

Oxleas NHS *Improving lives*

Preceptorship Training – The Mental Health Act 1983

Mental Health
LEGISLATION

we're **kind**
we're **fair**
we **listen**
we **care**

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Learning Aims

- Understand responsibilities under the Act
- Commonly used Sections
- Consent to Treatment
- Section 132 Rights information
- Overview of Community Treatment Orders

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Informal patients

- Should be informed of their rights as an informal patient
- All informal patients may leave the ward at will
- If there are any concerns about them leaving, discuss concerns with patient and if necessary, consider Section 5(2) or 5(4)
- Any discussions should be noted in RiO progress notes

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Section 132 Rights

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- Information must be given to patients as soon as practicable after detention. All attempts to give this information should be recorded in RiO.
- It is now possible for staff to document their discussions about rights prior to the relevant section being recorded in RiO:
 - Access the section 132 on RiO via Case Record
 - Select section from the drop-down list
 - Tick 'To be reconciled' box
 - Select [GO](#)
- As a minimum, patients must be reminded about their rights at key points in their care. These include:
 - If their section changes
 - When the rules about consent to treatment change (ie. they have received medication for 3 months or they have regained capacity to consent to medication)
 - There is a CPA review
 - If their detention is renewed
 - When they are discharged from section

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Section 136 - Police Powers

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- Power for the police to remove a mentally disordered person in a public place to a place of safety
- Detention for up to 24 hours
- For the purpose of examination by registered medical practitioner and interview by an AMHP
- Can be transferred between two or more places of safety
- If not mentally disordered, can be discharged immediately

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Warrants

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S135(1)

- Warrant to Search for and to remove patients
- Applied for by AMHP at Magistrates Court
- Once executed lasts for up to 24 hours to allow for assessment

S135(2)

- To return an AWOL patient
- Applied for by nursing staff at Magistrates Court
- Allows the police and team access to the premises named on the Warrant
- Once executed, lasts for up to 24 hours to allow for assessment

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Section 5(2) - Doctor's Holding Power

- Applies to informal in-patients (NOT CTO patients on the ward)
- Where the Registered Medical Practitioner/Approved Clinician in charge of the patient's treatment (or the nominated deputy) considers that an application for detention under the Act ought to be made
- Maximum duration of 72 hours including any time spent on S5(4)
- Cannot be renewed, and another S5(2) should not follow
- No right to appeal to tribunal

Immediate referral to AMHP's (this includes weekends!)

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Section 5(4) - Nurses Holding Power

- If is not practicable to secure immediate attendance of a Medical Practitioner/Approved Clinician for purpose of furnishing a report under S5(2)
- Nurse of the prescribed class (Registered Mental Health Nurse/Learning Disability Nurse) deems that a patient is suffering from a mental disorder to such a degree that it is necessary for their health, safety or for protection of others, that they are prevented from leaving hospital
- Duration of up to 6 hours
- Completion of Form H2
- Not renewable but Doctor to assess for a S5(2)

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Question...

- In what circumstances would you consider the use of a S5(4)?

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Section 5(4) - Nurses Holding Power

- Expressed intentions
- Likelihood of harm to self or others
- Likelihood of violent behaviour
- Evidence of disordered thinking
- Current behaviour and any changes in their usual behaviour
- Whether they have received any messages from relatives or friends
- Date of special significance
- Recent disturbances on the ward
- Relevant involvement of other patients
- History of unpredictability or impulsiveness
- Any formal risk assessments
- Any other relevant information from other members of MDT

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Quick Quiz...

- How long does section 5(2) last?
- Who can implement section 5(4)?
- What is the purpose of section 136?
- If a patient is AWOL from the ward, which type of Warrant would you need?

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Section 2 - Admission for Assessment

- Two Medical Recommendations required – Form A4. One doctor must be section 12 approved
- Application by Approved Mental Health Professional (AMHP) – Form A2 or Nearest Relative
- Form H3 to be completed by Nursing Team
 - Lasts for up to 28 days
 - For assessment but can be treated
 - Not renewable, but can be extended if Nearest Relative is displaced (see next slide)
 - Should not be followed by another Section 2, Section 4 or Section 5(2)

Right to appeal

- Within the first 14 days - hearing will be listed within 1 week of the application
- Reports must be emailed to the MHA Office 48 hours before the tribunal date

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Form H3

Department of Health & Social Care

Form H3 - Regulation 4(4) and (5) Mental Health Act 1983

Sections 2, 3 and 4 — Record of detention in hospital

(To be attached to the application for admission)

PART 1

(Name and address of hospital)

Obtain NHS Foundation Trust, insert full address of hospital site

(PRINT full name of patient)

Insert full name of patient

Complete (a) if the patient is not already an in-patient in the hospital.

Complete (b) if the patient is already an in-patient:

Delete the one which does not apply.

(a) The above named patient was admitted to this hospital on (date of admission to hospital)

Insert section start date

at (time)

Insert section start time

In pursuance of an application for admission under section (state section) of the Mental Health Act 1983.

Insert section - e.g. S2 / S3

ONLY COMPLETE (a) OR (b) DO NOT BOTH

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(b) An application for the admission of the above named patient (who had already been admitted to this hospital) under section (state section) of the Mental Health Act 1983 was received by me on behalf of the hospital managers on (date)

Insert section - e.g. S2 / S3

of the Mental Health Act 1983 was received by me on behalf of the hospital managers on (date)

Insert section start date

at (time)

Insert section start time

and the patient was accordingly treated as admitted for the purposes of the Act from that time.

Signed: Insert your name on behalf of the hospital managers

PRINT NAME: Print your name Date: Insert the date

DO NOT COMPLETE PART 2 UNLESS PATIENT DETAINED UNDER SECTION 4

PART 2

(To be completed only if the patient was admitted in pursuance of an emergency application under section 4 of the Act)

On (date)

at (time)

I received, on behalf of the hospital managers, the second medical recommendation in support of the application for the admission of the above named patient.

Signed: on behalf of the hospital managers

PRINT NAME: Date

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Section 3 - Admission for Treatment

- Two Medical Recommendations required – Form A8. One doctor must be section 12 approved
- Application by Approved Mental Health Professional (AMHP) – Form A6
- H3 to be completed by Nursing Team
 - AMHP must consult with Nearest Relative
 - Appropriate Treatment must be available
 - If the Nearest Relative objects to detention under Section 3, the application cannot proceed unless it is deemed to be an unreasonable objection
 - The AMHP can apply to the court to displace the Nearest Relative, if their objection is unreasonable
 - The Section 2 will be extended until the Court case has been heard
- Appropriate Treatment must be available
- Lasts for six months, can be renewed for a further six months then yearly
- Section 58 (Consent to Treatment) applies after three months of continuous detention

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Section 3 - Admission for Treatment

Right to appeal:

- Once in each period of detention
- Reports must be emailed to the MHA Office within three weeks (as per email from MHA Office)
- Referral by MHA office after six months from first day of detention, if patient has not made their own application or after 3 years from last hearing
- Can appeal to Hospital Managers more than once

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Nurse Responsibilities

Tribunals:

- Assist patients in completing tribunal application forms
- Explain what happens at a Tribunal
- Reports must be submitted to the MHA Office within the specified time frame
- Use tribunal report template
- Upload report to RiO
- Compulsory for a Nurse to attend and remains with client throughout
- Must facilitate the Pre-Hearing Examination (PHE)
- Link for all Video hearings will be added to Calendar invites

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Nurse Responsibilities

Hospital Managers Hearings:

- As per tribunals, if contested
- Explain what happens in a hearing
- Often no legal representation for patients
- Go through reports with patient ahead of hearing
- Reports should be sent to: Oxl-tr.mhamhearings@nhs.net

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Section 37 - Hospital Order without Restrictions


- The Court (Magistrates' or Crown Court) is satisfied on the written or oral evidence of two registered medical practitioners that the offender is suffering from Mental Disorder
- Lasts for six months. Can be renewed for a further six months then yearly. Effectively same as the section 3
- Section 58 (Consent to Treatment) applies after three months of continuous detention

Right to appeal:

- Cannot apply to Tribunal within the first 6 months of detention but can appeal to the Hospital Managers
- After 6 months, can apply once in each period of detention
- Referral after 3 years if no application made

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Section 37/41 - Hospital Order with Restrictions


- Crown Court
- Continuous detention
- Section 58 (consent to treatment) applies after three months of continuous detention
- All Section 17 leave must be granted by the MOJ in advance of any leave being taken, unless in an Emergency when it be applied for retrospectively

Right to Appeal:

- Cannot apply for a Tribunal within the first 6 months of detention
- Tribunal can grant a Conditional Discharge which allows the patient to leave hospital subject to conditions, they would be liable for recall
- Discharge can only be by tribunal or Ministry of Justice
- Restrictions remain in place until an Absolute Discharge is granted

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Section 47/49 - Transfer of Sentenced Prisoners to Hospital (with Restriction)


- Transfer of a prisoner suffering from mental disorder to a hospital which has agreed to admit them
- Discharge can only be granted by the MOJ or Tribunal. If the tribunal finds the patient is no longer suffering from a mental disorder, they will be returned to Prison to finish their sentence
- If the S47/49 Transfer Warrant has an Earliest Date of Release (EDR) - restriction ends on this date and the S49 is removed. The patient becomes a Notional 37, the RC is then responsible for the patient and can order Discharge at any time. The Notional S37 then acts like a section 3 (renewable)
- Section 58 (consent to treatment) applies after three months of continuous detention
- If RC/MHRT believe that treatment is no longer required, the RC can recommend to the MOJ that the patient is transferred back to Prison
- All S17 leave must be granted by the MOJ in advance of any leave being taken, unless in an Emergency when it can be applied for retrospectively

Right to Appeal:

- Can appeal to the tribunal within first six months – if successful patient will be returned to prison

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Section 48/49 - Transfer of Unsented Prisoners to Hospital (with Restriction)


- Enables an unsentenced prisoner to be transferred to hospital to receive treatment
Admission must be within 14 days of the Warrant
- Section 58 (consent to treatment) applies after 3 months of continuous detention
- If RC/MHRT believe that treatment is no longer required, the RC can recommend to the MOJ that the patient is transferred back to Prison
- All Section 17 leave must be granted by the MOJ in advance of any leave being taken, unless in an Emergency when it can be applied for retrospectively

Right to Appeal:

- Can appeal to the tribunal within first six months – if successful patient will be returned to prison

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Section 17 Leave


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- Responsible Clinician may grant leave of absence from the hospital
- Restricted patient must have MOJ approval prior to RC approving any leave
- Certain forensic sections – no leave permitted unless authorised by the Court ie. Section 35, 36, 38
- If leave is granted for more than seven days, consideration must be given to a Community Treatment Order (CTO) being made
- Copy must be given to client and anyone escorting them

ALL SECTION 17 LEAVE FORMS TO BE CROSSED THROUGH WHEN NO LONGER VALID

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Quick Quiz...

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- How long does Section 2 last?
- What is the time frame in which a Section 2 patient can apply to the tribunal?
- When are Section 2 tribunal reports due?
- Who is needed to complete a Section 2 or Section 3?
- How many times can a Section 3 be renewed?
- Can a Section 37/41 be renewed?
- What is the difference between Section 47/49 and Section 48/49?

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Section 58 Consent to Treatment

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- Medication can be given for first three months without patient consent
- At the end of the three-month period, one of the following must be in place:
 - Form T2 – Completed by the RC, if the patient has capacity & is consenting
 - Form T3 – Completed by SOAD (Second Opinion Approved Doctor), if patient is lacking capacity/refusing
 - Section 62 – Emergency Treatment form if waiting for the SOAD
- If not on the form, it is an offence to medicate and your NMC Registration at risk

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Nearest Relative Discharge


- Email the NR request to MHA office immediately
- RC has 72 hours to consider barring the request on the grounds of dangerousness to self or others

If Barred:

- The Hospital Managers will consider holding a hearing
- If patient is detained under Section 3, the Nearest Relative can apply for a tribunal
- Nearest Relative cannot make a further request for discharge for six months

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Community Treatment Orders - Section 17A

- Only patients detained under Section 3, 37, 47, 48 (notional 37) are eligible
- Inpatient RC and AMHP complete form CTO1
- No age limit
- CTO rights to be explained before patient leaves ward

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Community Treatment Orders - Section 17A

Recall

- Recalled by Responsible Clinician – usually Community RC but can be any RC
- If the patient presents to the Hospital which is not named on the initial Recall notice, a fresh recall must be completed asap by an RC a copy of this should be emailed to the MHA office and a copy handed to the patient
- Complete Form CTO4 & refer to AMHP service if RC is going to revoke the CTO
- Detain for up to 72 hours upon arrival at hospital
- Can be treated (emergency)


Possible Outcomes:

- CTO is Revoked - patient returns to being detained on their underlying section
- Recall is released. Patient remains informal under CTO
- Discharge off CTO

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Form CTO4

 **Form CTO4 should be completed ASAP after a patient is admitted to the ward under CTO Recall**

Form CTO4 - Regulation 6(3)(d) Mental Health Act 1983

Section 17E – Community treatment order: record of patient's detention in hospital after recall


(PRINT full name and address of patient)
Insert full name and address of patient

(The patient) is currently a community patient.
In pursuance of a notice recalling the patient to hospital under section 17E of the Act, the patient was detained in full name and address of hospital.
On the NHS Foundation Trust, insert full address of hospital site

on (enter date and time at which the patient's detention in the hospital as a result of the recall notice began)
Date *Insert date of admission* **Time** *Insert time of admission*
Signed *Sign your name* **on behalf of the hospital managers**

PRINT NAME *Print your name*
Date *Insert the date and time of form being completed*
Time

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Community Treatment Orders - Section 17A


Revocation

- RC can revoke the CTO, ONLY with the agreement of an AMHP
- Returns to underlying section
- Treatment can be continued under T2 or SOAD request and Section 62
- MHA office complete a referral to Tribunal

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Form H4



ONLY complete Part 2 if the patient is being transferred into Oxleas. Please note, Part 1 is NOT required when accepting a transferred patient.

Form H4 - Regulation 7(2)(a) and 7(3) Mental Health Act 1983

Section 19 – Authority for transfer from one hospital to another under different managers

Part 1
(To be completed on behalf of the managers of the hospital where the patient is detained)
Authority is given for the transfer of (PRINT full name of patient)
Insert full name of patient
From *(name and address of hospital in which the patient is liable to be detained)*
On the NHS Foundation Trust, insert full address of hospital site
to *(name and address of hospital to which patient is to be transferred)*
Insert full name and address of hospital accepting transfer
In accordance with the Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008 within 28 days beginning with the date of this authority.
Signed *Sign your name* **on behalf of the managers of the first named hospital**
PRINT NAME *Print your name* **Date** *Insert the date*

PART 2 - RECORD OF ADMISSION
(This is not part of the authority for transfer but is to be completed at the hospital to which the patient is transferred)
This patient was transferred to (name of hospital)
On the NHS Foundation Trust, insert full address of hospital site

In pursuance of this authority for transfer and admitted to that hospital on (date of admission to receiving hospital)
Insert date of admission
at (time)
Insert time of admission
Signed *Sign your name* **on behalf of the managers of the receiving hospital**
PRINT NAME *Print your name* **Date** *Insert the date*

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Mental Health Act 1983 – Forensic Sections (Part III of the Act)

Compulsory Detention	Purpose	Time Limits	Patients Appeal Rights
Section 35	Remand to hospital for a report on mental condition	28 days at a time up to maximum of 12 weeks	Application to court for termination of the remand
Section 36	Remand to hospital for treatment	28 days at a time up to maximum of 12 weeks	Application to court for termination of the remand
Section 37	Hospital Order for treatment	For up to 6 months, then can be renewed for 6 months, then every 12 months	Tribunal - After 6 months Hospital Managers - anytime
Section 37/41	Hospital Order with Restriction	Without limit of time	Tribunal - After 6 months Hospital Managers - anytime but no jurisdiction to discharge patient can only make recommendations to the Ministry of Justice for discharge
Section 38	Admission to hospital to determine if a hospital order is an appropriate disposal.	Initially 12 weeks, then 28-day periods up to maximum of 12 months.	Appeal against conviction or sentence. Court may terminate order.
Section 45A	Upon sentencing to imprisonment, Crown Court can direct immediate admission of the patient to hospital. Has same effect as section 37/41.	Restriction lasts until sentence expiry.	Appeal against conviction or sentence. Tribunal - After 6 months Hospital Managers - anytime
Section 47	Transfer to hospital of a sentenced prisoner in need of treatment (see 49 below).	As section 37 above	Tribunal - Immediately
Section 48	Transfer to hospital of a non-sentenced prisoner in urgent need of treatment (see 49 below).	As section 37 above or upon disposal of case	Tribunal - Immediately
Section 49	Restriction Direction which can be applied to patients on 47 or 48	You can be kept in hospital until the end of the section 47 or the date when you should be released from prison	

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Oxleas
NHS

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