

Reference Number: UHB444	Date of Next Review: 25/10/2025
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REVIEW OF DETENTION AND COMMUNITY TREATMENT ORDER, MENTAL HEALTH ACT 1983 PROCEDURE	
Introduction and Aim	
<p>This document supports the Review of 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>	
Objectives	
<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>	
Scope	
<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>	

Document Title: Review of Detention and CTO Procedure	2 of 15	Approval Date: 25.10.2022
Reference Number: UHB 444		Next Review Date: 25.10.2025
Version Number: 2		Date of Publication: 07.11.2022
Approved By: MHCLC Committee		

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>
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Document Title: Review of Detention and CTO Procedure	3 of 15	Approval Date: 25.10.2022
Reference Number: UHB 444		Next Review Date: 25.10.2025
Version Number: 2		Date of Publication: 07.11.2022
Approved By: MHCLC Committee		

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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>
2	25/10/2025		<i>Removal of glossary</i> <i>Expanded on paragraphs throughout for easier reading</i> <i>Expanded on who can be consulted when renewing a detention/extending a CTO</i> <i>Added section relating to patients who are absent without leave (AWOL)</i>

Document Title: Review of Detention and CTO Procedure	4 of 15	Approval Date: 25.10.2022
Reference Number: UHB 444		Next Review Date: 25.10.2025
Version Number: 2		Date of Publication: 07.11.2022
Approved By: MHCLC Committee		

CONTENTS

1. INTRODUCTION	5
2. PROCEDURE STATEMENT	5
3. SCOPE	5
4. DETENTION: RENEWAL, DISCHARGE OR CTO	5
5. EXAMINATION OF THE PATIENT	6
6. RENEWAL OF DETENTION (SECTION 20)	7
7. SECOND PROFESSIONAL	7
8. EXTENDING A CTO (SECTION 20A)	8
9. APPROVED MENTAL HEALTH PROFESSIONAL (AMHP)	9
10. PATIENTS WHO ARE AWOL AND RETURN WITHIN 28 DAYS (SECTION 21A)	9
11. PATIENTS WHO ARE AWOL AND RETURN MORE THAN 28 DAYS (SECTION 21B)	10
12. FURNISHING THE REPORT TO THE HOSPITAL MANAGERS	10
13. NOT HOLDING A REVIEW BEFORE DETENTION/CTO EXPIRES	11
14. RESPONSIBLE CLINICIANS POWER OF DISCHARGE	11
15. NEAREST RELATIVES POWER OF DISCHARGE	11
16. DISCHARGE BY THE HOSPITAL MANAGERS AND THE MENTAL HEALTH REVIEW TRIBUNAL FOR WALES	13
17. HOSPITAL MANAGERS DISCHARGE POWER	13
18. HOSPITAL MANAGERS HEARINGS	14
19. TRAINING	14
20. IMPLEMENTATION	14
21. RESPONSIBILITIES	14
21.1 Chief Executive	
21.2 Chief Operating Officer	
21.3 Designated Individuals	
22. REFERENCES	15

Document Title: Review of Detention and CTO Procedure	5 of 15	Approval Date: 25.10.2022
Reference Number: UHB 444		Next Review Date: 25.10.2025
Version Number: 2		Date of Publication: 07.11.2022
Approved By: MHCLC Committee		

1. INTRODUCTION

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

2. PROCEDURE STATEMENT

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

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

3. SCOPE

This procedure applies to all staff working in Cardiff and Vale University Local Health Board whose role involves the care and treatment of patients/service users covered under the 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

Document Title: Review of Detention and CTO Procedure	6 of 15	Approval Date: 25.10.2022
Reference Number: UHB 444		Next Review Date: 25.10.2025
Version Number: 2		Date of Publication: 07.11.2022
Approved By: MHCLC Committee		

the expiry of the patient's detention or CTO whether the criteria for renewing detention under section 20 of the Act or extending the CTO under section 20A are met, or whether discharge is appropriate.

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

The Mental Health Act Department will advise the RC via e-mail and they will also receive the PARIS daily report confirming that the detention or CTO is due to expire within 2 months and that the patient needs to be examined in order to renew the detention or extend the CTO.

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

5. 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:

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

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

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

The 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.

Document Title: Review of Detention and CTO Procedure	7 of 15	Approval Date: 25.10.2022
Reference Number: UHB 444		Next Review Date: 25.10.2025
Version Number: 2		Date of Publication: 07.11.2022
Approved By: MHCLC Committee		

6. RENEWAL OF DETENTION (SECTION 20)

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

- The patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment 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 provide unless he continues to be detained; and
- Appropriate medical treatment is available to him

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

7. SECOND PROFESSIONAL

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

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

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

The second professional should:

Document Title: Review of Detention and CTO Procedure	8 of 15	Approval Date: 25.10.2022
Reference Number: UHB 444		Next Review Date: 25.10.2025
Version Number: 2		Date of Publication: 07.11.2022
Approved By: MHCLC Committee		

- 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). The person who signs part 2 can be a different person to the one named in part 1. The RC is now able to complete part 3 of the form and furnish to the Hospital Managers (Mental Health Act Department).

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. EXTENDING A CTO (SECTION 20A)

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

- The patient is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment;
- It is necessary for his health or safety or for the protection of other persons that he should receive such treatment;
- Subject to his continuing to be liable to 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.

Document Title: Review of Detention and CTO Procedure	9 of 15	Approval Date: 25.10.2022
Reference Number: UHB 444		Next Review Date: 25.10.2025
Version Number: 2		Date of Publication: 07.11.2022
Approved By: MHCLC Committee		

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

9. APPROVED MENTAL HEALTH PROFESSIONAL (AMHP)

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

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

If the AMHP is in agreement with the RC they must complete part 2 of the statutory report (Form CP3). The RC is now able to complete part 3 of the form by naming a person they have consulted with, which must be a different person to the AMHP named in part 2 unless they have been professionally concerned with the patient's treatment. The report is then furnished to the Hospital Managers (Mental Health Act Department) (see 12 below furnishing the report to the Hospital Managers)

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

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

Document Title: Review of Detention and CTO Procedure	10 of 15	Approval Date: 25.10.2022
Reference Number: UHB 444		Next Review Date: 25.10.2025
Version Number: 2		Date of Publication: 07.11.2022
Approved By: MHCLC Committee		

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

In order to renew the detention of a patient who has been AWOL (absent without leave) for more than 28 days, section 21B applies for the purpose of renewal and requires an examination to take place by the RC. This must be done within 1 week (under section 21) of the patient's return and the statutory renewal report (Form HO16) must be completed.

Where the RC is satisfied that the criteria for renewing the patient's detention are met, they must complete part 1 of the statutory renewal report (Form HO16), which includes naming an AMHP and another person who the RC has consulted with. The RC is now able to furnish the form to the Hospital Managers (Mental Health Act Department) (see 12 below).

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

12. FURNISHING THE REPORT TO THE HOSPITAL MANAGERS

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

If the report is being furnished through the internal mailing system it must first 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).

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 renders the Hospital Managers at risk of successful challenge.

Document Title: Review of Detention and CTO Procedure	11 of 15	Approval Date: 25.10.2022
Reference Number: UHB 444		Next Review Date: 25.10.2025
Version Number: 2		Date of Publication: 07.11.2022
Approved By: MHCLC Committee		

13. 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.

14. 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 patient's detention or extending the patient's CTO are not met, they should exercise their power of discharge by completing Form HO17 for inpatients or a CP8 for a patient on a CTO and posting to the Mental Health Act Department, but it must first be either faxed (029 21824740) or scanned and emailed to the generic account (Mentalhealthact.Team.CAV@wales.nhs.uk). The RC should not wait until the patient's detention or CTO is due to expire to discharge.

15. 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 (Mental Health Act Department) and/or detaining AMHP should ensure the nearest relative is aware of the power and how to use it.

Document Title: Review of Detention and CTO Procedure	12 of 15	Approval Date: 25.10.2022
Reference Number: UHB 444		Next Review Date: 25.10.2025
Version Number: 2		Date of Publication: 07.11.2022
Approved By: MHCLC Committee		

Before giving a notice or discharge order, the nearest relative must give the Hospital Managers (Mental Health Act Department) at least 72 hours' notice in writing, specifying that as the nearest relative, they are using their powers of discharge of their intention to discharge the patient. A discharge order given without prior notice should be treated as being both a notice and order of intention to discharge the patient after 72 hours.

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

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

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

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

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

If a barring order is issued the Mental Health Act Department will make arrangements for a Hospital Manager's hearing to be held within four weeks of the barring order being issued.

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

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

Document Title: Review of Detention and CTO Procedure	13 of 15	Approval Date: 25.10.2022
Reference Number: UHB 444		Next Review Date: 25.10.2025
Version Number: 2		Date of Publication: 07.11.2022
Approved By: MHCLC Committee		

17. HOSPITAL MANAGERS' DISCHARGE POWER

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

Hospital Managers:

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

In the last two cases, when deciding whether to consider the case, 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 (Ministry of Justice).

18. HOSPITAL MANAGERS HEARING

Document Title: Review of Detention and CTO Procedure	14 of 15	Approval Date: 25.10.2022
Reference Number: UHB 444		Next Review Date: 25.10.2025
Version Number: 2		Date of Publication: 07.11.2022
Approved By: MHCLC Committee		

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

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

19. TRAINING

The Health Board will provide ongoing training for staff who have a delegated duty under the scheme of delegation. Details of training courses available can be found by contacting the Mental Health Act Department or looking on the Mental Health Act intranet page via CaV web.

20. 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.

21. RESPONSIBILITIES

21.1 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.

21.2 Chief Operating officer

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

21.3 Designated Individuals

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

Document Title: Review of Detention and CTO Procedure	15 of 15	Approval Date: 25.10.2022
Reference Number: UHB 444		Next Review Date: 25.10.2025
Version Number: 2		Date of Publication: 07.11.2022
Approved By: MHCLC Committee		

22. 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