

POLICY TITLE:	Leave of Absence under Section 17 and Revocation of Leave
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Policy Owner:	Kim Forrester, Head of Mental Health Act and Mental Capacity Act Operations
Ratified by:	Tu Sen Tran, Lawyer, Priory
Responsible Signatory:	Colin Quick, Chief Quality Officer
Outcome:	<p>This policy:</p> <ul style="list-style-type: none"> • Provides guidance on the lawful provision of leave from hospital under Section 17 and the associated considerations, processes, and documentation to ensure best practice and compliance with chapter 27 of the MHA Codes of Practice for England (2015) and for Wales (2016). • Provides guidance on the considerations, processes and documentation required to lawfully recall a detained patient from Section 17 leave and to ensure best practice and compliance with MHA Codes of Practice for England (2015) and for Wales (2016).
Cross Reference:	<p>MHA09 Detained Patients who Abscond or are Absent Without Official Leave</p> <p>MHA68 Electronic Communication of Statutory Forms under the Mental Health Act</p> <p>OP05 Mental Capacity</p>

EQUALITY AND DIVERSITY STATEMENT

Priory is committed to the fair treatment of all in line with the Equality Act 2010. An equality impact assessment has been completed on this policy to ensure that it can be implemented consistently regardless of any protected characteristics and all will be treated with dignity and respect.

Job titles updated throughout on 14.06.2022 following the organisational restructure

In order to ensure that this policy is relevant and up to date, comments and suggestions for additions or amendments are sought from users of this document. To contribute towards the process of review, email LegalandComplianceHelpdesk@priorygroup.com

LEAVE OF ABSENCE UNDER SECTION 17 AND REVOCATION OF LEAVE

1 SCOPE

- 1.1 This policy applies to all sites and services across England and Wales. Where there are differences in legislation between nations, this will be clearly highlighted.
- 1.2 This policy is intended for use in Priory Healthcare sites where adults with mental health difficulties are accommodated in a hospital setting.

2 INTRODUCTION

- 2.1 In general, a patient who is currently liable to be detained in a hospital under the Mental Health Act 1983 (MHA) can only leave that hospital lawfully - even for a very short period, by being granted leave of absence by their Responsible Clinician (RC) in accordance with Section 17 (or by way of transfer to another hospital under Section 19). This policy should be read in conjunction with the English and Welsh Codes of Practice, chapter 27.
- 2.2 In addition to chapter 27 of the English and Welsh Codes of Practice, the MHA Reference Guide at chapter 25 provides additional guidance to nursing and medical colleagues on the use of Section 17 Leave of absence.
- 2.3 The forms that accompany this policy should be used in all areas that do not use electronic records on CareNotes for the recording and management of Section 17 leave, with the exception of **MHA Form: 01** Section 17 Leave of Absence from Hospital, which should be used in every area and in every instance that leave is granted.

3 PRACTICE GUIDELINES

- 3.1 Leave of absence can be granted by the RC for specific occasions or for longer specific periods of time. The period of leave may be extended in the patient's absence. The granting of leave should not be used as an alternative to discharging the patient. When considering whether to grant leave of absence for more than 7 consecutive days or extending leave so that the total period is more than 7 consecutive days, RCs must first consider whether the patient should go onto a community treatment order (CTO) instead. This does not apply to restricted patients, nor in practice, to patients detained for assessment under Section 2 of the MHA as they are not eligible for a CTO. (English Code of Practice paragraph 27.11 / Welsh Code of Practice paragraph 27.8).
- 3.2 Leave of absence is part of the patient's treatment plan and should be noted in the care plan.
- 3.3 Leave of absence must be properly planned, if possible well in advance. Leave may be used to assess an unrestricted patient's suitability for discharge from detention. The patient should be fully involved in the decision to grant leave and should be able to demonstrate to the professional carers that he or she is likely to cope outside the hospital.
- 3.4 Leave is not to be granted until the patient has been admitted for sufficient time to allow an adequate risk assessment to be undertaken.
- 3.5 In recording leave an up-to-date description of the patient should be available in the notes. In addition, a photograph of the patient should also be included in their notes, with the patient's consent (or if the patient lacks capacity to decide whether a photograph is taken, refer to OP05 Mental Capacity). (See English Code of Practice paragraph 27.22 / Welsh Code of Practice paragraphs 27.17 – 27.22).
- 3.6 Leave arrangements allowing the patient to return home for a day or longer should be communicated to the local commissioning team and the GP in case the patient needs to access

services locally, as well as to ensure good communication with colleagues external to site. This is particularly important for patients who are travelling some distance home.

- 3.7 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 (see English Code of Practice paragraph 27.28/ Welsh Code of Practice paragraph 27.24).

4 AUTHORISING LEAVE – ALL DETAINED PATIENTS – (UNRESTRICTED AND RESTRICTED)

- 4.1 Only the patient's responsible clinician (RC) can grant leave of absence to a patient detained under the Act. The RC cannot delegate the decision to grant leave of absence to anyone else, except in the absence of the usual RC due to sick or annual leave. In these circumstances leave can be granted by the approved clinician, who for the time being is acting as the patient's RC (English Code of Practice paragraph 27.8/ Welsh Code of Practice paragraphs 27.35-27.38).
- 4.2 If the patient is subject to special restrictions (a 'Restricted Patient') in accordance with Section 41, 45B or 49, the RC MUST also obtain written authorisation from the Ministry of Justice (MoJ) to grant leave. The RC must ensure that all leave granted complies with time limitations and all other conditions stipulated by the MoJ. The RC's Section 17 leave form must be kept in the clinical area with a copy of the MoJ's letter of authorisation.
- 4.3 Where the patient must be taken for urgent physical treatment, the MoJ states that authority can be assumed but they must be notified of the action taken as soon as possible.
- 4.4 If patients do not consent to carers or other people who would normally be involved in their care being consulted about their leave, RCs should reconsider whether it is appropriate or safe to grant leave. (English Code of Practice paragraph 27.19 / Welsh Code of Practice paragraph 27.15).
- 4.5 The RC is responsible for
- (a) Undertaking a risk assessment and putting in place any necessary safeguards,
 - (b) Undertaking any appropriate consultation, including liaising with any relevant community services and other agencies e.g. Multi-agency Public Protection Arrangements (MAPPA).
 - (c) Considering any and conditions which they consider necessary in the interests of the patient or for the protection of other people.
 - (d) Considering all benefits and risks to the patient.
 - (e) Considering all other issues in accordance with English Code of Practice paragraph 27.10 and Welsh Code of practice paragraph 27.10.
- 4.5.1 The RC should specify any circumstances in which the leave should not go ahead e.g. if health has deteriorated (English Code of Practice paragraph 27.20/ Welsh Code of Practice paragraph 27.16).
- 4.7 The authorisation of leave cannot be vetoed by the Hospital Managers.

5 RESPONSIBLE CLINICIAN'S RECORDING OF AUTHORISED LEAVE

- 5.1 **In sites/services where electronic forms are used for managing Section 17 leave:**
- (a) Prior to leave being authorised RC MUST complete a Priority Risk assessment.
 - (b) RC must then complete Leave Authorisation Form (available under Leave tab).
 - (c) For restricted patients - Details of leave authorised by MoJ should also be recorded on this form.
 - (d) A Venue Risk Assessment Form should be completed if required (this will not be required in all cases).

- 5.2 **In sites/services where paper forms are used for managing Section 17 leave:**
- (a) The RC must complete, sign and date a **MHA Form: 01** Section 17 Leave of Absence from Hospital **BEFORE** leave may be granted. The form must be completed in full ensuring that escort requirements, including ratio of staff to patient, conditions of leave and restrictions, frequency, duration etc. are clearly documented. **NB** For patients under 18 – The RC must also complete **MHA Form: 01C** 17 Checklist for Granting Section 17 Leave of Absence from Hospital (Under 18 Year Olds) to ensure key external agencies have been informed, documentation is in place and there is a clear clinical rationale which is documented.
 - (b) The completed **MHA Form: 01** should be handed to/sent to the clinical area, where it must be checked by a qualified nurse to ensure it contains all necessary information concerning conditions of leave as documented in the patient's care plan and in accordance with MoJ authorisation in the case of restricted patients.
 - (c) As per para 3.2 above in respect of restricted patients, the RC's Section 17 leave form must be kept in the clinical area with a copy of the MoJ's letter of authorisation.

6 GRANTING LEAVE AT WARD LEVEL

- 6.1 Section 17 authorised leave may be granted at the discretion of the nurse in charge of the ward. It is crucial that leave is granted in accordance with the terms and conditions of leave authorised by the RC, and in the case of restricted patients, in accordance with the written authority of the MoJ. Nursing colleagues must review such decisions and their implications immediately prior to granting leave. Electronic CareNotes should be checked where appropriate and in areas where paper forms are used the nurse must check that **MHA Form: 01** has been completed and is still current.
- 6.2 **In units where, electronic forms are used for managing Section 17 leave:**
Nursing colleagues must complete a Leave Recording Form on every occasion that leave is granted, following a risk assessment by nurse in charge. This form is available under the Leave tab. Nurses will be prompted to assign the Leave Recording Form to a Leave Authorisation Form. If there is no Leave Authorisation Form, then the system will not allow a Leave Recording Form to be created.
- 6.3 **In units where paper forms are used for managing Section 17 leave:**
MHA Form: 01 must be fully completed on every occasion that leave is granted and on the patient's return from each period of leave.
- 6.4 A record must also be made in the patient's healthcare records.
- 6.5 A personalised risk management plan must be given to the patient using **MHA Form: 01B** Risk Management Plan, when going on day or overnight leave from Hospital.
- 6.6 There should be a record in the patient's healthcare records of the contact number and address of the place where the patient is staying whilst on leave.
- 6.7 The patient, their relative or carer or any person accompanying them whilst on leave should be provided with a contact number of the hospital and be informed that the patient can return and/or be bought back early if necessary before the end of their leave period. This should be recorded on the personalised risk management plan, **MHA Form: 01B**.
- 6.8 There should be a process in place on each ward for monitoring return times to mitigate against this being missed during busy times on a ward.

7 GRANTING LEAVE IN A MEDICAL EMERGENCY

- 7.1 Leave may be granted to a general hospital in a medical emergency without the RC's authorisation in circumstances where obtaining written or electronically recorded authorisation from the RC would delay the patient receiving urgent medical treatment.

- 7.2 Clinical colleagues must ensure that the circumstances which prompted the granting of leave without authorisation from the RC are fully documented in the patient's healthcare record.
- 7.3 The RC must complete **MHA Form: 01** or follow the electronic recording process for authorising Section 17 leave as soon as possible.
- 7.4 **NB:** If urgent treatment is to be provided Under Section 62(1), or continued under Section 62(2) **MHA Forms: 06 & 07** are available for this purpose. (See English and Welsh Codes of Practice, Chapter 25).

8 ESCORTED LEAVE

- 8.1 Where it is proposed as a condition of the leave that the patient is to be escorted, then this will be provided for by a member or members of the hospital staff. Section 137(2) then provides that these officers on the staff of the hospital shall have all the powers, authority, protection and privileges of a constable for the purposes of taking the patient into custody or conveying or detaining the patient. (This includes the power to arrest a person who is wilfully obstructing a staff member in the execution of their duties, the power to use reasonable force in effecting an arrest or to prevent a person from escaping, and the power to require other persons to assist them in the execution of their duties).
- 8.2 With regard to the patient being escorted by any person who is not a member of the hospital staff, then Section 17(3) provides that this may only occur when such a person is authorised to do so IN WRITING by the managers of the hospital. Regulation 19(b) also provides that "The functions of the managers of the hospital in respect of authorising persons under Section 17(3) (leave of absence from hospital) to keep in custody patients who are on leave of absence who are subject to a condition that they remain in custody may be performed by any person authorised by them in that behalf."

9 ACCOMPANIED LEAVE

- 9.1 Where a condition of the leave is that the patient be accompanied by a friend or relative, then this will be a non-enforceable condition and the patient will not be in the legal custody of the friend or relative unless this has been authorised IN WRITING by or on behalf of the managers of the hospital and the patient will in effect be **unescorted**. In the most exceptional circumstances where the patient is to be in the lawful custody of a friend or relative, then it is important that such a person understands and accepts the consequent responsibility. However, when a patient is to be in the lawful custody of a person who is not also an officer on the staff of the hospital and that person is not also a healthcare professional, then sound risk assessment is essential.
- 9.2 A copy of **MHA Form: 01** (the original is kept in the patient's record) is to be given to the patient, any appropriate relative or friends and any professionals in the community who need to know. Documentary evidence must be made of any discussion(s) with relevant carers who the patient will be with, demonstrating their agreement with the period of leave.

10 THE OUTCOME OF SECTION 17 LEAVE

- 10.1 The outcome of leave through discussion with the patient (to include whether or not leave went well, any particular problems encountered, concerns raised, and the benefits achieved) should also be recorded in the patient's records to inform future decision making. On sites using electronic recording of leave on CareNotes, this information should be recorded on the second part of the Leave Authorisation Form under 'patients' views' and 'escorting staff views'. (English Code of Practice paragraph 27.23 / Welsh Code of Practice paragraph 27.20).
- 10.2 Should the patient fail to return once their leave is ended, they are absent without leave and they therefore need to be treated in accordance with MHA09 - Detained Patients Who Abscond or Are Absent Without Official Leave.

- 10.3 If leave is rescinded or the **MHA Form: 01** is out of date, the form must be crossed through and marked accordingly, or in cases where leave is managed electronically the appropriate electronic Leave Authorisation Form must be 'ended' and the date time and reason for rescinding the leave must be recorded which will prevent a Leave Recording Form being created for the rescinded leave.

11 LONGER TERM SECTION 17 LEAVE

- 11.1 When considering whether to grant leave of absence for more than 7 consecutive days or extending leave so that the total period is more than 7 consecutive days, RCs must first consider whether the patient should go onto a Community Treatment Order (CTO) under Section 17A instead. Further advice on this can be found in paragraph 27.11 of the English Codes of Practice and paragraph 27.8 of the Welsh Code of Practice. This does not apply to restricted patients, nor, in practice, to patients detained for assessment under Section 2 of the Act, as they are not eligible for CTO.

12 RECALL FROM LEAVE

- 12.1 The RC (or, in the case of restricted patients, the Secretary of State) may revoke leave if they consider it necessary in the interests of the patient's health or safety, or for the protection of others. RCs must be satisfied that these criteria have been met and should consider what effect being recalled from leave 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. (English Code of Practice paragraph 27.32/ Welsh Code of practice paragraphs 27.31-27.32).
- 12.2 The RC must consider seriously the reasons for recalling the patient and the effects this will have and must be satisfied that it is necessary in the patient's interests, or the safety of others.
- 12.3 The RC must complete **MHA Form: 01A** - Recall from Section 17 Leave of Absence.
- 12.4 The RC must arrange for the notice in writing, notice of revoking leave (**MHA Form: 01A**) to be served on the patient or on the person for the time being in charge of the patient. Hospitals should always know the address of patients who are on leave of absence and anyone with responsibility for them whilst on leave. (English and Welsh Codes of Practice paragraph 27.33).
- 12.5 The reasons for recall should be fully explained to the patient and a record of explanation entered in the patient's healthcare record. (English Code of Practice paragraph 27.34/ Welsh Code of Practice paragraph 27.33).
- 12.6 It is essential that any appropriate relatives and friends, especially if the patient is residing with them whilst on leave, and any other professional in the community who needs to know, should have easy access to the patient's RC, if they feel consideration should be given to the return of the patient to the hospital, before their leave is due to end. (English Code of Practice paragraph 27.36/ Welsh Code of Practice paragraph 27.34).
- 12.7 The responsibility for the safe return of the patient rests with the detaining hospital.
- 12.8 A patient who refuses to return to hospital is considered to be AWOL and MHA09 Patients Detained Under the Mental Health Act who Abscond or are Absent Without Official Leave should be followed.

13 REFERENCES

- 13.1 **Legislation**
Mental Health Act 1983
- 13.2 **Guidance**
Jones, R. Mental Health Act Manual

DH (2015) Reference Guide to the Mental Health Act 1983
 DH (2015) Mental Health Act 1983: Code of Practice
 Welsh Assembly Government (2016) Mental Health Act 1983 Code of Practice for Wales
 Review

14 ASSOCIATED FORMS

- 14.1 **MHA Form: 01** [Mental Health Act 1983 Section 17 Leave of Absence from Hospital](#)
MHA Form: 01A [Recall from Section 17 Leave of Absence](#)
MHA Form: 01B [Risk Management Plan](#)
MHA Form: 01C [Checklist for Granting Section 17 Leave of Absence from Hospital for Under 18 Year Olds](#)
MHA Form: 06 [Section 62\(1\) - Urgent Treatment](#)
MHA Form: 07 [Section 62\(2\) Continuation of Treatment](#)

Standard MHA Forms are available from: <http://www.mentalhealthlaw.co.uk/Statutory Forms>

8 EQUALITY IMPACT ASSESSMENT

8.1	How is the policy likely to affect the promotion of equality and the elimination of discrimination in each of the groups?			
	Protected Characteristic (Equality Act 20210)	Impact Positive/ Negative/ None	Reason/ Evidence of Impact	Actions Taken (if impact assessed as Negative)
	Age	none		
	Disability	None		
	Gender identity and expression	None		
	Marriage or civil partnership	none		
	Pregnancy or maternity	none		
	Race	none		
	Religion or beliefs	none		
	Sex	none		
	Sexual orientation	none		
	Other, please state:	none		
	EIA completed by:			
	Name:	I/S [redacted] Mental Health Act Admin		
	Role/Job Title:			
	Date completed:	27/10/2021		