



Policy:

NP 022 - Hospital Managers Review of Detention or Community Treatment Order Under Section 23 Mental Health Act 1983

Executive Director Lead	Executive Director: Nursing & Professions
Policy Owner	Director of Quality
Policy Author	Head of Mental Health Legislation

Document type	Policy
Document version number	V4
Date of approval	25 July 2019
Approved by	Executive Directors' Group
Date of issue	01/08/2019
Date for review	31/07/2022 (3 years)

Summary of Policy

A policy to ensure that review of detention or compulsion under detention or CTO pursuant to the Mental Health Act 1983 takes place lawfully and as necessary

Target audience	Trust Board, Associate Mental Health Act Managers, Responsible Clinicians, All staff involved in the care of patients subject to compulsion under the Mental Health Act
------------------------	---

Keywords	Managers, Detention, Renewal, Review
-----------------	--------------------------------------

Storage

Version 3 of this policy is stored and available through the SHSC policy governance team. This version supersedes the previous version (V4 October 2016). Any copies of the previous guidance held separately should be destroyed and replaced with this version.

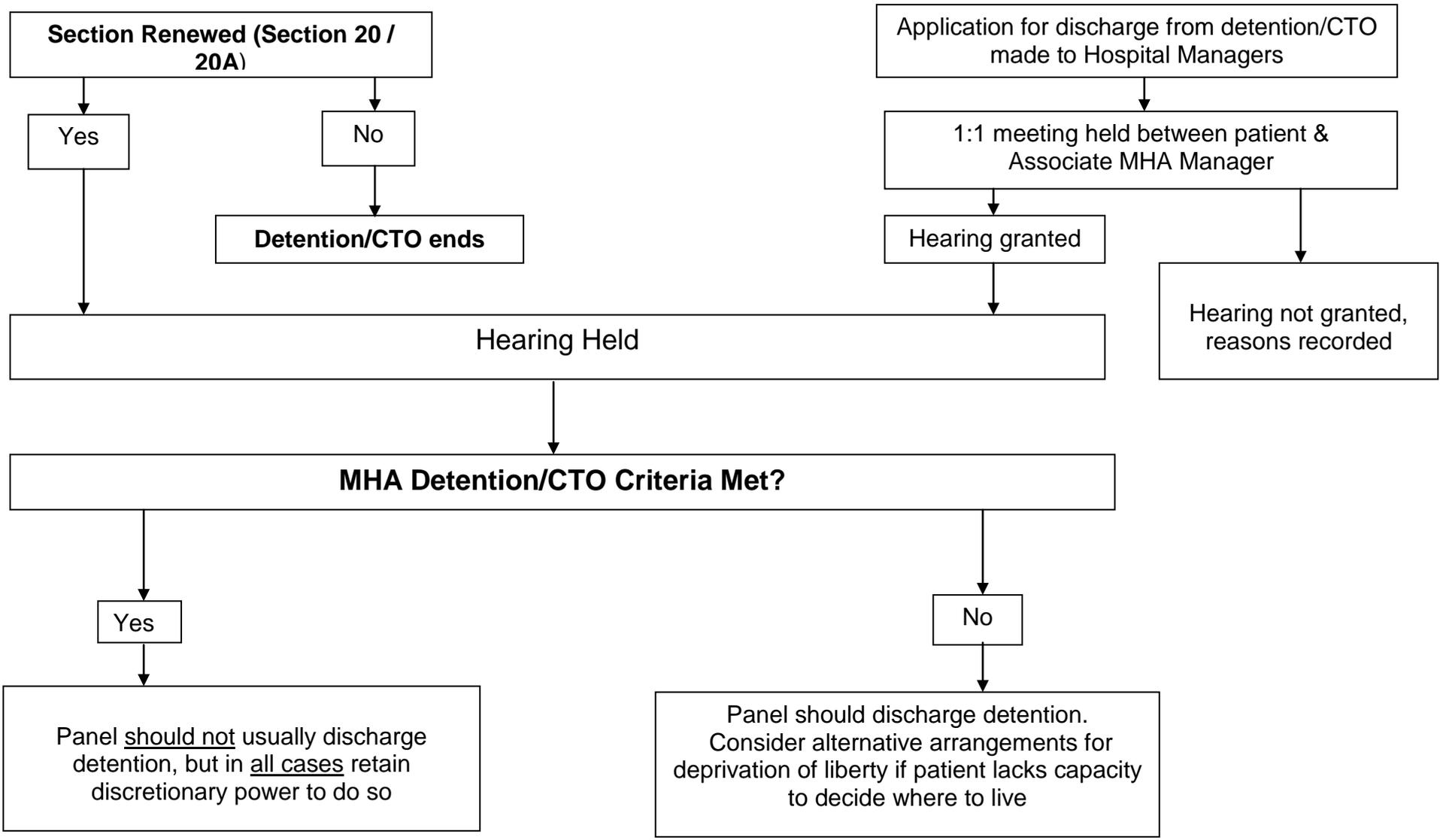
Contents

Section		Page
	Version Control and Amendment Log	3
	Flow Chart – Renewal of Section and Application to Managers	4
	Flow Chart – Nearest Relative Order for Discharge MHA s25	5
1	Introduction	6
2	Scope	6
3	Purpose	6
4	Definitions	6
5	Details of the policy	7
6	Duties	7
7	Procedure	8
8	Development, consultation and approval	12
9	Audit, monitoring and review	13
10	Implementation plan	13
11	Dissemination, storage and archiving (control)	13
12	Training and other resource implications	13
13	Links to other policies, standards, references, legislation and national guidance	13
14	Contact details	15

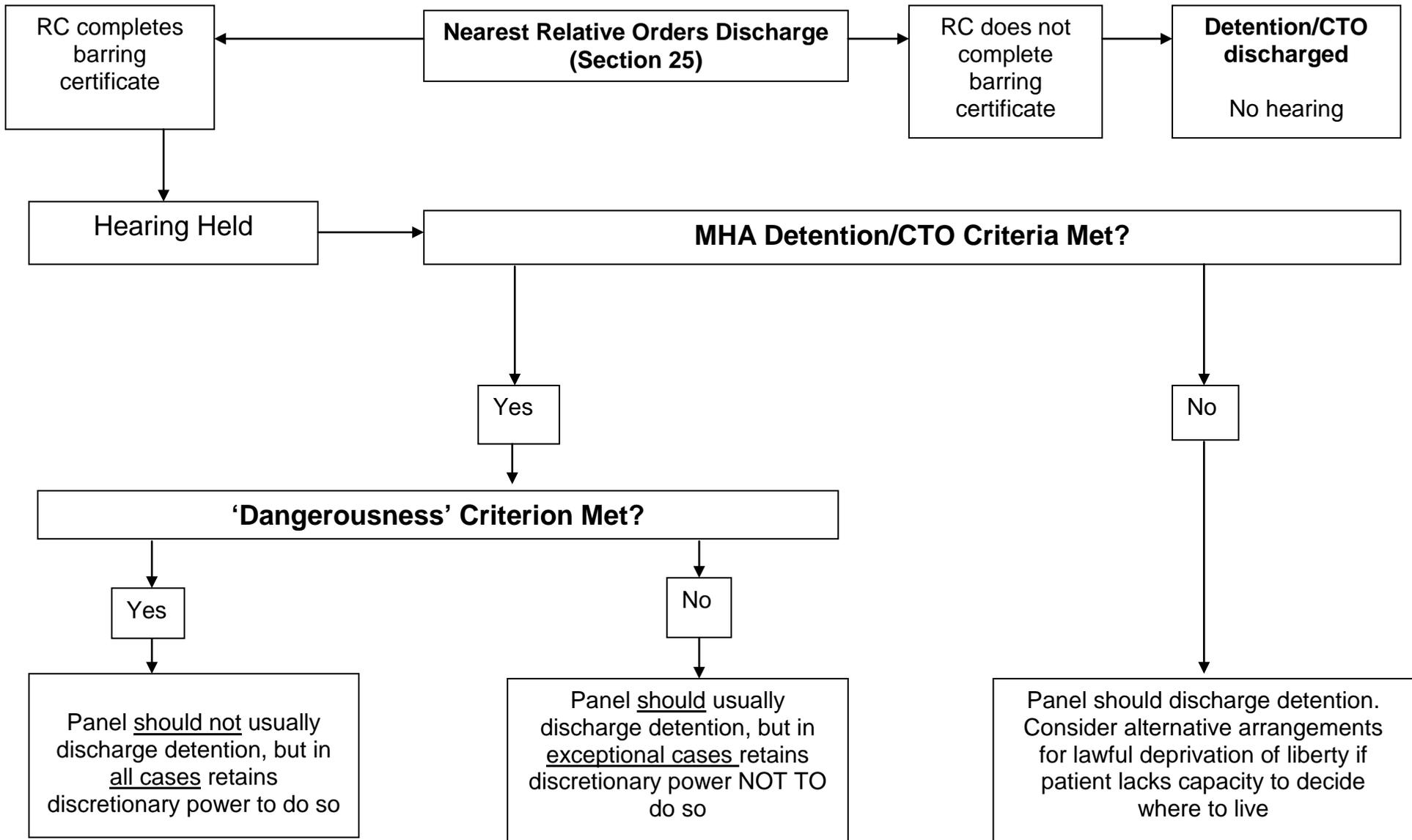
Version Control and Amendment Log

Version No.	Type of Change	Date	Description of change(s)
1.0	New policy	Oct 2008	New policy.
2.0	Reviewed	Feb 2014	Slight amendments to wording.
3.0	Reviewed, ratified and issued.	Aug 2016	General update including MHA Code of Practice, 2015.
4.0	reviewed	June 2019	Scheduled Review Flow-chart split into 2 charts: renewal of section & applications for discharge; Nearest Relative Order for discharge Updated job titles Addition of standard for RC reports to the hearing No other significant changes

Flowchart for the Hospital Manager Review of Detention - Section Renewal & Applications



Flowchart for the Hospital Manager Review of Detention - Nearest Relative Order MHA s25



1 Introduction

The Mental Health Act gives the Hospital Managers the power to discharge most detained patients and all patients subject to Community Treatment Orders. These powers of discharge are delegated to the Associate Mental Health Act Managers.

The Associate Mental Health Act Managers may not discharge restricted patients without the consent of the Secretary of State for Justice. This policy is to ensure the Trust meets its responsibilities in relation to discharge under section 23 Mental Health Act 1983 (MHA).

2 Scope

This policy applies to the Trust Board and the Associate Mental Health Act Managers who have delegated responsibility from the Trust Board.

This policy applies to all staff working in Sheffield Health and Social Care NHS Foundation Trust (including agency and secondees) whose role involves the care and treatment of patients / service users covered under the Mental Health Act.

3 Purpose

Section 23 Mental Health Act 1983 does not set out any procedure for reviewing the detention or community treatment order of patients other than to provide that a committee of three or more persons who are not employees of the hospital authority and who have been authorised by the Hospital Managers can exercise the Hospital Managers' power to discharge patients from detention under the MHA. The members of this committee are to be referred to as Associate Mental Health Act Managers (AMHAMs).

The purpose of this policy is to ensure the Trust Board and the AMHAMs are aware of its responsibilities & duties under section 23 Mental Health Act and defines to whom the Hospital Managers can delegate this function.

4 Definitions

Mental Health Act: References to the Mental Health Act are to the Mental Health Act 1983 as amended by the Mental Health Act 2007.

The Act: Refers to the Mental Health Act 1983 as amended by the Mental Health Act 2007.

Hospital Managers: Under the Mental Health Act 1983 the term 'Hospital Managers' does not mean the Management Team of the hospital but the people or body whose hospital it is i.e. the NHS Foundation Trust as a body.

Associate Mental Health Act Managers (AMHAM): Those persons authorised by the Trust Board to carry out the functions of Hospital Managers defined in the Mental Health Act 1983 (as amended by the Mental Health Act 2007) in relation to the discharge of detention.

The Managers: Where this term is used it refers to the Associate Mental Health Act Managers.

Managers' Panel: at least 3 Associate Mental Health Act Managers undertaking a review of detention/CTO. Any decision to discharge from detention/CTO requires 3 members to be in agreement, therefore 3-member panels must be unanimous in a decision to discharge

Patient: The Act uses the term 'patient' to mean a person who is, or appears to be suffering from mental disorder; this includes people subject to Community Treatment Orders.

Responsible Clinician: The Responsible Clinician (RC) is the named person responsible for care and treatment provided under the Mental Health Act. The Responsible Clinician must already be an Approved Clinician.

Community Treatment Order: Community Treatment Order (CTO) is the authorisation for managing patient care and treatment in the community with the power to recall the patients to hospital if necessary.

5 Detail of the Policy

This policy is concerned with statutory duties under the Mental Health Act

6 Duties

The Trust Board as the body that constitutes the 'Hospital Managers' is responsible for the delegation of the power of discharge under section 23 Mental Health Act 1983 to the Associate Mental Health Act Managers.

Executive Director with responsibility for the Mental Health Act is responsible for the link between the Associate Mental Health Act Managers and the Trust Board.

Mental Health Act Administration Manager has responsibility for ensuring review hearings are coordinated and relevant documents are available for the hearings.

Associate Mental Health Act Managers are responsible for ensuring the hearings are conducted in a way that satisfies the legal requirement of fairness, reasonableness and lawfulness

Responsible Clinicians are responsible for ensuring the renewal of detention or Community Treatment Orders are undertaken in a timely manner to ensure hearings can take place as close to the expiry date of the current detention or CTO as possible.

Mental Health Legislation Committee is responsible for monitoring the operation of this policy

7 Procedure

7.1 Principles - Exercise of Power to Discharge

The Hospital Managers must either consider discharge themselves or arrange for their power to be exercised on their behalf by a “manager’s panel”. A manager’s panel may consist of three or more people who are:

Members of the organisation in charge of the hospital (e.g. the chair or non-executive director of an NHS trust) or Members of a committee or sub-committee which is authorised for the purpose (Associate Mental Health Act Managers - AMHAMs)

In the case of an NHS foundation trust, it is permitted for the AMHAMs to be members of the Trust or any of its committees or sub committees but none of the members of the managers’ panel may be employees or officers of the Trust

In delegating this responsibility to the AMHAM, the Trust must ensure the training needs of the Associate Managers are met.

Section 23 of the MHA does not define the criteria or procedure for reviewing detention. In exercising this power, AMHAMs must have regard to the general law and to public duties. The AMHAMs conduct of a review must satisfy the fundamental legal requirements of fairness, reasonableness and lawfulness:

- They must adopt and apply a procedure which is fair and reasonable;
- They must not make irrational decision, that is, decisions which no other body of hospital managers, properly directing themselves to the law and on the available information, could have made;
- They must not act unlawfully, that is contrary to the provisions of the Act and other legislation and any **applicable regulations**.

7.2 From which sections can Hospital Managers consider discharge?

Hospital Managers’ hearings to consider discharge may be held for patients detained under sections 2, 3, 37, 47 and patients subject to Community Treatment Orders (CTO). They may not discharge patients who are held under the section 5 holding powers, or in a place of safety under section 135 or 136 or subject to interim hospital orders under section 38. Patients who are on restriction orders may request a hearing but discharge by the Managers could only be with the consent of the Secretary of State for Justice

7.3 Information to patients

Patients must know that they may apply for a Manager’s review of detention and that this is not the same as an application to the First Tier Tribunal for Mental Health.

The patient should be provided with copies of the reports prepared for review hearings, unless (in the light of any recommendation made by their authors) panels are of the opinion that disclosing the information would be likely to cause

serious harm to the physical or mental health of the patient or any other individual.

The patient's representative, legal or otherwise, such as donee of Lasting Power of Attorney or a Court (of Protection) appointed deputy, the patient's Independent Mental Health Advocate (IMHA) if they have one and - if the patient agrees – their nearest relative or carer should receive copies of these reports.

The patient must receive the decision of a hearing as soon as practicable, both orally and in writing. Unless the patient objects, the nearest relative should also receive the information and it must be communicated to the relevant professionals.

7.4 When to review detention or CTO

The Responsible Clinician should review the detention or CTO before the current period expires to ensure detention or CTO does not continue without authority, If detention continues without authority this would be an unlawful deprivation of liberty and a breach of the patient's Article 5 (European Convention on Human Rights) right to liberty.

If a section expires without a review taking place (ie it lapses in an unplanned manner) an incident form should be completed to determine why this happened and what actions have been taken to ensure that it would not happen again in the future.

Managers must hold a review when the Responsible Clinician (RC) submits a report under section 20 renewing detention or under section 20A, extending CTO. The review should take place before the date of expiry of the current period of detention or as near to that date as possible. This will be monitored by the Mental Health Act Office.

Managers must hold a review when the Responsible Clinician submits a report barring a patient's discharge by their nearest relative on the ground set out in section 25 MHA. Such a review must consider an additional 'dangerousness' criterion set out below in Criteria for Discharge. If the Managers do not agree with the Responsible Clinician's statement in the section 25 report (i.e. that the patient is likely to act in a dangerous manner if discharged) they should usually discharge the patient.

Patients may request a Manager's review at any other time. The Managers have discretion over when it is appropriate to hold such a review but must satisfy their public law duty of fairness. Following the request for a hearing an Associate Mental Health Act Manger will meet with the patient on one to one basis. When deciding whether a review should take place the managers are entitled to take into account whether the Tribunal has within the last 28days considered the patient's case or is due to do so in the near future.

Managers may undertake a review of whether or not a patient should be discharged from detention/CTO at any time at their discretion.

7.5 Conduct of review

Reviews should be conducted so as to ensure the case for discharging or continuing detention is properly considered against the criteria below and in light of

all the relevant evidence. The procedure needs to balance informality against the rigours demanded by the importance of the task.

The review hearing should be conducted in the same manner whether the patient contests the detention not, whether the hearing is as a result of an application or because of the renewal of the detention of CTO, or whether the patient attends the hearing or not.

The review panel needs to have sufficient information about the patient's past history of care and treatment and details of any future plans. It is essential the panel are informed of any history of violence and self-harm and any risk assessment which has been conducted.

The panel will receive written reports from the patient's Responsible Clinician, Named Nurse, Care Co-ordinator and any other directly involved in the patient's care.

The report submitted by the Responsible Clinician should be in a similar format to those provided for Tribunals and cover the history of the patient's care and treatment and details of their care plan, including all risk assessments. Where the review is being held because the responsible clinician has made a report under section 20, 20A or 21B renewing detention or extending the CTO, panels should also have a copy of the report itself before them. This should be supplemented by a record of the consultation undertaken by the responsible clinician in accordance with those sections before making the report. The written reports should be considered by the panel alongside documentation compiled under the CPA (or its equivalent).

The patient should receive copies of the reports unless the Managers are of the opinion that the information disclosed would be likely to cause serious harm to the physical or mental health of the patient or any other individual.

The patient's nearest relative should be informed of the review, unless the patient objects. If the nearest relative attends the meeting they should be invited to put their views before the panel.

The patient should be given a full opportunity and any necessary help to explain why he or she wishes to be discharged and, unless it would be considered unsafe, should always be given the opportunity to speak to the panel alone.

7.6 Criteria for discharge

The Act does not define specific criteria to be applied by the Managers when considering the discharge of a patient, the essential factor in considering a review application is whether the grounds for admission or continued detention/compulsion under the Act are satisfied, to ensure consistency the panel must consider the following

For section 2:

- Is the patient still suffering from mental disorder?
- If so is the disorder of a nature or degree which warrants the continued detention of the patient in hospital?
- Ought the detention to continue in the interests of the patient's health or

safety or for the protection of other people

For all other detained patients:

- Is the patient still suffering from mental disorder?
- If so, is the disorder of a nature or degree which makes treatment in hospital appropriate?
- Is continued detention for medical treatment necessary for the patient's health or safety or for the protection of other people?
- Is appropriate medical treatment available for the patient?
- Consideration should also be given to whether the Mental Capacity Act 2005 can be used to treat the patient safely and effectively

For patients on CTO:

- Is the patient still suffering from mental disorder?
- If so, is the disorder of a nature or degree which makes it appropriate for the patient to receive medical treatment?
- If so, is it necessary in the interests of the patient's health or safety or the protection of other people that the patient should receive such treatment?
- Is it still necessary for the Responsible Clinician to be able to exercise the power to recall the patient to hospital, if that is needed?
- Is appropriate medical treatment available for the patient?

In cases where the Responsible Clinician has issued a report barring discharge under section 25 the Managers must also consider the following question:

- Would the patient, if discharged, be likely to act in a manner that is dangerous to other people or to themselves?

If the panel members disagree with the responsible clinician and decide that the answer to this question is 'no' then the patient should usually be discharged. However the Managers have a residual discretion not to discharge in these cases and so should consider whether there are exceptional reasons why the patient should not be discharged.

The panel should be positively satisfied that the above criteria are met before declining to exercise their powers of discharge.

The panel should consider the burden of proof rests with those arguing for the continuation of detention or CTO rather than those arguing for discharge.

In all cases the Managers have discretion to discharge patients even if the criteria for continuing the detention or CTO are met. In having regard to the least restrictive option and maximising independence the Managers should always consider whether there are any other reasons why the patient should be discharged

7.7 Communicating the Decision

The Managers decision and their reasons for reaching that decision must be recorded at the end of each review. The decision must be communicated as soon as practicable,

both orally & in writing, to the patient, their representative, to the professionals and if the patient consents to the nearest relative or carer.

The written decision should give clear evidence that all the criteria for detention or CTO have been considered and that regard has been given to the least restrictive option and maximising independence principle. A record to show that the managers have considered using their discretionary powers of discharge should also be made.

Unless it would cause undue upset to the patient, at least one member of the panel should offer to see the patient to explain the decision and the reasons for it.

7.8 Venue

The venue for the hearings of patients detained in hospital will usually take place at the hospital the patient is detained at.

For those patients subject to CTO the option of holding the hearings in the Trust's community centres must be considered.

8 Development, consultation and approval

This policy was developed by the Mental Health Legislation Committee (MHLC) in line with the requirements of the Mental Health Act 1983 and its Code of Practice (2015). This review has updated job titles and Executive responsibility. It has been reviewed and approved by the MHLC for submission to the Executive Directors' Group for final approval.

9 Audit, monitoring and review

Audit & monitoring of this guidance will be through the Mental Health Legislation Committee.

This policy will be reviewed in 3 years.

10 Implementation plan – none necessary, no significant change

11 Dissemination, storage and archiving (Control)

This guidance replaces the previous version (v3) on SHSC Intranet and Intranet.

Notification of the updated policy will be achieved via the Communications internal publication

The previous policy will be removed from the Trust website by the Policy Governance Team/Communications team.

12 Training and other resource implications

The Trust delivers training on the Mental Health Act on a mandatory basis.

Training will be included in the training plan for the Associate Mental Health Act Managers. This will be reviewed on yearly basis by the Executive Director with Responsibility for the Mental Health Act and the Mental Health Act Administration Manger.

13 Links to other policies, standards (associated documents)

Mental Health Act 1983

Mental Health Act Code of Practice

All Mental Health Act policies.

14 Contact details

<i>Title</i>	<i>Name</i>	<i>Phone</i>	<i>Email</i>
Executive Director: Nursing & Professions (Executive Lead for Mental Health Act)	Liz Lightbown	16395	liz.lightbown@shsc.nhs.uk
Director of Quality	Andrea Wilson	64248	andrea.wilson@shsc.nhs.uk
Head of Mental Health Legislation	Anne Cook	64913	anne.cook@shsc.nhs.uk
Mental Health Legislation Administration Manager	Mike Haywood	18104	mike.haywood@shsc.nhs.uk
Consultant Psychiatrist, Mental Health Legislation Committee	Sobhi Girgis	16948	sobhi.girgis@shsc.nhs.uk