

Patients' Rights Procedure

Mental Health Act, 1983

Procedure information

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Not applicable

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Mental Health Legislation Committee

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Summary of document:

Section 132/132A of the Mental Health Act 1983 (the Act) places a responsibility upon the Hospital Managers to take practicable steps to ensure that all detained patients and those subject to Community Treatment Orders (CTO) are given information about their rights upon admission. The procedure aims to standardise practice of providing information, clarify, and provide guidance to staff responsible for delivering the information.

Scope:

The content of this procedure applies to all clinical staff working within the Health Board who are involved in the care and treatment of patients detained under the Act and those in the community involved in the care of patients subject to Community Treatment Orders.

To be read in conjunction with:

[625 - CTO Policy](#) (opens in a new tab)

[596 - Sec 5\(2\) Doctors Holding Power Policy](#) (opens in a new tab)

[626 - Sec 5\(4\) Policy](#) (opens in a new tab)

[626 - Sec 5\(4\) Nurses Holding Power Policy](#) (opens in a new tab)

[363 - Hospital Managers Scheme of Delegation Policy](#) (opens in a new tab)

[214 - IMHA Policy](#) (opens in a new tab)

[367 - In Patient Visiting Policy](#) (opens in a new tab)

[039 - ECT Procedure](#) (opens in a new tab)

Patient information:

Include links to [Patient Information Library](#)

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Keywords:

Mental Health Act, Patients' rights, section 132, sec 133, section 130D, Section 132A

Glossary of terms

RC	Responsible Clinician
MHRT	Mental Health Review Tribunal
NR	Nearest Relative
IMHA	Independent Mental Health Advocate
MHA	Mental Health Act
MHAA	Mental Health Act Administration
SOAD	Second Opinion Appointed Doctors
CTO	Community Treatment Order
MCA	Mental Capacity Act
ECT	Electro Convulsive Treatment

Key points:

Section 132/132A of the Mental Health Act places a responsibility upon the hospital managers to take practicable steps to ensure that all detained patients and those subject to Community Treatment Orders are given information about their rights regularly.

Information should be provided both verbally and in writing and in accessible formats, including how to access advocacy services, make a complaint, the role of Healthcare Inspectorate Wales, how to appeal, the length of their detention and how to complain.

Patients should be made aware of the Code of Practice for Wales and how to access it.

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Scope

The contents of this procedure applies to all clinical staff working within the Health Board who are involved in the care and treatment of patients detained under the Mental Health Act (Act) in hospital and those patients who are subject to Community Treatment Orders (CTO).

Aim

To provide clinical staff with specific guidance around providing patients an explanation of their rights under Sec 132 of the Act. Rights both verbally and in writing must be provided in a way in which patients are able to understand. This must take into account language, gender, religion, age, cultural background and any disability, which may inhibit the patient's understanding.

Objectives

This will be achieved by:

- Standardising practices and processes of providing information
- Clarifying and providing guidance to staff responsible for delivering the information
- Providing a framework to staff on the information that should be given to detained patients and their nearest relative
- Identifying who should deliver this information and the expected frequency of the delivery of information

Staff should have due regard to the Mental Health Act Code of Practice (for Wales) and to the Guiding Principles when they provide information to detained/community patients. This will ensure that consideration is given as to whether the objectives can be met in a less restrictive way.

Availability of Information

For all patients, relevant information should be given to them as soon as is practicable, following:

- Admission to Hospital;
- Commencement of a period of detention under the Act;
- Detention under another section of the Act;
- Renewal of any period of detention or extension of CTO

Welsh Government has produced a series of MHA patient information leaflets. These are designed to assist hospitals to meet their legal obligations under the Act to provide written information to patients subject to detention and other compulsory measures; they can be accessed via the MHAA page

https://nhs.wales365.sharepoint.com/sites/HDD_Mental-health-and-learning-disabilities

Information to Informal inpatients

Although section 132 is specific to detained patients, information should also be provided on a frequent basis to informal patients. An informal patient is a person having inpatient treatment in a psychiatric hospital voluntarily. Informal patients have the capacity to understand that they are being admitted to hospital and agree to treatment for their mental health.

Information on advocacy services should be made available on ward notice boards and patients should also be made aware that if they wish to leave hospital but it is felt that they need to remain for a period

of assessment and/or treatment, they could be assessed for possible detention under the Act. Where discussions take place, staff should ensure this is documented in their electronic record.

Communication with patients

Section 132 places a duty on the Health Board to take all reasonable steps to facilitate the patient's understanding of their legal rights. If the patient is not fluent in English or Welsh or has a learning or sensory impairment, arrangements should be made for the explanation of their rights to be delivered in a manner which is appropriate to their needs.

Everything possible should be done to overcome barriers to effective communication. Being able to communicate in a patients' preferred language is essential to ensuring that those providing services can undertake an accurate assessment and deliver ongoing care and treatment. The Health Board should ensure people with specialist expertise e.g in sign language or Makaton, are available as required. Staff should be aware of who to contact to ensure individuals' communication needs can be met.

Where interpreters are required, every effort should be made to identify who is suitable to the needs and circumstances of the patient. Arrangements are in place for staff to have access to these outside normal working hours.

Interpreters should:

- Fully understand the terminology and conduct of a mental health interview,
- Have knowledge of the patient's cultural and religious values,
- Be able to interpret the law; and
- Be of a gender which accords with the patient's wishes.

NB: It is not desirable that relatives or friends be asked to act as interpreters and this should only be done in exceptional circumstances and at the express wish of the patient.

MHA patient information leaflets are available from the MHAA team in languages other than English and Welsh, and arrangements can be made for them to be provided in Braille and audio format.

Explaining and understanding patient rights

The explaining of a patient's rights is an ongoing process throughout their stay in hospital or period of detention on a CTO and should be done both verbally and in writing.

It should be done in a suitable manner, at a suitable time, taking into account the patient's mental state and capacity to retain information. Staff should not rush through the process but give it their full attention, spending as much time as necessary with the patient in a private area free from interruption allowing time for questions to be asked. Carers and advocates should be involved where the patient wishes or if the patient lacks capacity to understand.

Consideration also needs to be given to the fact that there are some patients who have difficulties relating to their capacity to understand or the ability to retain the information given to them for any length of time. Whilst these patients are detained under the Act, the MHA Code of Practice advocates good practice in relation to detained patients who lack capacity or have fluctuating capacity. In these situations, staff need to comply with the principles of the Mental Capacity Act (2005) and take all reasonable steps to provide information in a suitable format, i.e. easy word version large print version or pictorially in order to facilitate

capacity to understand if at all possible. Staff need to be aware that they may have to explain their rights to such individuals on more than one occasion in the first instance and on a more frequent and ongoing basis. For alternative versions, please contact the MHA administration team.

Once an explanation of their legal rights has been given to a patient, staff should take steps to ascertain their level of understanding. If it is considered that a patient lacks the capacity to understand even after all attempts to assist them have been undertaken, their lack of capacity should be documented on their electronic record. However, staff need to be aware that in the majority of cases any lack of capacity will not be permanent and in view of this staff should continue in their attempts to facilitate the patients understanding.

Information to Detained Patients

Any detained patient should be informed as soon as is practicable both verbally and in writing of the following:

- The provisions of the Act under which they are being detained or subject to CTO and the effect of those provisions;
- The rights (if any) of their Nearest Relative (NR) to discharge them (and what can happen if their Responsible Clinician (RC) does not agree with that decision);
- For community patients, the effect of the CTO, including the conditions which they are required to keep and the circumstances in which their RC may recall them to hospital; and
- That help is available to them from an IMHA, and how to obtain that help;
- The reasons for their detention or CTO;
- The maximum length of the current period of detention or CTO;
- That their detention or CTO may be extended at any time if it is no longer required or the criteria for it are no longer met;
- That they will not automatically be discharged when the current period of detention or CTO ends;
- That their detention or CTO will not automatically be renewed or extended when the current period of detention or CTO ends;
- The reasons for a CTO being revoked;
- Their rights of appeal to both the Hospital Managers and the Mental Health Review Tribunal for Wales (MHRTfW). Appropriate details of address/telephone numbers should also be given along with guidance on how to make an application and a list of legal aid solicitors;
- That if they are detained on a treatment order (including a CTO) should it be extended for a further 6-month period and they do not appeal to the MHRTfW in the first period of detention, then the Health Board will automatically refer their case;
- That they have the right of legal representation at the MHRTfW and are given a list of legal aid solicitors who are specifically trained in mental health law;
- The nature and likely effects of any treatment which is planned;
- The role and powers of the Healthcare Inspectorate Wales (HIW) and how to make a complaint to them. Their contact information should also be supplied;
- The right to receive or send correspondence and whether there are any constraints on this;
- The procedure for making a formal complaint to the Health Board;
- The patient's financial entitlements whilst in hospital and how to secure them;
- Details of the visiting policy for the ward and in particular any restrictions around the visiting of children [367 - In Patient Visiting Policy](#) (opens in a new tab)
- After care entitlement under section 117 (if applicable) and the implications of this.

Recording the reading of rights to a patient

Those with responsibility for patient care should ensure patients are reminded regularly of their rights and the effects of the Act. It may be necessary to give the same information on different occasions or in different formats and to check the patient has fully understood it. Information given to a patient who lacks capacity may need to be repeated when their capacity improves.

- An entry is to be made in the electronic records to the effect that an oral and written explanation has been given with an indication of the patient's level of comprehension;
- A patient's rights form (see appendix 1) is to be completed and forwarded to the MHAA team indicating if the patient had the capacity to understand their legal rights or not. The outcome of this is to be recorded accordingly: The patient has understood the information read and has been given a copy of the leaflet.
- The patient is currently refusing to have their rights read. Further attempts will be made.
- The patient currently lacks capacity to understand their rights. Further attempts will be made.
- The patient has no capacity to understand information
- This will support in evidencing every attempt made to inform a patient of their legal rights.

The reading of rights should be undertaken to reflect the individual needs of the patient but it is recommended that, as a minimum, staff should adhere to the guidance as detailed below:

Section	Initial Frequency	Ongoing Frequency	By Whom
Section 2	As soon as is practicable after the patients detention begins, then twice weekly for the first two weeks of detention	Weekly for the remaining period of detention	Named nurse or other nominated clinical staff
Section 3	At the time of the section being applied then once a week for the first month of detention	Monthly for the remaining period of detention	Named nurse, Care Coordinator or other nominated clinical Staff
Section 37	At the time of the section being applied then once a week for the first month of detention	Monthly for the remaining period of detention	Named nurse, Care Coordinator or other nominated clinical staff
Community Treatment Order	At the time of the section being applied then once a week for the first month of detention.	Quarterly for the remaining period of the CTO	Care Coordinator or other nominated clinical staff

The patient must also have their rights explained to them if their period of detention is renewed. This should be recorded on a patient's rights form, which should then be forwarded to the MHAA team.

These minimum requirements do not prevent a member of the clinical team from using their professional judgement to decide how frequently individual patient's legal rights have to be explained to them. For patients who have a good understanding of their rights, it may not be necessary to renew their rights at

such frequent intervals. For any subsequent explanation of legal rights under section 132, staff should document this on a patient's rights form.

Copies of detention papers

Copies of the detention papers or CTO documentation will be made available to the patient as soon as practicable. If, based on the advice of the appropriate professional who will usually be the author of the documents that the information disclosed would be likely to seriously harm the physical or mental health or condition of the patient or any other person. It may be necessary to remove any personal information about third parties from the documentation prior to making this available to the patient.

Explanation of rights to a child/young person

For a child:

A child aged under 16 and anyone under this age who is admitted should have their legal rights under section 132 explained to them in the presence of their parent(s) (or others with parental responsibility) who will also be given a copy of the appropriate rights form.

For a young person:

A young person is a person aged 16–17 and the usual procedure with regard to reading a person their legal rights under this procedure should apply.

However, consideration should be given to completing this in the presence of their parent(s), if the patient agrees.

Confidentiality and sharing information in relation to a child/young person

As with adults, children and young people have a right to confidentiality. Where children are competent, and young people have the capacity to make decisions about the use and disclosure of information they have provided in confidence, their views should be respected. (Chapter 19 MHA COP).

However, as with adults, in certain circumstances confidential information may be disclosed without the child or young person's consent, e.g. if there is reasonable cause to believe that the child or young person is suffering, or is at risk of suffering, significant harm.

The same principles of confidentiality apply if a child who is competent or a young person who has capacity to make a decision regarding the information does not wish their parent (or others with parental responsibility) to be involved in decision making about their care and treatment. Their decision should be respected unless the disclosure can be justified, e.g. if there is cause to suspect that the child or young person is suffering or is likely to suffer serious harm. Practitioners should encourage the child or young person to involve their parents (unless it is considered to do so would not be in the best interests of the child or young person). They should also be proactive in discussing with the child or young person the consequences of their parents not being involved.

Where a child or young person does not wish their parents to be involved, every effort should be made to understand the child or young person's reasons with a view to establishing whether the child or young person's concerns can be addressed.

Information on access to the Independent Mental Health Advocacy Service

Access to independent mental health advocacy services, is available in all areas of the Health Board and all patients, regardless of their legal status, should be given information about the IMHA service. Wards will display on their patient information boards the days and times as to when the IMHAs will be available.

Information following a CTO patient being recalled to hospital

When a patient is being recalled to hospital whilst subject to a CTO, the RC should give the patient, or arrange for the patient to be given, verbal reasons for the decision to recall before the recall occurs. In addition to the NR being informed (see Chapter 5 of the MHA Code of Practice for Wales), the patient can also nominate another person whom they wish to be notified of their detention.

Information to conditionally discharged patients following recall to hospital

Where a conditionally discharged patient is being recalled to hospital, a brief verbal explanation of the Secretary of State's reasons for recall should be provided to the patient at the time of recall unless there are exceptional reasons why this is not possible eg; the patient is violent or too distressed. The Secretary of State's warrant will detail the reasons. The patient should also receive a full explanation of the reasons for their recall within 72 hours after admission, and both written and oral explanations should be provided.

Conditionally discharged patients recalled to hospital, should be told that their case will be referred automatically to the MHRTfW.

Information on consent to treatment

All patients, regardless of their legal status, should be informed of:

- The nature, purpose and likely effects of any treatment which is planned;
- The circumstances (if any) in which they can be treated without their consent and the circumstances in which they have the right to refuse treatment;
- The role of the Second Opinion Appointed Doctor (SOAD) and the circumstances in which they may be involved; and
- (Where relevant) the rules on electro-convulsive therapy (ECT) and medication administered as part of ECT.

Information about withholding of correspondence

Patients should routinely have access to any correspondence they receive and send and their privacy should be respected. Detained patients must be informed that their letters for posting may be withheld if the person to whom it is addressed asks the hospital managers to do so.

Information on rights to vote

The Representation of the People Act 2000 makes it clear that in most circumstances, detained patients can still exercise their right to vote in general or other elections. To allow patients to exercise this right and the Health Board should provide information to them about their voting rights.

Information about the role of Healthcare Inspectorate Wales (HIW)

All patients, regardless of their legal status, should be given information about:

- The role of HIW;
- When HIW is next due to visit the service;
- The rights to meet with HIW during a visit; and
- The rights to make a complaint to HIW.

Information to the nearest relative of detained patients

On admission or as soon as practicable, relevant patients should be made aware that their NR will be supplied with a copy of the written information of their rights, unless the patient objects.

Staff should also ascertain if the patient has an advance statement in place giving details of any other person they wish to be notified of their detention under the Act. If there is, the MHAA team is to be notified so that arrangements can be made for the necessary information to be sent.

A copy of the letter sent by the MHAA team to the patient's NR will be held in the patient's legal file. If the patient does not wish their NR to be informed of their detention this is to be recorded on the appropriate section 132 patient's rights) form (Appendix B at the earliest convenience).

Information on seeking discharge from detention or CTO

Patients should be informed of their rights to be considered for discharge and:

- That their RC and the Hospital Managers can discharge them (and that for restricted patients that it is subject to the agreement of the Secretary of State for Justice);
- That they have a right to ask the Hospital Managers to discharge them;
- That the hospital managers should consider discharging them when their detention is renewed or their CTO is extended;
- Of their rights to apply to the MHRTfW and of the rights, if any, of their NR to apply to the MHRTfW on their behalf, and;
- How to apply to, and the role of, the MHRTfW.

Hospital Managers should ensure patients are supported when they request a hospital managers' hearing or to make an application to the MHRTfW, and that the applications are transmitted to the MHRTfW without delay. This includes patients without the capacity to make such a request.

Patients should also be informed:

- how to contact a suitably qualified legal representative (and patients should be given assistance to do so if required);
- that free legal aid may be available, and how this may be accessed, and;
- how to contact any other organisation which may be able to help them to make an application to the MHRTfW

Patients on a CTO who may not have regular contact with people who could help them make an application to the MHRTfW should be well informed and supported in this process.

Discharge from detention

When the patient is discharged from detention or if the authority for detention expires, the section's end date/time and the patient's right to leave hospital should be made known to them.

Section 133 provides a duty for the 'hospital managers' to inform the NR of discharge from detention including CTO patients and this is to be given at least seven days before the discharge if practicable. To facilitate this it will be necessary for the patient's RC to inform the MHAA team of the planned discharge.

The requirement to inform the NR does not apply if the patient requests that information is not sent. The NR may also request that information is not sent to them regarding their relative.

Responsibilities

Chief Executive

Responsible for ensuring that responsibility for management of the legal and appropriate admission and care of patients is delegated to an appropriate executive lead and assuring this procedure is implemented within the Health Board.

Mental Health & Learning Disability Lead Executive

Executive Director who has overall responsibility for the effective delivery of Act and related legislation and policies, ensuring that there are appropriate quality assurance mechanisms in place in relation to the guidance in this procedure.

Service Managers

Have responsibility ensuring that teams implement MHA legislation and guidance observing the MHA Code of Practice. They are also responsible for ensuring systems are in place and monitoring of implementation within their area of responsibility, ensuring that all regulatory authority inspector reports are action planned and acted upon.

Hospital Managers under the Act

Whilst the MHA uses the term "Hospital Managers", in NHS Foundation Trusts and Health Boards they are defined as the "Hospital Managers". They have certain statutory duties they should fulfil under the Act and some of these duties including the explaining of legal rights under section 132 can be delegated by the hospital managers but in delegating this responsibility they should be satisfied that:

- The correct information is given to the patient/NR (with the patient's consent);
- The information is given in a suitable manner and at a suitable time, and, in accordance with the law;
- The member of staff who is to give the information has received sufficient guidance and is aware of the key issues regarding the information to be given;
- A record is kept of the information given, including how, when and by whom it was given;
- A regular check is made that the information has been properly given to each detained patient and understood by them;
- There are processes in place to monitor the explanation to patients of their legal rights under section 132.

Independent Mental Health Advocates (IMHA)

The role of the IMHA is to help qualifying patients (those detained under the Act, conditionally discharged, subject to guardianship or a CTO understand the legal provision to which they are subject under the Act

and the rights and safeguards to which they are entitled. This could include assistance in obtaining information about any of the following:

The provisions of the legislation under which they qualifies for an IMHA;

- Any conditions or restrictions they are subject to, for example; any arrangements made for section 17 leave;
- The medical treatment being given, proposed or being discussed and the legal authority under which this would be given;
- The requirements that would apply in connection with the giving of the treatment;
- Their rights under the Act and how those rights can be exercised.

Clinical Staff and Care Co-ordinators

All clinical staff should be aware of and comply with the contents of this procedure by providing inpatients with information about:

- Any conditions or restrictions they are subject to, for example, any arrangements made for section 17 leave;
- The medical treatment being given, proposed or being discussed and the legal authority under which this would be given;
- The requirements that would apply in connection with the giving of the treatment;
- Their rights under the Act and how those rights can be exercised;
- The rights of qualifying patients to the services of an IMHA and how to obtain one.

Clinical staff should also:

- Complete all the necessary documentation required;

Non-registered clinical staff

Any non- registered staff working within clinical services should:

- Be aware of this procedure and its contents;
- Direct any patient who has a query about their legal rights to a member of registered staff unless they are competent to address any issues raised.

Mental Health Act administration team

The Mental Health Act administration team are responsible for:

- Providing clinical staff with copies of the appropriate patient information leaflets;
- Monitoring the initial and on-going explanation of their legal rights to detained patients, via the receipt of the patients rights forms;
- Co-ordinating requests by patients for an appeal to the Hospital Managers and/or the MHRTfW;
- Ensuring referrals are made to the IMHA service where necessary;
- Patient's rights forms and copies of correspondence to NR are filed within the patient's legal correspondence file and a copy in the patient's case notes.

Mental Health Legislation Committee

The Mental Health Legislation Committee is responsible for:

- Overseeing the implementation of the Act within the organisation;
- The review and issuing of all policies and procedures which relate to the Act;
- Monitoring the Health Boards compliance with the legal requirements of the Act;

References

Jones R Mental Health Act Manual, 26th Edition, Sweet and Maxwell

Code of Practice for Wales (revised 2016) [Mental Health Act 1983: code of practice | GOV.WALES](#)

Mental Health (Wales) Measure 2010 [Mental Health \(Wales\) Measure 2010 \(legislation.gov.uk\)](#)

Mental Capacity Act Code of Practice [MCA Code of Practice](#)

Human Rights Act [Human Rights Act](#)

Relevant NICE guidance:

Service user experience in adult Mental Health:

QS15: <https://www.nice.org.uk/guidance/qs15>

CG136: <https://www.nice.org.uk/guidance/cg136>

**Mental Health Act, 1983 - Section 132/132A
Information to Detained Patients**



GIG
CYMRU
NHS
WALES

Bwrdd Iechyd Prifysgol
Hywel Dda
University Health Board

Patients Name:	
Current Section:	Ward/Team:
<p>Do you want us to correspond with you in Welsh or English? Please put a cross in the appropriate box to confirm your language of choice.</p> <p>Welsh <input type="checkbox"/> English <input type="checkbox"/> other? Please state <input style="width: 150px;" type="text"/></p>	
<p>I can confirm that I have fully explained the contents of the Patients Rights Leaflet to the patient, including the reasons for their detention and the patient's right to an Independent Mental Health Advocate (IMHA).</p> <p>I have informed the patient how long the detention will last for, if and when they have a right of appeal against their detention to the Mental Health Review Tribunal (Wales) and the Hospital Managers and of their right to make a complaint and how to do so. The role of Healthcare Inspectorate Wales and information regarding treatment has also been explained fully.</p>	
<p>Please tick one of the following boxes:-</p> <p>The patient has understood the information read and I have given them a copy of the information leaflet to retain. <input style="float: right;" type="checkbox"/></p> <p>The patient is currently refusing to have their rights read and I will make further attempts to read them their rights <input style="float: right;" type="checkbox"/></p> <p>I believe the patient has no capacity currently and I will make further attempts to read them their rights <input style="float: right;" type="checkbox"/></p> <p>I believe the patient likely lacks the capacity to properly understand the information <input style="float: right;" type="checkbox"/></p> <p>Other reasons (please state) <input style="float: right;" type="checkbox"/></p>	
<p>Please tick if patient would like a copy of their detention papers (Sec 2 & 3 only) <input style="float: right;" type="checkbox"/></p>	
Name of staff member reading rights - Print Name:	
<p>A copy of the Mental Health Act Leaflet and information relating to the section will be sent to the patients nearest relative unless the patient objects to this</p>	<p style="text-align: center;">I Object <input type="checkbox"/></p> <p style="text-align: center;">* Please tick if patient objects *</p>
Patients Signature:	Date:
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