	Approval Date: 26 04 2022
Reference Number: 1		Next Review Date: 24 02 2025
Version Number:		Date of Publication: 27 04 2022
Approved By: <i>Mental Health Legislation and Mental Capacity Act Committee</i>		

- 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 Office on behalf of the Hospital Managers to ensure they are not being used inappropriately or excessively.
- 12.5. Approved clinicians 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 community patients (not recalled to hospital) including a case note on PARIS. When completing the urgent treatment forms, all mental health medication is to be listed along with route and dose as indicated in 8.5 above. This must be sent to the Mental Health Act Office 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 approved clinicians must make detailed case notes on PARIS and inform the Mental Health Act office.

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

- 14.1. This section provides authority to treat a patient who is subject to a community treatment order, who is over the age of 16 if:
- The approved clinician 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.

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.

- 14.2. 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 approved clinician may continue to treat the patient using the SOAD certificate (CO7) if they

Document Title: <b>Consent to examination or treatment under the Mental Health Act 1983</b>	12 of 20	Approval Date: 26 04 2022
Reference Number: 1		Next Review Date: 24 02 2025
Version Number:		Date of Publication: 27 04 2022
Approved By: <i>Mental Health Legislation and Mental Capacity Act Committee</i>		

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 approved clinician wants to administer new medication which isn't already authorised on the CO7 or whereby a patient's [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.

- 14.3. A revoked community patient may continue to be treated using the SOAD certificate (CO7) if the approved clinician considers that discontinuing the treatment would cause the patient serious suffering. This only remains valid while the approved clinician is seeking to obtain a new SOAD certificate. A new certificate will only be required if the approved clinician 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 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 Act 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 approved clinician will remain responsible for deciding whether to administer that treatment.

## 16. Requesting a SOAD visit

- 16.1. The approved clinician will be notified of the upcoming '3 month rule' end date at 3 weeks and the due date by the Mental Health Act Office. They will also have had the automated daily PARIS reports informing them of the upcoming end date.
- 16.2. At this 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 Office on behalf of the Hospital Managers and Healthcare Inspectorate Wales to ensure that it is used appropriately and only in an urgent situation when absolutely necessary.
- 16.3. To request a SOAD visit the approved clinician 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 approved clinician 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

Document Title: <b>Consent to examination or treatment under the Mental Health Act 1983</b>	13 of 20	Approval Date: 26 04 2022
Reference Number: 1		Next Review Date: 24 02 2025
Version Number:		Date of Publication: 27 04 2022
Approved By: <i>Mental Health Legislation and Mental Capacity Act Committee</i>		

approved clinician to send this along with copies of the patients' medication chart to the Mental Health Act Office to process.

## **17. Visit of the SOAD**

- 17.1. Before the SOAD will issue 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 Community Treatment Order papers are in order, check the patient's case notes and medication chart and they will interview the patient along with the approved clinician to ensure the proposed treatment plan is appropriate for that patient. The Mental Health Act Office 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 consultees for a Part 4 and 4A certificate may be the clinician in charge of treatment or the responsible clinician.
- 18.2. The Act 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 approved clinician 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 Office will send the named statutory consultees a [Record of Discussion form](#) that must be completed and returned as soon as

Document Title: <b>Consent to examination or treatment under the Mental Health Act 1983</b>	14 of 20	Approval Date: 26 04 2022
Reference Number: 1		Next Review Date: 24 02 2025
Version Number:		Date of Publication: 27 04 2022
Approved By: <i>Mental Health Legislation and Mental Capacity Act Committee</i>		

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 approved clinician 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 approved clinician 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 approved clinician 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

Document Title: <b>Consent to examination or treatment under the Mental Health Act 1983</b>	15 of 20	Approval Date: 26 04 2022
Reference Number: 1		Next Review Date: 24 02 2025
Version Number:		Date of Publication: 27 04 2022
Approved By: <i>Mental Health Legislation and Mental Capacity Act Committee</i>		

the legal requirements. If the approved clinician 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 approved clinician 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 approved clinician should discuss with the SOAD the possibility of including covert medication on form CO3.
- 21.3. Before administering medication covertly, the approved clinician 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 covertly would it be less invasive of the patient's physical integrity.
- 21.4. Once the approved clinician 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 Act, 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 office has copies of the relevant documentation needed. The approved clinician will be prompted by the automated daily PARIS reports and the Mental Health Act Office to complete these forms. Once completed, the forms will be e-mailed to the ward or CMHT for them to

Document Title: <b>Consent to examination or treatment under the Mental Health Act 1983</b>	16 of 20	Approval Date: 26 04 2022
Reference Number: 1		Next Review Date: 24 02 2025
Version Number:		Date of Publication: 27 04 2022
Approved By: <i>Mental Health Legislation and Mental Capacity Act Committee</i>		

be printed and must be kept with the patients' medication chart. Original completed documentation must always be sent to the Mental Health Act Office to check it meets the legal requirements of the Act, 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
<a href="#">CO2</a> – Approved clinician	CO3 – SOAD	CO3 – SOAD	<a href="#">CO8</a> – Approved clinician	CO7 - SOAD

### ECT

Part 4 – detained patients	
Patient has the capacity and consents	Patient lacks the capacity to consent
<a href="#">CO4</a> – Approved clinician	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 Approved clinician or SOAD.



Document Title: <b>Consent to examination or treatment under the Mental Health Act 1983</b>	17 of 20	Approval Date: 26 04 2022
Reference Number: 1		Next Review Date: 24 02 2025
Version Number:		Date of Publication: 27 04 2022
Approved By: <i>Mental Health Legislation and Mental Capacity Act Committee</i>		

## **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 Office 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 and Capacity 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 and Capacity Legislation Committee.

## **24. References/Further Information**

- Mental Health Act 1983, ISBN 0-10-542083-2
- Mental Health Act 2007, ISBN 978-0-10-541207-6
- Mental Health Act Manual, Richard Jones, Twenty-First Edition, ISBN 978-0-414-06789-9
- 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 UHB intranet and internet sites and be circulated to individual delegated officers and managers of delegated officers.
- 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.

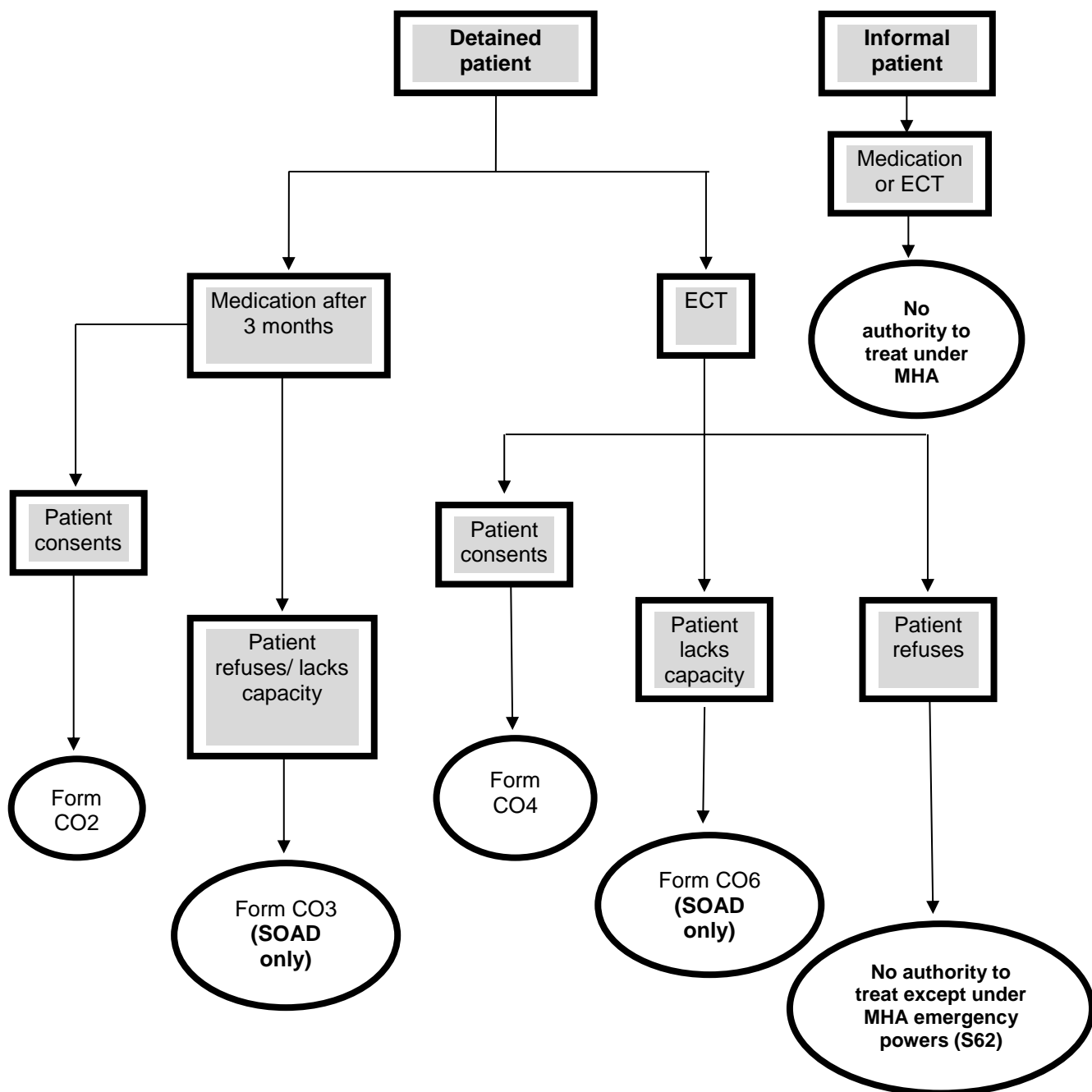
## **26. Review**

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

Document Title: <b>Consent to examination or treatment under the Mental Health Act 1983</b>	18 of 20	Approval Date: 26 04 2022
Reference Number: 1		Next Review Date: 24 02 2025
Version Number:		Date of Publication: 27 04 2022
Approved By: <i>Mental Health Legislation and Mental Capacity Act Committee</i>		

**Appendix 1**

**Certification of Treatment Flowchart - Inpatients**



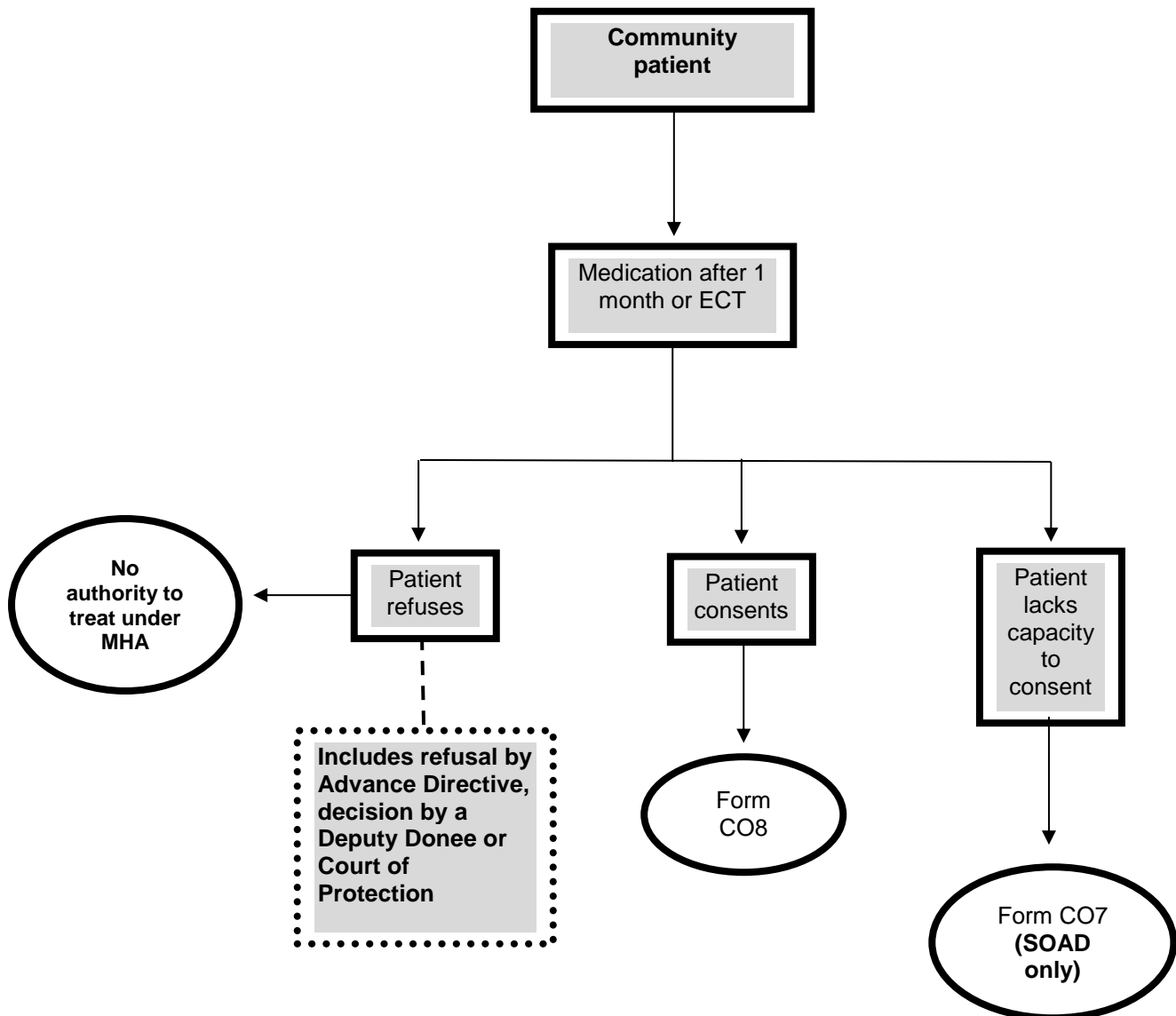
**KEY:**

- 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)

Document Title: <b>Consent to examination or treatment under the Mental Health Act 1983</b>	19 of 20	Approval Date: 26 04 2022
Reference Number: 1		Next Review Date: 24 02 2025
Version Number:		Date of Publication: 27 04 2022
Approved By: <i>Mental Health Legislation and Mental Capacity Act Committee</i>		

**Appendix 2**

**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 (Approved clinician Part 4A certificate)

Document Title: <b>Consent to examination or treatment under the Mental Health Act 1983</b>	20 of 20	Approval Date: 26 04 2022
Reference Number: 1		Next Review Date: 24 02 2025
Version Number:		Date of Publication: 27 04 2022
Approved By: <i>Mental Health Legislation and Mental Capacity Act Committee</i>		

## Appendix 3

### **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 Act.)*

LEGISLATION and LEGAL DOCUMENTATION	PROCEDURAL GUIDANCE
<p><b>The three month rule</b> 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 approved clinician 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).</p> <p><b>Treatment following the first three months</b> Once the three-month period has expired:</p> <ul style="list-style-type: none"> <li>• 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 approved clinician in charge of the patient's treatment or a SOAD.</li> <li>• 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.</li> <li>• 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.</li> </ul> <p><b>Legal documentation</b></p> <ul style="list-style-type: none"> <li>• Forms CO2 and CO3 represent the <b>legal authority</b> to continue administering medication to patients who are subject to consent to treatment provisions under s. 58 (<i>treatment requiring consent or a second opinion</i>).</li> <li>• It is <b>unlawful</b> 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.</li> <li>• A copy of the <b>current</b> CO2 and/or CO3 <b>must</b> be kept with the medicine card and a second copy <b>must</b> be retained in the patient's record.</li> <li>• Non-current copies of CO2/CO3 forms <b>must not</b> be removed from the patient record. However they <b>must</b> be clearly marked "VOIDED" and dated as such.</li> <li>• The current version must always be filed securely uppermost.</li> </ul>	<p><b>Each time, before administering medication for mental disorder the nurse must:</b></p> <ul style="list-style-type: none"> <li>• Check the medicine card for date of entry of a prescription for the medicine, for its dose and for the route of administration.</li> <li>• Check the date of the first administration to ensure that the three month period has not been exceeded.</li> <li>• 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.</li> <li>• Where a form CO2 is in place, check that the medication prescribed on the medicine card has been authorised by the approved clinician in charge of the patient's treatment or the SOAD</li> <li>• 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.</li> <li>• Where a form CO3 is in place, check that the medication prescribed on the medicine card has been authorised by the SOAD.</li> </ul> <p><b>N.B.</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.</p> <p>Where a Form CO2 or CO3 has not been completed even though required, the administration of medication for mental disorder may constitute an assault. <b>The only exception</b> is in the case of <b>urgent treatment</b> where s.62, MHA 1983 may apply.</p>