

Standard Operating Procedure Receipt and Requirements of Scrutiny of Mental Health Act Documentation

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VALIDITY – All local SOPS should be accessed via the Trust Intranet.

CHANGE RECORD

Version	Date	Change details
1.01	13/09/17	<i>Removed title to appendix (Parts) as may get confused with 'Parts' of Mental Health Act. Additional reference in reference section.</i>
1.02	23/11/17	<i>Following Mental Health Legislation Committee, amendments made to 4.5 No 1 to reflect the scrutiny processes apply to renewals, consent to treatment and Part 3 orders</i>
2	June 2020	<i>Full review</i>
2.1	July 2023	<i>Full review. Approved at Mental Health Legislation Steering Group (19 July 2023).</i>

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1. INTRODUCTION

Receipt and Scrutiny is the process of checking that the section papers for patients who are to be detained under the Mental Health Act 1983 or subject to Community Treatment Orders are legally correct.

For the purpose of the Mental Health Act 1983, Humber Teaching NHS Foundation Trust undertakes the role of “hospital managers.” It is the hospital manager’s duty to ensure that patients are only detained as the Act allows. Most of the decisions of the hospital managers are taken by individuals or groups of individuals on behalf of the hospital managers (MHA Code 2015 (37.5)).

The Trust has a scheme of delegation which sets out who should be authorised to undertake functions on behalf of the hospital managers.

Regulations require specific statutory forms to be used for certain applications, recommendations, decisions, reports and records under the Act. The forms are set out in the regulations themselves.

Forms can be completed electronically or on paper format. However, the wording of the forms must correspond to the current statutory versions of the forms set out in the regulations. The amended 2008 regulations came into force from 1 December 2020 and apply to England only. The use of statutory forms prior to December 2020 will invalidate the section.

2. SCOPE

This procedure applies to all Trust staff, contracted agency staff and supporting agencies who have a responsibility for patients subject to any section under the Mental Health Act 1983.

3. DUTIES AND RESPONSIBILITIES

The Hospital Managers can formally delegate their duties to receive and scrutinise section papers to staff within the Trust.

Receipt of documents may be undertaken by the registered practitioner (most likely a nurse) in charge of the ward. If the person is below the grade of first level nurse or equivalent, he or she should seek the advice of a first level nurse, or equivalent, when “receiving” documents.

All staff involved in delivery of clinical care must ensure compliance with the requirements of the Mental Health Act Code of Practice (2015), associated Trust policies and Standard operating procedures.

AMHPs should scrutinise medical recommendations prior to making their application to ensure there are no errors on the forms and that the Doctors rationale for recommending the detention is sufficient.

Scrutiny and rectification of documents is undertaken by the Mental Health Act administrators.

Medical Scrutiny is undertaken by a Consultant Psychiatrist with appropriate clinical expertise.

Any person to whom the responsibility is delegated must be competent to make such a judgement, and to identify any error in the documents, which may require rectification (Mental Health Act Code of Practice 2015 – paragraph 35.12).

4. PROCEDURES

4.1. Applications for Detention in Hospital and Supporting Medical Recommendations

The Hospital Managers have delegated their duties in a document called the Scheme of Delegation. Certain personnel are authorised to receive and scrutinise admission documents. This includes modern matrons, authorised clinical staff, clinical leads and staff from the mental health legislation department. The Managers of the Mental Health Legislation Department will take overall responsibility on behalf of the Hospital Managers for the proper receipt and scrutiny of the documents.

The Trust have checklists for the guidance of people delegated to receive documents (“receiving officers”), to help them detect those errors which fundamentally invalidate an application and which cannot be corrected at a later stage in the procedure. These checklists must be completed and signed by the receiving officer and kept with the detention documents for collection by Mental Health Legislation Team.

When a patient is being admitted on the application of an Approved Mental Health Professional (AMHP), the receiving officer should go through the documents and check their accuracy with the AMHP before they leave the unit.

Receiving Officers will have access to a manager for advice outside of office hours, especially at night.

Where the receiving officer is not authorised by the Hospital Managers to agree to the ratification of a defective admission document, the documents must be scrutinised by a person who is authorised to do so. This scrutiny should happen at the same time as the documents are received or as soon as possible afterwards (and certainly no later than the next working day).

Documents should be scrutinised for accuracy and completeness and to check that they do not reveal any failure to comply with the procedural requirements of the Act in respect of applications for detention. Medical recommendations will also be scrutinised by someone with appropriate clinical expertise to check that the reasons given appear sufficient to support the conclusions stated in them.

4.2. Circumstances in which an Application can be acted on (Section 6(3))

The managers do not have to seek further proof that the signatories are who they say they are, or that they have the qualification to make the application which they have signed to say they have. Nor do the managers need to seek further proof for any factual statement or opinion contained in the document.

The managers do not need to check that the signatories who state they are registered medical practitioners are; in fact registered, or seek independent verification of the time when the patient was last examined, or that there was sufficient urgency to justify the making of an emergency application.

The managers may detain a patient on the basis of an application that appears to them (or in practice a person authorised on their behalf to receive it) to be duly made and founded on the necessary medical recommendations.

4.3. Circumstances in which an Application cannot be acted on [Section 6(3)]

If admission documents reveal a defect which fundamentally invalidates the application and which cannot, therefore, be rectified under section 15 of the Act, the patient can no longer be detained on the basis of the application (see appendix 1). Authority for the patient’s detention can be obtained only through a new application (or, in the interim, by the use of holding powers under section 5 if the patient has already been admitted to the hospital). Unless that authority is to be sought, the hospital managers should use their power under section 23 to discharge the patient. The patient should be informed both orally and in writing, and in an accessible format for the patient. This

should also be documented on EPR. The RC should complete a S23 discharge form if the reassessment indicates informal admission is appropriate.

Any new application must, of course, be accompanied by the medical recommendations which comply with the Act. But this does not exclude the possibility of one of the two existing medical recommendations being used, if the time limits and other requirements of the Act can still be complied with.

4.4. Rectification of Errors in Applications (Section 15 and Regulation 4)

Unless an application is fundamentally invalidated, less serious problems with applications and recommendations may be capable of being rectified and patients may continue to be detained for a limited period while that is done.

An application or recommendation which is found to be incorrect or defective can be amended by the person who signed it, with the consent of the Hospital Managers, within the period of 14 days starting with the day of the patients' admission. However, a faulty emergency (Section 4) application may not be corrected after the patient has been detained on the basis of it for 72 hours, unless it has (in effect) become a Section 2 application because a second medical recommendation has been received. **It is not possible** to rectify a joint medical recommendation under Section 15.

Therefore, errors in emergency applications cannot be put right retrospectively once the application will inevitably have ceased to be effective. This also applies to Section 5(2).

Faults which may be capable of rectification include, leaving blank any spaces on the form which should have been filled in (other than the signature or date) or failure to delete one or more alternatives in places where only one can be correct. The patients' forenames, surname and address must agree in all the places where they appear in the application and the supporting recommendations. Discrepancies in the way a patient's name is recorded in the documents may be corrected, provided they do not raise any doubts as to whether the documents refer to the same person.

Any document found to contain faults of this will be returned to the person who signed it for amendment. When the amended document is returned to the hospital, it must again be scrutinised to check that it is now the proper form. Consent to the amendment can then be given by the managers. The consent must be recorded in writing and can take the form of endorsement on the document itself. If this is all done within a period of 14 days starting with the day on which the patient was admitted (or – in the case of a patient who was already in hospital – the day on which they were treated as admitted as a result of the application), the documents are deemed to have had effect as though originally made as amended. The managers may authorise officers to consent to amendments on their behalf.

4.5. Procedure for Receipt and Scrutiny of Mental Health Act Documentation

- 1 There are processes in place for scrutiny of the following Mental Health Act documentation:
 - Detention papers (Part 2 and Part 3)
 - Community Treatment Order paperwork
 - Consent to Treatment paperwork
 - Renewal paperwork
- 2 The receiving officer authorised by the Trust to carry out the Hospital Managers' functions and accept Section papers will be identified in the scheme of delegation approved by the Trust Board.
- 3 The role of the receiving officer is to ensure that the documentation is correctly completed by undertaking a scrutiny procedure, completion of the checklist and to complete Form H3

which commences the Section; this must coincide with the admission time unless patient was already an inpatient at the time of detention.

- 4 The scrutiny of documents to ensure they show sufficient legal grounds for detention will be undertaken in the first stage by the Nurse in Charge. The second stage will be the medical scrutiny undertaken by an independent Consultant Psychiatrist.
- 5 Within the Trust a rota is established where 3 Consultant Psychiatrists take responsibility for scrutinising the medical recommendations concerned. This changes every month.
- 6 Copies of the relevant documents will be emailed to the Consultant responsible for scrutiny by the Mental Health Legislation Department within two working days.

Following scrutiny the Consultant will sign the medical checklist and they will be emailed back to the Mental Health Legislation Department preferably the same day but no longer than three days of receipt. The Mental Health Legislation Department will action any communication regarding correction required and keep data regarding successful/unsuccessful completion.

4.6. Procedure Checklists

- 1 Each Mental Health Unit has a set of checklists for all relevant Sections. The documentation should be checked using the appropriate checklist prior to completion of Form H3 for the commencement and acceptance of the Section. If the checklist is not fully completed this will be returned to the author and the ward manager to amend.
- 2 When completing the checklists ensure that all details are filled in fully and correctly.
- 3 When completing Form H3 ensure:
 - that the patient has been given information in accordance with Section 132 of the Act: verbal and written information, Section 132, Form Z05 must be completed;
 - the person authorised to exercise the function of the nearest relative has been informed of the patient's admission and this is documented.
 - that the Local Authority Social Services is aware of the patient's admission.
- 4 The receiving officer needs to be satisfied that the documentation is correct. If there is an error it is the responsibility of the receiving officer to notify the Hospital Managers and the person who completed the document to allow amendment within 14 days.
- 5 When Form H3 is completed this should be attached to the appropriate document i.e. Application for Admission, the Medical Recommendation, Form Z05 patients' rights record and also a Social Circumstance report.
- 6 On completion all documents should be collected by the Mental Health Legislation Department for processing or emailed through to the mental health legislation department if completed electronically with an email audit trail (see Mental Health Act Policy and Electronic MHA Forms SOP). Once all papers scrutinised and correct mental health legislation will scan and upload into the patient's electronic record.

5. REFERENCES

Mental Health Act Legislation Policy

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

Jones R (2022) Mental Health Act manual. 25th Edition. London. Sweet & Maxwell

South London and Maudsley NHS Foundation Trust (2010), The Maze: A Practical Guide to the Mental Health Act 1983. UK CPI William Clowes Beccles.

Nottinghamshire Healthcare NHS Foundation Trust – Mental Health Act 1983 – Receipt and Scrutiny of Mental Health Act Section Papers

Appendix 1: Rectification Process Chart (All Sections)

DESCRIPTION OF ERROR	S15 APPLIES?	SUMMARY OF RECTIFICATION PROCESS	OTHER NOTES
Misspelling of name/address of patient	YES	For s2 and s3 complete within 14 days and good practice to amend for other sections	In some cultures there is no definitive spelling of a person's name but a consensus will need to be reached.
Inconsistencies in spelling of name/address	YES	For s2 and s3 complete within 14 days and good practice to amend for other sections	Judgement may be needed as to correct details as records may differ.
Incomplete addresses (e.g. postcodes)	YES	For s2 and s3 complete within 14 days and good practice to amend for other sections	Post codes are needed.
No name or address for patient	YES	For s2 and s3 complete process within 14 days but if not possible to establish patients true identity by the fourteenth day section would remain valid	<ul style="list-style-type: none"> • Homeless person should be recorded as NFA • If patient long stay on ward may be OK to put ward as residence but will need to be consistent on all forms • If patient does not give name (e.g. mute) or gives false name(s) note should be made with papers.
Nearest Relative – no details given or just telephone number	YES	May not be possible to complete process within 14 days or at all	Find out if more information has been obtained from AMHP. It is a matter for the AMHP's professional judgement as to whether it was practicable to have identified and consulted with nearest relative before making application.
Doctors or AMHP don't give full name or address (initials are not acceptable)	YES	Complete within 14 days and good practice to amend for other sections	If not possible to get this done within 14 days (e.g. because doctor or AMHP is on holiday) judgement needs to be made as to whether error is sufficiently serious to require invalidation but unlikely to be considered so.
No Hospital or wrong hospital named in application	NO	Section invalid as 'not duly completed' (see s6 and s 11)	The application must name the actual hospital to which the patient has been admitted.
Both doctors have not stated the hospital where the patient is admitted as having the appropriate treatment available.	NO	Section invalid as 'not duly completed' (see s6 and s 11)	The requirements within the 'appropriate treatment' test mean the hospital to which the patient is actually admitted to be named by the doctors on both medical recommendation(s) or the joint medical recommendation (s3).

DESCRIPTION OF ERROR	S15 APPLIES?	SUMMARY OF RECTIFICATION PROCESS	OTHER NOTES
More than five complete days between medical recommendations	YES	Complete within 14 days – notice must be given in writing to the applicant and a fresh medical recommendation must be furnished to the hospital managers within 14 days	<ul style="list-style-type: none"> • ‘Custom and practice’ is often for those working in MHA Administration to manage this process but the applicant should be made aware of the problem • The oldest of the medical recommendations needs to be replaced with a new one • S12 uses the phrase ‘not more than five days must have elapsed between the days on which the separate examinations took place’ i.e. if first recommendation completed on (e.g.) 1st March and second completed on (e.g.) 7th March this would be lawful.
Neither doctor s12 approved	YES	Obtain medical recommendation by an s12 doctor and furnish to the hospital managers within 14 days – as above, notice must be given in writing to the applicant. ‘Custom and practice’ is often for those working in MHA Administration to manage this process but the applicant should be made aware of the problem	A joint medical recommendation is not rectifiable under s15 in this situation.
Neither doctor knew patient and AMHP has not given reason	YES	Ask AMHP to add reasons to their form	If AMHP (e.g. due to leave) will not be able to complete within 14 days another option would be to obtain fresh recommendation from a doctor who did know the patient but such doctor may not exist if (e.g.) the patient is newly living in the UK or is not registered with a GP.
Medical Recommendation(s) or application not signed	NO	Invalidation needed	This applies also to s5.

DESCRIPTION OF ERROR	S15 APPLIES?	SUMMARY OF RECTIFICATION PROCESS	OTHER NOTES
Application made more than 14 days after AMHP last saw patient or application made more than 14 days from date of last medical examination or patient conveyed and admitted to hospital more than 14 days from date of last medical recommendation	NO	Invalidation needed	
Doctors have different views as to whether 'health', 'safety', 'protection of others' apply on their forms	N/A		There is no legal requirement for the two doctors to agree on each or any of these criteria but the medical scrutineer may comment if there is inconsistency between what the doctor's clinical description says and which legal criteria that doctor believes to apply.
Inadequacy of one or both medical recommendation or of a joint medical recommendation	YES (if single medical recommendation, Or, NO (if joint medical recommendation	Complete within 14 days. If one medical recommendation is inadequate that doctor may be asked to make additions or the recommendation could be replaced by a more adequate one using S15. It is not possible to amend joint medical recommendations.	The views of the medical scrutineer will give guidance as to how inadequate a recommendation is. An example of inadequacy might be a description of the patient's 'history' but no narrative as to the patient's current condition. An example where the section would be invalid would be where the medical recommendation(s) suggest the admission's purpose was only for the treatment/assessment of a physical disorder.

SECTION 5(2) ONLY

DESCRIPTION OF ERROR	S15 APPLIES?	SUMMARY OF RECTIFICATION PROCESS	OTHER NOTES
Doctor does not indicate whether they are the RC or nominated deputy or has wrongly identified themselves	NO	S15 does not apply to the furnishing of a report under s5 (2).	

SECTION 4 ONLY

DESCRIPTION OF ERROR	S15 APPLIES?	SUMMARY OF RECTIFICATION PROCESS	OTHER NOTES
AMHP has made the application more than 24 hours after last seeing the patient	NO	Invalidation needed	
Doctor not S12 approved	N/A		If 'converting' s4 to s2 the new medical recommendation would need to be made by an s12 approved doctor.
Doctor did not know patient and AMHP has not given reasons	YES (but only if applied prior to expiration of the emergency application or prior to the 'conversation' to s2).		
Doctor not S12 approved nor knowing the patient	N/A		There are differing legal views here but – if a genuine emergency and such a doctor were not available – the section remains valid. The AMHP would need to give reasons on form A10

SECTION 20 AND 20A RENEWALS ONLY

DESCRIPTION OF ERROR	S15 APPLIES?	SUMMARY OF RECTIFICATION PROCESS	OTHER NOTES
Form H5 or CTO7 not completed either by the patient's RC or in that RC's absence (due to sickness or leave) by the covering RC	NO	Invalidation needed	
Form H5 or CTO7 not completed until after the s3/37/CTO has expired or completed more than two months before renewal permitted	NO	Invalidation needed	

Appendix 2: Equality Impact Assessment

For strategies, policies, procedures, processes, guidelines, protocols, tenders, services

- 1 **Document or Process or Service Name:** Standard Operating Procedure for the Receipt and Requirements of Scrutiny of Mental Health Act Documentation
- 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?** Standard Operating Procedure

Main Aims of the Document, Process or Service
<p>This procedure applies to all Trust staff, contracted agency staff and supporting agencies who have a responsibility for patients subject to any section under the Mental Health Act 1983. Receipt and Scrutiny is the process of checking that the section papers for patients who are to be detained under the Mental Health Act 1983 or subject to Community Treatment Orders are legally correct.</p> <p>Regulations require specific statutory forms to be used for certain applications, recommendations, decisions, reports and records under the Act. The forms are set out in the regulations themselves.</p> <p>For the purpose of the Mental Health Act 1983, Humber Teaching NHS Foundation Trust undertakes the role of “hospital managers.” It is the hospital manager’s duty to ensure that patients are only detained as the Act allows. Most of the decisions of the hospital managers are taken by individuals or groups of individuals on behalf of the hospital managers (MHA Code 2015 (37.5)).</p>
<p>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</p>

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?
<ol style="list-style-type: none"> 1. Age 2. Disability 3. Sex 4. Marriage/Civil Partnership 5. Pregnancy/Maternity 6. Race 7. Religion/Belief 8. Sexual Orientation 9. Gender reassignment 	<p>Equality Impact Score</p> <p>Low = Little or No evidence or concern (Green)</p> <p>Medium = some evidence or concern (Amber)</p> <p>High = significant evidence or concern (Red)</p>	<ol style="list-style-type: none"> 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	<p>Including specific ages and age groups:</p> <p>Older people Young people Children Early years</p>	Low	The Act specifies who the Law relates to and the legal age thresholds where they exist.
Disability	<p>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:</p> <p>Sensory Physical Learning Mental health</p>	Low	The Code of Practice details the need for non-discriminatory practice and application of the Act as well as highlighting the requirement for awareness of, sensitivity to any special needs or requirements relating to any form of disability. For patients who have a communication need or have

Equality Target Group	Definitions	Equality Impact Score	Evidence to support Equality Impact Score
	(including cancer, HIV, multiple sclerosis)		English as their second language consideration must be given to providing information in an accessible format.
Sex	Men/Male Women/Female	Low	The Code of Practice details the need for non-discriminatory practice and application of the Act as well as highlighting the requirement for awareness of, sensitivity to any gender related preferences, needs or requirements.
Marriage / Civil Partnership		Low	This SOP is consistent in its approach regardless of marriage/civil partnership.
Pregnancy / Maternity		Low	This SOP is consistent in its approach regardless of pregnancy/maternity.
Race	Colour Nationality Ethnic/national origins	Low	The Code of Practice details the need for non-discriminatory practice and application of the Act as well as highlighting the requirement for awareness of, sensitivity to any preferences, needs or requirements related to race or ethnicity. It is acknowledged 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.
Religion or Belief	All religions Including lack of religion or belief and where belief includes any religious or philosophical belief	Low	The Code of Practice details the need for non-discriminatory practice and application of the Act as well as highlighting the requirement for awareness of, sensitivity to any preferences, needs or requirements related to religious or other belief systems.
Sexual Orientation	Lesbian Gay men Bisexual	Low	The Code of Practice details the need for non-discriminatory practice and application of the Act as well as highlighting the requirement for awareness of, sensitivity to any preferences, needs or requirements related to sexual orientation.
Gender reassignment	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	The Code of Practice details the need for non-discriminatory practice and application of the Act as well as highlighting the requirement for awareness of, sensitivity to any gender identity related preferences, needs or requirements. 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.

Summary

Please describe the main points/actions arising from your assessment that supports your decision above.

It is felt that this policy and any associated documentation would seek to uphold principles of individualised planning and arrangements for ongoing care needs.

There are statutory requirements and obligations built into existing related legislation (MHA 1983) and its supplementary Code of Practice as well as local systems in place for assurance of the monitoring of compliance with these requirements and reporting through related committees.

EIA Reviewer: Michelle Nolan

Date completed: 12 July 2023

Signature: Michelle Nolan