Clinical

Mental Health Act 1983:
Section 17 Leave: Standard Operating Procedure

Document Control Summary

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Associated Policy or Standard Operating Procedures

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Standard Operating Procedures (SOPs)

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1. **Introduction**

1.1 In general, while patients are detained in a hospital they can leave lawfully, even for a short period, only if they are granted leave of absence by their Responsible Clinician (RC) under Section 17 of the Mental Health Act 1983 (MHA). Leave of absence may be given either for a temporary absence, after which the patient is expected to return to hospital, or as a period of trial leave to assess the patient’s suitability for discharge.

1.2 Chapters 22, 27, 28, 31 and 40 of the Mental Health Act 1983 Code of Practice, and chapters 11, 14 and 25 of the Reference Guide contain further guidance.

1.3 This procedure supersedes those detailed on the cover page to this document and must be read in conjunction with the statutory references at 11 below and the Trust Policies and Standing Operating Procedures on the Document Control Summary on the front pages of this document.

2. **Purpose**

2.1 The purpose of this document is to provide guidance to staff on granting and managing leave of absence in accordance with the MHA and statutory guidance and the processes to be followed.
3. **Scope**

3.1 The MHA and Mental Capacity Act 2005 (MCA) policies should be referred to for the wider Trust roles in respect of the legislation.

3.2 This standard operating procedure relates to all staff responsible for and/or working with detained patients, and to administrative staff who support those professionals. It also informs staff from other agencies involved in the care and treatment of these patients. All staff caring for patients should be familiar with the requirements of the MHA, MCA and related documents, and with procedures detailed in the Trust’s SOPs. They must pay due regard to the MHA and MCA Codes of Practice, apply the Codes’ Guiding Principles when carrying out their work, and ensure they keep up to date with MHA and MCA practice commensurate with their role.

3.3 Specifically this document relates to the following groups who undertake direct key roles in the implementation and delivery of this procedure:

3.3.1 **Team Leaders / Departmental Heads / Ward and Unit Managers**
are responsible for ensuring all staff are conversant with the MHA and MCA Codes of Practice, this procedure and related policies and SOPs. They must be aware of and ensure implementation of the processes and actions that are required to be taken in relation to patients in their service area. They must ensure that all employees in posts in the Trust clinical services are aware of their responsibilities in relation to the Acts and attend appropriate training commensurate with their role.

3.3.2 **Medical Staff / Approved Clinicians** hold a key role in the processes and actions that are required to be taken in relation to detention and treatment of patients. They must be aware of this procedure and ensure implementation of the processes and actions that are required to be taken in relation to patients for whom they are responsible.

3.3.3 **Responsible Clinicians**
are specifically responsible for:
- Consideration of and granting of leave to detained patients.
- Seeking authorization from the Ministry of Justice for any leave for restricted patients.

3.3.4 **Registered healthcare professionals**
are accountable for their own practice and must be aware of legal and professional responsibilities relating to their competence, observe this procedure, legislation and guidance as detailed above, and work within the Code of Practice of their professional body.

3.3.5 **Trust employees working in roles to provide healthcare in direct clinical contact with patients**
are responsible for carrying out procedures in line with the standards detailed in this
and other related Trust’s SOPs and maintaining their individual competence in the
practice of the Acts and attending training as required by their roles.

3.3.6 **The Mental Health Legislation Manager**
is responsible for the development, monitoring and review of this procedure and
practice standards, disseminating new guidance as it arises and giving advice to all
staff on MHA and MCA issues. This manager is also responsible for highlighting
practice issues arising within the Trust, provision of appropriate administration
support in relation to the Acts, education to support the policy standards, advising the
Mental Health Legislation Committee that monitors the use of the Acts and reports to
the Quality Governance Committee of any issues relating to the implementation of
the MHA and MCA Policies and SOPs.

4. **Power to grant leave**

4.1 Only the patient’s RC may grant leave of absence to a patient detained under the Act.
This decision cannot be delegated to anyone else. In the absence of the usual RC,
permission may be granted by the Approved Clinician (AC) who is at the time
designated to act as the RC.

4.2 RCs may authorise short-term local leave which may be managed by other staff, eg.
leave to visit local amenities for two hours every week where nursing staff may decide
when this should take place. The parameters of short-term leave must be set out
clearly, including the places that may be visited and any restrictions imposed.

5. **Consideration of leave**

5.1 When considering and planning leave of absence RCs should:

5.1.1 consider benefits and risks to the patient’s health and safety of granting or
refusing leave;

5.1.2 consider benefits of granting leave for facilitating the patient’s recovery;

5.1.3 balance benefits against any risks that the leave may pose in terms of the
protection of other people;

5.1.4 consider any conditions that should be attached to the leave;

5.1.5 be aware of any child protection or child welfare issues in granting leave;

5.1.6 take account of the patient’s wishes, and those of carers, friends and others
who may be involved in any planned leave;
5.1.7 consider what support the patient requires during leave and whether it can be provided;

5.1.8 ensure that any community services (Foundation Trust, Local Authority or other agencies) required to provide support during leave are involved in the planning, that they know the leave dates and times and any conditions imposed;

5.1.9 ensure the patient is aware of any contingency plans put in place for their support, including what they should do if they think they need to return to hospital early;

5.1.10 liaise with any relevant agencies;

5.1.11 in the case of Part 3 patients, consider whether there are any issues relating to victims which impact on whether leave should be granted and the conditions to which it should be subject.

5.2 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, RCs should also consider whether the patient should go onto a community treatment order (CTO) instead. This does not apply to restricted patients or to those detained under section 2 of the Act.

5.3 Where a period of long-term leave (for more than seven days) is considered appropriate, eg. where discharge is on a trial basis, where the patient is likely to need further inpatient treatment without their consent or compliance, or where there is a serious risk of arrangements in the community breaking down; the RC will need to be able to show that both options (CTO and longer-term leave) have been duly considered. Decisions should be explained to the patient and fully documented, including why the patient is not considered suitable for CTO, discharge or guardianship.

5.4 A RC may direct that a patient remains ‘in custody’ while on leave, either in the patient’s interests or for the protection of others. This escorted leave may be in the custody of any staff or any person authorised in writing.

5.5 While it may often be appropriate to authorise leave subject to the condition that a patient is accompanied by a friend or relative, RCs should specify that the patient is to be in the legal custody of the friend or relative only if it is appropriate for that person to be legally responsible for the patient, and if that person understands and accepts the consequent responsibility.

6. Leave to other hospitals

6.1 Section 17 leave should be used where a detained patient requires a period of treatment and care at one of the local general hospitals. The RC will remain in overall charge of the patient’s mental health care.
6.2 Where a patient is to be transferred to another mental health facility outside the Foundation Trust, this should take place under Section 19 transfer. Section 17 leave however, may be used to facilitate trial leave with a view to full transfer.

7. **Restricted patients**

7.1 Any proposal to grant leave to a restricted patient has to be approved by the Secretary of State for Justice, who should be given as much notice as possible and full details of the proposed leave.

7.2 Where the restricted patient is detained specifically to a particular unit of a hospital, ie to Hatherton Centre on the St George’s Hospital site, or Clee Building on the Redwoods Centre site, those patient will require the Secretary of State’s permission to take leave of absence to go to any other part of the hospital site.

7.3 Further guidance on the process for applying to the Ministry of Justice for leave of absence for restricted patients can be found at: https://www.justice.gov.uk/offenders/types-of-offender/mentally-disordered-offenders; or by clicking the 'External Links' tab within RiO and selecting MHAct Forms MOJ Link.

8. **Recording leave**

8.1 When a decision is made that a detained patient is to be granted leave, the RC must complete the L1 - Section 17 Leave within the patient record on RiO (Mental Health Act folder; MHAct Forms/Assessments). See Appendix 1 (separate associated documents) for full instructions. Note that it MUST be the RC who is logged into the RiO system to complete this as they are legally the only person who can grant leave. Reasons for the decision should also be recorded in the patient’s record.

8.2 In exceptional cases where the RC does not possess a Smart Card to access the RiO system, leave may be granted using the paper form provided at Appendix 2 (separate associated documents). This must be scanned into the patient record within the RiO system within the MHA – Section 17 leave option.

8.3 Where the patient’s RC is unavailable through sickness/annual/study leave, then the doctor nominated to act as RC for that period will complete the relevant form.

8.4 For all leave granted, ward staff are responsible for completing the accompanying Form L1a – Section 17 Checklist within the RiO record (Mental Health Act; MHAct Forms/Assessments). Appendix 1 (separate associated documents) provides further instructions. The patient’s risk assessment and care plan must be updated and copies of the L1 Leave form provided to the patient, and to any carers, professionals and other people in the community who may need to know.

8.5 In case the patient fails to return from leave, an up to date description of the patient should be available in their record together with a photograph of the patient (See
Photographing Patients SOP).

8.6 In an emergency, eg, patient requires emergency treatment at the general hospital, paperwork may be signed by the RC when available but this should not prevent the patient being appropriately moved.

8.7 At the end of the leave period, the success or otherwise of the leave, problems encountered, concerns raised or benefits achieved, should be recorded in the patient's record by ward staff. This may inform the planning of future care. Where the patient is on extended leave and does not return to the ward prior to a further period of leave being granted, the RC will record this. Patients should be encouraged to contribute by giving their own views on the leave.

8.8 Where leave is cancelled (see 9 below) or extended or superseded, Form L1 must have the relevant box completed to show it is no longer valid (see Appendix 1 - separate associated documents for details).

9. Recall from leave

9.1 A RC may revoke or cancel a patient's leave at any time that they consider it necessary in the interests of the patient's health or safety, or for the protection of other people.

9.2 The RC must complete the L2 form within RiO – Mental Health Act; MHAct Forms/Assessments - (Form L2 at Appendix 3 - (separate associated documents) if paper copy required) and arrange for this to be served on the patient or the person who for the time being is in charge of the patient. Reasons for the revocation should be recorded on form L2 and in the patient record.

9.3 Form L1 should be marked as no longer valid in the appropriate box.

9.4 Reference should be made to the SOP on section 18 Absence without Leave for actions to be taken where the patient does not return from leave as required and for entry to premises under section 135(2).

10. Renewal of authority to detain

10.1 It is possible to renew a patient's detention while they are on leave if the criteria in section 20 of the Act are met.

11. Process for Monitoring Compliance and Effectiveness

11.1 This policy will be reviewed every 3 years or earlier in light of new legislation, guidance or other significant change in circumstances.

Compliance with this policy will be monitored through the mechanisms detailed in the table below. Where compliance is deemed to be insufficient and the assurance provided is limited then remedial actions will be drawn together through an action plan. This
progress against the action plan will be monitored at the specified committee/group. The results of the audits will be escalated to the appropriate committee/group where appropriate.

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<th>Monitoring method</th>
<th>Individual or department responsible for the monitoring</th>
<th>Frequencies of the monitoring activity</th>
<th>Group/committee/forum which will receive the findings/monitoring report</th>
<th>Committee/individual responsible for ensuring that the actions are completed</th>
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12. References

Mental Health Act 1983 (amended 2007)