

Reference Number: UHB 444	Date of Next Review: 12/02/2019
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REVIEW OF DETENTION AND COMMUNITY TREATMENT ORDER, MENTAL HEALTH ACT 1983 PROCEDURE	
<p>Introduction and Aim</p> <p>This document supports the Review Detention and Community Treatment Order, Mental Health Act 1983 Policy.</p> <p>To ensure staff are aware of their individual and collective responsibilities when reviewing detention and community treatment order's (CTO) under the Act.</p> <p>To Provide clear direction and guidance to staff in relation to their legal responsibilities under the Mental Health Act 1983 as amended by the MHA 2007.</p> <p>To Ensure that statutory requirements under the Mental Health Act 1983 are met.</p>	
<p>Objectives</p> <p>This Procedure describes the following with regard to renewing detention and extending a community treatment order:</p> <ul style="list-style-type: none"> • The purpose of reviewing detention and CTO • The process for reviewing detention CTO • The duties of the practitioners and agencies involved in the management of reviewing detention and CTO <p>Practitioners must have due regard to the Mental Health Act Code of Practice generally and specifically to the Guiding Principles when they are reviewing detention or CTO. This will ensure that considerations are given as to whether the objectives can be met in a less restrictive way.</p>	
<p>Scope</p> <p>This procedure applies to all of our staff in any inpatient or community setting where a person is liable to be detained or who is subject to a CTO and the Associate Mental Health Act Managers who have delegated responsibility from the Board.</p>	

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Equality and Health Impact Assessment	There is potential for both positive and negative impact. The procedure is aimed at improving services and meeting diverse needs. Mitigation actions are already in place to offset any potential negative outcome, e.g. through the monitoring of the procedure. There is nothing, at this time, to stop the procedure being implemented.
Documents to read alongside this Procedure	<ul style="list-style-type: none"> • The Mental Health Act 1983 (as amended by the Mental Health Act 2007) • Mental Health (hospital, guardianship, community treatment and consent to treatment)(Wales) regulations 2008 • The Mental Capacity Act 2005 (including the Deprivation of Liberty Safeguards delegated to this Act under the Mental Health Act 2007) • The respective Codes of Practice of the above Acts of Parliament • The Human Rights Act 1998 (and the European Convention on Human Rights) • Domestic Violence, Crime and Victims Act, 2004 <p>All Cardiff and Vale policies on the Mental Health Act 1983 as appropriate including:</p> <p>Review of detention and Community Treatment Order Policy Community Treatment Order Policy Community Treatment Order Procedure Hospital Managers' Scheme of Delegation Policy Hospital Managers' Scheme of Delegation Procedure Section 5(4) Nurses' Holding Power Policy Section 5(4) Nurses' Holding Power Procedure Section 5(2) Doctors' Holding Power Policy Section 5(2) Doctors' Holding Power Procedure</p>
Approved by	Mental Health and Capacity Legislation Committee

Accountable Executive or Clinical Board Director	<i>Mental Health Clinical Board Director of Operations</i>
Author(s)	<i>Mental Health Act Manager</i>

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Summary of reviews/amendments

Version Number	Date of Review Approved	Date Published	Summary of Amendments
1	12/02/2019	14/02/2019	<i>New document</i>

Glossary of terms

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Term	Definition
AC	Approved Clinician – A mental health professional approved by the Welsh Ministers to act as an approved clinician for the purposes of the Act. In practice, Health Boards take these decisions on behalf of the Welsh Ministers
Community Treatment Order (CTO)	The legal authority for the discharge of a patient from detention in hospital, subject to the possibility of recall to hospital for further medical treatment if necessary. Community patients are expected to comply with the conditions specified in the community treatment order.
Approved Mental Health Professional (AMHP)	A professional with training in the use of the Act, approved by a local authority to carry out a number of functions under the Act.
RC	Responsible Clinician - The approved clinician with overall responsibility for the patient's case
IMHA	Independent Mental Health Advocate – An advocate independent of the team involved in patient care available to offer support to patients.
Mental Capacity Act (2005)	An Act of Parliament that governs decision-making on behalf of people who lack capacity, both where they lose capacity at some point in their lives and where the incapacitating condition has been present since birth
Article 5 European Convention of Human Rights (ECHR)	Right to Liberty and Security of Person: <i>No one should be deprived of their liberty except for specific cases and in accordance with procedure prescribed by law e.g. after conviction, lawful arrest on suspicion of having committed an offence, lawful detention of person of unsound mind, to prevent the spread of infectious diseases. Everyone deprived of liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of detention shall be decided speedily by a court and release ordered if the detention is not lawful.</i>
MHRTfW	Mental Health Review Tribunal for Wales – A judicial body that has the power to discharge patients from detention, community treatment orders, guardianship and conditional discharge
Section 3	Compulsory admission to hospital for treatment and detention for up to six months
Keywords	Section 20, Duration of authority Section 20A, Community treatment period

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1. INTRODUCTION

The Mental Health Act gives the Hospital Managers the power to renew detention and extend a CTO. This does not apply to restricted patients without the consent of the Secretary of State for Justice. This procedure is to ensure that the UHB meets its responsibilities in relation to renewing detention and extending a CTO.

2. PROCEDURE STATEMENT

This procedure has been developed to guide staff on the management of patients considered for renewal of detention or extension of community treatment. This guidance has been developed in line with the Mental Health Act 1983 Code of Practice for Wales (Revised 2016).

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

3. SCOPE

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

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

4. DETENTION: RENEWAL, DISCHARGE OR CTO

Before a patient's detention or CTO expires, the RC must decide whether the patient's current period of detention should be renewed or CTO extended. The RC must examine the patient and decide within the two months leading up to the expiry of the patients detention or CTO whether the criteria for renewing detention under section 20 of the Act or section 20 A are met, or whether discharge is appropriate.

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

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other representative, patient's aftercare and any other key service providers.

5. EXAMINATION OF THE PATIENT

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

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

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

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

The patient's compliance with the conditions will be a key indicator of how a CTO is working in practice.

If the patient is not complying, the reasons for this should be properly investigated. Appropriate action will be needed, which may indicate a need to consider recall to hospital.

6. RENEWAL OF DETENTION

In order to renew detention, the patient's RC must submit a report to the Hospital Managers confirming that the following conditions are satisfied:

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

Where the RC is satisfied that the criteria for renewing the patient's detention are met, they must complete part 1 of the statutory renewal report (form HO15/HO16).

7. SECOND PROFESSIONAL

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Before the RC can submit the statutory renewal of detention report, they are required to obtain the written agreement of another professional ('the second professional') that the criteria are met. Before examining a patient to decide whether to make a renewal report, the responsible clinician should identify and record who the second professional is to be. This second professional must be professionally concerned with the patient's treatment and must not belong to the same profession as the RC.

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

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

The second professional should:

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

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

If the second professional is in agreement with the RC they must complete part 2 of the statutory renewal report (form HO15/HO16). The RC is now able to complete part 3 of the form and furnish to the hospital managers.

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

8. FURNISHING THE REPORT TO THE HOSPITAL MANAGERS

A report is furnished to the hospital managers when it is committed to the internal mailing system or alternatively handed to a member of staff authorised by the hospital managers to receive it (see Hospital Managers Scheme of Delegation Policy).

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If the report is being furnished through the internal mailing system it must be either faxed to the Mental health Act Department (029 21824740) or scanned and emailed to the generic account (Mentalhealthact.Team.CAV@wales.nhs.uk) to enable the Mental Health Act Administrator to make the appropriate record.

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

9. EXTENDING A CTO

In order to extend a CTO, the patients RC must submit a report to the Hospital Managers confirming that the following conditions are satisfied:

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

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

Where the RC is satisfied that the criteria for extending the patient's CTO are met, they must complete part 1 of the statutory report (form CP3/CP4).

10. APPROVED MENTAL HEALTH PROFESSIONAL (AMHP)

Before the RC can submit the report they must obtain the written agreement of an AMHP. The RC should ensure the AMHP is given enough notice to be able to interview the patient if appropriate.

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

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If the AMHP is in agreement with the RC they must complete part 2 of the statutory report (form CP3/CP4). The RC is now able to complete part 3 of the form and furnish to the hospital managers (see 8 above furnishing the report to the hospital managers)

11. NOT HOLDING A REVIEW BEFORE DETENTION/CTO EXPIRES

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

The RC should notify the hospital managers immediately by contacting the Mental Health Act Manager. The hospital managers should report the breach to Healthcare Inspectorate Wales (HIW) as a serious incident and the patient informed.

The patient must be informed and either immediately discharged or there must be lawful authority to continue to detain the patient, for example, in exercise of the holding powers in the Act. If necessary a new application for admission or assessment should then be made. The hospital managers should ensure a review is undertaken within one month to determine why this has happened and what actions have been taken to resolve this and to ensure that it won't happen again in the future.

12. RESPONSIBLE CLINICIANS POWER OF DISCHARGE

Section 23 of the Act allows RC's to discharge Part 2 patients, unrestricted Part 3 patients and all CTO patients by giving a discharge order in writing. As RC's have the power to discharge patients, they must keep under review the appropriateness of using that power. If, at any time, a RC concludes that the criteria which would justify renewing a patients detention or extending the patient's CTO are not met, they should exercise their power of discharge. They should not wait until the patient's detention or CTO is due to expire.

13. NEAREST RELATIVE'S POWER OF DISCHARGE

A patient detained for assessment or treatment under Part 2 of the Act may also be discharged by their nearest relative. The hospital managers should ensure the nearest relative is aware of the power and how to use it.

Before giving a discharge order, the nearest relative must give the hospital managers at least 72 hours notice in writing of their intention to discharge the patient.

The 72 hour period starts to run from the time when the notice is received by the authorised person on behalf of the Hospital Managers.

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

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

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

The nearest relative's notice and discharge order must both be given in writing, but do not have to be in any specific form. Hospital managers should treat a discharge order given without prior notice as being both notice of intention to discharge the patients after 72 hours.

Once received on behalf of the hospital managers by the Mental Health Act Administrator or Shift Coordinator the discharge order is deemed as served and the 72 hour period begins.

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

If a barring order is issued the Mental Health Act Team will make arrangements for a hospital managers hearing to be held within two weeks of the barring order being issued.

14. DISCHARGE BY THE HOSPITAL MANAGERS AND THE MENTAL HEALTH REVIEW TRIBUNAL for WALES

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

15. PROCEDURES FOR REVIEWING DETENTION OR A CTO

Hospital managers should ensure all relevant parties, nearest relatives and, if different, their carers are aware that patients have the right to seek discharge by the hospital managers. They also need to understand the distinction between this right and the right to apply to the Mental Health Review Tribunal for Wales.

Hospital managers:

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- May undertake a review of whether or not a patient should be discharged at any time at their discretion
- Must undertake a review if the patient's RC submits a report to them under section 20 of the Act or renewing detention under section 20A, extending the CTO.
- Should consider holding a review when they receive request from the patient. Such a request may be supported by a carer, their independent mental health advocate (IMHA), independent mental capacity advocate, by their attorney or deputy.
- Must consider holding a review when the RC makes a report to them under section 25(1) barring an order by the nearest relative to discharge a patient.

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

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

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

16. TRAINING

The health board will provide ongoing training for staff who have a delegated duty under the scheme of delegation. Details of training courses available can be found by contacting the Mental Health Act Department.

17. IMPLEMENTATION

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

18. RESPONSIBILITIES

18.1 Chief Executive

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

18.2 Chief Operating officer

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

18.3 Designated Individuals

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

19. REFERENCES

All staff will work within the Mental Health Act 1983 and in accordance with the Code of Practice for Wales 2007, Mental Capacity Act 2005, and Human Rights Act 1998.

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

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

Mental Health Review Tribunal for Wales -

www.justice.gov.uk/tribunals/mental-health

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