# MENTAL HEALTH ACT PROCEDURE NO 6
## SECTION 17 LEAVE OF ABSENCE FOR DETAINED PATIENTS AND INFORMAL PATIENTS (MENTAL HEALTH ACT 1983)

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## APPENDIX A

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## APPENDIX B

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SECTION 17 LEAVE OF ABSENCE FOR DETAINED PATIENTS AND INFORMAL PATIENTS (MENTAL HEALTH ACT 1983)

1.0 INTRODUCTION

1.1 A patient who is currently liable to be detained in a hospital or specified hospital unit, can only leave that hospital, or hospital unit, lawfully – even for a very short period – by being given leave of absence in accordance with the provisions of Section 17 (or by way of transfer to another hospital under Section 19. Leave of absence can be an important part of a patient’s treatment plan and the duty to provide aftercare services (Section 117) applies to qualifying patients on leave.

2.0 POWER TO GRANT LEAVE

2.1 Only the patient’s Responsible Clinician (RC) (with the approval of the Home Secretary in the case of restricted patient), can grant a detained patient leave of absence. RCs are not entitled to grant leave of absence to patients detained under sections 5(4), 5(2), 35, 36 and 38.

2.2 Leave of absence can be granted by the RC for specific occasions or for longer indefinite or 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 patients. If leave is to be granted for 7 days or more the RC must consider whether Supervised Community Treatment is more appropriate in all the circumstances of the case (the result of this consideration should be recorded in the notes).

2.3 The RC cannot delegate the decision to grant leave of absence to any other doctor or professional. The RC is responsible for undertaking appropriate consultation and leave may be subjected to conditions considered necessary (see para 2.11) in the interest of the patient and for the protection of others.

Unrestricted Patients

2.4 In the absence of the RC eg annual, sickness or study leave, permission can only be granted by the RC who is, for the time being, in charge of the patient’s treatment. In the absence of the RC the role falls by default or agreement to the Duty Consultant. The RC can however grant urgent leave over the telephone with the agreement recorded in the notes and the appropriate form being completed at the earliest possible opportunity (no later that 24 hours after the verbal agreement).
Restricted Patients

2.5 Any proposal to grant leave is to be approved by the Home Secretary, giving full details of the proposed leave.

Discretionary/Anticipatory Leave

2.6 The Mental Health Act Commission in their 6th Biennial Report made the following recommendation:

All absences from hospital [of a detained patient] should be regarded as constituting leave with a need for RC authorisation but that such leave should be agreed periodically, the weekly multi-disciplinary conference being an ideal occasion with a written statement of the maximum licence that is granted for a defined period and with any related conditions.

2.7 So the RC (with the authority of the Home Secretary, if the patient is subject to restrictions) may decide to authorise short-term local leave, which may be managed by other staff. For example, the patient may be given leave for a shopping trip of two hours each week, with the decision on the particular two hours left to the discretion of the responsible nursing staff. Leave must be reviewed at regular intervals and the outcomes recorded in the patient’s notes.

Planned Leave

2.8 Leave of absence should 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/she is likely to cope outside the hospital. Subject to the patient’s consent there should be detailed consultation with any appropriate relatives or friends (especially where the patient is to reside with them) and with community services. Leave should not be granted if the patient does not consent to the relatives or friends who are to be actively involved in his/her care being consulted.

2.9 A period of leave cannot last longer than the duration of the authority to detain, which was current when leave was granted.

“Ground Leave”

2.10 It is not necessary to grant sec 17 leave to allow the patient to move off the ward but to stay within the grounds of the hospital. However the risk assessment might dictate that it would be prudent to do so.
Conditions attached to the granting of leave

2.11 The RC may place conditions on the granting of leave that the RC considers necessary in the interests of the patient or for the protection of other people” (Sec 17(1)). There are no legally described limits on what conditions can be applied. However all conditions described should be proportionate and not constitute an unnecessary interference into the patient’s private and family life (Human Rights Act Article 8). If a condition is that the patient is to be accompanied by a friend or relative then the wording should not imply that the patient is in the legal custody of their escort. If the escort is a member of staff then they can be in legal custody.

Proposed leave outside England and Wales

2.12 The RC may grant sec 17 leave to permit the patient to visit parts of the UK outside England and Wales as there are reciprocal arrangements in the respective mental health acts to recall the patient if necessary. However the mental health act has no effect on a patient if they leave the UK. Should a patient request leave to visit a foreign country then a risk assessment should take place and one of the three following actions taken (always taking into account the Human Rights Act right to a family life (article 8)):

- Refuse the leave request
- Discharge the section
- Grant the leave knowing that it has no effect until the patient returns to this country

Revised leave agreements

2.13 Whenever a new agreement for sec17 leave is granted a line should be drawn across the old one to ensure that only the current sec 17 leave agreement is used.

3.0 LEAVE TO GENERAL HOSPITALS

3.1 Section 17 Leave of Absence should be used whenever a detained patient requires treatment/assessment in a local general hospital.

3.2 However, if the urgency of the situation is such that there is no time to contact the RC and anticipatory leave has not been granted, the Mental Capacity Act 2005(MCA) will provide authority for a mentally incapacitated patient to be moved to the general hospital. If the MCA is invoked, the RC should grant the patient leave of absence under this section at the earliest opportunity. If the patient has capacity they can be moved to General Hospital with their consent but again the RC should grant sec 17 leave at the earliest possible opportunity as the patient is technically absent without leave.
4.0 PROCEDURE

4.1 When it is known that a detained patient is to be granted leave under Section 17, the RC should complete Form 17a (Appendix A) and forward the original copy to the Mental Health Act Office.

4.2 Copies should be given to the Patient, Care Co-ordinator, their carer (if appropriate and the patient does not object) and a copy placed in the patient’s notes.

5.0 RECALL TO HOSPITAL

5.1 The RC may revoke a patient’s leave at any time if it is considered necessary in the interest of the patient’s health or safety or for the protection of other people. In such an event, the RC must arrange for a notice in writing revoking the leave to be served on the patient or on the person in charge of the patient whilst on leave. The reasons for recall should be fully explained to the patient and a record placed in the patient’s case notes.

5.2 The RC should complete Form 17b (Appendix B) revoking the leave of absence. The original document should be forwarded to the Mental Health Act Office and copies should be given to the patient, the Care Co-ordinator and a copy placed on the patient’s case notes.

5.3 It is unlawful to recall from leave a patient subject to Section 3 solely to renew the authority to detain.

5.4 The RC (or the Home Secretary) may revoke a restricted patient’s leave.

6.0 FAILURE TO RETURN FROM LEAVE

6.1 Section 18 provide powers for the return of patients who fail to return to Hospital at the end of an authorised leave or when recalled (Refer to Trust Policy on Absence without Leave)

7.0 LEAVE OF ABSENCE FOR INFORMAL PATIENTS

7.1 Informal Patients are not detained under the Mental Health Act 1983 and therefore are not subject to Section 17 Leave of Absence.

7.2 However, the Trust has set local arrangement so that leave will be discussed with a member of the patient’s medical team. This will be documented in the patient’s notes, including any agreement with the nearest relative, if appropriate. Time of leave and expected time of
return will also be noted, in order to monitor the safe return of the patient. If the patient does not return to the Ward at the agreed time, then the Ward will take the following steps:-

a) If patient is visiting family, check with family home first.
b) If concerns are raised regarding patient’s safety or there are concerns regarding risk, then contact the police.
APPENDIX A
FORM 17(A)

RECORD OF GRANTING SECTION 17 LEAVE OF ABSENCE

I (RC),______________________________________________________________
grant to (Patient) ____________________________ presently detained on
___________________ward under Section _______ of the Mental Health Act 1983

PLANNED PERIODS OF LEAVE (See Section 17 Policy item 2.6)
From (time/date) …………………………………
to (time/date) ………………………………………………
Subject to the following conditions:
…………………………………………………………………….………
…………………………………………………………………………………………
…………………………………………………………………………………………
Address of overnight leave
……………………………………………………………………………………...
If planned leave is for more than seven days please give reason(s) for not using
Supervised Community Treatment (SCT)
…………………………………………………………………………………………
…………………………………………………………………………………………
…………………………………………………………………………………………
SPECIFIED OCCASIONS (See Section 17 Policy item 2.5) at discretion of the
Nurse in Charge.
If leave is granted with relatives/friends please write ‘in the company of’.
Escorted leave can only be granted with nursing/community staff.
…………………………………………………………………………………………
…………………………………………………………………………………………
…………………………………………………………………………………………
…………………………………………………………………………………………
Conditions:

Escorted? YES/NO if “yes” by

These arrangements will continue until they are reviewed on or before: (date)

Signed

Dated

Responsible Clinician (only)

In case of difficulty please contact

Tel No.

This form should be given to Mental Health Act Co-ordinator.

The RMO should record authorisation of ALL leave in the patient’s medical notes, including all conditions. A copy should be given to the relevant people, including the patient and details kept accessible to staff in order to monitor the patient’s absence.

Please note that if the patient has not returned to the ward by the authorised time, he/she is deemed to be AWOL.

Copies to: Patient ☐, Care Co-ordinator ☐, Patient’s Case Notes ☐
APPENDIX B
FORM 17(B)

BLACK COUNTRY MENTAL HEALTH NHS TRUST

RECORD OF REVOKING LEAVE OF ABSENCE

I …………………………………………………….. (RC) am of the opinion that it is in the interest of ………………………………………………………………………………(patient)

* Own health
or
* Own safety
or
* For the protection of others

that they return to …………………………………….Hospital immediately and hereby revoke the leave of absence granted on (date)……………………………………

The patient is to return:
* Under their own arrangements
* Under the arrangements of ……………………………………………………………
* Accompanied by …………………………………………………………………

(*delete whichever does not apply)

SIGNED (RC)…………………………………….. DATE ……………………..

The RC should record any revoking of leave in the patient’s medical notes. A copy of this form should be given to the patient or the person in charge of the patient. This form should be held by the Mental Health Act Co-ordinator and a copy kept in the MHA File.