Policy for the use of Leave under Section 17 of the Mental Health Act 1983 (as amended)

Version: 11

| Summary: | Policy for the use of Leave Under Section 17 of the Mental Health Act 1983. This policy applies to leave authorised away from the detaining unit. |
| Keywords (minimum of 5): (To assist policy search engine) | Leave, section 17, mental health act, MHA. |
| Target Audience: | Responsible Clinicians, Care Coordinators, Inpatient Nurses and MHPs |
| Next Review Date: | April 2020 |
| Approved & Ratified by: | Mental Health Act Committee  
QID Virtual Policy Group |
| Date of meeting: | 17 April 2012  
28 January 2015  
25 June 2015  
16 July 2015 |
| Date issued: | June 2015 |
| Author: | Mental Health Act Manager |
| Sponsor: | Dr. Karl Marlowe, Medical Director |
Amendments Summary:

<table>
<thead>
<tr>
<th>Version</th>
<th>Issued</th>
<th>Page</th>
<th>Subject</th>
</tr>
</thead>
<tbody>
<tr>
<td>Version 4</td>
<td>January 2007</td>
<td>Page 5</td>
<td>Para 2.1: reference to Essential Training</td>
</tr>
<tr>
<td>Version 4</td>
<td>January 2007</td>
<td>Page 5</td>
<td>Para 2.4.4: reference to staff who are able to authorize leave</td>
</tr>
<tr>
<td>Version 4</td>
<td>January 2007</td>
<td>Page 6</td>
<td>Para 2.4.6: reference to low secure units included</td>
</tr>
<tr>
<td>Version 4</td>
<td>January 2007</td>
<td>Page 7</td>
<td>New para 7: failure to return to hospital after leave has expired</td>
</tr>
<tr>
<td>Version 5</td>
<td>November 2008</td>
<td>All</td>
<td>Major revision following publication of new CoP, the implementation of 2007 Act and new Leave Form</td>
</tr>
<tr>
<td>Version 6</td>
<td>January 2011</td>
<td>Page 10</td>
<td>Policy reviewed as result of a recommendation from a CIR. New paragraph 11 drafted “Withdrawal from Approved Leave” (previously “Recall from Leave”)</td>
</tr>
<tr>
<td>Version 6</td>
<td>January 2011</td>
<td>Page 5</td>
<td>Introduction: contains reference to reading policy in conjunction with CP 92 and CP 92.1</td>
</tr>
<tr>
<td>Version 7</td>
<td>April 2012</td>
<td>Page 1</td>
<td>Trust Logo and Author</td>
</tr>
<tr>
<td>Version 7</td>
<td>April 2012</td>
<td>Page 8</td>
<td>Para 6.3: Change due to recommendation from SIRI</td>
</tr>
<tr>
<td>Version 7</td>
<td>April 2012</td>
<td>Page 8</td>
<td>Para 6.4: Change due to recommendation from SIRI</td>
</tr>
<tr>
<td>Version 7</td>
<td>April 2012</td>
<td>Page 9</td>
<td>Para 6.5: Change made to comply with MHA Code of Practice para 21.21</td>
</tr>
<tr>
<td>Version 7</td>
<td>April 2012</td>
<td>Page 9</td>
<td>Para 6.7: Change made to comply with MHA Code of Practice para 21.21</td>
</tr>
<tr>
<td>Version 7</td>
<td>April 2012</td>
<td>Page 9</td>
<td>Para 6.9 Change of Titles</td>
</tr>
<tr>
<td>Version 7</td>
<td>April 2012</td>
<td>Page 12</td>
<td>Para 11.12 Considerations/risk assessment when revocation of leave is being considered in RCs absence</td>
</tr>
<tr>
<td>Version 7</td>
<td>April 2012</td>
<td>Appen 1</td>
<td>Change to section 17 leave form to comply with MHA CoP para 21.21</td>
</tr>
<tr>
<td>Version 7</td>
<td>April 2012</td>
<td>Appen 2</td>
<td>Changes to section 17 log form to comply with MHA CoP para 21.21</td>
</tr>
<tr>
<td>Version 8</td>
<td>June 2015</td>
<td>Throughout</td>
<td>New Code of Practice references</td>
</tr>
<tr>
<td>Version 8</td>
<td>June 2015</td>
<td>Page 9</td>
<td>Risk Assessment section</td>
</tr>
<tr>
<td>Version 8</td>
<td>Jan 2017</td>
<td>Page 15</td>
<td>Updated appendix 2</td>
</tr>
<tr>
<td>Version 8</td>
<td>6 March 2017</td>
<td>Page 10</td>
<td>Amendment to para 12.5</td>
</tr>
<tr>
<td>V9</td>
<td>09 May 2017</td>
<td>Page 8</td>
<td>Paras 5.2 (urgent situations) and 6.2 allocation of RC</td>
</tr>
<tr>
<td>V9</td>
<td>09 May 2017</td>
<td>Page 15</td>
<td>Urgent Treatment leave added to section 17 leave form.</td>
</tr>
<tr>
<td>V9</td>
<td>12/3/18</td>
<td></td>
<td>Policy reviewed, no amendments required review date extended for 2 years to 2020</td>
</tr>
<tr>
<td>V10</td>
<td>14 June 2018</td>
<td>Page 4</td>
<td>Para 1.3 updated i) requirements for nursing and MHPs to be able grant authorized leave; and ii) confirmation that other qualified professionals can grant authorized leave, subject to certain conditions. Updated front cover and footer</td>
</tr>
<tr>
<td>V11</td>
<td>8 April 2019</td>
<td>Page 12</td>
<td>Section 13.2 – additional information added</td>
</tr>
</tbody>
</table>
Policy for the use of Leave Under Section 17 of the Mental Health Act 1983 (as amended)

Contents

1 Introduction 4
2 Limitations on the Authorising of Leave 4
3 Considerations When Authorising Leave 5
4 Interface with Community Treatment Orders 6
5 Instances Where Section 17 Leave is Not Required 7
6 Process for Authorisation and Granting of Leave 7
7 Risk Assessment 9
8 Medical Treatment Whilst on Leave 9
9 Section 117 9
10 Leave to Reside in Other Hospitals 10
11 Extension of Leave 10
12 Withdrawing from Approved Leave 10
13 Renewal of Detention 12
14 Absence Without Leave 13
15 Patients who are in hospital but not detained 13
16 Human Rights Issues 13
17 References 13

Appendices

1 Leave of Absence Form 14
2 Leave Log Sheet 15
Policy for the Use of Leave Under Section 17 of the Mental Health Act 1983 (as amended)

This policy should be read in conjunction with chapter 27 of the MHA Code of Practice (2015). In this policy “the Act” means the Mental Health Act 1983 as amended by the Mental Health Act 2007.

This policy applies to leave authorised away from the detaining unit. Leave in the hospital grounds is not included in the scope of this policy.

1 Introduction

1.1 A patient who is currently liable to be detained in hospital or a specified hospital unit, can only leave that hospital or hospital unit lawfully by being given leave of absence under section 17, when being transferred to another hospital under section 19 of the Act.

1.2 Leave of absence is primarily intended to allow a patient detained under the Act to be temporarily absent from hospital where further in-patient treatment as a detained patient is still thought to be necessary. It is clearly suitable for short-term absences, to allow visits to family and so on. It may also be useful in the longer term, where the clinical team wish to see how the patient manages outside hospital before making the decision to discharge. However, for a number of patients a Community Treatment Order (CTO) may be a better option than longer-term leave for the ongoing management of their care. Reflecting this, whenever considering longer-term leave for a patient (that is, for more than seven consecutive days), the responsible clinician must first consider whether the patient should be discharged onto a CTO instead (CoP para 27.11).

1.3 In this policy the term “authorisation” refers to the process of the responsible clinician agreeing leave that may be taken. The term “granting” refers to the times when patient accesses authorised leave and the management of this by ward staff. Where nurses or Mental Health Practitioners are granting leave or accepting leave forms, they must have either:
   i) been qualified in that role for at least six months; or
   ii) must have at least six instances of granting or accepting leave reviewed by a senior nurse; and this is discussed, confirmed and recorded in supervision.

   iii) Other qualified professionals, such as Occupational Therapists may also grant authorised leave so long as:
      a) That professional has attended the Trust’s Mental Health Act training;
      b) Have at least six instances of granting or accepting leave reviewed by a senior nurse; and this is discussed, confirmed and recorded in supervision.

2 Limitations on the Authorising of Leave

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

2.2 Leave of absence for patients subject to special restriction orders under the Act may only be authorised by the responsible clinician with the consent of the Secretary of State for Justice.
2.3 Where the court or Secretary of State has decided that restricted patients are to be detained in a particular unit of a hospital, those patients require leave of absence to go to any other part of the that hospital as well as outside the hospital.

2.4 Only the patient’s responsible clinician can authorise leave of absence to a patient detained under the Act. Responsible clinicians cannot delegate the decision to authorise leave of absence to anyone else. In the absence of the usual responsible clinician (eg if they are on leave), permission can be authorised only by the approved clinician who is for the time being acting as the patient’s responsible clinician (CoP para 27.8).

2.5. Responsible clinicians may authorise leave for specific occasions, 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.

3 Considerations When Authorising Leave (CoP para 27.10)

3.1 Leave of absence can be an important part of a detained patient’s care plan, but can also be a time of risk. When considering and planning leave of absence, responsible clinicians should:

- consider the benefits and any risks to the patient’s health and safety of granting or refusing leave;
- consider the benefits of granting leave for facilitating the patient’s recovery;
- balance these benefits against any risks that the leave may pose in terms of the protection of other people (either generally or particular people);
- consider any conditions which should be attached to the leave, eg requiring the patient not to visit particular places or persons;
- be aware of any child protection and child welfare issues in granting leave;
- take account of the patient’s wishes, and those of carers, friends and others who may be involved in any planned leave of absence;
- consider what support the patient would require during their leave of absence and whether it can be provided;
- ensure that any community services which will need to provide support for the patient during the leave are involved in the planning of the leave, and that they know the leave dates and times and any conditions placed on the patient during their leave;
- ensure that 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; and
- (in the case of mentally disordered offender 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.

3.2 In relation to child protection and welfare issues, even in instances where there are no acknowledged concerns, the RC should nevertheless consider the risk of the individual’s known behavior (e.g. substance misuse, domestic abuse and violence) and the impact this may have on children and parenting. In such cases where access to children is involved, the RC should undertake a family-specific risk assessment.

3.3 Hospital managers cannot overrule a responsible clinician’s decision to authorise leave. However, the fact that a responsible clinician authorises leave subject to certain conditions, eg residence at a hostel, does not oblige the hospital managers or anyone else to arrange or fund the particular placement or services the clinician has in mind. Responsible clinicians should not authorise leave on such a basis without first taking
steps to establish that the necessary services or accommodation (or both) are available and will be funded (CoP para 27.14)

4 Interface with Community Treatment Orders (CoP paras 27.11 – 27, 13 and chapter 31)

4.1 When considering whether to authorise leave of absence for more than seven consecutive days, or extending leave so that the total period is more than seven consecutive days, responsible clinicians must first consider whether the patient should go onto a CTO instead. This does not apply to restricted patients, nor, in practice, to patients detained for assessment under section 2 of the Act, as they are not eligible for a CTO.

4.2 The requirement to consider Supervised Community Treatment (SCT) does not mean that 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 that both options have been duly considered. The decision, and the reasons for it, should be explained to the patient and recorded in the patient’s notes.

4.3 When considering CTO or authorising longer term section 17 leave the RC should consider (CoP para 31.7):

<table>
<thead>
<tr>
<th>Factors suggesting longer-term leave</th>
<th>Factors suggesting CTO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Discharge from hospital is for a specific purpose or a fixed period.</td>
<td>There is confidence that the patient is ready for discharge from hospital on an indefinite basis.</td>
</tr>
<tr>
<td>The patient’s discharge from hospital is deliberately on a “trial” basis.</td>
<td>There are good reasons to expect that the patient will not need to be detained for the treatment they need to be given.</td>
</tr>
<tr>
<td>The patient is likely to need further in-patient treatment without their consent or compliance.</td>
<td>The patient appears prepared to consent or comply with the treatment they need – but risks as below mean that recall may be necessary.</td>
</tr>
<tr>
<td>There is a serious risk of arrangements in the community breaking down or being unsatisfactory – more so than for CTO.</td>
<td>The risk of arrangements in the community breaking down, or of the patient needing to be recalled to hospital for treatment, is sufficiently serious to justify a CTO, but not to the extent that it is very likely to happen.</td>
</tr>
</tbody>
</table>

4.4 Before authorising longer term leave, the patient and the care team involved with the patient, including relatives and carers, should discuss the use of leave and options for the use of a CTO ideally in a CPA setting.
5 Instances Where Section 17 Leave is Not Required

5.1 Patients may lawfully be absent from hospital without section 17 leave if:
   - They are being transferred or taken to another place under the Act or other legislation (whether or not it is a formal transfer of care under section 19);
   - They are evacuated from the detaining hospital in an emergency;
   - ground leave is required. (Ground leave is not available to certain restricted patients).

5.2 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 – i) the Mental Capacity Act 2005 provides authority for mentally incapacitated patients to be moved to a general hospital; ii) A mentally capable person can be moved with their consent – in both cases, the RC should authorise leave as soon as is practicable.
   - To facilitate this, leave for the purposes of urgent treatment has been added as a standard condition to the section 17 leave form.

6 Process for Authorisation and Granting of Leave

6.1 The patient should be fully involved in the decision to authorise leave and should be able to demonstrate to their care team that they are likely to cope outside the hospital. Subject to the patient’s consent there should be detailed consultation with any appropriate relatives and friends (especially where the patient is likely to stay with them) and also community services. Leave should not be authorised if the patient does not consent to this process.

6.2 Allocation of RC – in general:
   - For inpatients, the inpatient RC will usually be the allocated RC and will therefore have responsibility for authorising section 17 leave;
   - Where a patient goes on long-term section 17 leave, consideration may be given to allocating responsibility to a community RC. The process for this is set out in the Allocation of RC protocol;

Quick summary:

<table>
<thead>
<tr>
<th>Patient</th>
<th>Allocated RC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inpatient</td>
<td>Inpatient RC</td>
</tr>
<tr>
<td>Section 17 patient</td>
<td>Inpatient RC</td>
</tr>
<tr>
<td>Long-term section 17 leave patient</td>
<td>Community RC</td>
</tr>
<tr>
<td>Community Treatment Order</td>
<td>Community RC</td>
</tr>
</tbody>
</table>

In all instances, the transferring RC should i) discuss and confirm the allocation with the receiving RC and ii) inform their local MHA Administration team in writing using a Notification of Change of RC form that the allocation has taken place.
6.3 The responsible clinician should (with the consent of the Secretary of State in the case of restricted patients) attach any conditions to the leave that they believe to be clinically appropriate in all the circumstances of the individual case in the interests of the health and safety of the patient or for the protection of others.

6.4 Nursing care plans and the section 17 leave form must clearly state the conditions of leave and escort requirements, including; what grade a member of staff should be and the agreed ratio of escorts to patients, however section 17 leave forms should be the primary record of leave status and details. **Leave conditions, restrictions and requirements should be personal to the patient: CQC requires that generic conditions be avoided.**

6.5 The section 17 leave form (Appendix 1) must be completed in full for all instances of section 17 leave being authorised. The form should be checked for accuracy and detail by a nurse or Mental Health Practitioner (MHP) and signed and dated as received on behalf of the hospital managers as soon as possible and before leave is taken by the patient. Section 17 leave forms must not be signed by the responsible clinician and left blank.

6.6 The white copy of the form should be delivered to the MHA Administrator and filed in the patient's master legal file. The yellow copy should be given to the patient. The blue copy is to be placed in the section 17 leave folder. A copy of the section 17 leave form should be given to any carers, professionals and other people in the community who need to know (CoP 27.22).

6.7 The leave folder should contain only current leave forms, a leave log sheet (Appendix 2) and, if appropriate, a copy of the letter from the Ministry of Justice approving leave. When a patient accesses leave which has been authorised by the RC and recorded on the section 17 leave form, a nurse or Mental Health Practitioner on the ward must check the leave form (and Ministry of Justice letter) to ensure that they are still valid and that any conditions can be satisfied.

6.8 The nurse or MHP must complete the log sheet in full, including the anticipated time of return and the staff member's signature, when the patient goes out on leave. They should record on the log sheet that a copy of the section 17 leave form has been given to carers or professionals as per para 6.5 above. Staff should ensure that the time of the patient's return is recorded on the leave log sheet. Only a qualified nurse or MHP may sign a patient in from leave on every instance. The completion of leave log sheets is monitored through the internal audit programme.

6.9 Cancelled or expired leave forms must be clearly crossed through (to avoid leave being given mistakenly) and filed in the Copy Legal File on the ward. In low and medium secure units obsolete forms should be sent to the MHA Administrator for archiving.

6.10 The MHA Manager will coordinate regular audits of compliance with these standards and provide reports to the MHA Committee and Quality and Safety committees within the Trust.

6.11 The Trust requires qualified nurses and MHPs to attend training every two years. This ensures that the relevant staff understand the agreed Trust standards around the granting and exercising of leave. The training is included in the Essential Training Programme and nurses and MHPs must refer to this when planning their professional training requirements.
7 Risk Assessment

7.1 This section is informed by and should be read in conjunction with the following Trust policies:
   - SH CP 27: The Assessment and Management of Clinical Risk
   - SH CP 28: Managing Clinical Risk Practice Guidance

7.2 Each patient must have a **new** risk assessment completed in the following situations (SH CP 27, para 4.4):
   - As part of the initial assessment by any Clinical Team in all Service Divisions;
   - At the beginning of each new episode of care;
   - Within four weeks of transition e.g. between Community teams;
   - During the first assessment of the patient’s condition;
   - Within 4 hours following admission to hospital;
   - Annually (as a minimum) as part of CPA/Care Plan Reviews if a new Risk Assessment has not been completed in the previous 6 months.

7.3 For section 17 leave, it is the responsibility of the patient’s multi-disciplinary team (led by the admitting nurse in conjunction with the admitting doctor) to ensure that risk assessment is initiated and undertaken in a consistent manner (SH CP 27, para 4.6). Where the admitting nurse or doctor are not available, the MDT should be led by the patient’s lead nurse and RC.

7.4 At each episode of leave, the current Risk Assessment should be reviewed. This should include a review of the historical (static) factors of risk and any dynamic factors that might be present.

7.5 Completion of the RiO Risk Assessment Tool (or other agreed tools) will be recorded directly into the patient’s RiO record and validated.

7.6 If a new Risk Assessment is completed, this will be recorded as a risk related progress note in the patient’s progress notes.

7.7 All Risk Assessment reviews must be recorded in the progress notes, even if there has not been a change to the risk assessment. This should be recorded as a risk related progress note. Further information is within the appropriate RiO guide.

8 Medical Treatment Whilst on Leave (CoP para 27.25)

8.1 A patient who is granted leave under section 17 remains liable to be detained, and the rules in Part 4 of the Act about their medical treatment continue to apply (see chapter 24 of the CoP). If it becomes necessary to administer treatment without the patient’s consent, consideration should be given to whether it would be more appropriate to recall the patient to hospital, although recall is not a legal requirement.

9 Section 117 (CoP para 33.6)

9.1 The duty on local authorities and primary care trusts to provide after-care under section 117 of the Act for certain patients who have been discharged from detention also applies to those patients while they are on leave of absence.
10.1 Responsible clinicians may also 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. However, 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.

10.2 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.

10.3 Patients who require medical treatment in a general hospital should do so under the provision of section 17 leave. A leave form should be completed at the earliest opportunity to facilitate this leave. Consideration should be given to the criteria for continued detention for a deteriorating patient on a medical ward. Refer to the relevant directorate’s Admissions, Transfers and Discharges Policy for more information.

11 Extension of Leave

11.1 A period of leave can be extended by the responsible clinician (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.

12 Withdrawing Approved Leave

12.1 Where S17 leave is approved it should be recognised that a patient’s mental state may deteriorate during that time and that decisions in respect of leave should take full account of current risk assessments. All staff should refer to SH CP 27 The Assessment and Management of Clinical Risk Policy, and SH CP 28 Managing Clinical Risk Practice Guidance.

12.2 The responsible clinician 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 and community staff, which indicate to the responsible clinician that recall is necessary in the interests of the patient’s health or safety and/or for the protection of others. Responsible clinicians must be satisfied that these criteria are met and should 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.

12.3 Leave granted to a detained patient is an integral part of their care plan. If the conditions of leave set out in the Section 17 leave form are not complied with leave can be withdrawn until conditions are clarified with the responsible clinician and the patient is re-assessed.

12.4 Leave is authorised under this Trust policy by the Responsible Clinician. But each individual episode will be allowed at the discretion of nursing staff.

12.5 The responsible clinician must arrange for a notice in writing recalling the patient from leave either by serving it 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.

12.6 Once the decision has been made to revoke leave of absence under s.17 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 and a risk management plan entered in to the medical record and communicated by the person coordinating the recall, to all relevant parties.

12.7 Factors requiring consideration, consultation and decisions are:

- Who is best placed to coordinate and execute the entire recall process? I.e. deliver the responsible clinician recall notice, inform the patient, nearest relative and other involved relatives/carers, liaison with ambulance/police etc, and facilitate re-admission to hospital.

- Will a PICU admission be necessary, if so who will arrange this?

- Is the use of s135(2) via an application to a magistrate necessary to facilitate recall? Advice may need to be sought from an AMHP

- How will the patient be transported back to hospital? “The police should be asked to assist in returning a patient to hospital only if necessary. The police should always be informed immediately of the absence without leave of a patient who is considered to be vulnerable, dangerous or who is subject to restriction under Part 3 of the Act” (MHA Code of Practice para 28.15) See also SH CP 38 Management of Patients who go Missing Policy

12.8 The guidance contained in the CoP chapter 17 Transport of Patients applies except that an AMHP will not necessarily be involved in the recall procedure. Staff involved in revocation of leave should be familiar with the principles and advice in chapter 17, in particular the professional obligation to ensure that the most humane and least threatening method of conveying the patient is used, consistent with ensuring that no harm comes to the patient or others.

12.9 The reasons for recall should be fully explained to the patient and a record of the explanation included in the patient’s notes. A restricted patient may be recalled from leave either by the responsible clinician or by the Secretary of State for Justice.

12.10 It is essential that carers (especially where the patient is residing with them while on leave) and professionals who support the patient while on leave should have easy access to the patient’s responsible clinician if they feel consideration should be given to the recall of the patient before their leave is due to end.

12.11 If a patient on s.17 leave demonstrates a change in presentation which causes staff concern, they must take steps to have the patient’s responsible clinician review the patient immediately, with a view to assessing the patient’s risk, mental state and considering whether the patient’s leave should be revoked.

12.12 Every effort should be made to encourage and persuade the patient to wait until the Responsible Clinician can attend to review them. If the patient refuses to wait, the member of staff should consider if the patient were to leave the clinical area would there be a real and immediate risk of serious irreparable harm to the patient or others? In the
event of such an emergency staff should take steps to prevent harm and under the power of common law, the doctrine of necessity and duty of care, should prevent the patient from leaving the clinical area until the RC is able to review the patient. The patient cannot be detained under s.5(2) or s.5(4)

12.13 If the patient does not pose such a risk they should be allowed to leave, but the member of staff should take immediate steps to ensure that the responsible clinician reviews the patient as a matter of urgency and in the meantime should take all reasonable steps to ensure the safety of the patient is maintained. Such steps could include (but are not limited to), following the patient to observe their whereabouts and monitor their risk, calling the police and alerting other relevant persons to the possible risk.

13 Renewal of Detention (CoP para 21.35)

13.1 The responsible clinician may consider making a report under section 20 and renewing a patient’s detention whilst they are on leave. The responsible clinician may only do this if they are satisfied that the criteria in section 20 of the Act are met and particularly that a Community Treatment Order is not appropriate in the circumstances of the case (see CoP chapter 28 for guidance).

13.2 For patients on leave whilst under section 3, the detention can be renewed only if the criteria under section 20 are met:

i) P is suffering from mental disorder of a nature or degree which makes it appropriate for him to receive medical treatment in hospital;

ii) It is necessary for the health and safety of the patient or the protection of others that he should receive such treatment and that it cannot be provided unless he continues to be detained; and

iii) Appropriate medical treatment is available to him.

Following feedback from the First-Tier Tribunal, consultants should pay particular attention to the criteria of whether ‘it remains necessary for the health and safety of the patient or the protection of others that the patient should receive such treatment and that it cannot be provided unless the patient remains liable to be detained.’

The question that will be asked by the Tribunal is whether hospital treatment constitutes a significant part of the patient’s treatment plan. If the consultant considers that hospital treatment no longer forms a significant part of the patient’s treatment plan, the consultant must either:

i) Place the patient on a CTO; or

ii) Discharge the patient from section.

For note, the Tribunal appears to be interpreting this test quite strictly. For example, treatment or circumstances that cause treatment to fall outside of this test include:

• Treatment delivered entirely under the auspices of the patient’s community mental health team;
• There appears to be no interplay or joint working between the inpatient and community care team.

13.3 It is unlawful to recall the patient to hospital solely in order to renew the authority for their detention.

14 Absence Without Leave

14.1 A patient who fails to return from leave at the appointed time, or fails to comply with conditions placed upon them, will be considered to be absent without leave.

14.2 Refer to the Policy for Management of Patients who go missing (SH CP 38 in these instances).

15 Patients Who Are in Hospital But Not Detained (CoP para 27.38)

15.1 Patients who are not legally detained in hospital have the right to leave at any time. They cannot be required to ask permission to do so, but may be asked to inform staff when they wish to leave the ward.

16 Human Rights Issues

16.1 When dealing with situations which require leave to be authorised under section 17, it is important to ensure that there are no unnecessary delays in authorising leave. Such delays could lead to a breach of the patient’s rights under Article 5 (right to liberty) or Article 8 (right to private life) of the European Convention on Human Rights.

16.2 It is important for the responsible clinician to ensure that the conditions attached to section 17 leave are reasonable and proportionate to the particular patient’s circumstances. The European Court of Human Rights has confirmed that conditions requiring acceptance of medical treatment are acceptable (L v Sweden).

16.3 Where leave is revoked there must be adequate grounds to do so (see CoP para 27.32). Recall without adequate grounds could contravene Article 8 (right to a private life) and Article 5 (right to liberty).

17 References

Human Rights Act 1998
Mental Health Act 1983 (as amended 2007)
Mental Health Act Code of Practice (2015)
SH CP 27 The Assessment and Management of Clinical Risk
SH CP 28 Managing Clinical Risk Practice Guidance
SH CP 38 Policy and Procedure for Missing / Absent Without Leave Patients

*Guidance for Responsible Clinicians – Leave of Absence for Patients Subject to Restrictions*, Ministry of Justice Mental Health Unit
Section 17(1) – Leave of Absence Form

To the managers of Southern Health NHS Foundation Trust, I [full name]………………………………………………………………………………………………………………….. am the Responsible Clinician in charge of the treatment of [patient’s name]………………………………………………………………………………………………………………….. , who is a patient detained under section …………………….of the Mental Health Act 1983 (as amended) at [name of hospital]……………………………;…….

Start date of leave: …………………………………………………………………………………………………………………………………………………………………………………………………………………….

<table>
<thead>
<tr>
<th>Description</th>
<th>Leave 1</th>
<th>Leave 2</th>
<th>Leave 3</th>
<th>Leave 4 – Urgent Treatment (see para 5.2 of Policy)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Description of Leave (delete as appropriate)</td>
<td>Escorted / Unescorted / Accompanied by relatives or friends</td>
<td>Escorted / Unescorted / Accompanied by relatives or friends</td>
<td>Escorted / Unescorted / Accompanied by relatives or friends</td>
<td>Escorted / Unescorted / Accompanied by relatives or friends</td>
</tr>
<tr>
<td>Where is the leave to?</td>
<td>No of escorts</td>
<td>Tick a box</td>
<td>Can be unqualified?</td>
<td>No of escorts</td>
</tr>
<tr>
<td>Escorts (please tick the box which applies) – it is assumed escorts will be ‘qualified’ unless stated otherwise</td>
<td>2</td>
<td>1</td>
<td>Group</td>
<td>Shadowed</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>1</td>
<td>Group</td>
<td>Shadowed</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>1</td>
<td>Group</td>
<td>Shadowed</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>1</td>
<td>Group</td>
<td>Shadowed</td>
</tr>
<tr>
<td></td>
<td>2</td>
<td>1</td>
<td>Group</td>
<td>Shadowed</td>
</tr>
<tr>
<td>Any other conditions / restrictions?</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Maximum frequency of leave</td>
<td></td>
<td></td>
<td></td>
<td>To be determine by nature of urgent treatment.</td>
</tr>
<tr>
<td>Maximum duration of leave</td>
<td></td>
<td></td>
<td></td>
<td>To be determine by nature of urgent treatment.</td>
</tr>
<tr>
<td>Overnight? (if yes state max no of nights)</td>
<td></td>
<td></td>
<td></td>
<td>To be determine by nature of urgent treatment.</td>
</tr>
</tbody>
</table>

As the RC for the above patient, I confirm I have consulted with the appropriate staff, relatives, carers and community services and grant leave of absence under section 17(1) of the MHA 1983 (as amended) for the above patient. I have considered the use of a Community Treatment Order in respect of this patient where leave has been granted for more than seven consecutive nights.

This has been explained to the patient by: …………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………………
**Section 17 – Leave of Absence Record Sheet**

<table>
<thead>
<tr>
<th>Patient Name:</th>
<th>Ward / Unit:</th>
<th>Section:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Date of Leave</th>
<th>S 17 Leave Doc Valid? (✓)*</th>
<th>Destination</th>
<th>Escorted Y / N</th>
<th>Description of clothing</th>
<th>Copy of s.17 leave form given to carer***</th>
<th>Time Out</th>
<th>Time due back</th>
<th>Resident’s signature OUT</th>
<th>Actual Return Time &amp; Date</th>
<th>Resident’s signature RETURN</th>
<th>Qualified Practitioner’s Signature RETURN</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Check there is a current section 17 leave form that authorises the leave you are granting.** **Qualified Practitioner: Nurse or MHP Band 5, 6 months post qualification** **A carer must be given a photocopy of the relevant section 17 leave form on every occasion they accompany a patient on leave. Please record in the box above if this has been done or if it was not applicable.**
As Qualified Practitioner**, I believe from the information made available to me that the patient is fit to undertake the nature and purpose of their leave and this has been recorded in the nursing notes. Please sign below.

* Check there is a current section 17 leave form that authorises the leave you are granting. ** Qualified Practitioner: Nurse or MHP Band 5, 6 months post qualification.
*** A carer must be given a photocopy of the relevant section 17 leave form on every occasion they accompany a patient on leave. Please record in the box above if this has been done or if it was not applicable.