NHS
Humber Teaching
NHS Foundation Trust

MENTAL HEALTH ACT POLICY
(M-021)

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Policies should be accessed via the Trust intranet to ensure the current version is used

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1. INTRODUCTION

The Trust is committed to ensuring the provision of high quality treatment, care and respect for patients to ensure their rights, privacy and dignity are respected.

Humber Teaching NHS Foundation Trust has a statutory obligation to ensure policies and procedures related to the Mental Health Act (1983) are in place as set out within Annex B of the Mental Health Act Code of Practice (2015). The policies and associated procedures must provide relevant information that clearly outlines the Mental Health Act (referred to as 'The Act') legislation requirements and any associated systems.

The Trust has a Mental Health legislation team who have expertise in this field and are available to advise staff, patients and their relatives and professionals receiving Trust services on all matters concerned with the Act.

This Policy and attendant procedures, in the form of Standard Operating Procedures, are designed to provide a clear and informative explanation of elements of the Code of Practice requiring such policy/guidelines as described in Annex B of the Code.

This policy is not a replacement for the Mental Health Act Code of Practice (2015).

They are intended to state clearly requirements within practice and do not replace or over-ride the Mental Health Act or the associated Code of Practice.

It is essential that all those undertaking functions under the Act understand the five sets of overarching principles which should always be considered when making decisions in relation to care, support or treatment provided under the Act. If a circumstance arises when the care team believe there is justification for practicing outside of the Code of Practice, either the Mental Health Act Clinical Manager or the Mental Health Legislation Manager must be consulted and a decision will be made at that point whether this decision can be justified.

The following is an explanation of the overarching principles. Although all are of equal importance the weight given to each principle in reaching a particular decision will depend on context and the nature of the decision being made. The five overarching principles are:

Least restrictive option and maximising independence
Where it is possible to treat a patient safely and lawfully without detaining them under the Act, the patient should not be detained. Wherever possible a patient's independence should be encouraged and supported with a focus on promoting recovery wherever possible.

Empowerment and involvement
Patients should be fully involved in decisions about care, support and treatment. The views of families, carers and others, if appropriate, should be fully considered when taking decisions. Where decisions are taken which are contradictory to views expressed, professionals should explain the reasons for this.

Respect and dignity
Patients, their families and carers should be treated with respect and dignity and listened to by professionals.

Purpose and effectiveness
Decisions about care and treatment should be appropriate to the patient, with clear therapeutic aims, promote recovery and should be performed to current national guidelines and/or current, available best practice guidelines.

Efficiency and equity
Humber Teaching NHS Foundation Trust will work together with commissioners and other relevant organisations to ensure that the quality of commissioning and provision of mental healthcare services are of high quality and are given equal priority to physical health and social care services. All relevant services should work together to facilitate timely, safe and supportive discharge from detention.

This policy supports CQC guidance principles of the:

"Raising Standards putting people First" Strategy 2013-2016 which asks:

- **Are we safe**
- **Are we caring**
- **Are we effective**
- **Are we well led**
- **Are we responsive to individual needs**

The new measures were introduced as part of the government's response to the Francis Inquiry's recommendations and are intended to help improve the quality of care and transparency of providers by insuring that those responsible for poor care can be held to account.

On 11 November 2014 the government published 12 Care Quality Commission (CQC) fundamental standards including two regulations – the duty of candour and the fit and proper person requirements for directors – which were all in force by April 2015. The fundamental standards appropriate to this policy are:

- Care and treatment must be appropriate and reflect service users' needs and preferences.
- Service users must be treated with dignity and respect.
- Care and treatment must only be provided with consent.
- Care and treatment must be provided in a safe way.
- Service users must be protected from abuse and improper treatment.
- Systems and processes must be established to ensure compliance with the fundamental standards.
- Registered persons must be open and transparent with service users about their care and treatment (the duty of candour).

2. SCOPE

The Trust policy applies to all clinical/non-clinical staff, including substantive, bank, flexible workforce staff, contracted agency staff who provide care that focuses on assessment, care and treatment of patients subject to the Mental Health Act.

3. POLICY STATEMENT

The aim of this policy and its supporting procedures is to ensure that all Trust Staff are aware of their delegated responsibilities in relation to the application and administration of the Act and to support staff in the effective implementation of the Mental Health Act, to ensure patients detained under the Act receive care and treatment lawfully and that they are able to exercise their rights at all times.

The policy sets out the arrangements for Mental Health Act, sets out general principles and processes for Mental Health Act reporting and performance arrangements, defines the training requirements for the Mental Health Act, and sets out the Trust Hospital Managers Scheme of Delegation.

4. DUTIES AND RESPONSIBILITIES

Position	Duty/Responsibility
Chief Executive	• Has ultimate responsibility for Trust adherence to legislation and policies
Trust Board Members	• Responsibility to ensure full compliance with the Act
Chief Operating Officer	• Ensure the operational implementation of Mental Health Legislation Policy, procedure and guidelines. • Responsible for allocation of resources to support the implementation of this policy
Medical Director	• Has lead responsibility for the implementation of this policy • Reports any serious concerns regarding the implementation of this policy to the attention of the Board of Directors
Clinical Director	• Has lead responsibility on strategies and innovations to improve current practice • Has lead responsibility for the development of Policies, Procedures, Protocols aligned to the Mental Health Act
Divisional Managers and Divisional Clinical Leads	• Ensuring staff are aware of and adhere to this policy • Monitoring their staff's compliance with the Act
Modern Matrons/Unit Managers/Team Managers	• Responsibility to ensure policy distribution, implementation and compliance throughout relevant wards, units and Community Teams • Responsibility to support implementation and compliance with Mental Health Act audits • Responsibility to ensure appropriate staffing and skill mix in wards/units with seclusion facilities
Approved Clinicians (ACs)	• Personally accountable for discharging duties under the Mental Health Act • Attend regular update training • Abide by any applicable professional Code of Conduct • Ensure all staff aware who the nominated deputy is and how to contact them at times when they are available • Scrutiny of Section papers on a rotational basis • Responsibility for overseeing the completion of audits by junior Medics in respect of this topic area and policy
Responsible Clinicians (RCs)	• Personally accountable for discharging duties under the Mental Health Act • Attend regular update training • Abide by any applicable professional Code of Conduct • Ensure all staff are aware who the nominated deputy is and how to contact them at times when they are available • Responsible for maintenance of the Section including renewal and authorising S17 leave • Ensure S23 discharge form is completed electronically on the same day, and as soon after the decision is made to discharge as possible. There must be evidence documented on the electronic system at the time the decision to discharge is ordered by the RC. • Ensure capacity to consent to treatment is recorded as required: on admission (within 3 working days), 3 month rule, change of RC, change in treatment, or transfer.

Position	Duty/Responsibility
Registered Nurse	• Ensure tribunal/hearing reports are completed in a timely manner • Ensure patients are provided with their rights on a regular basis (dependent on individual need) • Complete risk assessment prior to any patient going on leave • Ensure consent obtained in relation to administration of care and treatment or ensure relevant safeguard in place if capacity to consent is doubted • Receive and scrutinise detention papers on admission or where patients have been reassessed as requiring further detention in hospital • Carry out 2 hourly reviews of seclusion where required
Band 4 Nursing Associates	• May undertake the task of providing patients with their rights on a regular basis (dependent on individual need), however cannot undertake any of the other above duties under the MHA that a registered Nurse is required to carry out.
Other Registered Practitioners	• Ensuring tribunal/hearing reports are completed in a timely manner • Are required by their relevant codes of professional practice to ensure that the care and treatment provided to patients is lawful and recorded
Approved Mental Health Professionals (AMHPs)	• Personally accountable for discharging duties under the Mental Health Act • To ensure compliance with the AMHP Section, Approval and Authorisation Criteria • Attend regular update training • Abide by the Codes of professional Practice • Deciding on appropriateness of CTO and extensions • Duties laid down in the Act/Code of Practice • Overall responsibility for co-ordinating assessment process • Interview the patient • Make applications for admission of patients if it is appropriate and all criteria are met, having regard to the guiding principles and the Code of Practice • Identify the Nearest Relative and inform/consult • Ensure property is secure and pets/dependants are looked after
All Clinical Staff	• Individual staff members have a personal duty to work within the provisions of the Act approved Trust-wide policies and their associated procedures and protocols. • To work within the confines of the Law • Adhere to this policy when assessing or providing care or treatment (directly or indirectly) to individuals suffering from mental disorder • Identify where additional knowledge or training is required, and attend as directed • Work alongside external agencies such as the Care Quality Commission, Ministry of Justice

Position	Duty/Responsibility
Mental Health Act Clinical Manager	• Responsibility for providing leadership, support and expert advice on safeguarding adults with regard to the Mental Health Act • CPA Lead • Ensure all relevant issues are taken to the Mental Health Legislation Steering Group for discussion • Development/review of policies relating to mental health legislation • Review of CQC MHA inspection reports and delivery of actions • Providing reports to various groups on the Trust position in terms of CQC MHA visits • MHA support visits to units focussing on specific themes from CQC MHA visits • Partnership working with local AMHP services • Undertaking ward based audits of MHA compliance, and providing feedback on the outcomes of audits and practice updates to wards and teams • Reviewing and reporting exceptions to the MHA • Responsibility for recruitment and management of the Associate Hospital Managers • Facilitating quarterly AHM Forum • Annual reviews of AHMs to ensure they are suitable to carry out the role • Arrange and participate in extended seclusion, LTS and CAFO reviews • Closely monitor compliance with seclusion and segregation policy, and ensure audits completed for every episode of seclusion • Weekly Seclusion/LTS reporting • Oversight of Service Level Agreements with HUTH, NLAG, ERYC Guardianships, and Cheswold Park Hospital re external reviews • AC status and AMHP warrant monitoring • Support the reducing restrictive interventions agenda • Provide mental health legislation expertise to CRMG, safety huddle, Crisis Care concordat and clinical governance meetings
Mental Health Legislation Manager	• Responsibility for providing leadership, support and expert advice on safeguarding adults with regard to the Mental Health Act • Collate and prepare data in relation to all mental health legislation – performance report • Supporting the review of CQC MHA inspection reports and delivery of actions • Undertaking ward based audits of MHA compliance, and providing feedback on the outcomes of audits and practice updates to wards and teams • MHA support visits to units focussing on specific themes from CQC MHA visits • Datix reporting in terms of exceptions to the MHA • Providing MHA training across the Trust • Developing bespoke MHA training packages specific to team need • Providing MHA training to the AHMs • Providing MHA training to junior Doctors • Facilitate monthly MHA Q & A sessions • Facilitate quarterly Medic/AMHP training sessions • Monitor compliance with completion of capacity to consent to treatment forms

Position	Duty/Responsibility
Mental Health Legislation Administrators	• Provide effective access to appropriate advice and support in relation to administration processes for all mental health legislation that is easily available to all clinicians and practitioners in the Trust throughout office hours • The team must support the effective functioning of review and tribunal processes through effective booking and clerking processes • The service will provide prompts to clinicians and practitioners with regard to time periods, e.g. section renewals, consent to treatment to enable adherence to legislation • Manage the day to day functioning of the Act on behalf of the Medical Director and Hospital Managers • Scrutinise legal paperwork on behalf of the Hospital Managers and ensure ratification of errors • Arrange scrutiny for medical recommendations • Provide written information to patients • Co-ordinating First-Tier Tribunals • Co-ordinating Hospital Managers Hearings • Co-ordinating Renewal / extension Hearings • Capturing and presenting Mental Health Act data • Auditing compliance with legislation • Correspond with the CQC as appropriate • Jointly support The Associate Medical Director – Specialist Care Group – to identify Authors to review policies/protocols/procedures • Any other functions delegated by the Hospital Managers • Deprivation of Liberty Safeguards (DoLS) monitoring

All professionals have a requirement to be familiar with and operate in line with the MHA and the Code of Practice as stated in Section 118 of the Act.

Where relevant, staff must ensure they are compliant with, or pay consideration to requirements of the Human Rights Act (1998) and The Mental Capacity Act (2005) and associated Deprivation of Liberty in respect of patient care and promoting good safe and effective quality mental health care.

Staff undertaking the Approved Mental Health Professionals (AMHP) role should refer to their employing organisations support systems through the respective Local Authority where they are not employed by the Trust. The AMHPs employed by Humber Teaching NHS Foundation Trust are approved by Hull City Council and when undertaking duties and functions under the Mental Health Act, they do so on behalf of the Local Authority. Therefore, AMHP's, whilst they are employees of the Trust, are also duty bound to adhere to Hull City Council's Policies and Procedures as required in relation to their work.

In England, NHS hospitals are managed by NHS trusts and NHS foundation trusts. For these hospitals (including acute/non-mental health hospitals**), the trusts themselves are defined as the 'hospital managers' for the purposes of the Act**.

In practice, most of the decisions of the hospital managers are actually taken by individuals (or groups of individuals) on their behalf. This is listed in the Scheme of Delegation). In particular, decisions about discharge from detention and Community Treatment orders (CTOs) are taken by panels of three lay people (managers' panels) specifically selected for the role.

Functions of Hospital Managers (as defined above)

- Responsibility for implementation of the Act as delegated by the Trust Board
- Receive applications for admission under the Act
- Hold Renewal / extension Hearings when a patient's detention is being renewed / extended

- Hold Appeal Hearings when a patient appeals against their Section
- Responsible for the Discharge of a patient on Appeal or Renewal Hearing
- Authorise transfers to other Hospitals
- Provide information to patients in accordance with Section 132 & Chapter 2 of the Code of Practice
- Provide information to victims in accordance with the Domestic Violence, Crime & Victims Act 2004
- Withhold mail where appropriate
- Refer patient to the First-Tier Tribunal where appropriate

Second Professionals (in relation to renewals)
The second professional should be someone who is professionally concerned with the patient's treatment, but of a different profession to the RC.

Usually this would be undertaken by the patients care co-ordinator or inpatient named nurse.

Responsibilities:

- Attending regular update training
- Provide second opinion at Renewal Hearings

Professionals in relation to CTO extensions
Part 2 is completed by an AMHP who doesn't need to be involved in the patients care.
Part 3 is completed by a professional who has been professionally concerned with the patient's treatment.
Part 2 and 3 cannot be completed by the same person.

Statutory Consultee (in relation to consent to treatment)
One would be a nurse, the other neither a nurse nor a doctor. Both must have been professionally concerned with the patient's treatment.

Responsibilities:

- Consult with Second Opinion Appointed Doctor (SOAD) in relation to treatment being provided
- Provide an opinion on proposed treatment, patient's ability to consent, treatment options and implications for the patient

Statutory Consultee (CTO patients)
Neither consultee can be the RC in charge of treatment. It is possible to use a medic as another consultee, i.e. GP. The other could be a nurse or other professional involved in the patient's care.

The CTO 11 is a certificate of appropriateness rather than a second opinion. For CTO's the Consultee is not certifying if a patient has or lacks capacity to consent, or if they have capacity to consent but are refusing.

Responsibilities:

- Consult with SOAD about the appropriateness of treatment to be provided
- Discuss with the SOAD the treatments proposed in the event of recall

Associate Hospital Managers Panels
- Power to discharge most detained patients and all patients subject to a Community Treatment Order.
- Review patient's detention on request of patient
- Hold a review hearing for patients whose section are due for renewal/extension

Independent Mental Health Act Advocate (IMHA)

- Support patients to exercise their rights and ensure they can participate in the decisions that are made about their care and treatment.

Mental Health Legislation Steering Group

- Act within agreed terms of reference
- Enact Policy, procedure and guidelines.
- Provide forum for resolving of operational issues in relation to the Mental Health Act
- Provide support and guidance to all Clinicians

Mental Health Legislation Committee

Act within their prescribed and agreed terms of reference; seek assurance on behalf of the organisation for the application of the Mental Health Act

5. PROCEDURES

Where members of staff are unclear how to proceed in a given situation, they must refer to the Mental Health Act 1983, the Mental Health Act Code of Practice (2015) or the procedures associated with this policy.

If not resolved, additional information and guidance can then be requested from the Mental Health Act legislation team.

Standard operating procedures (SOPs) form appendices to this policy which describe clearly responsibilities and requirements for the following elements of the Mental Health Act

- Section 132 / S132A Information for patients, nearest relatives, carers and others SOP16-001
- Missing Patient Procedure and Section 18 AWOL SOP16-003
- Receipt and Requirements of Scrutiny of Mental Health Act Documentation (SOP16-004)
- Section 5 (MHA 1983) – Holding Powers (SOP17-009)
- Repatriation SOP (SOP20-005)
- Advance Decision/Advance Statement Guidance (G372)
- Death of detained patients SOP
- Electronic MHA Forms SOP
- Consent to Treatment for patients detained under the MHA Standard Operating Procedure
- Handcuffs and Softcuffs SOP
- Medication under S117 Aftercare SOP
- Legal use of clinical holding or restraint in acute hospitals SOP
- Admission and recall of restricted (S37/41) patients SOP

Mental Health Legislation Procedures – General Responsibilities

Completion and location of section papers

It is the responsibility of the professional completing any Section papers to ensure that they are correctly completed and submitted.

Any incomplete or sub-standard papers that result in unlawful detention will be treated as an Untoward Incident and reported via Datix.

Any actions (or omissions or incorrect information) that results in unlawful detention remain the responsibility of the professional concerned. Repeated actions resulting in unlawful detention will be regarded as a disciplinary matter.

The receiving officers are identified in the 'Standard operating Procedure for Receipt and Scrutiny of Mental Health Act Documentation'.

It will be the responsibility of the Mental Health Legislation Team to retain all (individual's) Mental Health Section documents in accordance with Department of Health Circular HSC 1999/053

All ‘active’ legal documents/section papers will be located within the Legislation Team office; historic legal documents will be held within the Medical Records Department.

Knowledge
All clinical staff within the mental health and learning disability service must have the relevant working knowledge of the Mental Health Act and its Code of Practice, the Human Rights Act, the Mental Capacity Act and its Code of Practice. Staff must ensure that they receive regular updates on relevant case law and in-service training.

All RC’s, AC’s and Registered relevant Professionals must have the relevant working knowledge of The Mental Health Act, The Human Rights Act and The Mental Capacity Act and compliance with the Code of Practice (Section 118).

The Chief Executive, through delegation, will ensure that all areas have well defined and understood procedures for the admission of detained patients.

The Mental Health Act Code of Practice (2015) to be adhered to. All staff will ensure that they comply with Section 118 of the Mental Health Act (1983)

The Mental Health Act Legislation Department will provide a co-ordinating and advisory role on the Mental Health Act legislation and its administration. The Department will also provide guidance on the requirements of the Human Rights Act 1998 and The Mental Capacity Act 2005.

Every unit staff should be aware of how to access the appropriate legislation, information materials and also the Procedure and Guidance for Accessing Interpreter Services and how to obtain leaflets in the appropriate language and the use of the DVD issued to all wards which cover an extensive number of languages.

Responsible Clinician responsibility
For patients subject to CTO the Community RC is the named RC unless the patient is recalled into hospital in which case the AC responsible for the admitting unit becomes the named RC until the patient is discharged back into the community.

For all detained patients their named RC will be the AC responsible for their respective inpatient unit.

For patients who are transferred to other units within Humber the AC responsible for the receiving inpatient unit will become the named RC. If there is more than one consultant on the unit the Z11 (transfer of RC) form needs completing to ensure there is clear evidence who is responsible for that patient; the form also needs completing where patients are transferred into the community on a CTO or a conditional discharge.

Form Z11 should be completed via the electronic system in the MHA & Legal tab in clinical charts. The first part of the form is completed by the previous RC on the original unit and the second part of the form is completed by the new RC on the receiving unit/team. The form MUST be signed off by the accepting RC.

Rights
Detained patients under the Mental Health Act will be informed of the reason for detention and the method of appeal, both verbally and in writing by the appropriate Mental Health Act leaflet, and by the Registered Nurse responsible for admitting the patient. If the patient is unable to understand

their rights at the time of detainment under the Act, it is the responsibility of the charge nurse of the admitting ward to ensure that every attempt is made to allow the patient to be able to understand fully their rights under the Act. On admission/transfer a Section 132 rights form will be completed either on paper or using the CDC form within Lorenzo. If done on paper the originals should be sent to the Mental Health Legislation Department, who will make a referral for an IMHA for those patients who lack capacity to make this decision or those who consent to a referral being made. A rights care plan will be completed and must identify how often the patient needs their rights repeating based on individual need.

Each Inpatient Unit will have the responsibility of informing the patient's nearest relatives of the detention and rights under the Mental Health Act and also their right to an IMHA – see Standard Operating Procedure, Section 132/132A.

Re-assessments for further detention in hospital (regrades), renewals and appeals
All Sections under the Act to be routinely monitored via the Mental Health Legislation Department, who will send out regular reminders of section expiry dates to the units and AMHPs where applicable.

Tribunals and Hospital Managers Hearings will be organised via the Mental Health Team.

The re-grading of a Section to be organised within the ward multi-disciplinary clinical team and it is the responsibility of the Trust's Mental Health Legislation Department to ensure the administration is implemented correctly. Notification for renewals / extensions and consent to treatment requirements will be undertaken by the Mental Health Legislation Department.

Governance
As a Trust we are registered with the Care Quality Commission (CQC) and are required to maintain compliance with their regulatory standards. The CQC undertake unannounced Mental Health Act visits across our in-patient mental health and learning disability wards periodically in order to monitor use of the Mental Health Act and ensure standards are being met. Services are assessed against the MHA Code of Practice' overarching principles (as described in the introduction of this policy). It is essential that effective governance processes are in place across all levels of the Trust.

On receiving a MHA visit from the CQC the ward manager/senior in charge must inform the Governance and Patient Safety Team, Matron, Service Manager, and the Mental Health Legislation Team immediately. Following the visit the Ward Manager/Senior in charge will receive initial feedback from the CQC Inspector and this should be written up and sent via email to the Governance and Patient Safety Team, Matron, Service Manager, and the Mental Health Legislation Team at the earliest opportunity. The Governance Team then distribute this information accordingly. Any serious issues identified should be rectified immediately.

Once the report is received from the CQC the MHA CQC Reports Process should be followed (see Appendix 1) with regards to completion of the Provider Action Statement, which needs to be submitted back to the CQC within a tight timeframe.

The MHA Clinical Manager monitors progress in line with the closing dates for actions and reviews evidence with the Unit Manager; the actions are closed off by the MHA Clinical Manager once sufficient evidence of completion of actions is provided. The actions are monitored through use of a CQC MHA tracker, which enables a regular update report to be completed for Mental Health Legislation Steering Group (MHLSG), Mental Health Legislation Committee (MHLC), Audit and Effectiveness Group (AEG), and Clinical Governance Groups as requested. The MHA Clinical Manager attends each Division's Clinical Governance Meeting in order to contribute to the governance relating to mental health legislation.

In addition to the above controls the MHA Managers aim to carry out MHA support visits to every inpatient unit on a bi-monthly basis. The main focus of these visits is to ensure compliance with

patients being given their rights regularly, S17 leave authorisations, and completion of capacity to consent to treatment forms (Z48) by the Responsible Clinician (these are generally the recurring themes identified by the CQC at Trusts across the country). The MHA Managers then provide immediate feedback to the Nurse in Charge and follow this up in writing in the form of an action plan for immediate attention.

Any exceptions to the Mental Health Act will be reported via the monthly exception report, which is monitored via the MHLSG. This includes unlawful detentions. Learning from such exceptions is addressed in the development of practice notes, amendments to forms/checklists, and through use of relevant scenarios within the bespoke MHA training packages etc.

6. HUMAN RIGHTS ACT

The Human Rights Act (1998) came into effect in October 2000. As a public authority, the Trust must consider this within any policy documents.

For the purpose of this policy and the implementation of the Mental health Act, the following Articles from the European Convention on Human Rights (ECHR), and compliance with them, must be considered within clinical practice:

Article 2 – Right to life
Article 3 - The right to be free from torture, inhuman and degrading treatment
Article 5 – Right to personal liberty
Article 6 – The right to a fair trial
Article 8 – Right to respect for private and family life, home and correspondence
Article 9 – The right to freedom of thought, conscience and religion
Article 14 – The right to non-discrimination in relation to any of the rights contained in the Human Rights Act
In addition the following is also applicable for mental health and learning disability services:
Protocol 1, Article 1 – Right to peaceful enjoyment of your property

7. EQUALITY AND DIVERSITY

An Equality and Diversity Impact Assessment has been carried out on this document using the Trust approved EIA

This Policy, procedures and guidelines ensure that all people are in receipt of services that are safe, effective and led by the needs of the person. The standards within the policy will be applied equally to all patients irrespective of creed or race. Where individuals are being detained or receiving treatment under the terms of the Act no community group will be treated less favourably.

The impact assessment has identified the following actions which will be monitored by the Mental Health Legislation Committee and Equality and Diversity Steering Group;

- Any reports to the Mental Health Legislation Committee on the use of the Mental Health Act will include data on equality fields.
- Trends in the use of the Mental Health Act will be monitored against national Equality and Diversity data to identify any impacts on the target groups.

Where patients' legal status is affected we have a clear duty to inform them of their rights regardless of their main language or communication difficulties. DVDs are available in 28 languages (other than English) with the rights of detained patients.

When patients are detained with any impairment to understanding clinical staff must identify this need as soon as possible and access appropriate interpreter support e.g. Language specialist, British Sign Language (BSL) interpreter, Independent Mental Health Advocate.

Religious beliefs will be respected and the Trust Chaplain will support access to relevant faith leaders and information. All clinical settings (wherever possible) should accommodate individual prayer/meditation space with appropriate access facilities.

8. DISSEMINATION/IMPLEMENTATION/TRAINING

- This policy will be disseminated by the method described in the Document Control Policy
- Revised policy to be circulated via global email
- This Policy document must be discussed within all MDT and team meetings, led by the senior staff in each team
- Policy and associated Standard operating procedures will be available on the intranet under policies and also dedicated mental health act page

The policy is to be implemented within existing resources.

All mental health inpatient units have been provided with as a minimum, the following resources for their information and reference:

Department of Health: (2015) Mental Health Act Code of Practice. London TSO

Department of Health (2005) Mental Capacity Act Code of Practice. London TSO

Ministry of Justice (2008) Deprivation of Liberty safeguards. London TSO

Jones. R. Mental Health Act manual latest Edition. London. Sweet & Maxwell

Revised HFT mental health act manual is also available

Mental Health Act training is provided via training diary on ESR and is available to all staff working within the boundaries of the Mental Health Legislation.

Each Division will be responsible for ensuring that any identified gaps in completion of the training are addressed.

9. MONITORING AND AUDIT

In order to meet the monitoring requirements of the Mental Health Act Code of practice (2015) an assurance report on the Mental Health Act will be provided to the Trust Mental Health Legislation Steering group, and a quarterly report to the Trust Mental Health Legislation Committee. Exception reports will be made through the same process as well as in the Clinical Risk Management Group as required.

Mental Health Legislation Committee will identify additional actions/scrutiny as required to achieve satisfactory assurance on behalf of the organisation

The Mental Health legislation team receive regular audit information regarding the implementation for the following areas:

- Seclusion / LTS / CAFO
- Use of MHA
- Use of Section 4

- Holding powers
- Certificates for treatments
- Exclusion of visitors
- Cancellation of S17 leave due to staff shortage

Any exceptions, non-compliance is initially reported via a Datix report, which then informs the decision whether any further review is required.

The Mental Health Legislation Steering group monitors the number of admissions, detentions, discharges, CTO's, seclusions, duration of seclusions and all other relevant information pertaining to detained patients.

The Trust benchmarks its performance with other health trusts through CQC Annual reports on the Mental Health Act and other available sources. This is included within the monthly CQC MHA visits reports provided to the MHLSG, Divisional Clinical Governance meetings and the Audit and Effectiveness Group.

Regular MHA audits are built into Trust audit programme in MyAssurance. The units will audit five sample notes per month and the MHL Managers will aim to audit all inpatient records on every unit on a yearly basis.

Good management supervision and case load management are key to the safe and effective implementation of the MHA. Line managers will monitor adherence to the Act, ensuring the provision of lawful interventions.

10. REFERENCES/EVIDENCE/GLOSSARY/DEFINITIONS

Department of Health (2015) Mental Health Act Code of Practice. London TSO

Department of Health (2005) Mental Capacity Act Code of Practice. London TSO

Ministry of Justice (2008) Deprivation of Liberty safeguards. London TSO

Great Britain. Human rights act 1998: Elizabeth II Chapter 42 (1998).London TSO

Great Britain. Mental Health Act 1983 (Chapter20): Elizabeth11 (1983). London W.J Sharp

Jones. R. Mental health act manual. Latest Edition. London. Sweet & Maxwell

Avon and Wiltshire Mental Health Partnership NHS Trust – Mental Health Act Policy

11. RELEVANT POLICIES/PROCEDURES/PROTOCOLS/GUIDELINES

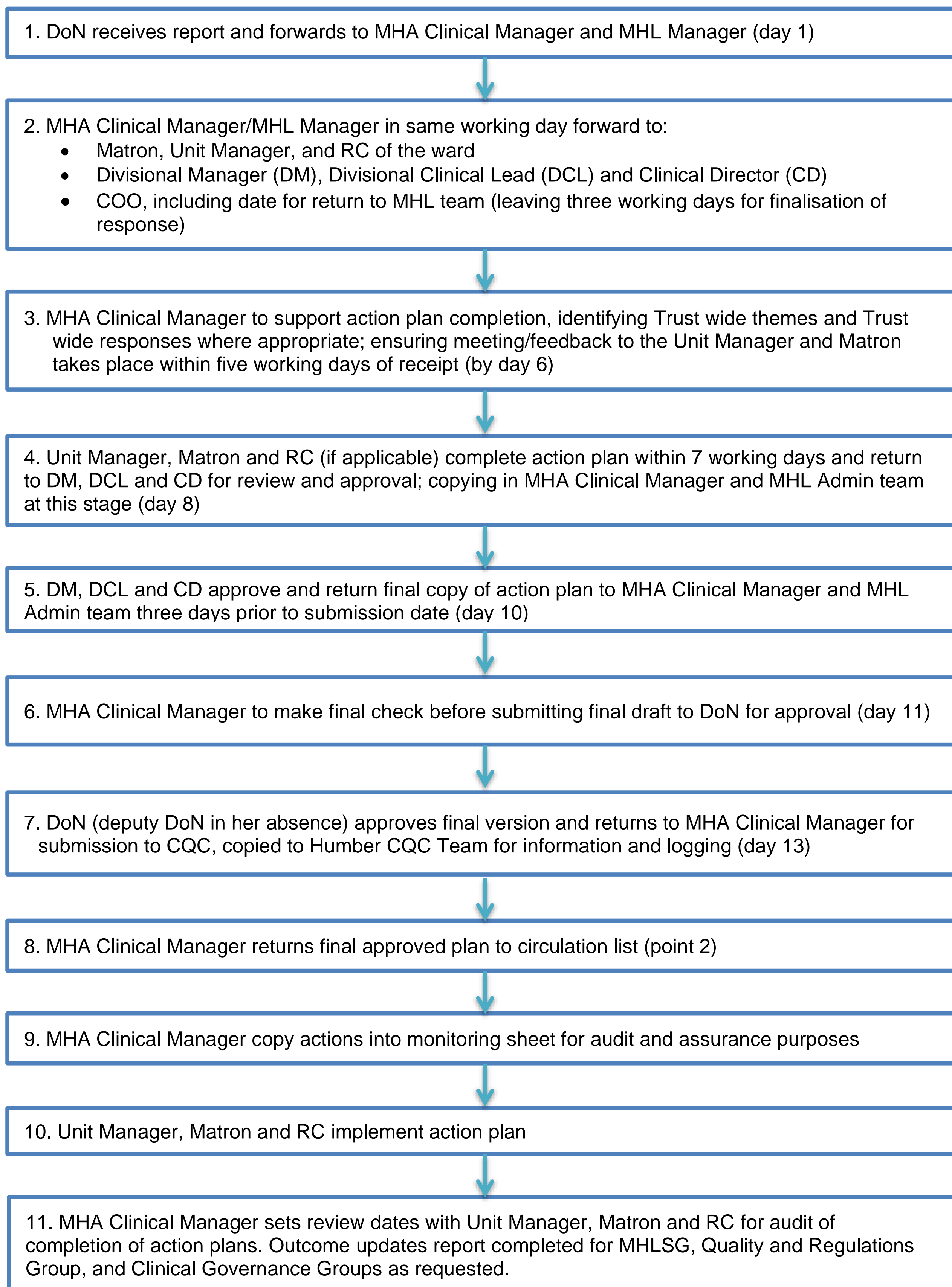
Please see Section 5 (Procedures) for list of Standard Operating Procedures directly linked to the Policy.

Other relevant Policies, Procedures, Protocols and guidelines are as follows:

- Inpatient Leave Policy
- Policy for the Management of Violence and Aggressive Behaviour
- Policy for the Use of Seclusion or Segregation
- Rapid Tranquilisation Policy
- Guidance in Relation to Advance Statements, and Advance Decisions to Refuse Treatment
- Community Treatment Order Protocol

- Entry and Exit for Non-Secure Mental Health and Learning Disability Inpatient Units Policy
- Search Policy
- Protocol for the implementation of Section 136
- Section 135 Warrant to search for and remove patients Protocol
- S136 Policy
- Care Programme Approach (CPA) and non CPA Policy and Procedural Guidance
- Conveying a patient
- Use of Force Policy
- Policy on the use of global restrictive practices (blanket restrictions) in in-patient units
- Human Rights and Equality Policy for service provision and practice in relation to the MHA
- Section 117 Protocol
- Consent to Assessment, Examination and Treatment Policy and Procedure
- Restrictive Practice guidance
- Visiting Policy
- Associate Hospital Managers Policy

Appendix 1: MHA CQC Reports Process



Humber Teaching
NHS Foundation Trust

Appendix 2: Functions Imposed on Hospital Managers by the Mental Health Act 1983 and the Code of Practice – Scheme of Delegation to Officers of the Trust

HUMBER TEACHING NHS FOUNDATION TRUST

FUNCTIONS IMPOSED ON HOSPITAL MANAGERS BY THE MENTAL HEALTH ACT 1983 AND THE CODE OF PRACTICE

SCHEME OF DELEGATION TO OFFICERS OF THE TRUST

FUNCTIONS WHICH CANNOT BE DELEGATED TO OFFICERS OF THE TRUST

FUNCTION	STATUTORY REFERENCE (1)	CODE OF PRACTICE REFERENCE (2)	AUTHORISED PERSON/COMMITTEE
Review of patients' detention	Section 20(3)	Chapter 38	Mental Health Act Associate Managers
Discharge of unrestricted patients; detained patients or community treatment order patients	Section 23(2)(a)	Chapter 38	Mental Health Act Associate Managers

(1) Mental Health Act 1983 (as amended by the MHA 2007).
The Mental Health (Hospital, Guardianship and Consent to Treatment) (England) Regulations 2008 (S.I. 1184)

(2) The Mental Health Act 1983 Code of Practice (published 2015)

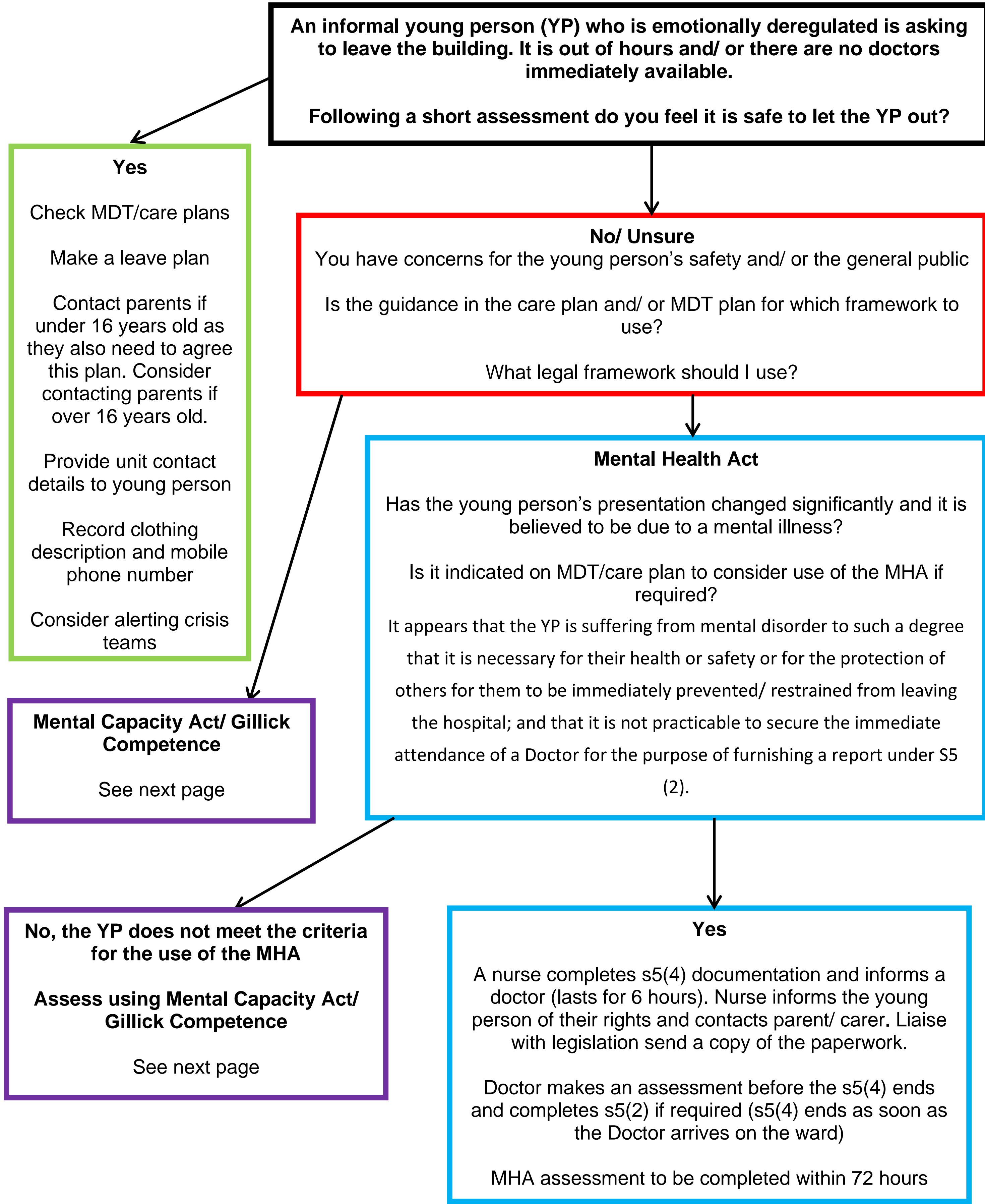
FUNCTIONS WHICH CAN BE DELEGATED TO OFFICERS OF THE TRUST

FUNCTION	STATUTORY REFERENCE (1)	CODE OF PRACTICE REFERENCE (2)	AUTHORISED PERSON/COMMITTEE
Admission of patients under the MHA	Sections 6(2), 40(1), 40(3), 47(3), 45B(2)	Chapter 37, para.37.12	An application for admission will be served by delivering it to an officer acting on behalf of the Hospital Managers on the admitting ward/unit Site Manager/Deputy Modern Matron/Clinical Lead Nurse in charge Qualified Clinician
Receipt, scrutiny and rectification of statutory admission documents for detained patients	MHA S.11(2) MHA S.15 Regulation 4(3)	Chapter 35 Chapter 35	Receipt of documents: Mental Health Legislation Personnel Modern Matron/Clinical Lead Site Manager/Deputy Nurse in charge Qualified clinician Medical scrutiny by Consultant on rota basis
Recording admission (Form H3) (for Section 2, 3 & 4)	MHA Sections 2, 3 and 4 Regulation 4(4) and 4(5)	Chapter 35	Mental Health Legislation Personnel Receiving qualified nurse on inpatient unit Modern Matron/Clinical Lead Qualified clinician
Recording admission (For Section 5(2) – Form H1) (For Section 5(4) – Form H2)	MHA Sections 5(2) and 5(4) Regulation 4(1)(g) Regulation 4(1)(h)	Chapter 18	Mental Health Legislation Personnel Modern Matron/Clinical Lead Qualified Nursing staff on inpatient unit Clinical lead Qualified clinician
Receipt of Renewal documentation on behalf of Hospital Managers (Form H5)	MHA Section 20(3)(b) Regulation 13(3)	Chapter 32	Mental Health Legislation Personnel
Receipt of order for discharge of patient or notice of intention to make such an order	MHA Section 23 and 25	Chapter 32 (32.20-32.25)	Mental Health Legislation Personnel

FUNCTIONS WHICH CAN BE DELEGATED TO OFFICERS OF THE TRUST

FUNCTION	STATUTORY REFERENCE (1)	CODE OF PRACTICE REFERENCE (2)	AUTHORISED PERSON/COMMITTEE
Receipt of Community Treatment Order (Form CTO1)	Section 17A Regulation 6(1)(a), (b) and 6(2)(a)	Chapter 29 (29.26)	Mental Health Legislation Personnel
Receipt of order varying CTO conditions (Form CTO2)	Section 17B(4) Regulation 6(2)(b)	Chapter 29 (29.40)	Mental Health Legislation Personnel
Receipt of extension report of CTO (Form CTO7)	Section 20A(4)(b) Regulation 13(6)(a) and (b), and 13(7)	Chapter 32 (32.14)	Mental Health Legislation Personnel
Receipt of notice recalling patient from CTO (Form CTO3)	Section 17E(6) Regulation 6(3)(a)	Chapter 29 (26.60)	Mental Health Legislation Personnel Ward/Unit co-ordinator or equivalent out of hours Case worker
Record of detention in hospital after recall (Form CTO4)	Section 17E Regulation 6(3)(d)	Chapter 29	Mental Health Legislation Personnel Modern matron/lead clinician Ward/Unit co-ordinator or equivalent out of hours. Qualified Nurse in charge
Receipt of CTO revocation order (Form CTO5)	Section 17F(4) Regulation 6(8)(a) and (b)	Chapter 29 (29.68)	Mental Health Legislation Personnel Ward/Unit co-ordinator or equivalent out of hours. Case worker Qualified Nurse in charge Qualified Clinician
Transfer of CTO patient to a hospital under different managers (Form CTO6)	Section 17F(2) Regulation 9(3)(a) and (5)	Chapter 37 (37.30)	Mental Health Legislation Personnel Ward/Unit co-ordinator or equivalent Modern Matron/Lead Clinician Qualified Nurse in charge Case worker Qualified Clinician
Transfer of detained patients (Form H4) (For restricted patients, consent of MoJ required).	Section 19 Regulation 7(2)(a) & 7(3)	Chapter 37	Transfer decision is made by the Responsible Clinician Mental Health Legislation Personnel Ward/Unit co-ordinator or equivalent Modern Matron/Lead Clinician Qualified Nurse in charge

Appendix 3: CAMHS Staff guidance – Mental Health Act Vs Mental Capacity Act/ Gillick competence



Mental Capacity Act (16 and over)/ Gillick competence

- Is stopping the person from leaving the ward for a short period necessary to prevent harm to them or others?
- Is this a proportionate response to the likelihood and seriousness of harm?
- Is young person's capacity to understand the risks of leaving the ward doubted

No
Make appropriate provision for the young person to leave the ward.

Possible options:

This could be with a member of staff or a family member if continuing concerns.

You could advise them to wait a short while and engage in other coping strategies with support.

You could make a plan for leave with them.

Yes
Complete and document a capacity assessment:
Decision: Whether it is safe f*or the YP to leave the ward at this moment in time.*
Nature of impairment or disturbance: *Any diagnosis the YP has and that at the time of the assessment they were emotionally deregulated, describe presentations and likely triggers/ background info e.g. family dynamics, social care status.*

1) Is the YP able to understand information relevant to the decision? *Risks of leaving the ward, safety of themselves/ others, purpose of the leave, staff concerns can describe the YP's presentation current and prior, alternative options e.g. leave with family/ staff.*
2) Is YP able to retain the information provided?
3) Is the YP able to use or weigh the information provided? *This is the important one, a person may be able to demonstrate that they understand the information but is their current presentation impairing their ability to use the information to make a decision.*
4) Is the YP able to communicate their decision?

Document the questions asked by staff and the responses from the YP.

YP has capacity

Make appropriate provision for the young person to leave the ward.

Possible options:

This could be with a member of staff or a family member if continuing concerns.

You could advise them to wait a short while and engage in other coping strategies with support.

You could make a plan for leave with them.

It is considered YP does not have capacity to make this decision
A best interest decision is made, if possible involving the YP's parent/ carer or anyone else involved in the care of the young person.

Document best interest discussion

Communicate decision to YP and parent/carer

Document on Lorenzo that the YP's liberty has been **restricted** to protect the YP and/or others from harm.

Capacity can and should be reviewed regularly, particularly if the young person's presentation has improved.

If the YP's Liberty has been restricted for a length of time this can easily become a deprivation of liberty. This is something which will need to be discussed in MDT and with the MHA team if staff are restricting a YP for a length of time.

Capacity assessment is time specific therefore this process should be repeated each time a young person asks to leave the ward.

Appendix 4: Document Control Sheet

This document control sheet must be completed in full to provide assurance to the approving committee.

Document Type	Mental Health Act Policy		
Document Purpose	The aim of this policy and its supporting procedures is to ensure that all Trust Staff are aware of their delegated responsibilities in relation to the application and administration of the Act and to support staff in the effective implementation of the Mental Health Act, to ensure patients detained under the Act receive care and treatment lawfully and that they are able to exercise their rights at all times. This Policy and attendant procedures, in the form of Standard Operating Procedures, are designed to provide a clear and informative explanation of elements of the Code of Practice requiring such policy/guidelines as described in Annex B of the Code. They are intended to state clearly requirements within practice and do not replace or over-ride the Mental Health Act or the associated Code of Practice.		
Consultation/Peer Review:	Date:	Group/Individual	
List in right hand columns consultation groups and dates	24/02/20	Mental Health Legislation Steering Group (via email)	
	24/02/20	Unit Managers (via email)	
	24/02/20	AMHPs (via email)	
	18/01/23	Mental Health Legislation Steering Group	
	15.02.23	Mental Health Legislation Steering Group	
	15.03.23	Mental Health Legislation Steering Group	
	19.04.23	Mental Health Legislation Steering Group	
Approving Committee:	Mental Health Legislation Committee (MHLC)	Date of Approval:	07/05/20
Ratified at:		Date of Ratification:	
Training Needs Analysis: *(please indicate training required and the timescale for providing assurance to the approving committee that this has been delivered)*		Financial Resource Impact	
Equality Impact Assessment undertaken?	Yes [✓]	No [ ]	N/A [ ] Rationale:
Publication and Dissemination	Intranet [✓]	Internet [ ]	Staff Email [✓]
Master version held by:	Author [ ]	HealthAssure [✓]	
Implementation:	*Describe implementation plans below – to be delivered by the Author:*		
	• This policy will be disseminated by the method described in the Policy and Procedural Documents Development and Management Policy. • Revised policy to be circulated via global email. • This Policy document must be discussed within all MDT and team meetings, led by the senior staff in each team. • Policy and associated Standard operating procedures will be available on the intranet under policies and also dedicated Mental Health Act page.		
Monitoring and Compliance:	The Trust's arrangements for MHA monitoring are regularly scrutinised within the MHLC, where areas for development are identified and annual priorities determined. These form the work plan for the coming year,		

	against which progress is measured and reported regularly to the MHL steering Group and MHL Committee and the Trust Board. An assurance report on the Mental Health Act will be provided to the Trust Mental Health Legislation Operational group, and a quarterly report to the Trust Mental Health Legislation Committee, which meets the monitoring requirements of the Mental Health Act Code of practice (2015). Exception reports will be made through the same process as well as in the Clinical Risk Management Group as required. The Trust benchmarks its performance with other health trusts through CQC Annual reports on the Mental Health Act and other available sources. This is included within the monthly CQC MHA visits reports provided to the MHL Steering Group, Divisional Clinical Governance meetings and the Quality and Regulations. Regular MHA audits are built into Trust audit programme in MyAssurance. The Units will audit five sample notes per month and the MHL Managers will audit all inpatient records on every unit on a yearly basis.

Document Change History: (please copy from the current version of the document and update with the changes from your latest version)

Version number/name of procedural document this supersedes	*Type of change, e.g. review/legislation*	*Date*	*Details of change and approving group or executive lead (if done outside of the formal revision process)*
2.6	*Review*	*2013*	*Revised*
3.0	*Review*	*15/01/16*	*Revised in line with Mental Health Act Code of Practice 2015, specifically Annex B requirements*
3.01	*Minor changes*	*15/05/17*	*Minor changes in relation to duties and responsibilities, and deletion of reference to the search SOP (now a policy)*
3.02	*Minor changes*	*06/06/17*	*Role and responsibilities of Medical Director and Associate Medical Directors defined. Also MHA CQC Reports Process added as appendix.*
3.03	*Minor changes*	*29/08/17*	*Section added under roles and responsibilities regarding Statutory Consultee for CTO patients. Also under Section 5 – Human Rights Act – added Article 2 Right to life.*
4.0	*Review*	*07/02/20*	*Full Review*
4.1	*Review*	*13.01.23*	*Additions made to RC responsibility section (p5), MHA Clinical Manager section (p6), MH Legislation Manager and Adminsitrators section (p8). Clarified the role of the Band 4 Nursing Associates under the MHA (page 6). Addition made to RC responsibilty for transfer of RC (page 11).* *Addition made to reflect responsibilities of AMHPs employed by Humber (page 9). Approved by Director sign-off at MHLS group (19/04/2023).*
4.2	*Reviewed with Minor amends*	*01.09.23*	*Addition on Page 12 to ensure transfer of RC form is signed only by the RC* *Approved at QPaS 19th October 2023.*

Appendix 5: Equality Impact Assessment

Screening pro forma for strategies, policies, procedures, processes, tenders, and services

1. Document or Process or Service Name: Mental Health Act Policy
2. EIA Reviewer (name, job title, base and contact details): Michelle Nolan, Mental Health Act Clinical Manager
3. Is it a Policy, Strategy, Procedure, Process, Tender, Service or Other? Policy

Main Aims of the Document, Process or Service
The aim of this policy and its supporting procedures is to ensure that all Trust Staff are aware of their delegated responsibilities in relation to the application and administration of the Act and to support staff in the effective implementation of the Mental Health Act, to ensure patients detained under the Act receive care and treatment lawfully and that they are able to exercise their rights at all times. The policy sets out the arrangements for Mental Health Act, sets out general principles and processes for Mental Health Act reporting and performance arrangements, defines the training requirements for the Mental Health Act, and sets out the Trust Hospital Managers Scheme of Delegation.
Please indicate in the table that follows whether the document or process has the potential to impact adversely, intentionally or unwittingly on the equality target groups contained in the pro forma

Equality Target Group	Is the document or process likely to have a potential or actual differential impact with regards to the equality target groups listed?	How have you arrived at the equality impact score?
1. Age 2. Disability 3. Sex 4. Married/Civil Partnership 5. Pregnancy/ Maternity 6. Race 7. Religion or belief 8. Sexual Orientation 9. Gender Re-assignment	Equality Impact Score Low = Little or No evidence or concern (Green) Medium = some evidence or concern(Amber) High = significant evidence or concern (Red)	a) who have you consulted with b) what have they said c) what information or data have you used d) where are the gaps in your analysis e) how will your document/process or service promote equality and diversity good practice

Equality Target Group	Definitions	Equality Impact Score	Evidence to support Equality Impact Score
Age	Including specific ages and age groups: Older people, Young people, Children, Early	Low	This policy is consistent in its approach regardless of age. Staff must carry out mandatory Equality, Diversity and Human Rights training via e-learning.
Disability	Where the impairment has a substantial and long term adverse effect on the ability of the person to carry out their day to day activities: Sensory, Physical, Learning, Mental	Low	This policy is consistent in its approach regardless of disability. For patients who have a communication need or have English as their second language consideration must be given to providing information in an accessible format. Staff must carry out mandatory Equality, Diversity and Human Rights training via e-learning.
Sex	Men/Male, Women/Female	Low	This policy is consistent in its approach regardless of sex. Staff must carry out mandatory Equality, Diversity and Human Rights training via e-learning.
Married/Civil Partnership		Low	This policy is consistent in its approach regardless of marriage/civil partnership. Staff must carry out mandatory Equality, Diversity and Human Rights training via e-learning.

Pregnancy/ Maternity		**Low**	This policy is consistent in its approach regardless of pregnancy/maternity. Staff must carry out mandatory Equality, Diversity and Human Rights training via e-learning.
Race	Colour, Nationality, Ethnic/national origins	**Low**	This policy is consistent in its approach regardless of race. It is acknowledged however that for any patient whose first language is not English, as information needs to be provided and understood, staff will follow the Trust interpretation procedure. Staff must carry out mandatory Equality, Diversity and Human Rights training via e-learning.
Religion or Belief	All Religions Including lack of religion or belief and where belief includes any religious or philosophical belief	**Low**	This policy is consistent in its approach regardless of religion or belief. Staff must carry out mandatory Equality, Diversity and Human Rights training via e-learning.
Sexual Orientation	Lesbian Gay Men Bisexual	**Low**	This policy is consistent in its approach regardless of sexual orientation. Staff must carry out mandatory Equality, Diversity and Human Rights training via e-learning.
Gender Re-assignment	Where people are proposing to undergo, or have undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attribute of sex	**Low**	This policy is consistent in its approach regardless of the gender the individual wishes to be identified as. We recognise the gender that people choose to live in hence why the terms gender identity and gender expression ensure we are covering the full spectrum of LGBT+ and not excluding trans, gender fluid or asexual people. Staff must carry out mandatory Equality, Diversity and Human Rights training via e-learning.

Summary

Is a FULL Equality Impact Assessment required?	Yes	**No**
Please describe the main points arising from your screening that supports your decision above: The policy is specifically aimed at the protection of all service users and their carers under the Equalities Act 2010 and the Human Rights Act. Significant attention has been paid to ensure that no groups are discriminated against either directly or indirectly.		
EIA Reviewers: Michelle Nolan, Mental Health Act Clinical Manager		
Date completed: 10 October 2023	Signature: M Nolan	