

**SECTION 17 LEAVE POLICY
MENTAL HEALTH ACT 1983**

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1. INTRODUCTION

- 1.1 Leave is an important part of a detained patient's treatment plan. It should be planned as far in advance as possible with the patient being involved in the decision to grant leave. Where necessary, those responsible for planning a patient's leave should consult with his/her care-coordinator and other agencies and, with the patient's permission, the patient's relatives and friends. Section 17 Leave applies to patients who are subject to Sections 2, 3, 37 or 47 of the Mental Health Act 1983. Formal Section 17 Leave of absence is not required for those patients moving between units in the Somerset Partnership but it is needed whenever and for whatever reason a patient subject to one of the relevant Sections is absent from one of our units. It is not required for, and this policy must not be applied to, non-detained patients.
- 1.2 Members of Trust staff must ensure the patient and their families and carers fully understand the Section 17 process and their different communication and cultural needs must be taken into account at all times. This may require the support of a professional interpreter or translator through the process and the provision of information in a range of formats and languages.

2. PURPOSE & RATIONALE

- 2.1 To inform responsible clinicians what action to take when granting Section 17 leave to detained patients
- 2.2 To inform nurses about how to facilitate and record Section 17 leave
- 2.3 All staff caring for detained patients should be familiar with the procedures detailed in this document.

3. DUTIES AND RESPONSIBILITIES

- 3.1 The **Trust Board** has a duty to care for patients detained by the Trust, which extends to those detained patients on Section 17 leave from the hospital where they are liable to be detained.
- 3.2 The **Director of Governance and Corporate Development** is responsible for this policy, covering detained patients on Section 17 leave, but will delegate authority for the operational implementation and ongoing management of this policy to the Mental Health Legal Strategies Lead.
- 3.3 The **Mental Health Act Coordination Lead** is the author of this policy, who will review this policy at least every two years.
- 3.4 Each **registered healthcare professional** is accountable for his/her own practice and will be aware of their legal and professional responsibilities relating to their competence and work within the Code of practice of their professional body.
- 3.5 **All staff** caring for detained patients should be familiar with the procedures detailed in the document and other related policies.
- 3.6 **Line managers** are responsible for ensuring all staff are conversant with this policy and related policies.

4. DEFINITIONS

- 4.1 **Responsible Clinician (RC)** – The Approved Clinician responsible for the patients care
- 4.2 **Approved Clinician (AC)** – A doctor, social worker, psychologist, occupational therapist or nurse who has been approved to act as the patient’s responsible clinician.
- 4.3 **AWOL – Absent without leave- when a** detained patient is absent from the hospital where they are detained under the Mental Health Act, and has no leave of absence granted by their RC, or who has failed to return from leave by the required time.
- 4.4 **Detained** - A patient required to be in hospital under powers contained in the Mental Health Act 1983.

5. RESPONSIBLE CLINICIAN’S RESPONSIBILITIES

- 5.1 Only the patient’s Responsible Clinician can grant Section 17 Leave. The power cannot be delegated but during periods of absence, for example through illness or leave, responsibility for the patient’s care would transfer to another Approved Clinician, who is for the time being acting as the patient’s Responsible Clinician. Overnight or at weekends the on-call consultant becomes the responsible clinician for all detained patients within the Trust.
- 5.2 Responsible clinicians cannot grant leave of absence from hospital to patients who have been remanded to hospital under sections 35 or 36 of the Act or who are subject to interim hospital orders under section 38. Patients subject to the holding power within section 5 have no RC, and so may not be granted leave.
- 5.3 The patient does not have to agree with the leave arrangements.
- 5.4 Any proposal to grant leave for restricted patients must be approved by the Secretary of State for Justice, who should be given as much notice as possible and full details of the proposed leave. Additional guidance can be found at www.justice.gov.uk, and in paragraphs 27.39-27.42, 27.53-27.60 of The Code of Practice.
- 5.5 Leave should only be given to detained patients after a full consideration of the risks involved, both to the patient and others. When the patient is taking medication from the ward, it should be sufficient to cover but not exceed the period of agreed leave. 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 for 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
- liaise with any relevant agencies, eg the sex offender management unit (SOMU)
- undertake a risk assessment and put in place any necessary safeguards, and (in the case of part 3 patients – see chapters 22 and 40 of The Code of Practice) consider whether there are any issues relating to victims which impact on whether leave should be granted and the conditions to which it should be subject.

5.6 Where a patient is detained by us, but lives (or is usually cared for) in another County, the Responsible Clinician should consider whether it would be more appropriate to return the patient to a ward in their home Trust via a Section 19 transfer rather than granting leave to an address outside Somerset. Because of complexities involved in returning the patient should they not comply with the conditions of their leave, it would be preferable to transfer the patient back to their home Trust and have a RC in that Trust grant the leave if they think it appropriate. If that is not possible or practical, then any such period of leave should be planned in close cooperation with the local services which would have to respond to any crisis during the leave.

5.7 Responsible Clinicians and nurses should be familiar with Chapter 27 of the Mental Health Act Code of Practice.

5.8 The Responsible Clinician granting leave should complete and sign the relevant form (See Appendix A) and forward a copy to the Mental Health Act Administrator. The patient should also sign the form.

5.9 The patient's progress notes should contain detail of the discussion about leave between the patient and their Responsible Clinician. The notes should include comments about how any risks were identified and addressed.

6. DURATION OF LEAVE

6.1 Section 17 Leave of absence can be of any duration within the extent of the detention period.

6.2 Leave should normally be of short duration and not normally more than seven days. 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, responsible clinicians **must** also consider whether the patient

should go onto a community treatment order (CTO) instead and, if required, consult any local agencies concerned with public protection. 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 to be placed on a CTO.

- 6.3 The option of using a CTO 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. Decisions should be explained to the patient and fully documented, including why the patient is not considered suitable for a CTO, and also guardianship or discharge.
- 6.4 If the detention section is renewed while the patient is on leave, the current leave arrangements should be reviewed and a new form completed.
- 6.5 The patient should not be asked to return to hospital for the sole purpose of renewing their detention.
- 6.6 Where the patient is being transferred to another hospital for a relatively short period, usually to receive a specified treatment, Section 17 Leave can be used rather than a formal transfer of the patient under Section 19 of the Act.

7. THE LEAVE FORM

- 7.1 S17 leave does not have to be authorised in writing in order to be lawful. It is lawful when it has been authorised by the responsible clinician. There will be emergency situations where it will be appropriate for the RC to grant leave verbally, or even where a patient may need to leave the hospital without any authorisation (i.e. an acute medical emergency such as heart attack, stroke or penetrative wounds or burns where the patient requires emergency treatment.). In these situations the RC should provide verbal and then written authorisation as soon as is practicable. If there is an identified risk that an individual patient may require treatment in another hospital during their period of detention, then RCs may choose to authorise this potential leave in writing to cover the eventuality.
- 7.2 The leave form should list any conditions to which the leave is subject. These could include, for example, whether leave should be escorted or unescorted, whether the patient should abstain from certain activities or substances or live or attend a particular place, or take medication¹.
- 7.3 Relatives, friends etc should not be made to feel responsible for the patient by being asked to 'escort' them (although it could be a condition of leave that the patient be accompanied by a relative or friend), nor should any condition of leave involve a third party without their consent.
- 7.4 The leave should take account of the patient's wishes, and those of carers, friends and others who may be involved in any planned leave of absence. In the case of mentally disordered offender patients, the Responsible Clinician should consider whether there are any issues relating to victims that impact on whether leave should be granted and the conditions to which it should be subject.

¹ See the 'Medicines Policy' in relation to leave medication
Section 17 leave policy

- 7.5 Where community services are providing support while the patient is on leave, the Responsible Clinician should ensure those services know the leave dates/times and any conditions placed on the leave
- 7.6 The leave form must also clearly state the maximum duration of leave, including, where appropriate, the time/date the patient should be back on the unit. The patient should be made aware of any contingency plans in place for their support, including what they should do if they need to return to hospital early.
- 7.7 The Section 17 Leave form (Appendix A) should never indicate that any of the leave arrangements are to be decided by anyone but the patient's Responsible Clinician. Comments such as 'at nurses' discretion' must be explicit about the parameters of the discretion. The parameters should be clearly set out by the responsible clinician, eg the particular places to be visited, any restrictions on the time of day the leave can take place, and any circumstances in which the leave should not go ahead. For example, patients may be given leave for a shopping trip of two hours every week to a specific destination, with the decision on which particular two hours to be left to the discretion of the responsible nursing staff.
- 7.8 Hospital managers cannot overrule a responsible clinician's decision to grant leave. The fact that a responsible clinician grants 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 grant 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.
- 7.9 The patient should have a signed copy of the agreed leave arrangements, and a copy should also be given to those carers, professionals and others in the community who need to know.

8. CARE AND TREATMENT WHILE ON LEAVE

- 8.1 Responsible clinicians' responsibilities for their patients remain the same while the patients are on leave.
- 8.2 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 Code of Practice). 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 (see section 9 below), although recall is not a legal requirement.
- 8.3 The duty on local authorities and clinical commissioning groups (or, in certain circumstances, NHS Commissioning Board (NHS England)) 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.

9 ESCORTED LEAVE (see 7.2 above re accompanied leave)

- 9.1 A responsible clinician may direct that their patient remains in custody while on leave of absence, either in the patient's own interests or for the protection of other people. Patients may be kept in the custody of any officer on the staff of the hospital or any person authorised in writing by the hospital managers. Such an arrangement is often useful, eg to enable patients to participate in escorted trips or to have compassionate home leave.
- 9.2 When a staff member is escorting a patient on leave, the patient is in their legal custody. This means that the escort is able to take reasonable actions to prevent the patient from absconding, and can insist that the patient returns with them to hospital if that becomes necessary. A patient who absconds from the custody of an escort during a period of leave should be treated as being AWOL, and the Detained Patient Absent without Leave (AWOL) policy should be followed.
- 9.3 The written authorisation mentioned in 9.1 above may be provided by the patient's responsible clinician (see the Trust's 'Delegation of Hospital Managers' Functions'). This authorisation may be required when a patient is sent into a care setting on a trial basis.
- 9.4 Escorted leave to Northern Ireland is permitted under the Act – patients may be held in lawful custody by a constable or a person authorised in writing by the managers of the hospital. In Scotland, the Isle of Man or any of the Channel Islands escorted leave can only be granted if the local legislation allows such patients to be kept in custody while in that jurisdiction. If this is contemplated for a restricted patient seek advice from the Mental Health Casework Section of the Ministry of Justice.

10 LEAVE TO RESIDE IN OTHER HOSPITALS

- 10.1 Responsible clinicians may require patients, as a condition of leave, to reside at another hospital in England and Wales, and they may then be kept in the custody of staff of that hospital. If custody is required the responsible clinician must provide explicit instructions to the staff of the receiving hospital about how the custody should be managed. 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 using S.19
- 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. If it is thought that a clinician at the other hospital should become the responsible clinician, the patient should instead be transferred to that hospital. An approved clinician in charge of any particular aspect of the patient's treatment may be from either hospital. Neither of the acute hospitals in Somerset employs any approved clinicians. If a patient is transferred to them via s.19 then a Somerset Partnership approved clinician must be identified to become the patient's responsible clinician. Any difficulties encountered in identifying an AC/RC must be raised as a matter of urgency with The Partnership's medical director.

11. THE REGISTERED NURSE'S ROLE

- 11.1 While the granting of Section 17 Leave and the conditions attached to leave is the prerogative of the patient's Responsible Clinician, the nurse in charge has the discretion to veto planned leave if they feel that risks associated with the patient's immediate clinical presentation do not warrant it.
- 11.2 This should only be done if the Responsible Clinician authorising the Section 17 Leave, or their nominee, is not immediately available to discuss the matter and make their own decision.
- 11.3 If leave is vetoed, the nurse in charge should contact the patient's Responsible Clinician as soon as is practicable to see whether they might wish to review current Section 17 Leave arrangements.
- 11.4 Whenever Section 17 Leave is taken it should be clearly recorded in the patient's notes. The notes should include a record of:
- The circumstances under which leave is taken (eg. whether the patient is escorted, and if so, by whom).
 - Clear guidance about the actions to take should the patient abscond from custody or fail to return at the required time.
 - A description of the clothes being worn by the patient, in case they become AWOL and there is a need to provide a description to the police.
 - The date and time at which the patient departs.
 - The date and time by which the patient must return.
 - The date and time the patient did return to the unit.
 - The outcome of the leave (e.g. whether or not it went well, or problems encountered).
 - Views of the patient on how the leave went.
- 11.5 The nurse in charge should ensure that when leave is taken, it is included in the patient's progress notes.

12. RECALL TO HOSPITAL

- 12.1 A responsible clinician (or, in the case of restricted patients, the Secretary of State) may revoke their patient's leave at any time if they consider it necessary in the interests of the patient's health or safety or for the protection of other people. 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.
- 12.2 The responsible clinician must arrange for a notice in writing revoking the leave to be served on the patient or on the person who is for the time being in charge

of the patient. Hospitals should always know the address of patients who are on leave of absence and of anyone with responsibility for them whilst on leave.

- 12.3 It is at the Responsible Clinician's discretion whether advance notice is given or whether the written notification is provided at the time attempts are made to return the patient (see Appendix B for draft letter).
- 12.4 In emergency circumstances, when the patient's Responsible Clinician has stated the patient needs to be returned to hospital but there has not been time to furnish written notification to that effect, the patient should be asked to return. If he / she refuse to return, they should be treated as Absent without leave and the Trust's Detained Patients and Absent Without Leave policy should be followed.
- 12.5 On return to the ward the reasons for recall should be fully explained to the patient and a record of the explanation included in the patient's notes. If the patient is recalled and returns (or is returned) in circumstances where it has not been possible to issue a written notice of recall, a written notice should be provided to them retrospectively as soon as is practicable.
- 12.6 A restricted patient's leave may be revoked either by the responsible clinician or by the Secretary of State for Justice. If a problem were to arise during a restricted patient's leave of absence the responsible clinician should immediately suspend the use of that leave and notify the Ministry of Justice who would then consider whether to revoke or rescind the leave or let the permission stand.
- 12.7 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 return of the patient before their leave is due to end.

13. DETAINED PATIENTS -ABSENT WITHOUT LEAVE (AWOL)

- 13.1 Any patient in breach of their authorised Section 17 Leave arrangements is absent without leave. AWOL procedures may be avoided if the RC reviews the situation and decides to authorise further leave (i.e. a patient on leave phones and requests a prolonged period of leave). Otherwise the AWOL policy should be followed.
- 13.2 A notice of recall provides no power to gain entry to any property. If a power of entry is required, staff must follow the procedures relating to s135(2) warrants in the Trust's AWOL policy.

14 RESTRICTED PATIENTS

- 14.1 Any proposal to grant leave to a restricted patient has to be approved by the Secretary of State for Justice.
- 14.2 Where the courts or the Secretary of State have decided that restricted patients are to be detained in a particular unit of a hospital, those patients will require the

Secretary of State's permission to take leave of absence to go to any other part of that hospital as well as outside the hospital.

- 14.3 For routine medical appointments or treatment, the Secretary of State's permission will be required. It is accepted that there will be times of acute medical emergency such as heart attack, stroke or penetrative wounds or burns where the patient requires emergency treatment. There may also be acute situations which, while not life threatening still require urgent treatment, eg fractures. In these situations, the responsible clinician may use their discretion, having due regard to the emergency or urgency being presented and the management of any risks, to have the patient taken to hospital. The Secretary of State should be informed as soon as possible that the patient has been taken to hospital, what risk management arrangements are in place, be kept informed of developments and notified when the patient has been returned to the secure hospital.
- 141.4 Further information and guidance on further types of short term section 17 leave, such as compassionate or holiday, can be found on the Ministry of Justice website

15 TRAINING REQUIREMENTS

- 15.1 The Trust will work towards all staff being appropriately trained. The training will form part of general Mental Health Act training delivered regularly to all mental health ward staff.

16. MONITORING COMPLIANCE AND EFFECTIVENESS

- 16.1 The Mental Health Legislation Committee (MHLC) will monitor procedural document compliance and effectiveness where they relate to Section 17 Leave.
- 16.2 The MHLC will review assurance of the effectiveness of the policy by monitoring any issues arising from:
- Internal audit
 - Clinical audit
 - Complaints
- 16.3 Any incidents of serious incidents relating to the use of Section 17 Leave will be monitored by the Clinical Governance Committee.

17. REFERENCES, ACKNOWLEDGEMENTS AND ASSOCIATED DOCUMENTS

17.1 References

Jones R. 'Mental Health Act Manual – 16th Edition - Sweet & Maxwell 2013
MHA '83 Code of Practice – Chapter 27 – The Stationery Office 2015

Mental Health Casework Section Guidance – Section 17 leave. Ministry of Justice. Mental Health Casework Section. 2014.
<http://www.justice.gov.uk/downloads/offenders/mentally-disordered-offenders/mhcs-guidance-s17-leave.pdf>

Guidance for Responsible Medical Officers – leave of absence for patients subject to restrictions. Ministry of Justice Mental Health Unit. 2007.
<http://www.mentalhealthlaw.co.uk/images/Leave-guidance-for-rmos>

17.2 **Cross reference to other procedural documents**

Detained Patients Absent Without Leave (AWOL)

Medicines Policy

Record Keeping and Records Management Policy

Serious Incidents Requiring Investigations (SIRI) Policy

Untoward Events Reporting Policy

All current policies and procedures are accessible in the policy section of the public website (on the home page, click on 'Policies and Procedures'). Trust Guidance is accessible to staff on the Trust Intranet.

18. **APPENDICES**

18.1 For the avoidance of any doubt the appendices in this policy are to constitute part of the body of this policy and shall be treated as such. This should include any relevant Clinical Audit Standards.

Appendix A Section 17 Leave Form

Appendix B Leave Recall Letter from Responsible Clinician

SECTION 17 LEAVE OF ABSENCE FORM

I, (full name) am the responsible clinician for

..... (full name) who is detained under **section** of the Mental Health Act 1983, currently an inpatient **on** **Ward**.

I authorise leave of absence under section 17(1) for the above patient as follows.

If applicable, has this leave been authorised by the Ministry of Justice: **Yes / No/ NA**

DETAILS OF LEAVE

FROM DATE/TIME **TO DATE/TIME**

If the intended leave is to last 7 days or longer have you (the RC) considered a Community Treatment Order and recorded in the notes your reasons why it is not appropriate at this time?
YES / NO

<p>The RC to note whether or not the patient has the capacity to understand the nature/purpose and conditions of this leave detailed below.</p>
<p>Nature/purpose and conditions – include whether this leave is ESCORTED (i.e. in the custody of an escort) or ACCOMPANIED (no custody)</p>
<p>During your leave you will reside at</p>
<p>Maximum duration and frequency</p> <p>(please continue on separate sheet and attach if necessary)</p>
<p>If family members or carers are likely to be significantly affected by the leave, have they been involved in the discussion to grant leave? YES / NO / NOT APPLICABLE</p>
<p>If YES have family members or carers, with the patient’s permission, been given a copy of this form? YES / NO (give reasons why)</p>
<p>The leave and the conditions have been explained to me, and I have received a copy of this form (PATIENT TO SIGN unless deemed (above) to lack the capacity to do so)</p>

Responsible Clinician **dated**
NB ONLY THE RESPONSIBLE CLINICAN CAN AUTHORISE SECTION 17 LEAVE

Dear (*Patient name or name of person in charge of patient during leave*),

As your responsible clinician I have decided that, *in the interests of your health or safety or for the protection of other people* it is necessary that you should return to hospital.

I am therefore revoking your section 17 leave. You must return to *ward name immediately OR by no later than time/date*. If you *refuse to return immediately OR fail to return by this time* you will be absent without leave, and may be returned to the ward by any member of the hospital staff, an approved mental health professional, a police officer or anyone authorised in writing by the hospital managers.

Yours sincerely,

Responsible clinician