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

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**RECEIPT OF APPLICATIONS FOR DETENTION 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 correct receipt and scrutiny of MHA detention papers by those formally delegated to undertake the task on behalf of the Hospital Managers. Officers responsible for receipt and scrutiny of Mental Health Act detention papers must be suitably trained and fully aware of this policy.

Scope

This policy is applicable to all employees delegated to receive and scrutinise statutory forms required by the MHA 1983 on behalf of the Hospital Managers for Cardiff and Vale UHB.

Equality Impact Assessment

An Equality Impact Assessment has been completed.

Health Impact Assessment

A Health Impact Assessment (HIA) has not been completed

Documents to read alongside this Procedure

Mental Health Act 1983
Mental Health Act 1983, Code of Practice for Wales Revised 2016
Mental Health Regulations for Wales

Approved by

Mental Health Act Policy Group
Mental Health Clinical Board Quality & Safety Committee

Accountable Executive or Clinical Board Director

Mental Health Clinical Board

Disclaimer

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



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Summary of reviews/amendments			
Version Number	Date Review Approved	Date Published	Summary of Amendments
1	10/12/2015		
2	21/02/2020		<p><i>Mental Health and Capacity Legislation Committee replaces Mental Health Act Monitoring Committee throughout.</i></p> <p><i>Reference to the new Mental Health Act Code of Practice for Wales, Revised 2016 and some language amended to reflect this.</i></p> <p><i>Clinical Board replaces Division.</i></p> <p><i>Scope replaces Aim to bring in line with current standard templates.</i></p>
3	21/11/2023	23/11/2023	<p><i>Mental Health Legislation & Mental Capacity Act Committee replaces Mental Health & Capacity Legislation Committee.</i></p> <p><i>Added new section detailing what statutory forms are required for each Section.</i></p> <p><i>Expanded on paragraphs throughout for easier reading and understanding.</i></p>

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1. Introduction

- 1.1. This procedure has been developed in line with the Mental Health Act 1983 (the Act), the Human Rights Act 1998 (HRA), the Mental Health (Wales) Regulations 2008 (the Regulations), the MHA Code of Practice for Wales revised 2016 (the Code) and other associated legislation. This policy is required to ensure correct receipt and scrutiny of MHA detention papers by those formally delegated to undertake the task on behalf of the Hospital Managers (please see scheme of delegation policy). Officers responsible for receipt and scrutiny of detention papers must be suitably trained and fully aware of this procedure.

2. Procedure Statement

- 2.1. Part II of the Act requires that certain legal and procedural formalities be observed when an application is made for a person to be admitted to hospital compulsorily. The Code identifies standards of practice that should be met 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 competence of delegated staff required to receive and scrutinise statutory forms.
- 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. Hospital Managers have specific powers and duties under the Act. These include the authority to detain patients. Therefore, they must ensure the grounds for admission are met and that all relevant admission documents are in order.
- 3.5. This task is delegated to certain members of staff named in the Scheme of Delegation Procedure. Those delegated to act on behalf of the Hospital

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Managers must ensure competence and understanding of the requirements in order to receive and scrutinise statutory forms.

3.6. Hospital Managers must ensure:

- Patients are detained only as the Act allows;
- Patients treatment and care fully complies with the Act;
- Patients are fully informed of and supported in exercising their statutory rights.

3.7. The Act 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. Hospital Managers

4.1. Cardiff and Vale UHB are ultimately responsible for Hospital Managers. The Mental Health Legislation and Mental Capacity Act Committee is responsible for monitoring and reviewing the way functions under the Act are exercised on behalf of the Hospital Managers.

4.2. Hospital Managers must ensure that their patients are detained lawfully. They should therefore ensure that receipt and scrutiny of prescribed forms is monitored regularly.

4.3. Hospital Managers remain responsible for their duties even when carried out by those delegated on their behalf.

4.4. Hospital Managers should ensure that those delegated to receive and scrutinise statutory forms on their behalf are competent to perform these duties, understand the requirements of the Act, and receive suitable training.

5. Document Irregularities

5.1. Document irregularities fall into three broad groups:

- Those which are both incapable of retrospective correction and sufficiently serious to render the detention invalid;
- Errors and omissions that even if not corrected within the 14 day statutory period as defined under Section 15 is not sufficiently serious to render the application invalid.

5.2. When a patient is being admitted on the application of an Approved Mental Health Professional (AMHP), the person receiving the admission forms should check their accuracy with the AMHP.

6. Receipt and scrutiny of prescribed forms

6.1. There is a difference between 'receiving' forms and 'scrutinising' them.

- **Receipt** involves physically receiving the forms and recording that receipt.

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- **Scrutiny** is the study of those forms to ensure that the requirements of the Act and the regulations have been met. Scrutiny involves both administrative and medical scrutiny.

- 6.2. Rectification or correction is mainly concerned with inaccurate recording, making a form 'incorrect' for example, if names, dates or places are misstated, but if corrected, would not make the decision to admit a patient an unjustified one, and it cannot be used to enable a fundamentally defective application to be retrospectively validated. It also cannot be used to cure a defect which arises because an element of the procedural process leading to the detention has simply not taken place at all, i.e. the nearest relative not being consulted for a Section 3. A form may be 'defective' if the signatory has failed to complete all the sections, or delete alternative options but this can be rectified under Section 15. An unsigned form should not be accepted as rectifiable.
- 6.3. When an AMHP makes an application for detention, he or she should carefully check that the medical recommendations prepared by the doctors meet the requirements of both the Act and the Regulations. The AMHP should pay particular attention to the correct completion of the medical recommendations and application form. Wherever possible, errors on forms should be corrected before being accepted, with appropriate consultation between the AMHP and the doctors.
- 6.4. Where the person delegated to receive the forms is not a person authorised by the Hospital Managers to agree the correction of errors on an admission form, the forms should be scrutinised by an appropriately authorised person immediately on the patient's admission or during the next working day if the patient is admitted out of hours.

7. Receipt of statutory forms

- 7.1. The UHB has delegated the receipt of detention documents on behalf of the Hospital Managers to:
- Mental Health Act Manager
 - Deputy Mental Health Act Manager
 - Mental Health Act Team Administration Lead
 - Mental Health Act Administrators
 - Shift Co-ordinator for the appropriate area i.e. Hafan Y Coed, MHSOP or Rehab (classified as the 'receiving officer')
- 7.2. To perform this function the staff detailed in above must have received training and instruction in the receipt and scrutiny of admission documents. All shift co-ordinators must attend yearly refresher training on the receipt and scrutiny of admission documents.
- 7.3. The statutory forms needed for each section are listed below:

Section 2

- HO1 application by nearest relative **or**

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- HO2 application by approved mental health professional (AMHP)
and
- HO4 single medical recommendation (x2)

Section 3

- HO5 application by nearest relative **or**
- HO6 application by approved mental health professional (AMHP)
and
- HO8 single medical recommendation (x2)

NOTE: Cardiff & Vale UHB no longer accept joint medical recommendations. This is due to them not being able to be rectified under Section 15 of the Act.

Section 4

- HO9 application by nearest relative **or**
- HO10 application by approved mental health professional (AMHP)
and
- HO11 single medical recommendation for emergency admission (x1)
once in hospital the below is needed also
- HO4 single medical recommendation to convert detention to Section 2 (x1)

7.4. Officers responsible for receiving detention papers as listed above should accept them as soon as possible on a statutory form HO14 (sections 2, 3 and 4 – record of detention in hospital). An administrative scrutiny checklist (see Appendix 1 below) for receiving detention papers should be used each time and attached to the detention papers.

NOTE: Statutory HO14 is not required for receipt of section 5(4) or 5(2). Part 2 of the statutory form HO12 is completed by the designated officer for the purpose of receipt and acceptance of section 5(2).

7.5. During office hours (09:00 – 17:00, Monday to Friday) detention papers must be submitted to the Mental Health Act office in Hafan Y Coed, UHL to enable the team to undertake receipt and scrutiny. Other sites must make contact with the Mental Health Act office to inform them that they have detention papers to be received and make arrangements to fax or email a scanned copy the papers as a priority.

Contact details for Mental Health Act office:

- Tel: 02921 824744
- Fax: 02921 824740
- E-mail: Mentalhealthact.Team.Cav@wales.nhs.uk

7.6. Outside of office hours between 17:00 and 20:30 the Shift Coordinator for the appropriate area i.e. Hafan Y Coed, MHSOP or Rehab must be contacted via bleep or through the main switchboard in order to make arrangements to receive and scrutinise detention papers in line with appendix 1.

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- 7.7. The Night Site Manager is the delegated officer between 20:30 and 08:30 for the purpose of receipt of detention papers and can be contacted by bleep or the main switchboard.
- 7.8. The ward must keep a copy of the section papers in the patients file until the final version which has been processed by the Mental Health Act office is available. The section papers will be uploaded to PARIS via the MHA module and additional details tab once processed and a 'final' version will also be uploaded once they have been medically scrutinised.
- 7.9. Once the detention papers have been formally received on behalf of the Hospital Managers outside of office hours it is the responsibility of the receiving officer to ensure the detention papers are forwarded to the Mental Health Act office, Hafan Y Coed, UHL immediately.
- 7.10. Detention papers received off site must be faxed or scanned and emailed to the Mental Health Act office immediately. Once confirmation has been received the original detention papers must be sent to the Mental Health Act office in the internal mail system.
- 7.11. Detention papers received on the Hafan Y Coed site must be placed in an envelope and delivered to the Mental Health Act office letterbox for staff to receive and scrutinise on the next working day.

8. Administrative Scrutiny

- 8.1. It is the responsibility of the Mental Health Act office to undertake an 'administrative scrutiny' of all admission documents upon receipt and to ensure that all documentation complies with the requirements of the Act.
- 8.2. It is also the duty of this office to forward the medical recommendations to an appropriate consultant for medical scrutiny. A scrutiny rota (approved by the Clinical Director for each directorate) is used to guarantee that a consultant does not scrutinise their own medical recommendation or those of doctors within their team.

9. Rectification of applications and recommendations

- 9.1. Section 15 of the Act allows an application or single medical recommendation which is found to be in any regard incorrect or defective to be amended by the person who signed it, with the consent of the Hospital Managers, within 14 days of the date of admission.
- 9.2. **Incorrect** – Had the facts been correctly stated the admission would have been justified i.e. misstating dates, names or places.
- 9.3. **Defective** – Incomplete information i.e. leaving a space blank (other than a signature) or failing to delete one or more alternatives where only one can be correct.
- 9.4. Where one of the two medical recommendations is found to be insufficient section 15 (2) and (3) provide the provisions for the Hospital Managers to give

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notice to the applicant for arrangements to be made for a fresh medical recommendation to be obtained within the 14 day period.

9.5. Providing the new medical recommendation considered together with the remaining recommendation is sufficient to warrant detention. The application shall be deemed to have always been valid.

9.6. **Insufficient:**

- The medical recommendation does not describe adequate grounds to justify the admission, or
- neither doctor is approved under section 12, or
- it has been signed after the date on which the application was made, or
- more than five clear days between the days on which the doctors have examined the patient

9.7. Detention papers must not be accepted on behalf of the Hospital Managers if any of the following apply:

- The application is not accompanied by the correct number of medical recommendations (for section 2 either 1x HO3 or 2x HO4 and for section 3 1x HO7 or 2x HO8).
- The application and recommendations do not all relate to the same patient.
- The application or recommendation is not signed at all, or is signed by someone not qualified to do so.
- The application does not specify the correct hospital where the patient is being detained to.
- If the time limits of each section are not complied with (the requirement that no more than five days must elapse between the two medical recommendations no longer applies, if a fresh recommendation is required due to one of the original recommendations being insufficient).
- Any of the above faults cannot be rectified and authority for a patient's detention can only be obtained under Section 15(3) or a new application.
- If rectification is not possible then either the Hospital Managers or the patient's Responsible Clinician should exercise their powers under section 23 to discharge the patient from section.
- If a patient is already in hospital he/she can only be detained if the doctor in charge of his/her treatment (or their nominee) issues a report under Section 5(2) of the Act.
- Any new application must meet the appropriate requirements for each detention order.

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10. Time Limits applicable to Practitioners applying the MHA 1983

10.1. Compliance of time limits mentioned in sections 6, 11, and 12 of the Act should be checked as soon as the documents are received. Except for emergency applications under section 4, these limits are:

- The date on which the applicant last saw the patient must be within the period of 14 days ending with the date of the application.
- The dates of the medical examinations of the patients by the two doctors who gave the recommendations (not the dates the recommendations were signed) must be not more than 5 clear days apart.
- The dates of signatures of both medical recommendations must be on or before the date of the application.
- The patient's admission to hospital (or if the patient is already in hospital the reception of the documents by a person authorised by the Hospital Managers to receive them) must take place within 14 days beginning with the date of the later of the two medical examinations.

10.2. When an emergency application is made under section 4 it is accompanied in the first place by only one medical recommendation. The time limits, which apply to emergency applications only, are:

- The time at which the applicant last saw the patient must be within the period of 24 hours ending with the time of the application.
- The patient's admission to hospital must take place within the period of 24 hours starting with the time of the medical examination. An emergency application is founded on a medical recommendation therefore the date and time of application must be later than the date and time of the medical recommendation.
- The second medical recommendation must be received on behalf of the managers no more than 72 hours after the time of the patient's admission. The two medical recommendations must then comply with all the normal requirements except the requirement as to the time of the signature of the second recommendation.
- Once the second recommendation has been accepted, the section 4 is converted to a section 2 and the 28 day detention period is calculated from the date of admission to hospital.

11. Responsibilities

11.1. This procedure affects all members of staff responsible for undertaking receipt and scrutiny on behalf of the Hospital Managers and all patients who are being detained under the Act.

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- 11.2. Ultimate accountability for the effective management of UHB's business particularly ensuring that policies are adhered to is the responsibility of the Chief Executive as the Accountable Officer.
- 11.3. The UHB Board is responsible for effective implementation of this policy.
- 11.4. Monitoring and management of the policy will be the responsibility of the Mental Health Legislation and Mental Capacity Act Committee of the Board.
- 11.5. Clinical Boards have responsibility for compliance with the receipt of applications for detention under the Mental Health Act 1983 Policy and Procedure and should ensure that everyone in their Clinical Board understands their responsibilities in ensuring compliance.
- 11.6. Managers are responsible for managing their staff in compliance with this procedure.
- 11.7. It is the responsibility of the qualified nurse to ensure detention papers are received in accordance with this procedure when detention papers are left with them by the AMHP.

12. Resources

- 12.1. The Mental Health Act Manager or delegated officer will be responsible for providing training to delegated staff receiving statutory documentation on behalf of the Hospital Managers.
- 12.2. Time must be made available for delegated staff to attend training on the receipt of statutory documentation.

13. Training

- 13.1 Training should be provided by the Mental Health Act Manager or delegated officer to all members of staff receiving statutory forms.
- 13.2 Managers of staff receiving statutory forms are responsible for ensuring that this training is undertaken. Staff should not be able to receive statutory forms on behalf of the Hospital Managers unless training has been provided and their role falls within that remit as outlined in the Scheme of Delegation Procedure.
- 13.3 Staff new to an authorised role should be given training upon induction. Existing members of staff currently undertaking this task must attend yearly refresher training.
- 13.4. Training will address the criteria which must be met prior to receiving statutory forms.
- 13.5. The Mental Health Act Manager or delegated officer will keep a record of those members of staff who have been trained.
- 13.6. Once staff have attended training, updates will be provided at the request of managers or staff members.

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13.7. If quality issues are highlighted through audit by the Mental Health Act office the Mental Health Act Manager or delegated officer will contact the staff member or their manager to arrange individual training until improvement has been made.

14. Implementation

14.1. This procedure is to be used by members of staff and managers of members of staff receiving statutory forms on behalf of the Hospital Managers

14.2. Clinical Boards need to ensure that members of staff within their area understand this procedure and disseminate to all staff members and managers of staff members working under this policy.

14.3. Staff members and managers of staff members working under this procedure need to ensure that they understand the contents of the document.

15. Equality

15.1. We have undertaken an Equality Impact Assessment and received feedback on this policy and the way it operates. We wanted to know of any possible or actual impact that this policy may have on any groups in respect of their sex, maternity and pregnancy, marriage or civil partnership issues, race, disability, sexual orientation, Welsh language, religion or belief, transgender, age or other protected characteristics. The assessment found that there was a positive impact on the Human Rights group mentioned.

15.2. Cardiff and Vale UHB is committed to ensuring that, as far as is reasonably practicable, the way we provide services to the public and the way we treat our staff, patients and others reflects their individual needs and that we will not does not discriminate, harass or victimise individuals or groups unfairly on the basis of sex, pregnancy and maternity, gender reassignment, disability, race, age, sexual orientation, disfigurement, religion and belief, family circumstances including marriage and civil partnership. These principles run throughout our work and are reflected in our core values, our staff employment policies, our service delivery standards and our Strategic Equality Plan. We believe that all staff should have fair and equal access to training as highlighted in both the Equality Act 2010 and the 1999 Human Rights Act. The responsibility for implementing the scheme falls to all employees and UHB Board members, volunteers, agents or contractors delivering services or undertaking work on behalf of the UHB.

16. Audit

16.1. The Mental Health Act Manager or delegated officer will monitor the progress of the implementation of the procedure.

16.2. The UHB Board and Mental Health Legislation and Mental Capacity Act Committee will conduct and formally review the effectiveness of the receipt of applications for detention under the Mental Health Act 1983 procedure.

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16.3. The following indicators will be used to monitor the effectiveness of the procedure:

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

16.4. Audit findings will be reported quarterly to the Mental Health Legislation and Mental Capacity Act Committee.

17. 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
- Mental Health Act Commission Guidance Note 'Scrutinising and Rectifying Statutory Forms for Admission under the Mental Health Act 1983'

18. Distribution

18.1. This procedure will be made available on the UHB intranet and internet sites and be circulated to individual delegated officers and managers of delegated officers and to Adult/MHSOP directorates.

18.2. All wards within Cardiff and Vale UHB should be aware of this procedure to ensure that delegated officers are informed when detention papers are completed.

19. Review

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

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MENTAL HEALTH ACT 1983
ADMINISTRATIVE SCRUTINY CHECKLIST

Appendix 1

Forename		Surname		Date of Birth	
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Date of Admission		Sec		Commenced		Date expiry renewal	
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- Has the application been signed by AMHP or Nearest Relative (NR) Yes/No
- Is the name and address of the hospital correct on the application by the AMHP/NR Yes/No
- Have two medical recommendations been made and signed (S 4 only one needed) Yes/No
- Was one medical recommendation made by a Section 12 approved Doctor Yes/No
- If neither Doctor has previous acquaintance has the AMHP stated a reason Yes/No
- Were Medical Recommendations made within 5 Days of each other Yes/No
- Is the clinical description for admission adequate Yes/No
- Is date of application by AMHP later than or the same date as medical recommendations Yes/No
- Has the AMHP seen the patient personally within 14 days of the application Yes/No
- Is the name and address of the patient the same on all documentation Yes/No*
- Is the date of the application within 14 days of the admission Yes/No
- Have you received a assessment report from the AMHP Yes/No*
- In the case of papers received out of hours was the HO 14 completed Yes/No*
- Is the name and address of the hospital correct on HO 14 Yes/No*
- Is the date of admission correct on HO 14 Yes/No*
- Have all alterations been initialled Yes/No*

* These are rectifiable errors - if the answer is no to any of the other questions the section papers may have to be re-done

ON BEHALF OF THE MANAGERS HEREBY CERTIFY THAT THESE DOCUMENTS ARE CORRECT AND ARE IN ACCORDANCE WITH THE PROVISIONS OF THE MENTAL HEALTH ACT 1983

SIGNED	DATE
PRINT NAME	PRIMARY SCRUTINISER
SIGNED	DATE
PRINT NAME	SECONDARY SCRUTINISER