

# Mental Health Act Procedural Document

## Statement/Key Objectives:

This document covers the procedural requirements of the Mental Health Act 1983 to be followed by staff and the associated documentation. It is not intended to be an alternative to following the specific wording of the MHA but is intended as a user-friendly guide. Where there is any conflict between this document and the legislation, the legislation will prevail.

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## Version Control and Summary of Changes

Version number	Date	Comments (description change and amendments)
1	May 2016	
2	April 2018	Revision following policy expiry date
3	October 2019	No changes

### For further information contact:

The MHA Office

## **1. Introduction**

- 1.1 The Trust is required to deliver services to its service users within the legal framework of the Mental Health Act 1983 and in accordance with the Mental Health Act Code of Practice (2015) and associated guidance.
- 1.2 In the application of legislative provisions, codes, and guidance, together with this procedural document and other linked documents, professionals, staff and stakeholders must have regard to the principles of the European Convention on Human Rights, as set out in the Human Rights Act 1998. These principles pervade all actions and decisions taken and any incompatibility identified.
- 1.3 This document and the procedures contained will apply to all employees of the Trust, including Non-Executive Directors, Managers Panel Members, bank staff, volunteers, individuals on secondment and trainees or those on a training placement within the Trust and temporary staff employed through an agency. Staff from other organisations or companies undertaking work on Trust premises must abide by the relevant legislation and regulations and should be made aware of the pertinent parts of this document.
- 1.4 The purpose of this document is to provide guidance that ensures compliance with the provisions of the Mental Health Act, to protect the staff and the Trust from litigation and to assist staff in undertaking duties.
- 1.5 All of the documents in this document are standard templates or forms which staff are expected to utilise. Most are available on the Trust intranet site, where they are not the MHA Office should be contacted.
- 1.6 This procedures and the associated documentation have been approved by through the MHA Governance Processes and in accordance with the requirements of the Trust's Policy for Policies.
- 1.7 If staff are unsure of their responsibilities at any time they should discuss this with their line manager. If staff are unsure of their legal responsibilities or the legal implications of their action they should contact the MHA Office for advice. In the first instance all requests for advice or assistance should be made by telephone/email providing background information to the situation, the specific question being asked, the risks and the urgency of the request. The Office will endeavour to respond with appropriate advice; however where there remains a requirement for clarification from Trust solicitors, the recognised Trust process will be followed.

## **2. Legislation, Guidance and Policy Documents Considered**

- 2.1 This document is not a substitute for the legislation, regulations and Codes of Practice to which all staff must adhere. The list below is not intended to provide a complete list of the legislation governing the practice of NHS employees. Staff should ensure they receive regular training which will inform them of any changes.
  - Mental Health Act 1983 (and Regulations)
  - Mental Health Act 2007 (And associated regulations)
  - Tribunals, Courts and Enforcement Act 2007

- Human Rights Act 1998
- Equalities Act 2010
- Children Act 2004
- Mental Capacity Act 2005
- Police And Criminal Evidence Act 1984
- Mental Health Act Code of Practice 2015
- Mental Health Act Reference Guide 2015
- Supervised Community Treatment: A Guide for Practitioners, NIMHE, 2008.
- Leave of Absence for patients Subject to Restrictions: Guidance for Responsible Clinicians, Ministry of Justice, 2015.

### 3. Definitions and Abbreviations

#### 3.1 Definitions

**Advance Decision to Refuse Treatment (ADRT)** - At a time when a patient has the capacity to make the decision they may decide that if they lack capacity at some point in the future they do not want to receive certain forms or methods of treatment. Advance Decisions can only be made by people 18 or over. If an advance decision relates to life sustaining treatment (such as resuscitation) it must be in writing and witnessed – ideally by a carer or relative or if this is not appropriate an advocate or independent third party - but not by a member of Trust staff unless there are special circumstances. ADRTs are covered in detail in the Trust’s Mental Capacity Act Policy.

**Aftercare (Section 117)** - Aftercare which is provided to eligible persons who have been discharged following a period in hospital under s.3, s.37, s.45A, s.47 or s.48 of the Mental Health Act 1983, in order to provide support for their on-going mental health needs until the care provider is satisfied that the person is no longer in need of such services.

**Care Quality Commission (CQC)** - The CQC look after the rights and concerns of all those who are held under the Act and aim to ensure the Act is being properly used. The CQC is also responsible for the provision of **SOADs** (see below under ‘Second Opinion Appointed Doctors’) when required.

**Community Treatment Order (CTO)** – Power under sections 17A-17G that enables a patient to be discharged from detention in hospital but to remain subject to recall.

**Court Appointed Deputy** - In certain situations where an individual does not have a **Lasting Power of Attorney (LPA)** but a series of decisions needs to be made, the Court of Protection may appoint a deputy who then takes on the same functions as an attorney either for a specified period or indefinitely.

**Independent Mental Health Advocate (IMHA)** – Specialist advocates who support detained patients and those on CTO, ensuring that the safeguards laid out in the legislation are followed, commissioned in Leicester, Leicestershire and Rutland by LAMP.

**Lasting Power of Attorney (LPA)** - A Lasting Power of Attorney (LPA) is a formal legal document which confers on the attorney (or donee as it sometimes called) the authority to make decisions on the patient's behalf. There are 2 types of LPA: Personal Welfare and Property & Affairs. The decisions that can be made by the attorney will depend on the type of attorney they are and what is written in the LPA. To be valid an LPA must be formally written down, signed and registered with a body known as the Office of the Public Guardian. An LPA can also be verified through this body and should be verified if a paper copy cannot be presented to staff.

**Mental Health Tribunal (MHT)** – The MHT is an independent statutory body responsible for hearing patients' appeals and referrals and act as a 'mobile court'. They are now classified as 'first-tier tribunals' as per the Tribunals, Courts and Enforcement Act 2007.

**Nearest Relative** - Not to be confused with 'Next of Kin', a patient cannot choose their Nearest Relative. It is a term specific to the Act and the Nearest Relative has a legally defined role (see section 26 of MHA). The Nearest Relative has certain powers and is entitled to receive certain information regarding a patient who is subject to the Mental Health Act unless the patient objects.

**Second Opinion Appointed Doctor (SOAD)** - The **CQC** retain responsibility for the provision of SOADs in response to requests from clinicians when ensuring that a patient who does not or cannot consent to certain treatment that it is only given if it is medically necessary. Also required to ratify the treatment provided to **CTO** patients irrespective of whether consent is forthcoming. In this role they are acting independently of the detaining hospital on behalf of the CQC.

### 3.2 Abbreviations

AC	– Approved Clinician
ADRT	– Advance Decision to Refuse Treatment
AMHP	– Approved Mental Health Professional
AWOL	– Absent Without Leave
CoP	– Code of Practice (The Mental Health Act Code of Practice)
CQC	– Care Quality Commission
CTO	– Community Treatment Order
ECT	– Electro-Convulsive Therapy
EDT	– Emergency Duty Team
EMAS	– East Midlands Ambulance Service
IMHA	– Independent Mental Health Advocate
LPA	– Lasting Power of Attorney
MHA	– Mental Health Act

- MHT – Mental Health Tribunal
- MOJ – Ministry of Justice
- NIC – Nurse in Charge
- NR – Nearest Relative
- OOH – Out of Hours
- RC – Responsible Clinician
- SOAD – Second Opinion Appointed Doctor

#### 4. Duties (detailed within the Trust Delegation Document)

Individual/Group	Responsible for:
<b>Chief Executive</b>	<p>As Accounting Officer of the Trust the Chief Executive has ultimate responsibility for staff and organisational adherence to legislation, guidance and policy.</p> <p>Ensuring appropriate management chains are in place to enable adherence to this policy.</p>
<b>Board of Directors</b>	<p>Ensuring that the Trust has in place the necessary policies and procedures to enable staff to meet the standards aimed at by the Trust.</p>
<b>Managers Panel Members</b>	<p>Holding review meetings when a patient’s detention or CTO is renewed with the power to discharge the patient.</p> <p>Holding appeal hearings when a patient appeals against their detention or CTO with the power to discharge the patient.</p> <p>Highlighting concerns in accordance with agreed procedures</p>
<b>“Hospital Managers”</b>	<p>NHS Hospitals in England are managed by NHS Trusts, Foundation Trusts and CCGs. For these hospitals the Trusts themselves are defined as the ‘Hospital Managers’ for the purposes of the Mental Health Act 1983 (as amended by the 2007 Act) (the Act)<sup>1</sup> and as such have authority to detain patients and ensure the requirements of the Act are met.</p> <p>In practice most of the decisions required to be taken by the Trust, or “hospital managers”, in meeting their obligations under the Act are done so not by the Trust themselves but by individuals with delegated responsibility on their behalf. The Trust’s delegation document outlines this process.</p>

<sup>1</sup> Mental Health Act 1983 (as amended by the 2007 Act) Code of Practice Chapter 30

<p><b>Legislative Committee (LEG)</b></p>	<p>To provide assurance on the implementation of the MHA Produce report to the Trust Board Disseminating new case law Providing a forum for resolving and escalating issues relating to the MHA Providing support and guidance in matters relating to the MHA Receiving reports Monitoring statistics related to MHA activity Other duties as detailed within the Committee's Terms of Reference</p>
<p><b>Approved Clinician</b></p>	<p>Attending regular update training and training as required by the Strategic Health Authority to retain AC status.</p> <p>Informing the Medical Staffing department that they have completed AC training.</p> <p>Medical Staffing will maintain a current list</p>
<p><b>Responsible Clinician</b></p>	<p>Discharging duties under the MHA including in particular:</p> <p>Being responsible for Admissions</p> <p>Granting leave under section 17</p> <p>Issuing CTOs</p> <p>Consulting with their professionals</p> <p>Leading the clinical team</p> <p>Abiding by applicable professional codes of practice.</p> <p>Ensuring all appropriate staff are aware who the consultant on-call is and how to contact them for times when they are unavailable.</p> <p>Maintaining of their patients' sections including renewal, discharge, granting leave and writing reports for MHRTs and Managers' Panel meetings/hearings and Part IV provisions</p> <p>Referring patients to an Independent Mental Health Advocate (IMHA) where appropriate.</p> <p>Informing CQC of patient deaths</p> <p>The allocation of Responsible Clinicians will be in accordance with Trust strategy currently stating an in-patient / community patient split dependent on localit</p>
<p><b>AMHP</b></p>	<p>AMHP responsibilities remain under the Local Authorities in</p>

	Leicester City, County and Rutland
<b>Qualified Nurse</b>	<p>Attending regular update training</p> <p>Receiving and scrutinising paperwork</p> <p>Completing forms H3, H3a, (or CTO4)</p>
<b>Inpatient Named Nurse</b>	<p>Attending regular update training</p> <p>Continuing to inform patients of their rights and documenting on Rights Form</p> <p>Section 117 awareness where appropriate</p> <p>AWOL notification</p>
<b>Mental Health Act Office</b>	<p>Attending regular update training</p> <p>Scrutinising legal paperwork, issuing reminders re statutory deadlines and ensure rectification of errors.</p> <p>Providing written information to patients</p> <p>Coordinating Tribunals</p> <p>Coordinating Managers Panel Hearings</p> <p>Capturing and presenting MHA data</p> <p>Auditing compliance with legislation</p> <p>Corresponding with the CQC as appropriate</p> <p>Any other functions delegated</p>
<b>Corporate &amp; Legal</b>	Providing advice to staff on the application of the Act.
<b>Learning and Development Department</b>	<p>Ensuring appropriate and sufficient training is available and promoted to give staff the knowledge and skills to comply with this policy.</p> <p>Ensuring information on training is easily accessible to staff.</p> <p>Ensuring a training database is maintained of each staff member's attendance at training</p> <p>Providing reports on the uptake of training</p>
<b>General Managers/Clinical Directors/ Lead Specialists/ Heads of Service</b>	<p>Ensuring staff are familiar with this policy (including volunteers, placement staff, students, temporary staff and contracted staff)</p> <p>Ensuring staff have the tools, resources and skills to deliver the standards detailed in this policy and to undertake the</p>

	<p>tasks requested of them.</p> <p>Ensuring all efforts are made to facilitate staff attendance at training as defined in the HR Policy Handbook.</p> <p>Ensuring relevant legislation, Codes of Practice and guidance are available to staff.</p> <p>Gathering assurance that requirements and standards are being met and providing reports to</p>
<b>All Staff</b>	<p>Practicing within the legislative framework and update knowledge of such accordingly.</p> <p>Complying with professional Codes of Practice relevant to their discipline.</p> <p>Following the procedures described in this policy and aim to achieve the target standards.</p> <p>Undertaking all training as identified in HR Policy Handbook and any training essential for their particular role or duties.</p> <p>Cooperating with management to meet requirements</p> <p>Providing reports to General Managers/Clinical Directors on the performance against standards for their team.</p>

## 5. Application of the Mental Health Act

### 5.1 Statement

5.1.1 In making any decisions under the Mental Health Act the guiding principles should be considered. These are laid out in Chapter 1 of the Mental Health Act Code of Practice and can be summarised as follows:

- **Least Restrictive Option and Maximising Independence**  
Where it is possible to treat a patient safely and lawfully without detaining them under the Act, the patient should not be detained. Wherever possible a patient's independence should be encouraged and supported with a focus on promoting recovery wherever possible.
- **Empowerment and Involvement**  
Patients should be fully involved in decisions about care, support and treatment. The views of families, carers and others, if appropriate, should be fully considered when taking decisions. Where decisions are taken which are contradictory to views expressed, professionals should explain the reasons for this.
- **Respect and Dignity**  
Patients, their families and carers should be treated with respect and dignity and listened to by professionals.
- **Purpose and Effectiveness**

Decisions about care and treatment should be appropriate to the patient, with clear therapeutic aims, promote recovery and should be performed to current national guidelines and/or current, available best practice guidelines.

- **Efficiency and Equity**

Providers, commissioners and other relevant organisations should work together to ensure that the quality of commissioning and provision of mental healthcare services are of high quality and are given equal priority to physical health and social care services. All relevant services should work together to facilitate timely, safe and supportive discharge from detention.

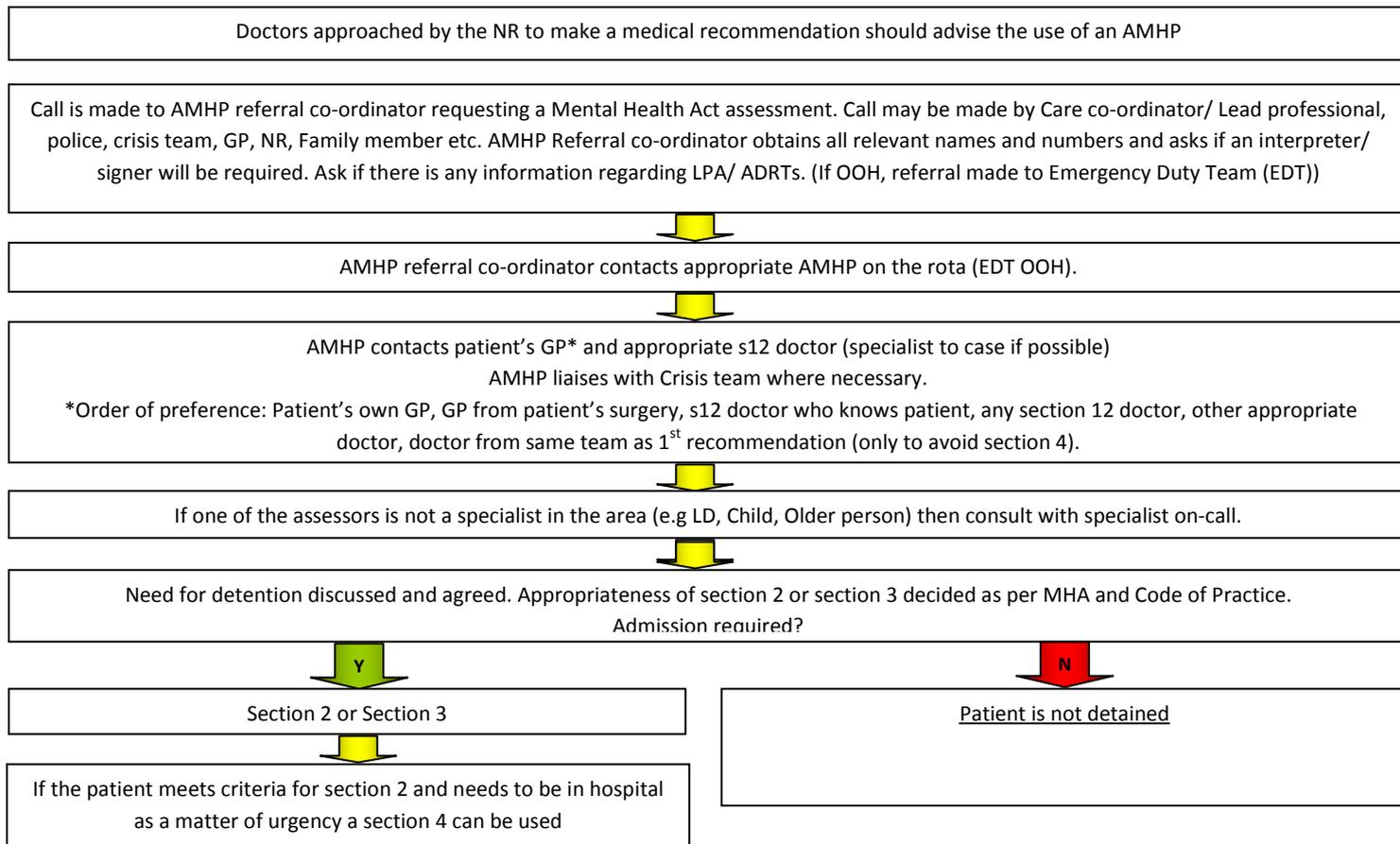
- 5.1.2 Decisions made under the Mental Health Act are supported and informed by the clinical assessment and care planning process (including CPA) and detention under the Mental Health Act is not a substitute for following these processes.
- 5.1.3 All staff should ensure that their decisions made and actions taken in respect of patients subject to the Mental Health Act follow the procedures laid out in the legislation. All decisions made and action taken should be in accordance with the Code of Practice and the Reference Guide unless there are robustly justified and documented reasons for deviation.
- 5.1.4 All situations in which the procedures detailed below are not/cannot be followed should be recorded as an incident on the electronic risk management system, classified under Mental Health Act.

## **5.2 Standards**

- 5.2.1 All action taken in respect of patients subject to the MHA will be in accordance with the Act and the procedures outlined in this document.
- 5.2.3 There should be no conflicts of interest between the assessors; financial, business, professional or personal.
- 5.2.4 If one of the assessors is not a specialist in the area (eg LD, child, older person) then consult with specialist on-call.
- 5.2.5 In considering the application of the Mental Health Act, staff will have due regard to the Safeguarding Policies and Procedures of the Trust.

## 5.3 Procedures.

### 5.3.1 – Overall Assessment Process



## 5.3.2 – Section 2 Application Process

Most senior Section 12 doctor conducting assessment arranges for a bed or can delegate but retains responsibility.



Doctors complete 1 x **Form A3** or 2 x **Form A4**



AMHP completes **Form A2** ensuring correct address of hospital including name of Trust. AMHP informs NR of application and their rights (including right to refer to IMHA). AMHP discusses the IMHA service with the patient. AMHP should check all forms for consistency and correctness.

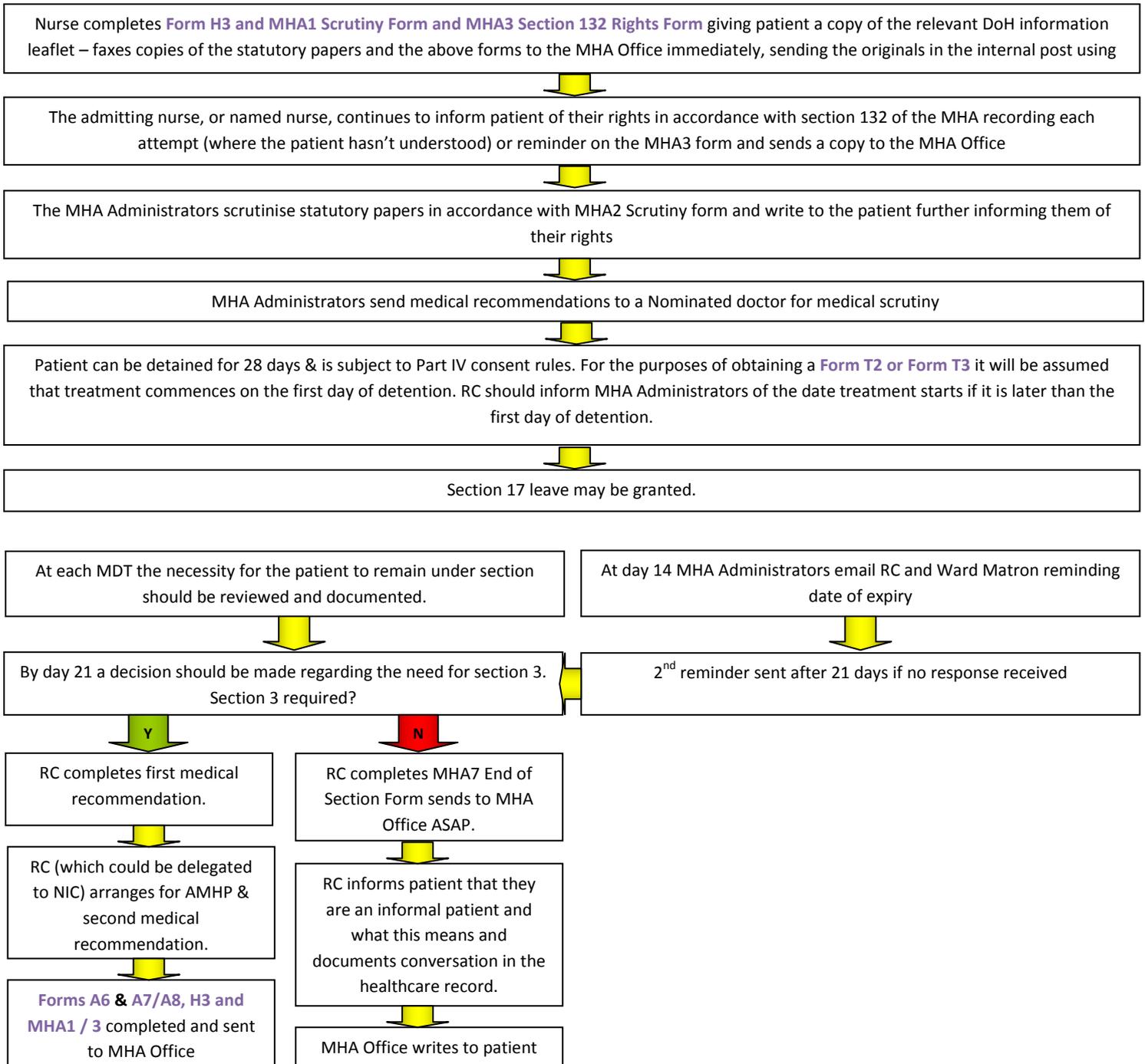


Appropriate transport arranged by AMHP (Police to be contacted if high risk) in accordance with Multi-Agency Joint Conveyance Agreement



AMHP (and others dependant on risk assessment) goes with patient to hospital and personally delivers application for admission and accompanying medical recommendations to hospital ward staff. Delivery of papers can be delegated in exceptional circumstances. The reasons for this must be appropriately recorded. If the AMHP does not accompany should phone the hospital later to confirm admission.

### 5.3.3 – Section 2 Admission & Maintenance



### 5.3.4 – Section 3 Application Process

Appropriateness of section 3 agreed by all assessors (bearing in mind that admissions to hospital from the community should be enacted under section 2 in all but exceptional circumstances).

Most senior Section 12 doctor conducting assessment arranges for a bed or can delegate to Crisis teams but retains responsibility.



Doctors agree what is the appropriate treatment and where this can be given and complete 1 x **Form A7** or 2 x **Form A8**, documenting all the various alternatives on the paperwork.



AMHP consults with NR. If this is not appropriate or possible reasons must be documented. If the NR objects to the use of section 3 the section cannot be applied. If NR maintains objection AMHP should consider displacement under s 29 if grounds are met. AMHP consults own legal department.



AMHP completes **Form A6** ensuring correct address of hospital including name of Trust. AMHP informs NR of their rights (including right to refer to IMHA). AMHP should check all forms for consistency and correctness.

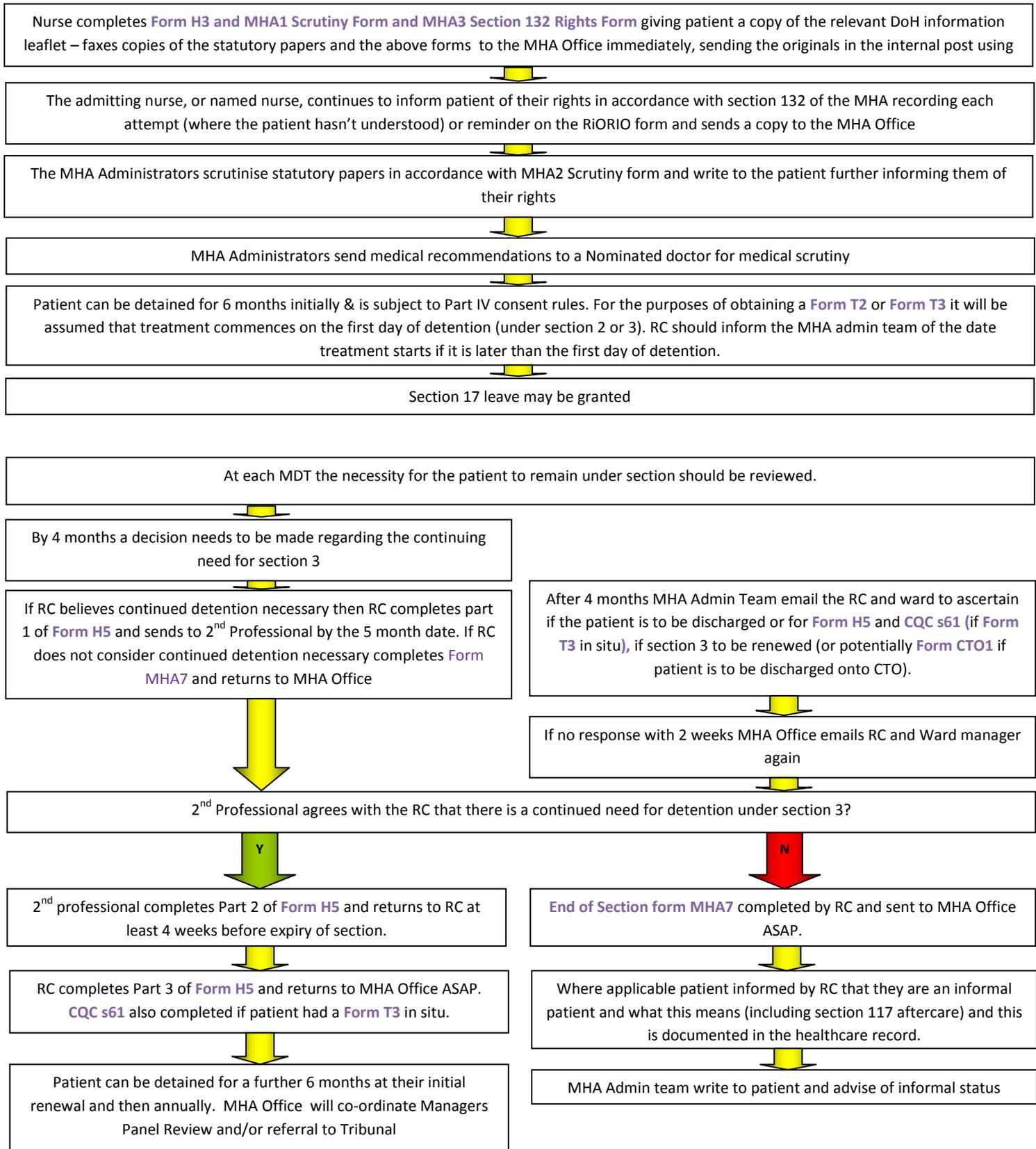


Appropriate transport arranged by AMHP (Police to be contacted if high risk) in accordance with agreed Multi Agency Conveyance document

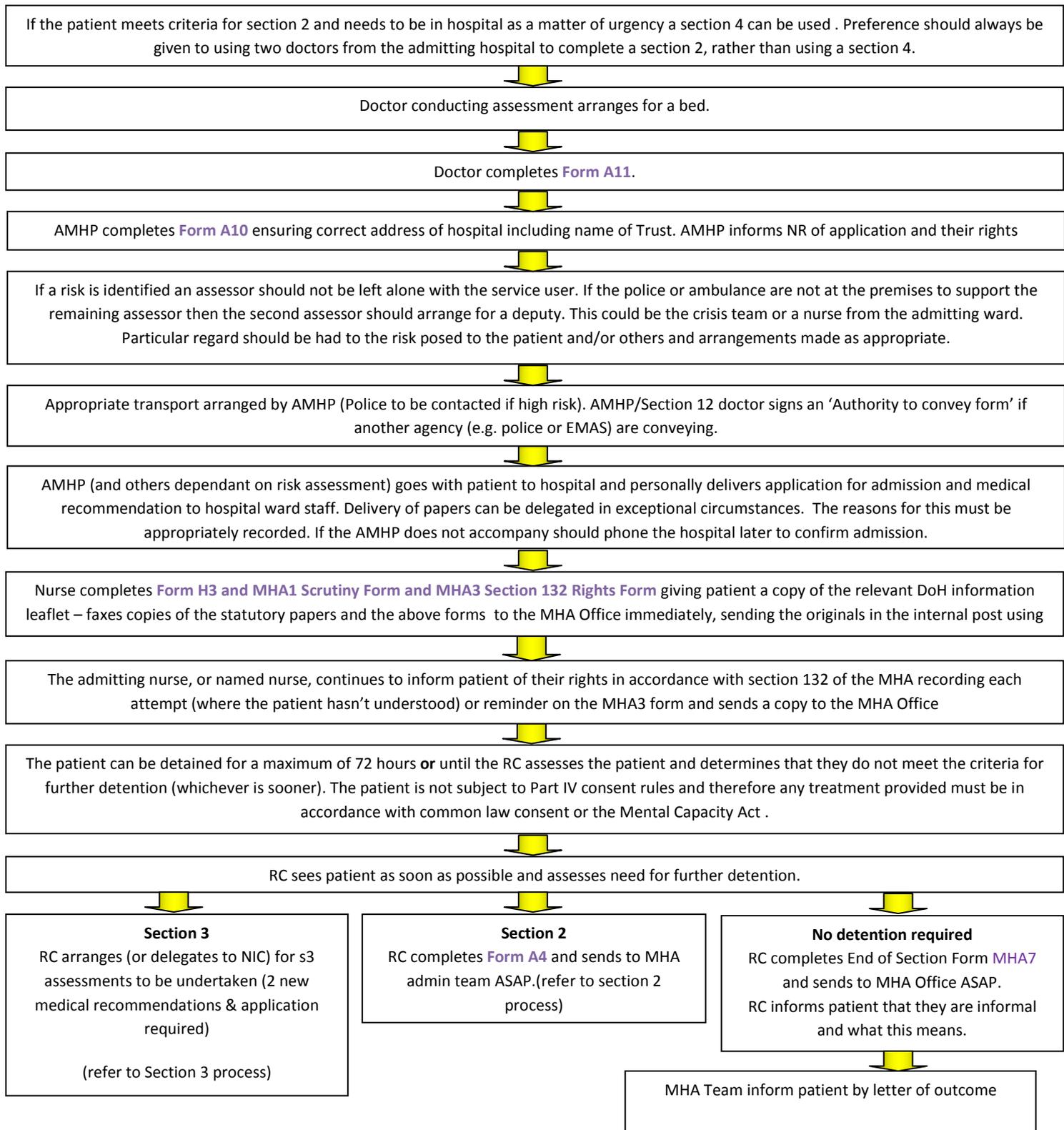


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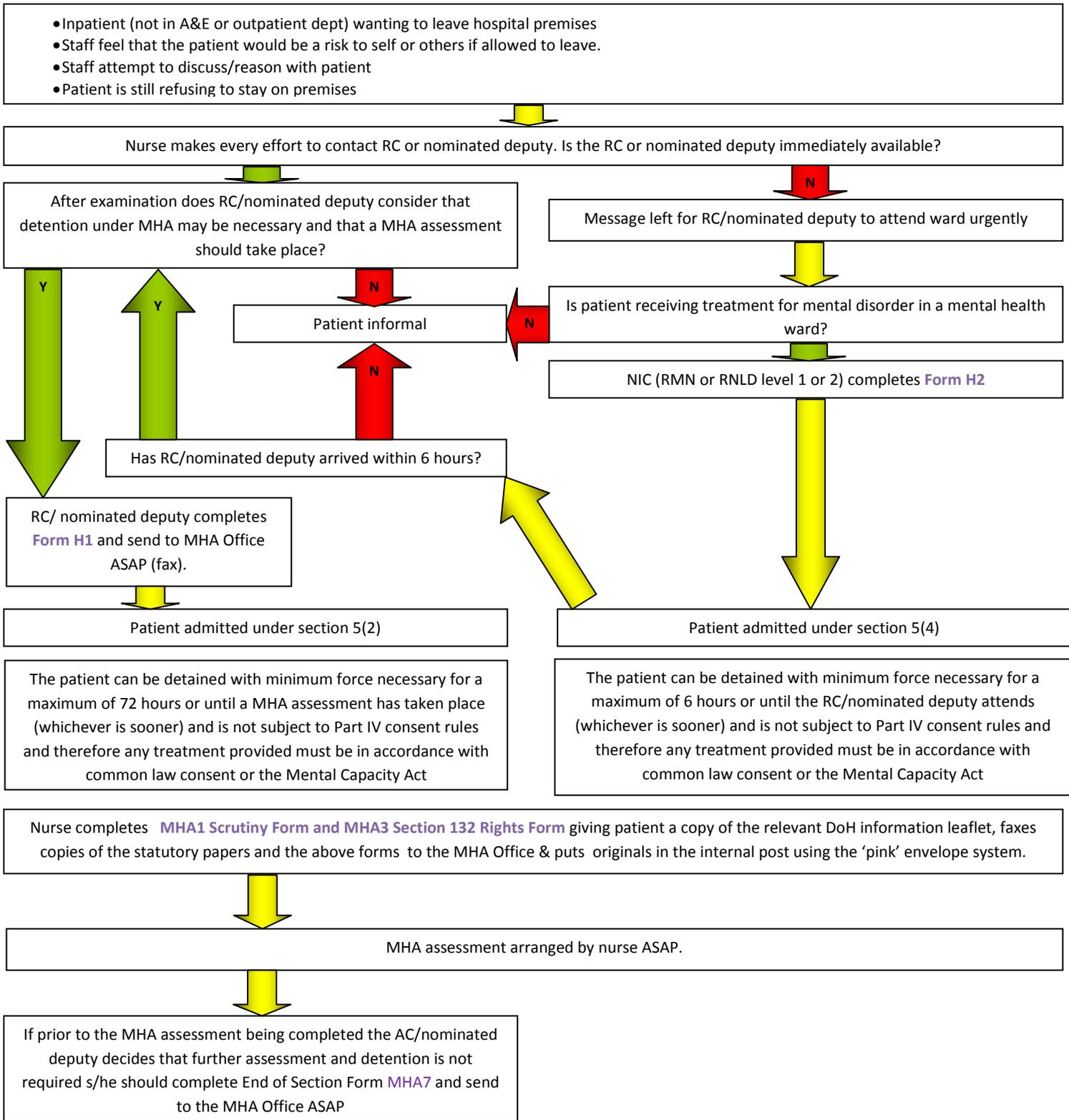
### 5.3.5 – Section 3 Admission & Maintenance



## 5.3.6 – Section 4 Application & Admission Process



### 5.3.7 – Section 5 Holding Power



### 5.3.8 – Section 17 Leave

- Patient detained under MHA
- Patient requests leave of absence
- Reviewed by RC & team at MDT review

In assessing whether to grant section 17 leave consideration must be given to any implications at the time for child or vulnerable adult safeguarding concerns. In circumstances where any risk to a child/children has been identified, schools and other relevant agencies will be notified of the Section 17 leave in accordance with the relevant procedures.

Decision made by RC to grant section 17 leave. For restricted patients under Part 3 of the MHA (those subject to section 41 or 49 restrictions) please see the Trust Policy on Section 17 Leave.

Leave of absence conditions agreed by RC and MDT in consultation with the patient.

Named nurse or NIC ensures that the patient is aware of any conditions and AWOL procedures. A contingency plan should be agreed in case the patient does not return.

Leave forms completed in accordance with Trust Policy – copy given to patient and/or carers/relatives as appropriate

At the time when the patient requests to go out on their assigned leave the named nurse or NIC completes risk assessment and exercises discretion (if leave refused nurse documents reasons). Patient informed that if they have any problems they should return to hospital.

Leave documented in the patient's progress notes

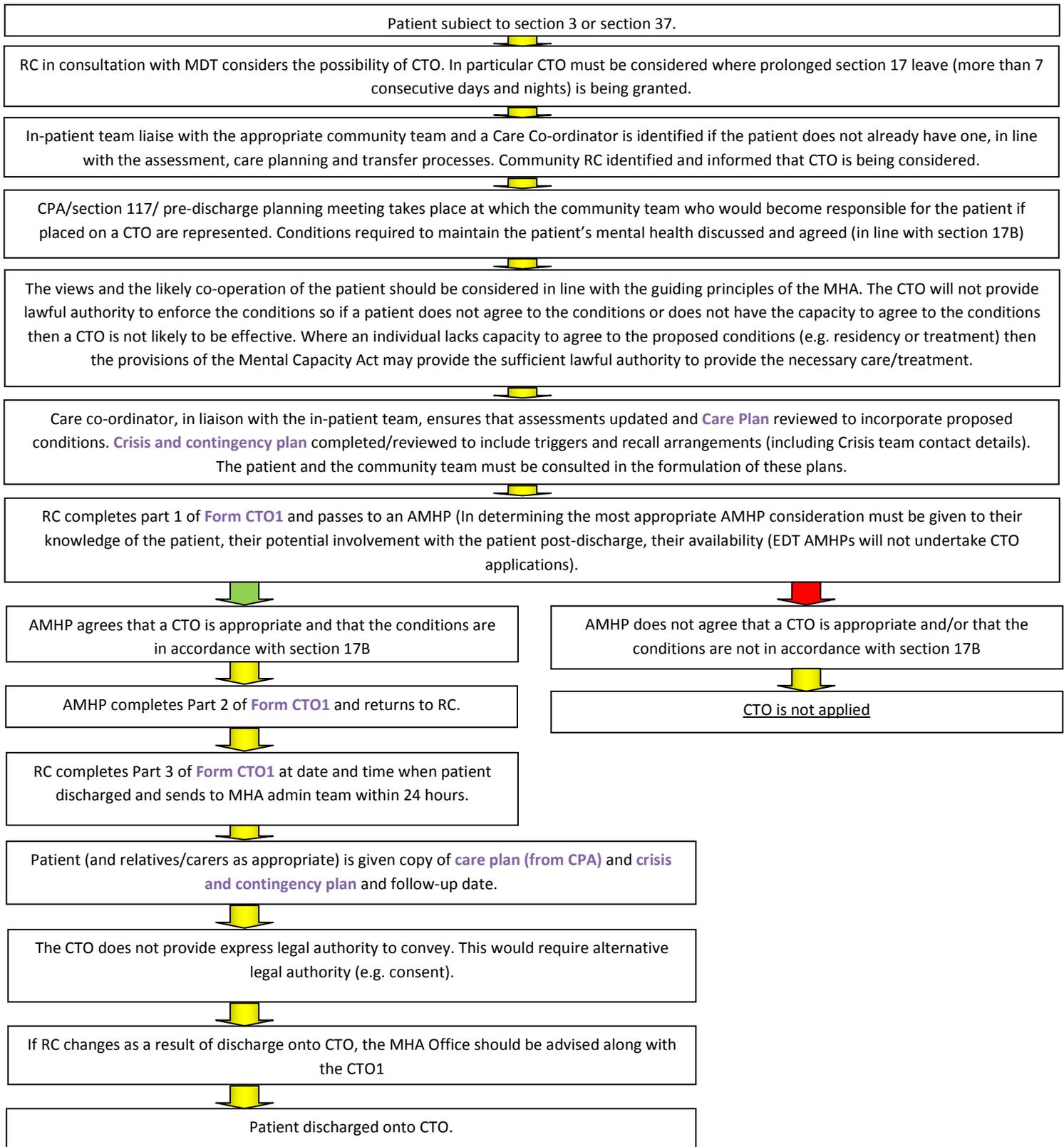
On the patient's return from leave the named nurse/NIC should review the leave with the patient and document in the progress notes

If patient fails to return from leave at the specified time the AWOL procedure should be followed

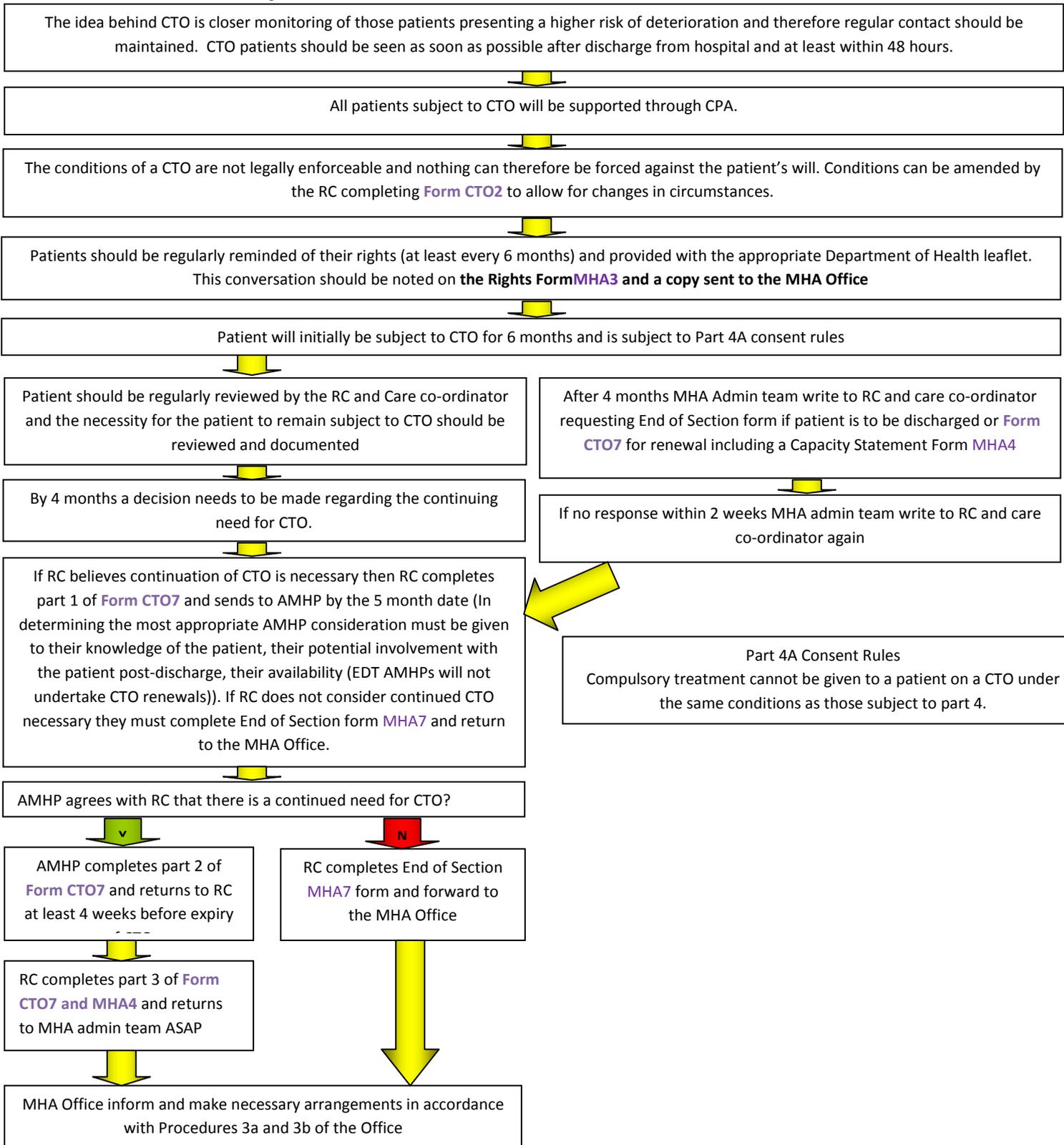
In cases of emergency if the patient is in need of urgent medical treatment (eg if an elderly patient has fallen out of bed and has a suspected fractured hip) and needs to be moved to the General Hospital for the medical treatment the patient can be moved and the Leave Forms completed retrospectively by the RC at the earliest opportunity.

Any outpatient hospital appointments, optician appointments, dental appointments etc **must** be planned and the Leave Forms completed by the RC in advance of the appointment.

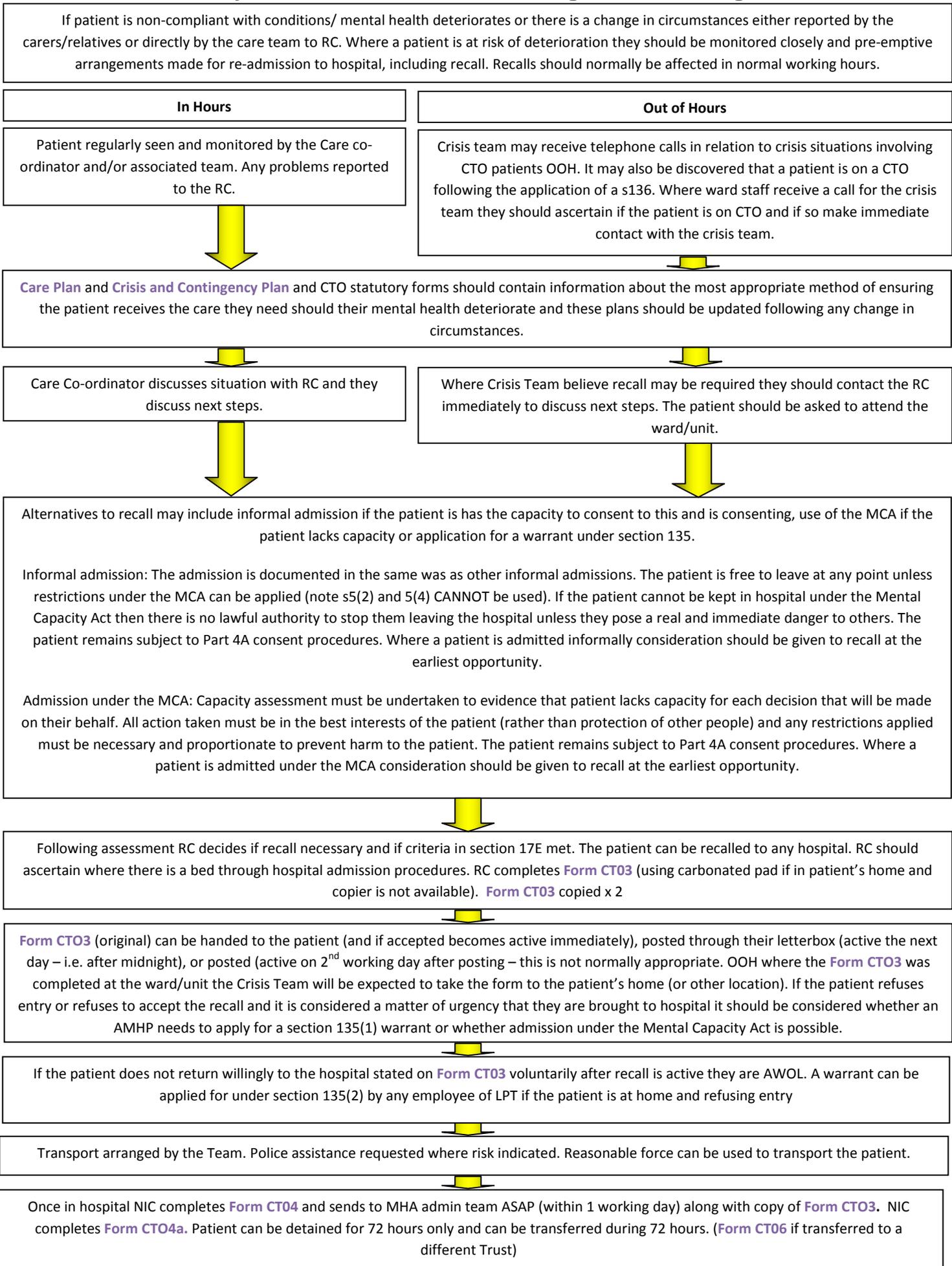
### 5.3.9 – Community Treatment Orders Assessment & Application Process

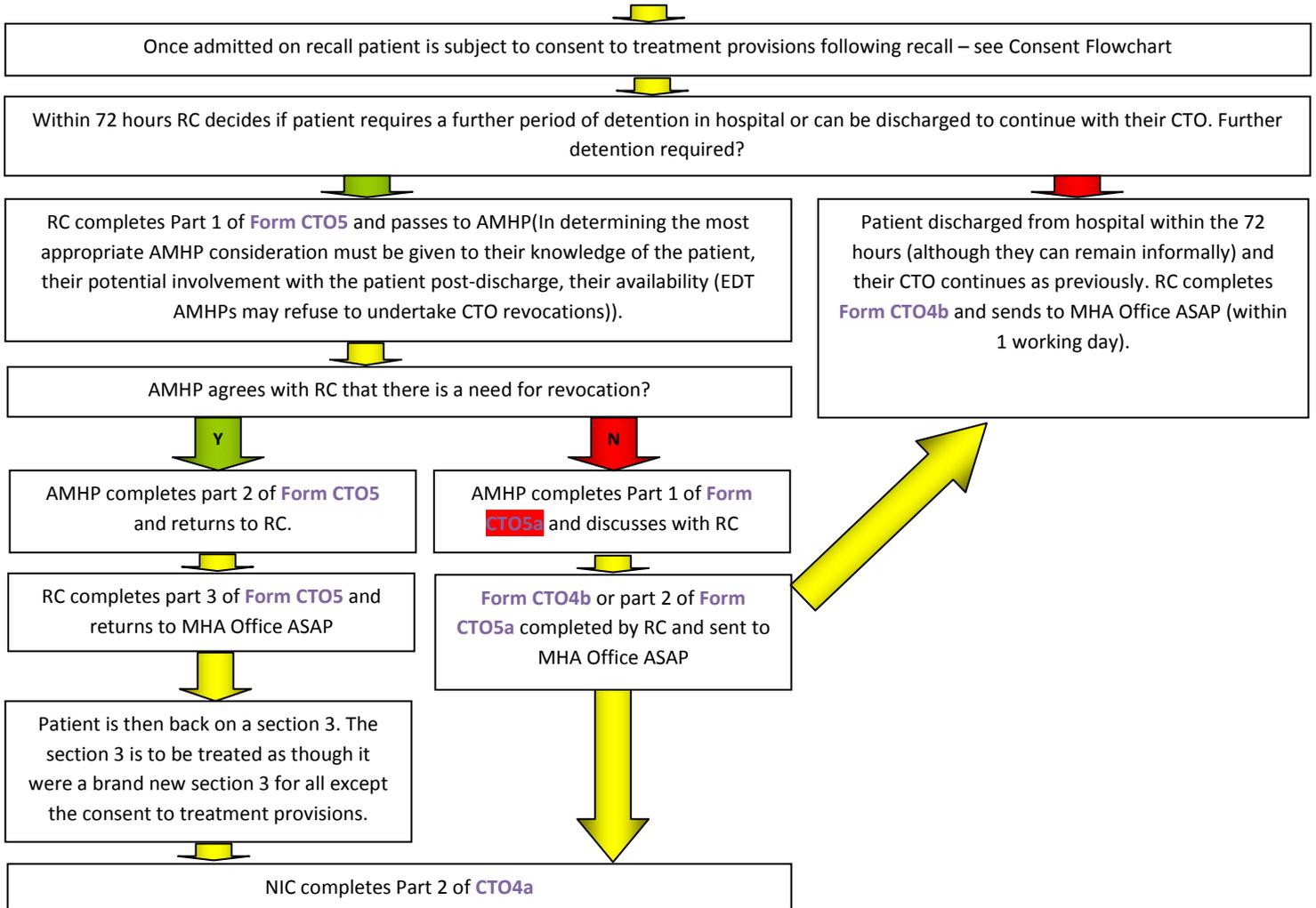


### 5.3.10 – Community Treatment Orders: Maintenance



### 5.3.11 – Community Treatment Orders: Recalling and Revoking





### 5.3.12 – Section 29 Displacement of Nearest Relative

The NR is established using a set hierarchy. The NR is the first individual on the following list:

- Relative that the individual ordinarily resides with (over 18)
- Husband, Wife, Civil Partner (or living as such for 6 months)
- Son/Daughter (over 18)
- Father/Mother (born out of wedlock – father can only qualify as NR if parental responsibility has been officially assigned to him – special rules after 1 Dec 2003)
- Brother/Sister (over 18)
- Grandparent
- Grandchild (over 18)
- Uncle/Aunt
- Nephew/Niece (over 18)
- Non-relative that patient has been living with for 5 years

In establishing complex situations:

- Whole blood relatives rank higher than half blood relatives
- The eldest of several relatives covered by the same bullet point ranks highest
- Step relatives DO NOT count as relatives
- Individuals living outside the UK do not count (where patient is ordinarily resident in the UK)

NB: Patients detained under section 35, 36 or 38 and Part III restricted patients do not have a NR for the purposes of the Act.



Care Co-ordinator may bring to the attention of an AMHP any case where they believe that the patient's Nearest Relative is not appropriate. An AMHP must decide for themselves at any time that a patient's nearest relative is not appropriate. Possible reasons might include:

- Abuse/ domestic violence
- NR is unknown to the patient
- NR is unreasonably objecting to section 3 or section 37 against the patient's best interests
- No NR is identifiable
- NR is incompetent due to mental disorder or illness
- The NR has previously discharged patient without due consideration
- Patient does not want NR to perform role
- Nearest Relative is uncomfortable with the role (option to get NR to delegate authority preferred)



If appropriate talk to NR and see if NR will authorise someone else to perform role

If the patient does not appear to have a NR the AMHP should advise them of their right to have one appointed or use their discretion to instigate proceedings - referral to IMHA made unless patient objects.

If the patient states that they don't want their NR to perform the role but the AMHP believes that the NR is not inappropriate advise patient of their right to initiate displacement proceedings or that the NR could authorise someone else to perform role



AMHP to consider all the circumstances of the case and use their discretion as to whether to instigate proceedings

Displacement proceedings can also be instigated by

AMHP to contact Legal department for advice and assistance with the court application.

- The patient themselves
- Anyone who lives with the patient
- Any relative of the patient.

A replacement NR to be nominated

For patients detained in hospital arrangements should be made for them to attend court if they wish.

Where a section 2 was in effect when a section 29 displacement application is made on the basis of the NR unreasonably objecting to a section 3 or using their power to discharge without due regard to public safety then the section 2 will remain in force until the matter is finally disposed of.

## 5.3.13 – Discharge: Mental Health Tribunal

Times when the patient and NR have the right to apply for a Tribunal:

- Within 14 days of s2 commencing (patient only)
- Once in each period of s3 detention or section 3 CTO (patient only)
- Once in each period of s37 or section 37 CTO (starting from the 2<sup>nd</sup> period) (patient and NR where applicable)
- Following displacement of NR (12 months) (NR)
- Following barring of discharge by NR (28 days) (NR)

Times when Hospital Managers automatically refer a patient to the Tribunal:

- After six months of detention if the patient has not applied (including time on section 2)
- Every 3 years if the patient has not applied (from the date of the last tribunal) (every year if <18)
- On revocation of CTO

Patient should be regularly informed of their rights and confirmation of this discussion confirmed on Rights Form. This discussion should include information regarding the patient's right to apply to the Mental Health Tribunal.

On receipt of application (of any route) the Tribunal will request:

1. Authority's statement (*MH Admin supply this*) ?
2. RC's report ?
3. Social circumstances report (from Care Co-ordinator)?
4. In-patient nursing report (as appropriate) ?

**The MHA Office will co-ordinate submission of documentation within statutory timescales**

MHA admin team will request reports from the relevant professionals providing a deadline for completion (3 weeks from the date of application generally or 1 day before the Tribunal for section 2 patients). All instances where reports are not available at least 1 working day prior to the Tribunal will be recorded as incidents on the electronic risk management system.

Relevant professionals should inform the MHA Office of any dates that they or the patient (or nominated representative) would be unable to attend so that they can liaise with the Tribunal Office to arrange a mutually convenient date and time.

Date offered by the Tribunal Office (within 7 days of application for section 2 patients).

All parties (including patient, representative, advocate and NR as well as health professionals) informed of date, time and venue.

MHA admin team liaise with the named nurse/ ward manager to establish if the patient has the capacity to appoint or instruct their own solicitor/representative. The patient should be provided with a list of solicitors specialising in mental health law (which should be available from each ward/unit – the Trust does not allow the display of posters advertising individual solicitors. Nor does it make recommendations.)

Where the patient lacks capacity to appoint/instruct a representative it is the responsibility of the Tribunal to appoint a representative for the patient.

CPA/section 117/Pre-discharge planning meeting held to consider plans should Tribunal discharge the patient. Assessments and Care Plans updated

Medical member of Tribunal will examine patient before the Tribunal if requested by representative

Tribunal panel sits at the hospital to review the case. The attendance of the RC, the Care co-ordinator and the named nurse (if in-patient) is expected.

After private discussion, the decision of the tribunal will be announced verbally at the end of the hearing to all present. The written decision must be sent to all parties concerned within 7 days of the hearing.

If the patient asks to withdraw their application at any time the MHA office should be informed immediately so that they can formally withdraw the application.

## 5.3.14 – Discharge: Managers Panel Members’ Review Meetings & Appeal Hearings

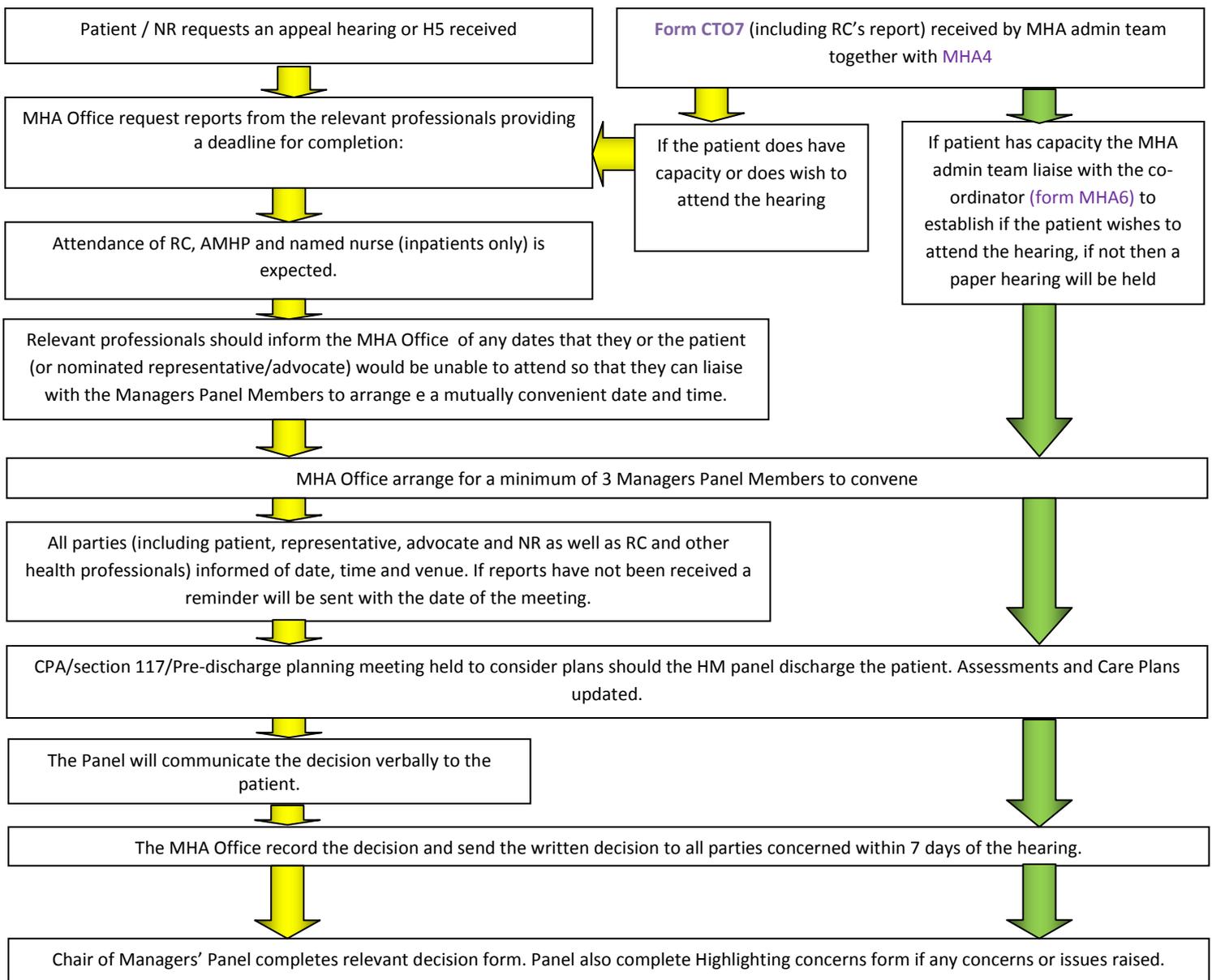
Times when the patient (or LPA) and NR have the right to apply for a Managers’ Panel Members Hearing:

- At any time during detention in hospital under the MHA (patient and NR)
- At any time whilst subject to CTO (patient and NR)

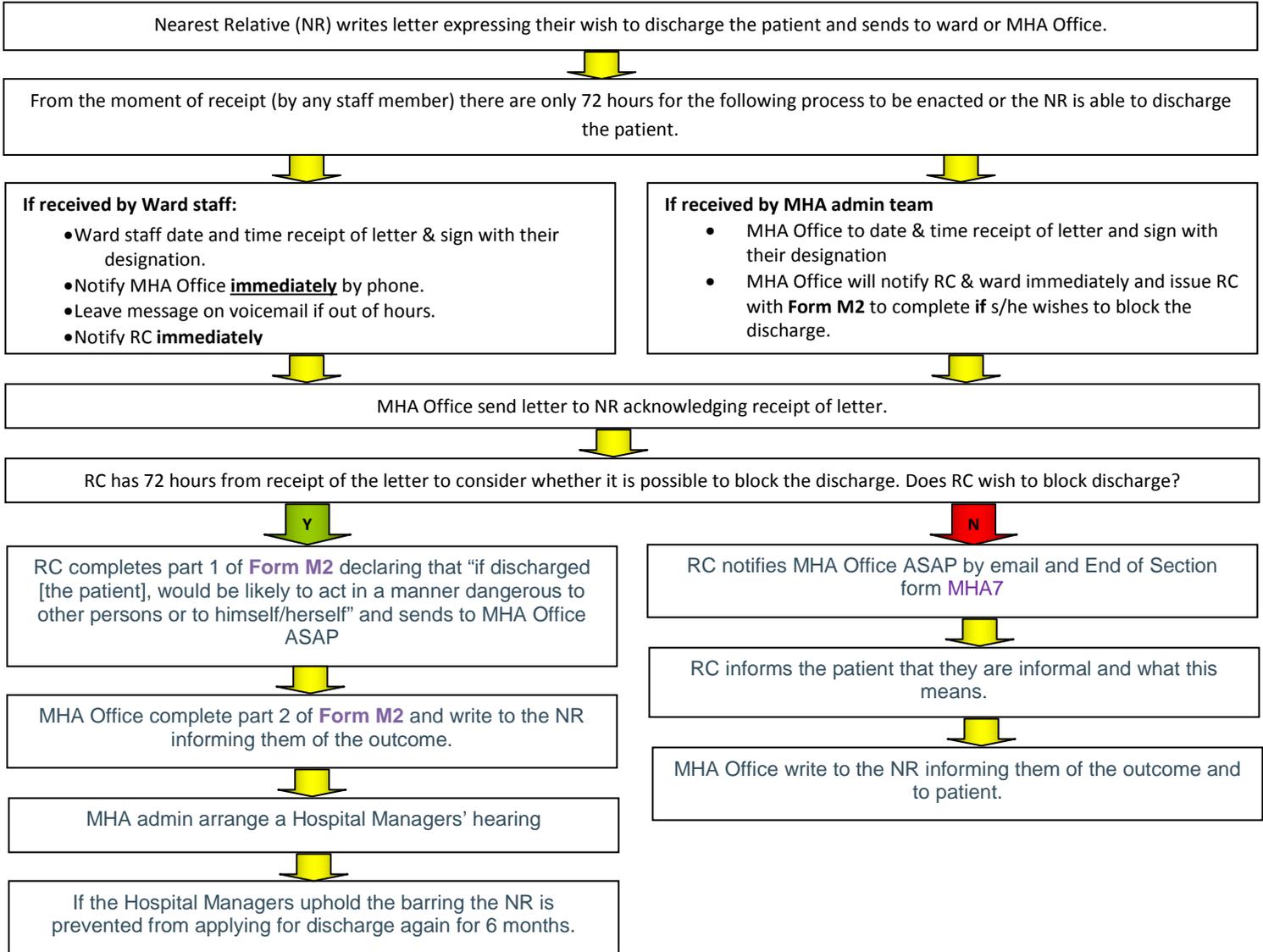
Times when Hospital Managers automatically hold a renewal meeting:

- On renewal of detention under section 3 or 37 (receipt of **Form H5**)
- On renewal of CTO (receipt of **Form CTO7**)
- Annually for review of restricted patients
- Following the barring of discharge by NR (receipt of **Form M2**)

Patient should be regularly informed of their rights and confirmation of this discussion confirmed on **Form MHA3**. This discussion should include information regarding the patient’s right to apply to the Managers Panel Members.



### 5.3.15 – Discharge by Nearest Relative



## 5.3.16 – Part 4 Consent to Treatment

The following procedure is applicable to patients detained under sections 2, 3, 36, 37, 38 and 45A

Is the treatment for Mental Disorder?

Y

N

The MHA does not provide sufficient lawful authority to provide the treatment. Alternative lawful authority is required (See Consent to Treatment Policy)

What is the treatment proposed?

Medication (s58)

Psycho-surgery (s57)

Patient must have capacity and must consent. SOAD must be requested. SOAD completes **Form T1**

ECT (s58A)

18+ with capacity- **Form T4**  
 <18 with capacity- **Form T5** (SOAD)  
 Lacks capacity – **Form T6** (SOAD) (can't conflict with LPA or ADRT)

Other Treatment

Can be given without consent under section 63.

RC informs MHA Office when first treatment given under detention.

After 2 months following first administration under detention (including whilst on section 2) MHA Office write to RC requesting **Form T2** or **Form T3** is completed.

If within 2 weeks a **Form T2** or a **Form T3** has not been sent to the MHA admin team they will send a reminder to the RC

Does the patient have capacity to consent to the treatment? Document on designated form on RiO

v

N

Does the patient consent to all the treatment or the plan of treatment proposed (discussion and outcome documented in Healthcare record)?

N

RC completes SOAD Request and sends to CQC.

RC and patient complete **Form T2** including BNF category, route and dosage.

SOAD attends the ward. They will discuss the proposed treatment with the RC, one nurse and one other professional (non nurse/non-medic) involved in the patient's care.

If SOAD believes treatment is appropriate (and where against patient's wishes is medically necessary) they will complete **Form T3**.

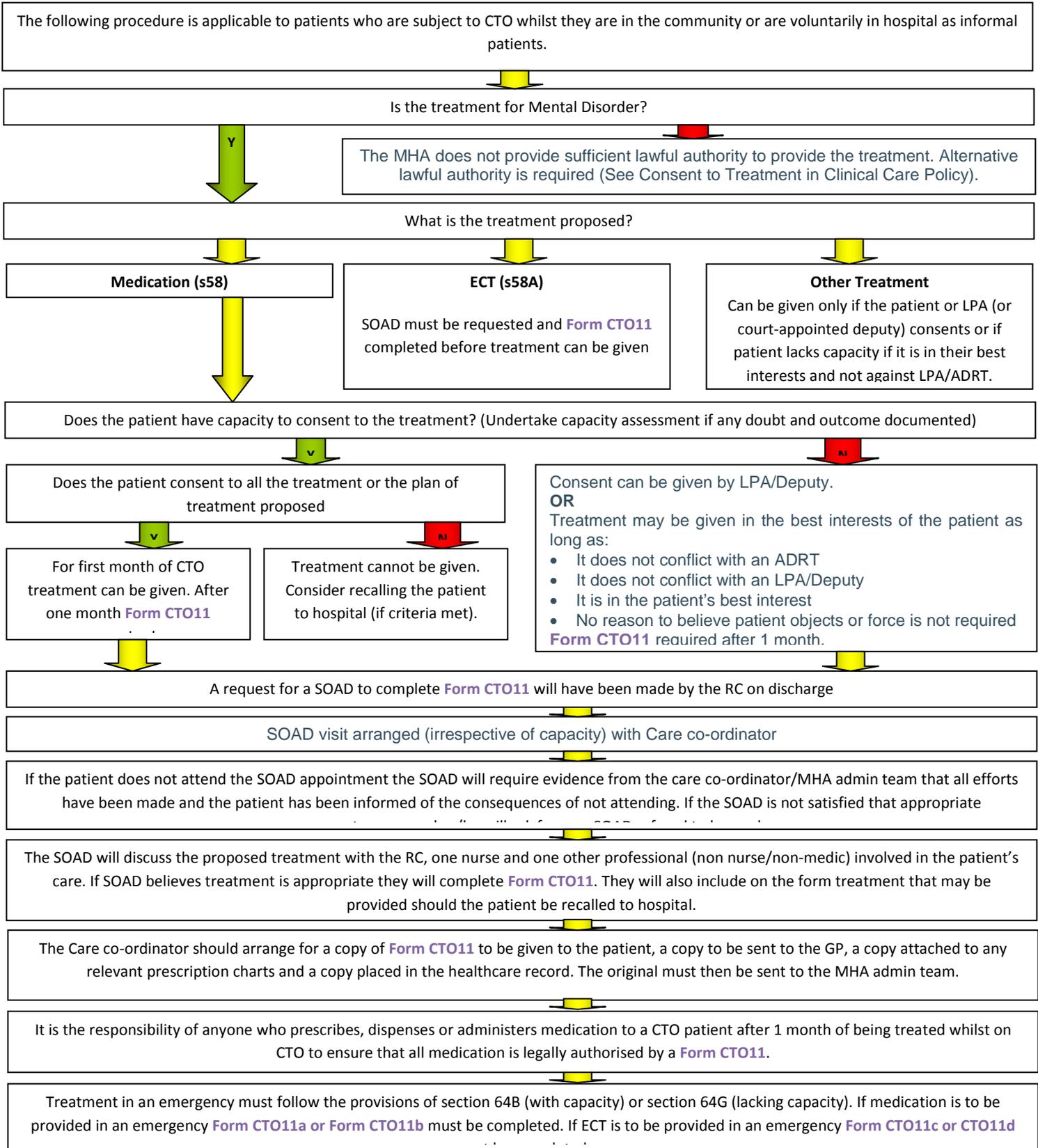
Copies of **Form T2** and/or **Form T3** to be sent to the MHA Office. A copy must also be attached to the prescription card.

It is the responsibility of anyone who prescribes, dispenses or administers medication to a detained patient after 3 months of being treated under detention to ensure that all medication is legally authorised by a **Form T2** or a **Form T3**.

The **Form T2** or a **Form T3** should be reviewed by the RC at regular intervals and at each renewal of section or change in section status. Where the patient's capacity changes or they change their mind regarding the provision of consent a new **Form T2** or **Form T3** should be completed as appropriate and the old one superseded (marking as such)

Treatment in an emergency must follow the provisions of section 62. If medication is to be provided in an emergency **Form T3a** must be completed. If ECT is to be provided in an emergency **Form C6** must be completed.

### 5.3.17 – Part 4A Consent to Treatment (CTO patients)



**Once recalled to Hospital/CTO revoked** - The patient becomes subject to Part 4 consent to treatment provisions as though they had never been discharged onto CTO (see 7.3.17). Therefore a certificate (**Form T2, T3, T4, T5, T6**) is required to authorise treatment with only 3 exceptions:

If it has been less than 1 month since patient discharged onto CTO (i.e. does not have **Form CTO11**)

If the treatment is explicitly written on **Form CTO11** as being authorised following recall.

If the treatment was being given on CTO and the RC believes discontinuing would cause the patient suffering.

The **Form T2, T3 etc** should be reviewed and arrangements made for a new certificate where necessary as the above exceptions will only apply whilst a new certificate is obtained.

Treatment in an emergency must follow the provisions of section 62. If medication is to be provided in an emergency **Form T3a** must be completed. If ECT is to be provided in an emergency **Form T6a** must be completed.

### 5.3.18 – Death of a Detained/ CTO Patient

Patient declared deceased whilst subject to the provisions of the MHA (including CTO)

Inform the MHA Office ASAP.

Death of patient procedures followed

NIC/ Care Co-ordinator completes **CQC Notification of Death Form** (in-patient/CTO) and faxes to CQC and MHA Office within 1 working day and sends original in internal post to MHA admin team. For restricted patients NIC informs MOJ immediately.

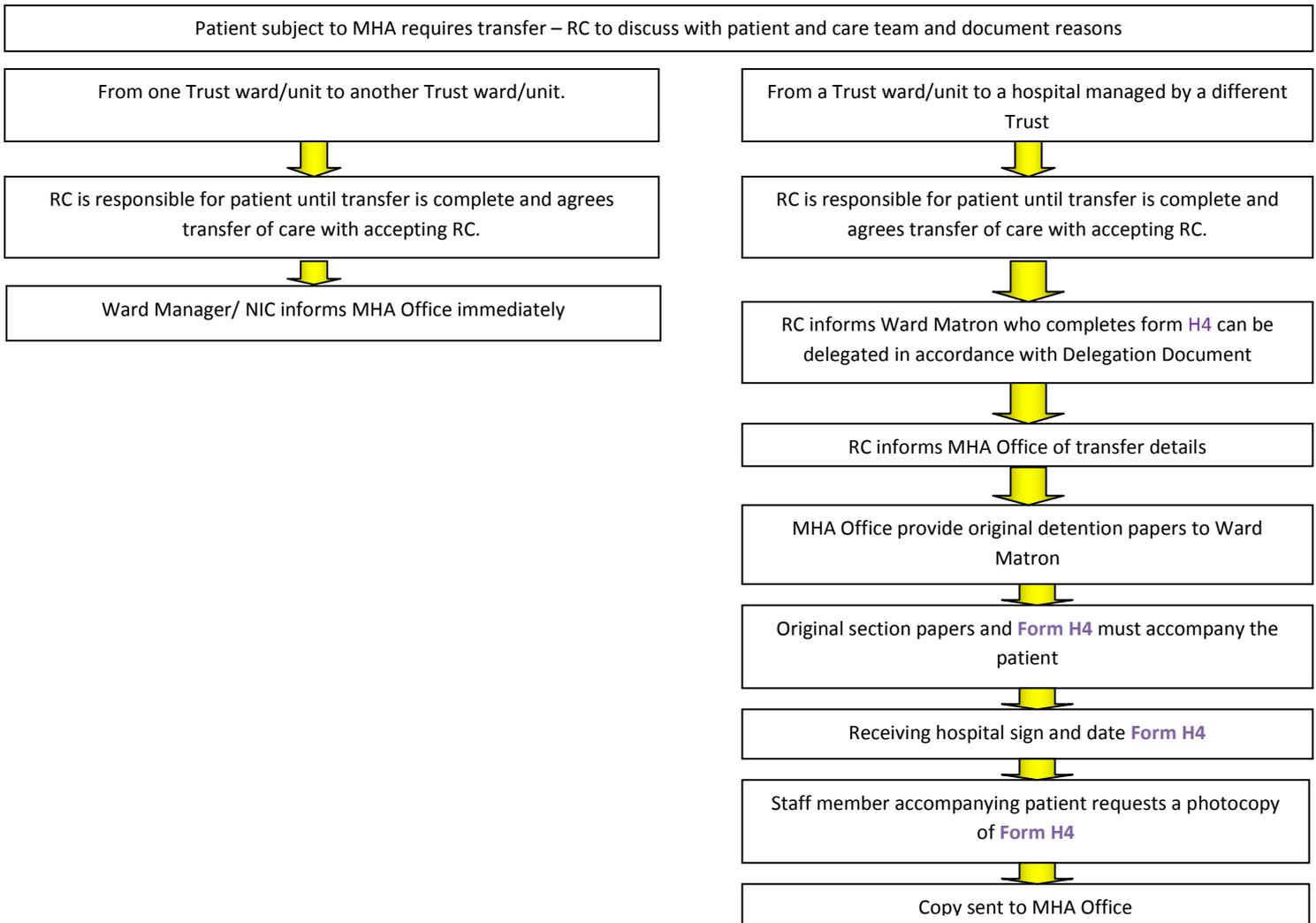
NIC/ Care Co-ordinator completes incident report on electronic risk management system

NIC/ Care Co-ordinator informs Records Manager

CQC will request various documentation which will be sent to them by the Access to Records Manager ASAP and at the very least within any time frame set by the CQC.

CQC informed of the date of the Coroners' Inquest (if applicable) by the risk department.

### 5.3.19 – Section 19 Transfer



The responsibility for CTO patients can be transferred to another Trust/Independent Hospital by completion of **Form CTO10** whilst the patient remains in the community or by completion of **Form CTO6** during the 72 hours of recall.

Where patient is transferred to the Trust from another Trust/Local Authority the individual accepting the transfer must ensure that the original section papers are received (including **Form H3**) and checked as well as the relevant transfer documentation (see above) before accepting responsibility or signing transfer documentation. In exceptional circumstances photocopies may be accepted by the admitting nurse. For transfer into the Trust of section 2 or section 3 patients the admitting nurse should follow the procedure described in 7.3.3 or 7.3.5 respectively. All paperwork should be sent to the MHA admin team ASAP (within 1 working day).

## 5.3.20 – Section 132 Duty to Provide Information

Maintaining accurate records of section 132 in accordance with the legislative and Code of Practice requirements is essential in ensuring compliance and best practice.

The Trust provides for the electronic recording of section 132. It is the responsibility of the nursing staff (with responsibility for patients subject to the Act) to ensure accurate and up to date records are maintained.

Electronic recording - There are a number of electronic forms each with a specific purpose that follow the patient's detention pathway. These forms should be completed at relevant points in that pathway.

- *The six forms are:*

*S132 – at the point of detention*

*S132 – Review (revisit)- at least monthly for inpatients*

*S132 – Regrade of detention order*

*S132 – Renewal or Extension (CTO)(this will provide for the revisit of rights for CTO patients)*

*S132 – Discharge from detention*

*S132 – Going onto a CTO*

It is the responsibility of qualified nursing staff to familiarise themselves with the process and the relevant forms.

Section 1	
<b>Name of activity/proposal</b>	DELEGATION OF STATUTORY FUNCTIONS OF THE LEICESTERSHIRE PARTNERSHIP NHS TRUST IN RELATION TO PATIENTS DETAINED UNDER THE MENTAL HEALTH ACT 1983
<b>Date Screening commenced</b>	April 2016
<b>Directorate / Service carrying out the assessment</b>	Quality
<b>Name and role of person undertaking this Due Regard (Equality Analysis)</b>	Regulation and Assurance Lead
<b>Give an overview of the aims, objectives and purpose of the proposal:</b>	
<p><b>AIMS:</b> The purpose of this document and related procedural documents is to provide all permanent employees of LPT, together with those on bank, agency or honorary contracts with clear guidance in their application of the Act in order that the Board may be assured of their responsibilities in terms of compliance with the legislative requirements of the Act.</p> <p>Employees as described above are expected to work within the guidance provided here and within the associated documentation.</p>	
<p><b>OBJECTIVES:</b> This document sets out the delegation of statutory functions of Leicestershire Partnership NHS Trust - 'The Trust' – in relation to patients detained under the provisions and in accordance with the Mental Health Act 1983 (amended 2007) and with reference to the associated Code of Practice 2015. The content should be considered in conjunction with the principles set down in the Trust's Over-arching MHA Policy.</p>	
<p><b>PURPOSE:</b> The purpose of this policy and related procedural documents is to provide all permanent employees of LPT, together with those on bank, agency or honorary contracts with clear guidance in their application of the Act in order that the Board may be assured of their responsibilities in terms of compliance with the legislative requirements of the Act.</p>	
Section 2	
Protected Characteristic	Could the proposal have a positive impact Yes (give details)
Age	Awareness of the Document in the context of those patients in receipt of mental health services, and subject to the MHA.
Disability	Awareness of Document in the context of the delivering patient care. This policy supports the application of best practice lawful standards for staffs application of the MHA and

	for those patients who are subject to the MHA or those in receipt of mental health services.
Gender reassignment	Awareness of the MHA in the context of mental health service delivery
Marriage & Civil Partnership	Awareness of the MHA in the context of mental health service delivery
Pregnancy & Maternity	Awareness of the MHA in the context of mental health service delivery
Race	Awareness of the MHA in the context of mental health service delivery
Religion and Belief	Awareness of the MHA in the context of mental health service delivery
Sex	Awareness of the MHA in the context of mental health service delivery
Sexual Orientation	Awareness of the MHA in the context of mental health service delivery
Other equality groups?	Awareness of the MHA in the context of mental health service delivery

**Does this activity propose major changes in terms of scale or significance for LPT? For example, is there a clear indication that, although the proposal is minor it is likely to have a major affect for people from an equality group/s? Please tick appropriate box below.**

High risk: Complete a full EIA starting click <a href="#">here</a> to proceed to Part B	Low risk: Go to Section 4. <b>x</b>

**Section 4**

**If this proposal is low risk please give evidence or justification for how you reached this decision:**

Patients who are subject to lawful detention under the MHA 1983 or patients in receipt of Mental health services should expect employers and employees to work within best practice standards as defined by the MHA Code of Practice (2015) and

- Not to discriminate against patients who are subject to the Act
- Not to compromise the privacy and dignity of patients subject to the Act and to ensure patients can access the means to undertake private discussions when seeking personal support

- Provide support and monitor mandatory training uptake rates of those staff working in mental health services to ensure adherence and correct application of best practice standards as outlined in the MHA Code of Practice (2015)
- To ensure that measures are in place to monitor application of the MHA for patients subject to its lawful restrictions
- To provide support to detained patients to ensure that any communication needs are met i.e. translation services
- To offer independent support to detained patient via local advocacy services
- The provision of local expertise via a Mental Health Act Office for the purposes of supporting staff to apply best practice standards Mon-Fri

<b>Signed by reviewer/assessor</b>	A Wheelton	<b>Date</b>	April 2018  Reassessed January 2020
<i>Sign off that this proposal is low risk and does not require a full Equality Analysis</i>			
<b>Head of Service Signed</b>	H Wallace	<b>Date</b>	April 2018

## Training Needs Analysis

Training Required	YES	NO
<b>Training topic:</b>	Mental Health Act 1983 and associated Code of Practice	
<b>Type of training:</b> (see study leave policy)	<input checked="" type="checkbox"/> Mandatory (must be on mandatory training register) <input type="checkbox"/> Role specific <input type="checkbox"/> Personal development	
<b>Division(s) to which the training is applicable:</b>	<input checked="" type="checkbox"/> Adult Mental Health & Learning Disability Services <input checked="" type="checkbox"/> Community Health Services <input type="checkbox"/> Enabling Services <input checked="" type="checkbox"/> Families Young People Children <input type="checkbox"/> Hosted Services	
<b>Staff groups who require the training:</b>	<i>Mental health clinicians</i>	
<b>Regularity of Update requirement:</b>	Once every 3 years for qualified mental health nurses (Band 5 and above)  Once every two years for senior medics	
<b>Who is responsible for delivery of this training?</b>	MHA Office  Medical directorate team	
<b>Have resources been identified?</b>	Yes	
<b>Has a training plan been agreed?</b>	Yes	
<b>Where will completion of this training be recorded?</b>	<input checked="" type="checkbox"/> ULearn <input type="checkbox"/> Other (please specify)	
<b>How is this training going to be monitored?</b>	MHAAC	



## The NHS Constitution

The NHS will provide a universal service for all based on clinical need, not ability to pay. The NHS will provide a comprehensive range of services

<b>Shape its services around the needs and preferences of individual patients, their families and their carers</b>	<input type="checkbox"/>
<b>Respond to different needs of different sectors of the population</b>	<input type="checkbox"/>
<b>Work continuously to improve quality services and to minimise errors</b>	<input checked="" type="checkbox"/>
<b>Support and value its staff</b>	<input type="checkbox"/>
<b>Work together with others to ensure a seamless service for patients</b>	<input type="checkbox"/>
<b>Help keep people healthy and work to reduce health inequalities</b>	<input checked="" type="checkbox"/>
<b>Respect the confidentiality of individual patients and provide open access to information about services, treatment and performance</b>	<input checked="" type="checkbox"/>

**Stakeholders and Consultation**

**CONTRIBUTION LIST**

**Key individuals involved in developing the document**

<b>Name</b>	<b>Designation</b>
Dr Satheesh Kumar	Medical Director
Alison Wheelton	Senior MHA Administrator
Helen Wallace	Regulation & Assurance Lead

**Circulated to the following individuals for comments**

<b>Name</b>
Faisal Hussain – Non Executive Director (Chair)
Professor Adrian Childs – Chief Nurse/Deputy Chief Executive
Dr Saquib Muhammad, Consultant Psychiatrist/Deputy Medical Director AMH/LD
Helen Perfect, Head of Service AMH
Julie Warner, Clinical Audit Officer
Carl Lomas, Quality & Data Analyst
Dr Matthew Noble, Consultant Psychiatrist - MHSOP
Zayad Saumtally (representing MHSOP), Inpatient Matron
Dr Mariam Benaris, Consultant Psychiatrist
Dr Rummana Khan, Consultant Psychiatrist
Paul Williams, Service Manager
Michelle Churchard Smith, Service Manager
Laura Belshaw, Service Manager

## Associated Documentation

Document	Available From
<b>Statutory Forms</b>	All the Statutory Forms must be printed on PINK paper.
A1 – Application by Nearest Relative for Admission for Assessment	As above
A2 – Application by AMHP for Admission for Assessment	As above
A3 – Joint Medical Recommendation for Admission for Assessment	As above
A4 – Medical Recommendation for Admission for Assessment	As above
A5 – Application by Nearest Relative for Admission for Treatment	As above
A6 – Application by AMHP for Admission for Treatment	As above
A7 – Joint Medical Recommendation for Admission for Treatment	As above
A8 - Medical Recommendation for Admission for Treatment	As above
A9 – Emergency Application by Nearest Relative for Admission for Assessment	As above
A10 – Emergency Application by an AMHP for Admission for Assessment	As above
A11 – Medical Recommendation for Emergency Admission for Assessment	As above
H1 – Report on Hospital In-patient (section 5(2))	As above
H2 – Record of Hospital In-patient (section 5(4))	As above
H3 – Record of Detention in Hospital	As above
H4 – Authority for Transfer from One Hospital to Another under Different Managers	As above
H5 – Renewal of Authority for Detention	As above
H6 – Authority for Detention After Absence Without Leave for More than 28 days	As above
G1 – Guardianship Application by Nearest Relative	As above
G2 – Guardianship Application by AMHP	As above
G3 – Joint Medical Recommendation for Reception into Guardianship	As above
G4 – Medical Recommendation for Reception into Guardianship	As above
G5 – Record of Acceptance of Guardianship Application	As above
G6 – Authority of Transfer from Hospital to Guardianship	As above
G7 – Authority for Transfer of a Patient from the Guardianship of One Guardian to Another	As above
G8 – Authority of Transfer from Guardianship to Hospital	As above
G9 – Renewal of Authority for Guardianship	As above
G10 – Authority for Guardianship After	As above

Absence Without Leave for More than 28 days	
M1 – Date of Reception of a Patient in England	As above
M2 – Report Barring Discharge by Nearest Relative	As above
T1 – Certificate of Consent to Treatment and Second Opinion (s57)	As above
T2 – Certificate of Consent to Treatment (s58)	As above
T3 – Certificate of Second Opinion (s58)	As above
T4 – Certificate of Consent to Treatment (Patients at Least 18 years old) (s58A)	As above
T5 – Certificate of Consent to Treatment and Second Opinion (Patients under 18) (s58A)	As above
T6 – Certificate of Second Opinion (s58A)	As above
CTO1 – Community Treatment Order	As above
CTO2 – Variation of Conditions of Community Treatment Order	As above
CTO3 – Notice of Recall to Hospital	As above
CTO4 – Record of Patient's Detention in Hospital After Recall	As above
CTO5 – Revocation of Community Treatment Order	As above
CTO6 – Authority for Transfer of Recalled Community patient to a Hospital under Different Managers.	As above
CTO7 – Report Extending the Community Treatment Period	As above
CTO8 – Authority for Extension of Community Treatment Period After Absence Without leave for More than 28 days.	As above
CTO9 – Community Patients Transferred to England	As above
CTO10 – Authority for Assignment of Responsibility for Community Patient to a Hospital under Different Managers	As above
CTO11 – Certificate of Appropriateness of Treatment to be Given to Community Patient	As above