Section 17 - Leave of Absence Policy

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Brief Summary of Document:	Section 17 is formal permission for a patient who is detained in hospital to be absent from the hospital for a period of time; patients remain under the power of the Mental Health Act when they are on leave and can be recalled to hospital if necessary in the interests of their health or safety or for the protection of others.
Scope:	The contents of this policy apply to all clinical staff working within the health board who are involved in the care and treatment of patients detained under the Act who qualify for section 17 leave.
To be read in conjunction with:	625 - Community Treatment Order Policy 374 - Mental Capacity Act Policy 688 - Section 117 Aftercare Policy 597 - Section 5(2) Doctors Holding Power Policy 626 - Section 5(4) Nurses Holding Power Policy 514 – Management and Investigation of Incidents Policy 218 – Missing Persons under the care of the Mental Health and Learning Disabilities Directorate Procedure

Owning Committee	Mental Health Legislation Committee – Mrs Judith Hardisty, Vice Chair

Executive Director:	Mr Andrew Carruthers	Job Title	Director of Operations

Reviews and updates		
Version no:	Summary of Amendments:	Date Approved:
1	New Policy	13/09/2018
2	Review of Policy (three year)	6/10/2021

Glossary of terms

Term	Definition
Approved Clinician	A mental health professional approved by the Welsh Ministers (or the Secretary of State) to act as an approved clinician for the purposes of the Act. In practice, local health boards take these decisions on behalf of the Welsh Ministers. Some decisions under the Act can only be undertaken by people who are approved clinicians. A responsible clinician must be an approved clinician.
Community Treatment Order (CTO)	The legal authority for the discharge of a patient from detention in hospital, subject to the possibility of recall to hospital for further medical treatment if necessary. Community patients are expected to comply with the conditions specified in the community treatment order
Responsible Clinician	The approved clinician with overall responsibility for the patient's case.
Section 19	Transfer of patients to another hospital which is not the detaining hospital.

Keywords	Section 17, Leave, Mental Health Act

CONTENTS

1. Introduction

A patient who is currently liable to be detained in hospital under the Mental Health Act, 1983 (the Act), can only leave hospital lawfully if they are granted leave of absence by the responsible clinician under section 17 of the Act. This includes those detained under section 2, 3, 37 and 47 of the Act. Short and long term leave from the hospital or its grounds including leave to reside in other hospitals needs to be covered by a section 17 authorisation.

Section 17 leave is not available to patients detained under section 5(4), 5(2), 4, 35, 36, 38, 135 or 136 of the Act.

Only the patient's responsible clinician (RC) can grant leave of absence to a patient detained under the Act. RCs cannot delegate the decision to grant leave of absence to anyone else. In the absence of the usual RC, 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 RC and the RC must complete a Nomination of RC form (Appendix 1) if cover is to be provided.

For patients who are subject to restriction orders (i.e. subject to section 41 or 49). The RC must seek approval from the Secretary of State for Justice. Life threatening emergencies requiring immediate removal are exempt by a common law duty of care, the circumstances of which must always be documented.

Informal patients are not subject to leave requirements under section 17. A patient who is not detained has the right to leave, other than those patients subject to authorisation under the Deprivation of Liberty Safeguards (DoLs). However, patients may be asked by staff to inform them when they want to leave the ward. In the case of children, safeguarding needs and the opinion of the person with parental responsibility must be taken into account.

2. Policy Statement

The purpose of this policy is to provide guidance to staff on granting and managing leave of absence in accordance with the Act and statutory guidance and the processes to be followed.

3. Scope

The contents of this policy apply to all clinical staff working within the health board who are involved in the care and treatment of patients detained under the Act who qualify for Section 17 leave.

4. Aim

To aim of the policy is to ensure effective compliance with providing leave to detained patients in accordance with section 17 of the Act and The Code of Practice for Wales 2016.

5. Objectives

The aim of this policy will be achieved by the following objectives:

- To ensure that staff are aware of their responsibilities for granting leave under the Act.
- To ensure that staff are aware of their responsibilities for documenting leave of absence and managing the risks that may be associated with this.
- To ensure that staff are aware of the procedures to follow when a patient is Absent without Leave (AWOL).

6. Procedure

Prior to granting any leave from an inpatient ward the RC must record on a Section 17 leave form:-

- the leave address if overnight
- conditions and purpose of the leave
- if the patient is being accompanied
- duration of the leave
- when it is to be reviewed

Nursing staff must ensure that the leave form is sent to the MHA administration team and that a copy of the form is retained on the ward.

6.1 Granting Leave

Only an RC 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 must only be granted after careful consideration by the 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 the 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, must they wish to return to hospital early.

6.2 Considerations about the patient's current risk must be identified and where necessary ensure that safeguards are in place and liaison with any relevant agencies who may be involved has occurred. The RC must balance these benefits against any risks the leave may pose for the protection of other people, either generally or particular people. This information must be recorded on Care Partner. In the case of a mentally disordered offender patient, consider whether there are any issues relating to victims that impact on whether leave must be granted and the conditions to which it must be subject (refer to Chapter 27 MHA Code of Practice for Wales).Process for recording leave.

The granting of leave and the conditions attached to it, must be clearly recorded on a Section 17 leave form(Appendix 3) which must be completed by the RC to authorise all leave and specify any conditions including a time-limit or review date. The completed form must be sent to the MHA administration team to be placed in the patient's legal file and a copy must be kept on the ward.

Copies of the forms must also be given to the patient, any appropriate relatives or friends and any professionals in the community who may need to be informed. All expired section 17 leave authorisation forms must be clearly marked as no longer valid by striking them through with a marker pen.

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).

For those restricted patients who require the consent of the Secretary of State a copy of the letter from the Ministry of Justice approving leave must be attached to the completed form and ward staff must ensure that they are valid and conditions can be satisfied.

On commencement of leave it is advisable to document the time and date the patient left the unit and the time and date that they are due to return must be monitored. 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.

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 on Care Partner. This must also be explained to any other person/s who may have been involved with leave at this time.

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

In urgent cases the RC can grant leave over the telephone. If the urgency is so great that there is no time to contact the RC and get verbal authorisation the Mental Capacity Act 2005 provides authority for mentally incapacitated patients to be moved to a general hospital; A mentally capable person can be moved with their consent – in both cases, the RC must authorise leave as soon as is practicable both verbally and in writing.

The outcome of leave, whether or not it went well, benefits achieved, and particular problems encountered or concerns raised must also be recorded on Care Partner to inform future decision-making. Patients must be encouraged to contribute by giving their own views on their leave.

6.3 Transfers between Mental Health wards

On occasion a patient may have to be transferred to a bed in other areas within Hywel Dda. Prior to this happening consideration needs to be given to any pending MHRT hearings, hospital managers and Second Opinion Appointed Doctor visits. RCs must be consulted either directly or through usually ward procedures. Following transfer the patient must have their section 17 leave reviewed by the ward RC and a new section 17 leave form completed.

6.4 Short-term leave

Section 17 periods of leave, authorised by the RC, may be recorded “at the discretion of” which would allow another professional to use their own knowledge and judgement of a situation to determine whether the leave authorised is suitable for the patient at a particular time. As an example, the patient may be given leave for a shopping trip of two hours every week, with the decision on which particular two hours left to the discretion of the responsible nursing staff. The leave must specify circumstances in which leave must not proceed.

The RC must clearly set out the parameters within which the discretion may be authorised. (This is to ensure that the staff managing the leave do not interpret the leave differently).

6.5 Longer periods of leave

If longer periods of leave are being considered the patient must be fully involved in the decision. Again it would be necessary to consult with carers, relatives and friends if the patient consents (especially where the patient is staying with them). The RC must be satisfied that the patient is able to manage outside the hospital and as with short term leave must specify circumstances in

which leave must not proceed., for example if the patient's health has deteriorated since the leave was authorised.

When granting longer term periods of leave the Responsible Clinician must consider whether there is a significant componentt of the patient's care being delivered in hospital (DB v Betsi Cadwaladr UHB (2021) UKUT 53).

Where a patient goes on long term leave, consideration may be given to allocating responsibility to a community RC. In all instances, the transferring RC must discuss and confirm the allocation with the receiving RC and inform the MHA administration team in writing using a Nomination of RC form that the allocation has taken place (Appendix 1).

6.6 Interface with Community Treatment Orders

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 RC must also consider whether the patient could be placed on to a CTO 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 RC cannot use longer-term leave if that is the more suitable option, but the RC will need to be able to show both options have been considered. Decisions must be explained to the patient and fully documented on Care Partner.

6.7 Care and treatment while on leave

The RC's obligation for the patient's care remains the same while the patient are on leave, although it is exercised differently.

A patient granted leave under section 17 remains 'liable to be detained' and the rules of consent to treatment under Part 4 of the Act continue to apply. If it becomes necessary to administer treatment in the absence of the patient's consent, consideration must be given to recalling the patient to hospital.

The duty to provide after-care under Section 117 of the Act for certain patients who have been discharged from detention also applies to those patients who are on section 17 leave.

6.8 Escorted leave

The RC 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. A patient 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 a patient to participate in escorted trips or to have compassionate home leave. If it is felt that the absconsion risk of the patient is high then the RC must review the leave and a minimum of two escorts must be provided.

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

6.9 Accompanied leave

While it may often be appropriate to authorise leave subject to the condition a patient is accompanied by a friend or relative, the RC must 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.

6.10 Leave to another hospital

The RC may also require a patient, as a condition of leave, to reside at another hospital in Wales or England, and they may then be kept in the custody of staff of that hospital. However, before authorising leave on this basis, the RC must consider whether it would be more appropriate to transfer the patient under Section 19 of the Act to the other hospital instead.

Where a patient is granted leave of absence to another hospital, the RC at the first hospital must remain in overall charge of the patient's case.

A patient who requires medical treatment in a general hospital must do so under the provision of Section 17 leave. A leave form must be completed at the earliest opportunity to facilitate this. Consideration must be given to the criteria for continued detention for a deteriorating patient on a medical ward.

6.11 Renewal of authority to detain

A period of leave can be extended by the RC (with the consent of the Secretary of State if appropriate) in the patient's absence. A period of leave cannot last longer than the authority to detain which was current when the leave was authorised or extended and the RC must examine the patient whilst they are still on leave. The RC must further consider 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 on a CTO.

6.12 Recall from leave to hospital

Where section 17 leave is approved it must be recognised that a patient's mental state may deteriorate during that time and that decisions in respect of leave must take full account of current risk assessments.

The RC may revoke the leave and recall the patient to hospital at anytime during an agreed period of leave, if reports are received from relatives/carers or other professionals such as inpatient or community staff, which indicate to the RC that recall is necessary in the interests of the patient's health or safety and/or for the protection of others. The RC must be satisfied that these criteria are met and must consider what effect being recalled may have on the patient. A refusal to take medication would not on its own be a reason for revocation, although it would almost always be a reason to consider revocation. The effect of revoking the leave is that the patient again becomes an inpatient.

Once the decision has been made to revoke leave of absence consideration must then be given to when and how the recall will be facilitated and by whom, and the likely reaction of this decision by the patient and carers. The risk implications inherent by the decision to revoke leave must be fully explored, anticipated and documented on Care Partner and any risks communicated by the person co-ordinating the recall, to all relevant parties.

The RC 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 (Appendix 2). The ward must always know the address of the patient who is on leave of absence and of anyone with responsibility for them whilst on leave and this must be recorded on the section 17 leave form.

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

The police must always be informed immediately of the absence without leave of a patient who is considered to be vulnerable, dangerous or who is subject to restrictions. When transporting a patient back to hospital, the police must only be asked to assist when returning a patient if it's deemed necessary.

6.12.1 Factors requiring consideration, consultation and decisions are:

A decision needs to be made as to who is best placed to co-ordinate and execute the entire recall process:-

1. deliver the recall notice The reasons for recall must be fully explained in writing by the RC to the patient, and if appropriate their family or carers and a record of the explanation included on Care Partner.

2. inform the patient, nearest relative and other involved relatives/carers

3. liaison with police/ambulance etc.

Consideration needs to be given to the re-admission to hospital and whether a PICU bed is necessary.

The RC must 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

7. Absence without leave

Where a detained patient fails to return from leave the MHA department must be notified. If the patient is deemed missing the *Missing Persons under the care of the Mental Health and Learning Disabilities Directorate Procedure* must be followed.

Section 18 of the Act 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).

A patient is considered to be absent without leave in various circumstances, for example when they:

- have left the hospital in which they are detained without leave being agreed by their RC under section 17.
- 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 a patient on a Community Treatment Order (CTO) who has failed to attend hospital when recalled.

- are a CTO patient who has absconded from hospital after being recalled there.
- are a conditionally discharged restricted patient whom the Secretary of State for Justice has recalled to hospital.

All instances of absence without leave must be recorded on Care Partner, and reported through DATIX. Incidents must be reviewed so that lessons about ways of identifying patients most at risk of going missing can be learnt.

A detained patient, 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 in line with section 18.

8. Monitoring

The Mental Health Legislation Committee (MHLC) will monitor procedural document compliance and effectiveness where they relate to Section 17 Leave.

The MHLC will review assurance of the effectiveness of the policy by monitoring any issues arising from:

- Internal audit
- Clinical audit

Any incidents of serious incidents relating to the use of Section 17 Leave will be monitored by the Quality Safety and Experience Assurance Committee (QSEAC).

9. Responsibilities

9.1 The Chief Executive

Is 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 policy is implemented within the Health Board.

9.2 Mental Health & Learning Disabilities Lead Executive

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

9.3 Ward Managers

Are responsible for ensuring all staff are conversant with the Act, its Code of Practice and this policy. They must be aware of and ensure implementation of the procedures and actions that are required to be taken in relation to patients in their service area.

9.4 Medical Staff / Approved Clinicians

Hold a key role in the procedures and actions that are required to be taken in relation to detention and treatment of patients. They must be aware of this policy and ensure implementation of the procedures and actions that are required to be taken in relation to patients for whom they are responsible.

9.5 Responsible Clinicians

Are specifically responsible for:

• Consideration of and granting of leave to detained patients.

• Seeking authorisation from the Ministry of Justice for any leave for restricted patients.

9.6 Registered healthcare professionals

Are accountable for their own practice and must be aware of legal and professional responsibilities relating to their competence, observe this policy, legislation and guidance as detailed above, and work within the Code of Practice of their professional body.

9.7 Health Board 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 maintaining their individual competence in the practice of the Act and attending training as required by their roles.

9.8 The Mental Health Act Administration Lead

Is responsible for the monitoring and review of this policy, disseminating new guidance as it arises and giving advice to all staff on MHA issues. This person is also responsible for highlighting practice issues arising within the Health Board, provision of appropriate administration support in relation to the Act, education to support the policy standards, advising the Mental Health Legislation Committee that monitors the use of the Act

10. References

Mental Health Act 1983 (amended 2007)
Mental Health Act 1983: Code of Practice for Wales 2016
Mental Capacity Act 2005: Code of Practice (2007)
Mental Capacity Act: Deprivation of Liberty Safeguards Code of Practice (2008)
Human Rights Act 1998
Data Protection Act 2018

11. APPENDIX 1 – NOMINATION OF RESPONSIBLE CLINCIAN

Nomination of a Responsible Clinician

I: .....would like to nominate/identify

.....

To be the temporary/acting Responsible Clinician and to exercise the functions of a Responsible Clinician during the following periods

From: ..... **To**: .....

From: ..... **To**: .....

And to cover the following areas: ..... (Wards/CMHTs)

And/or for the following named patients:
.....

.....

.....

Signed: .....

Designation: .....

Dated: .....

Copy to be sent to the Mental Health Act Administration Team and clinical team as soon as completed

12. APPENDIX 2 – SECTION.17(4) – Return of Patient Absent without Leave

SECTION.17(4) – Return of Patient Absent without Leave

Name of Patient: …… **Section**:……

Address of detaining Hospital:……

……

I revoke the leave of absence given to …… under the provisions of Section17(4) and recall them to hospital as it appears necessary in the interests of the patient's health or safety or for the protection of other persons.

Reasons for Recall to Hospital: ……....

……..

……..

Signed: …….. …….. **Date:** ……
(Responsible Clinician/Deputy Approved Clinician)

Copy to: Patient
Nearest Relative/Carer/Friend
Mental Health Act Administration Team
Care Co-ordinator
Approved Mental Health Practitioner
Police

13. APPENDIX 3 - MENTAL HEALTH ACT, 1983 – SECTION 17 LEAVE OF ABSENCE

Patient Full Name:-		**Section:-**
Leave of Absence to be granted/ to be reviewed no later than expiry date of detention		**Granted by Responsible Clinician:- (only)**
With effect from:	**To be granted until:**	**Name Print:** **Signed:** **Date:**

Leave Address and with whom:-
Duration of leave:- If S.17 leave has been approved for more than 7 days, has a CTO been considered? Yes/No
Conditions
Purpose of leave and consequences of not giving leave:-
Any specific service input arranged or required during period of leave: (e.g. CRHT/CMHT/reallocation to another Responsible Clinician) Details:

Have safeguarding issues been considered?	*Yes*	*No*
The RC has discussed S.17 leave with the patient	*Yes*	*No*
The RC has discussed S.17 leave with the appropriate relatives/carers	*Yes*	*No*
The RC has discussed S.17 leave with the Care Coordinator Insert name:	*Yes*	*No*
The RC grants ongoing S17 leave to a medical bed on a general ward if and when required	*Yes*	*No*

Copies to: Patient ☐ MHA Admin Team ☐ Sec 17 leave folder ☐ Care Co-ordinator ☐

If there is a significant risk of deterioration, leave may be temporarily withheld by the care team under discussion with the RC

Action to be undertaken if conditions not adhered to:
Note for escorts accompanying persons: **In case of difficulty, contact** :_____ **On telephone No:**_____