

<b>Reference Number:</b> <i>UHB 438</i>	<b>Date of Next Review:</b> <i>December 2021</i>
<b>Version Number:</b> 1	<b>Previous Trust/LHB Reference Number:</b> N/A
<b>Guideline for Section 17 Leave of Absence Mental Health Act 1983</b>	
<b>Introduction and Aim</b>	
To provide staff with sufficient guidance in order to ensure effective compliance with providing leave to detained patients in accordance with Section 17 of the Mental Health Act 1983 and The Code of Practice for Wales 2016.	
<b>Objectives</b>	
<ul style="list-style-type: none"> <li>• <i>To ensure that staff are aware of their responsibilities for granting leave under the Mental Health Act 1983.</i></li> <li>• <i>To ensure that staff are aware of their responsibilities for documenting leave of absence and managing the risks that may be associated with this.</i></li> <li>• <i>To ensure that staff are aware of the procedures to follow when a patient is Absent without Leave.</i></li> </ul>	
<b>Scope</b>	
This procedure applies to all of our staff within Mental Health Services in all locations including those with honorary contracts.	
<b>Equality and Health Impact Assessment</b>	<i>An Equality and Health Impact Assessment (EHIA) has not been completed.</i>
<b>Documents to read alongside this Procedure</b>	<i>Mental Health Act 1983 Code of Practice for Wales Revised 2016 Mental Health Act Manual 18<sup>th</sup> edition 2015 Missing Person Procedure Mental Health Division Inpatient facility or a missing community patient.</i>
<b>Approved by</b>	<i>Committee/ Group</i>

<b>Accountable Executive or Clinical Board Director</b>	<i>Director of Nursing, Mental Health Clinical Board</i>
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<b>Summary of reviews/amendments</b>			
<b>Version Number</b>	<b>Date of Review Approved</b>	<b>Date Published</b>	<b>Summary of Amendments</b>
1	13/12/2018	11/02/2019	<i>new document</i>

## **Introduction**

A patient, who is detained in hospital under the Mental Health Act 1983, can only leave hospital lawfully if they are granted a leave of absence by the responsible clinician under Section 17 of the Act. This includes those

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detained under section 2, 3, 37 and 47 of the Act. Section 17 leave of absence applies to any short and long term leave from the hospital or its grounds and includes leave to reside in other hospitals.

Only the patient's responsible clinician can grant leave of absence to a patient detained under the Act. Responsible clinicians cannot delegate the decision to grant leave of absence to anyone else. In the absence of the usual responsible clinician, e.g. if they are on leave, permission can be granted only by the approved clinician who is, for the time being, acting as the patient's responsible clinician.

For patients who are subject to restriction orders (i.e. subject to section 41 or 49). The responsible clinician must seek approval from the Secretary of State for Justice. A responsible clinician may not grant leave of absence to patients detained under sections 35, 36 and 38 of the Act.

### **Granting leave**

Responsible clinicians may grant leave for specific occasions or for specific or indefinite periods of time. They may make leave subject to any conditions which they consider necessary in the interests of the patient or for the protection of other people.

Leave of absence should only be granted after careful consideration by multi-disciplinary team and the patient. It is also important to consult any carers, friends and others who may be involved in any planned leave of absence. Any conditions that are attached to leave must be stipulated including what support and/or resources the patient would require during their leave of absence.

It is important to ensure that patient is aware, understands and agrees to the plans and support provided during their leave. They must also be informed about what to do and who to contact they should wish to return to hospital early.

Considerations about the patient's current risk must be identified and where necessary ensure that safeguards are in place and to liaise with any relevant agencies who may be involved. In the case of mentally disordered offender patients, consider whether there are any issues relating to victims that impact on whether leave should be granted and the conditions to which it should be subject (please refer to Chapter 40 MHA Code of Practice for Wales).

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Short term leave can be granted by the responsible clinician which might be managed by other staff i.e. nursing staff. For example the section 17 leave form may stipulate that a patient can have 2 hours escorted leave per day within the hospital grounds at the discretion of the nursing staff. The decision as to which particular 2 hours is left at the discretion of the responsible nursing staff. It is important that the responsible clinician clearly sets out the parameters within which the discretion may be exercised. This is to ensure that that the staff managing the leave do not interpret the leave differently.

If longer periods of leave are being considered the patient should be fully involved in the decision. Again it would be necessary to consult with carer's, relatives and friends if the patient consents (especially where the patient is staying with them). The responsible clinician should be satisfied that the patient is able to manage outside the hospital and as with short term leave should specify circumstances in which leave should not proceed, for example if the patients health has deteriorated since the leave was authorised.

When considering whether to grant leave of absence for more than seven consecutive days, or extending leave so that the total period is more than seven consecutive days. The responsible clinicians should also consider whether the patient should go on to a community treatment order instead. This does not apply to restricted patients, or, in practice, to patients detained for assessment under section 2 of the Act as they are not eligible to be placed on a CTO. The option of using a CTO does not mean the responsible clinician cannot use longer-term leave if that is the more suitable option, but the responsible clinician will need to be able to show both options have been considered. Decisions should be explained to the patient and fully documented in the patient's notes.

### **Emergency transfer for medical treatment**

Section 17 leave may be necessary to allow a patient to attend a general hospital for treatment, for example to undergo an operation. In these circumstances the responsible clinician should clearly set out the conditions for granting the leave, including any requirements for the patient to remain in the custody of staff.

For routine medical appointments or treatment, the Secretary of State's permission will be required. It is accepted however that there will be times of acute medical emergency where the patient requires emergency treatment. There may also be

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acute situations which, while not life threatening still require urgent treatment, e.g. a fracture. In these situations, the responsible clinician may use their discretion, having due regard to the emergency or urgency being presented and the management of any risks, to have the patient taken to hospital. The Secretary of State should be informed as soon as possible that the patient has been taken to hospital, what risk management arrangements are in place, be kept informed of developments and notified when the patient has been returned to the secure hospital.

The RC can grant a patient leave of absence over the telephone in urgent cases. The RC does not have the power to delegate functions under this section (although the power can be exercised by another AC acting as RC in the absence of the patients usual RC).

If a detained patient needs to be moved to a general hospital as a matter of urgency for treatment for a physical disorder or injury; legal authority for the move is present if either:

- 1) Leave of absence for such a move has been granted by the RC in anticipation of such an eventuality occurring

OR

- 2) The RC has granted leave of absence over the telephone at the time of emergency

Authority for treating the patient for the disorder or injury must be found in the common law or the Mental Capacity Act 2005 if the disorder or injury is not related to the mental disorder. If the urgency of the situation is such that there is no time to contact the RC and anticipatory leave has not been granted, the 2005 Act will provide authority for a mentally incapacitated patient to be moved to the general hospital. A mentally capable patient can be moved with his consent. In both cases the RC should grant the patient leave of absence under this section at the earliest opportunity as technically the patient is absent without leave. Given that an urgent need for a patient to be transferred to a general hospital for treatment is unpredictable, anticipatory leave to cover such a situation should be granted as a matter of routine.

### **Recording leave**

The granting of leave and the conditions attached to it, should be clearly recorded in the patient's case notes on PARIS. (Copies of the Section 17 leave form are attached in appendix 1 and 2). All expired section 17 leave authorisation forms should be clearly marked as no longer valid.

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Copies of the authorisation of leave form should be given to the patient, any appropriate relatives or friends and any professionals in the community who may need to be informed. Relatives, carers or friends must be aware of whom they should contact if any concerns arise during the period of leave that has been granted.

Nursing staff are responsible for ensuring that the patient is aware of the conditions of leave and the implications of the non-compliance with the leave conditions. It must be made clear that the time restrictions are important as these define the point at which the patient becomes absent without leave (AWOL).

Prior to any leave being undertaken, the patient must have an up to date risk assessment and a specific care plan relating to the leave. On commencement of leave it is important to document the time and date the patient left the unit and the time and date that they are due to return. Also to ensure that an up to date contact number is available for the patient and the friend, relative or carer that maybe involved in the leave.

In case a patient fails to return from leave, an up-to-date description of the patient should be available in their notes. If a patient is only granted leave for a short period of time for example 6 hours, a description of their clothing should also be noted.

If any authorised Section 17 leave has been withheld by nursing or medical staff, the reasons for this must be explained to the patient and documented clearly within their case notes. This must also be explained to any other person/s who may have been involved with leave at this time.

A case note should be documented on the outcome of the patients leave which must include whether or not it went well, benefits achieved, problems encountered or concerns raised by the patient or others involved in the leave. It is important that the patient is encouraged to provide their own views on their leave. This helps inform future decision-making.

### **Care and treatment while on leave**

The responsible clinician's obligation for the patient's care remains the same whilst they are on leave.

A patient granted leave under section 17 remain subject to Part 4 of the Act. If it becomes necessary to administer treatment to the patient without their consent, consideration should be given to recalling the patient to hospital.

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Refusal of treatment will not be sufficient grounds on its own for recall, the Responsible Clinician should consider whether it would be in the best interests of the patient's health and safety or for the protection of others. This should include the least restrictive care and treatment option and the maximisation of independence.

### **Escorted leave**

A responsible clinician may direct that a patient remains 'in custody' while on leave of absence, either in the patient's own interests or for the protection of other people. Patients may be kept in the custody of any officer on the staff of the hospital or any person authorised in writing by the hospital managers. Such an arrangement is often useful, for example to enable patients to participate in escorted trips or to have compassionate home leave.

If this is contemplated for a restricted patient, advice should be sought from the Mental Health Casework Section (MHCS) of the Ministry of Justice.

### **Accompanied leave**

While it may often be appropriate to authorise leave subject to the condition a patient is accompanied by a friend or relative, responsible clinicians should only specify that the patient is to be in the legal 'custody' of a friend or relative if it is appropriate for that person to be legally responsible and that the person understands and accepts the responsibilities of being the patient's legal custodian. In the case of children, it may be appropriate for the person with parental responsibility to be the legal custodian.

### **Leave to another hospital**

Section 17 leave may also be used to grant a patient leave to another hospital for further treatment of their mental disorder, often as progression to a unit with lesser security, sometimes referred to as 'trial leave'. This can be a useful stage in the patient's recovery. Responsible clinicians may therefore require patients, as a condition of leave, to reside at another hospital in England or Wales, and they may then be kept in the custody of staff of that hospital. Before authorising leave on this basis, responsible clinicians should consider whether it would be more appropriate to transfer the patient to the other hospital instead.

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Where a patient is granted leave of absence to another hospital, the responsible clinician at the first hospital should remain in overall charge of the patient's case. If it is considered a clinician at the other hospital should be the responsible clinician, the patient should be transferred to that hospital. An approved clinician in charge of any particular aspect of the patient's treatment may be from either hospital.

The responsible clinician must ensure that staff in the other hospital understand the restrictions which the patient is under because of their detention under the Act. Those staff should understand the limits and protections given to the patient by Part 4 of the Act. If the patient needs further leave of absence from the second hospital, for example, if their friends or family want to take them out for a few hours, that leave can only be granted by the patient's responsible clinician in accordance with section 17, and not by the consultant or other professional in charge of their treatment in the other hospital.

### **Renewal of authority to detain**

A period of leave cannot last longer than the duration of the authority to detain. If the authority to detain an unrestricted patient will expire while the patient is on leave, the responsible clinician should examine the patient whilst they are still on leave. The responsible clinician should consider whether the statutory criteria for detention are met and further hospital treatment is necessary or if it would be more appropriate for the patient to be placed onto a CTO.

### **Recall from leave to hospital**

The responsible clinician may revoke the leave of absence of an unrestricted patient at any time, if they consider this necessary in the interests of the patient's health or safety or for the protection of other people. A restricted patient's leave may be revoked either by the responsible clinician or the Secretary of State for Justice. The effect of revoking the leave is that the patient again becomes an inpatient.

The responsible clinician must carefully consider the reasons for recalling a patient



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and the effect this may have on the patient's care and treatment. For an unrestricted patient, the responsible clinician would have to be satisfied it is necessary in the patient's interests or for the safety of others for the patient to be recalled.

The responsible clinician must arrange for a notice in writing revoking the leave to be served on the patient or on the person who is for the time being in charge of the patient. Hospitals should always know the address of patients who are on leave of absence and of anyone with responsibility for them whilst on leave. The reasons for recall should be fully explained to the patient, and if appropriate their family or carers and a record of the explanation included in the patient's notes.

It is essential carers, especially where the patient is residing with them while on leave, and professionals who support the patient while on leave should know who to contact if they feel consideration should be given to return of the patient before their leave is due to end.

### **Restricted patients**

Where the courts or the Secretary of State have decided that a restricted patient is to be detained in a particular unit of a hospital, that patient will require the Secretary of State's permission to have leave of absence, to go to any other part of that hospital, as well as outside the hospital.

The responsible clinician should notify the Ministry of Justice if they need to suspend the leave of any restricted patients. Consideration will then be given as to whether to revoke or rescind the leave or allow the leave to continue.

### **Absence without leave**

Section 18 of the Mental Health Act 1983 provides powers to return a patient to hospital who is absent without leave or have been recalled to hospital on a Community Treatment Order (CTO).

Patients are considered to be absent without leave in various circumstances, for

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example when they:

- have left the hospital in which they are detained without leave being agreed by their responsible clinician under section 17 of the Act.
- have failed to return to the hospital at the time required to do so under the conditions of their section 17 leave.
- are absent without permission from a place where they are required to reside as a condition of leave under section 17.
- have failed to return to the hospital if their leave under section 17 has been revoked.
- are patients on a Community Treatment Order (CTO) who have failed to attend hospital when recalled.
- are CTO patients who have absconded from hospital after being recalled there.
- are conditionally discharged restricted patients whom the Secretary of State for Justice has recalled to hospital.

All instances of absence without leave should be recorded in the patient's case notes, and reported through local incident reporting mechanisms. Incidents should be reviewed so that lessons about ways of identifying patients most at risk of going missing can be learnt.

Detained patients including those on a CTO who are absent without leave may be taken into custody and returned to the hospital by an approved mental health professional (AMHP), any member of the hospital staff, any police officer, or anyone authorised in writing by the hospital managers.

**SECTION 17, MHA 1983 - LEAVE OF ABSENCE**

<b>Patient Name:</b>		<b>Ward:</b>												
<b>RC:</b>		<b>Section:</b>												
<b>Start Date:</b>		<b>Review Date:</b>												
<b>Short Term Leave</b> <input type="checkbox"/>		<b>Long Term Leave</b> <input type="checkbox"/> Has consideration been given to a CTO? <b>Yes/No</b>												
<p><b>Please state duration in each box as applicable</b></p> <table border="1" style="width:100%; border-collapse: collapse; margin: 10px 0;"> <thead> <tr> <th style="width:20%;">Escorted ground</th> <th style="width:20%;">Unescorted ground</th> <th style="width:20%;">Overnight</th> <th style="width:20%;">Escorted community</th> <th style="width:20%;">Unescorted community</th> </tr> </thead> <tbody> <tr> <td style="height: 30px;"></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>					Escorted ground	Unescorted ground	Overnight	Escorted community	Unescorted community					
Escorted ground	Unescorted ground	Overnight	Escorted community	Unescorted community										
<p><b>Conditions:-</b></p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>														
<p><b>Address required to reside at if different from home address:</b></p> <p>_____</p> <p>_____</p> <p>_____</p>														
<p>I can confirm that this leave has been given in accordance with Chapter 27 of the Code of Practice.</p> <p>I can confirm that the patient has been fully involved in the decision to grant this leave along with any appropriate others.</p> <p>This leave is to be given at discretion of nursing staff/Risk Assessment and in compliance with care plan.</p> <p>A copy of this form has been given to the patient <input type="checkbox"/></p>														
<b>Signed:</b>		<b>Date:</b>												

<b>Signed:</b>	<b>Date:</b>
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GIG  
CYMRU  
NHS  
WALES

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

Patient's Name \_\_\_\_\_ Section \_\_\_\_\_

Is currently liable to be detained at: \_\_\_\_\_ Hospital/Unit

I, \_\_\_\_\_ (Print Name)

*being the Responsible Clinician of the above named patient hereby  
revoke the leave of absence given under the provisions of Section 17 for  
the following reasons:*


***This decision has been taken :***

(Indicate as  
Appropriate)

- in the Interests of the Patient's Health [ ]
- in the interests of the Patient's safety [ ]
- for the protection of other persons [ ]

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
Responsible Clinician

**A copy of this form must be: delivered to the patient  
sent to the MHA Office  
filed in the patient's health record**

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