

DELEGATION OF STATUTORY FUNCTIONS
OF THE LEICESTERSHIRE PARTNERSHIP
NHS TRUST IN
RELATION TO PATIENTS DETAINED
UNDER
THE MENTAL HEALTH ACT 1983

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.

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Which Relevant CQC Fundamental Standards?	Person-centred care Dignity & Respect Consent Safety Good governance Fit & proper staff Duty of Candour

Contents

Version Control	3
Equality Statement	3
Due Regard	3
Definitions that apply	4
1. Purpose of the Policy	5
2. Responsibilities	7
3. Flowchart/Process Chart	12
Appendices	
Appendix 1 – Due Regards Assessment	13
Appendix 2 – Training Requirements	16
Appendix 3 – NHS Constitution Checklist	17
Appendix 4 – Stakeholder consultation	18
Appendix 5 – Three-tier Scrutiny Process	19

Version Control and Summary of Changes

Version number	Date	Comments (description change and amendments)
1	October 2007	Revised following revision of Mental Health Act and associated Codes
2	September 2014	Revision following revision of Trust assurance of MH
3	April 2015	Revision following revision of Code of Practice and Guide
4	June 2016	Revision following review of Terms of Reference of the Trust MHAAC
5	April 2018	Revision following expiry of current policy
6	October 2019	No changes to revision

For further information contact: The MHA Office TEL: 0116 2953030

Equality Statement

Leicestershire Partnership NHS Trust (LPT) aims to design and implement policy documents that meet the diverse needs of our service, population and workforce, ensuring that none are placed at a disadvantage over others.

It takes into account the provisions of the Equality Act 2010 and promotes equal opportunities for all.

This document has been assessed to ensure that no one receives less favourable treatment on the protected characteristics of their age, disability, sex (gender), gender reassignment, sexual orientation, marriage and civil partnership, race, religion or belief, pregnancy and maternity.

In carrying out its functions, LPT must have due regard to the different needs of different protected equality groups in their area.

This applies to all the activities for which LPT is responsible, including policy development and review.

Due Regard

The Trust's commitment to equality means that this policy has been screened in relation to paying due regard to the Public Sector Equality Duty as set out in the Equality Act 2010 to eliminate unlawful discrimination, harassment, victimisation; advance equality of opportunity and foster good relations. And as such this particular policy has no specific impact on any protected characteristic or equality group.

This is evidenced by the fact that every effort will be made to support the patient in

understanding their rights under section 132 of the Mental Health Act and by the provision of supporting information both verbally and in writing in a format that the patient is able to understand.

That being the fact, the information is available in a different media designed specifically to assist patients in their understanding, for example, in different languages or different formats such as easy-read.

Support will also be provided through the use of interpreters and through the support of the Independent Mental Health Advocacy Service in accordance with the provisions of the Act.

Where a patient is deemed not to have the capacity to understand the information being provided this will be repeated at appropriate intervals.

Equality monitoring of all relevant protected characteristics to which the policy applies will be undertaken where relevant.

Definitions that apply to this Policy

MHA	Mental Health Act 1983
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**DELEGATION OF STATUTORY FUNCTIONS OF THE
LEICESTERSHIRE PARTNERSHIP NHS TRUST IN RELATION TO PATIENTS
DETAINED UNDER THE MENTAL HEALTH ACT 1983**

1. Introduction

1.1 This scheme of delegation is written in reference to the Mental Health Act (MHA) 1983 (as amended by the 2007 Act and the Code of Practice to the MHA as revised in 2015.

- **Sections** referred to are sections of the Mental Health Act 1983

1.2 In England, NHS hospitals are managed by NHS trusts and NHS foundation trusts. For these hospitals (including acute/non-mental health hospitals), the 'trusts' themselves are defined as the 'hospital managers' for the purposes of the Act.

1.3 The Code of Practice requires at Chapter 37 that arrangements for who is authorised to take which decisions should be set out in a scheme of delegation. The Trust is required to approve the scheme of delegation by a resolution of the body itself. Unless the Act or the regulations say otherwise, organisations may delegate their functions under the Act to any one and in any way that their constitution or, in the case of NHS providers or NHS commissioners, NHS legislation allows them to delegate their other functions.

1.4 The 'Trust' retains responsibility for the performance of all hospital managers' functions exercised on their behalf under Chapter 37, and those delegated to Managers Panel Members under Chapter 38¹, and must ensure that the people acting on their behalf are competent to do so.

1.5 The 'Trust' has the authority to detain patients under the Act. They have the primary responsibility for seeing that the requirements of the Act are followed. In particular, they must ensure that patients are detained only as the Act allows, that their treatment and care accord fully with its provisions, and that they are fully informed of, and are supported in exercising, their statutory rights. This extends to patients subject to section 17a – Community Treatment Orders, even if those patients are not actually being treated at one of the hospitals.

Regulation 3 provides that any document, other than an application for admission, which is to be served on the Trust, may either be sent by post or delivered personally to the Trust or any person authorised by the Trust to receive such documents. These documents include:-

1. medical recommendations which constitute the authority for a patient's detention;

¹ 'Managers' Panel Members, Terms and Conditions of Appointment, Management and Release, Procedural Document' LPT 2015

2. a report under Section 5(2) authorising the detention of a patient not previously liable to be detained;
 3. a report by the Responsible Clinician renewing the authority for detention under Section 20;
 4. a notice of intention to make an order for discharge or an actual order for discharge given by the nearest relative under Section 23 or 25;
 5. the written record of nurse's holding power under Section 5;
 6. statutory forms required under section 17A for the purposes supervised community treatment
- 1.6 An application for admission must be delivered by hand, to an officer authorised to receive it.
- 1.7 The time limits imposed by the Act, mean that it is important the above documents are passed on expeditiously by the authorised staff who receive them on behalf of the Trust, to the officers who will be responsible for their scrutiny and custody these may be sent through the internal post system using the prescribed 'pink' envelopes designed for that purpose.
- 1.8 Documents that represent and confirm the legal authority to detain and treat the patient must be retained by the Trust through its records retention and destruction policy, commencing on the date on which the person to whom they relate ceases to be a hospital inpatient.
- 1.9 The "Responsible Clinician" is defined as Approved Clinician with overall responsibility for the case of the patient in question. The Responsible Clinician must be a Consultant approved under Section 12(2) of the Act and registered as an Approved Clinician. The Responsible Clinician has certain powers and duties under Part II and III of the Act, including in respect of hospital patients, the power to:-
- grant leave of absence;
 - discharge;
 - bar discharge by the nearest relative;
 - renew authority for detention;
 - apply the provisions of Supervised Community Treatment (section 17A)
- 1.10 All hospital patients should be under the care of a Consultant who is in charge, in the sense that he or she is not responsible or answerable for the patient's treatment to any other doctor. It is this doctor who will normally exercise the functions of the "Responsible Clinician".

- 1.11 During periods of absence, when certain functions of the Act require swift action and the usual doctor is not available, the doctor who for the time being is in charge of the patient's treatment, (who will be another Consultant approved under Section 12(2) of the Act and registered as an Approved Clinician), should exercise the functions of the Responsible Clinician. The patient's usual doctor should normally undertake the examinations and reports authorising renewal under Section 20, which can be made at any time during the preceding two-month period.

2. Responsibility

2.1 Reception of documents authorising the Trust to detain a patient

Overall responsibility for the proper receipt and scrutiny of documents is the responsibility of the Senior Mental Health Act Administrator.

The nurse in charge of the ward to which the patient is to be admitted to and detained on is authorised to receive the application and medical recommendations that constitute the authority for the Trust to detain the patient. This may be delegated to a grade 5 or above nurse who has successfully completed the Trust's mandatory MHA training in receipt and scrutiny.

As soon as possible after the admission, these documents must be delivered to the Mental Health Act Administrator or their deputy, who are deputised by the Trust to scrutinise them to ensure that errors or omissions do not invalidate the detention of the patient. It is important that the documents are delivered expeditiously.

2.2 Reception of reports under Section 5(2) authorising the detention of a patient not previously liable to be detained.

Under Section 5(2), the doctor in charge of the patient's treatment is empowered in accordance with the provisions set out therein, to furnish a written report to the Trust concerning any informal in-patient in hospital whom the doctor believes an application ought to be made for admission to hospital. In such cases the patient may be detained in hospital for a period of 72 hours from the time when the report is furnished.

"Under Section 5(3) the doctor in charge of the patient's treatment in a hospital may nominate one, (but not more than one), other registered medical practitioner on the staff of the hospital to act for him/her under subsection (2) in his/her absence". The medical officer, who is the nominated deputy at the time in question, is responsible for signing the report under Section 5(3), in absence of the doctor in charge of the patient's treatment. It is important that ward staff are informed of the nomination arrangements for each Consultant.

The nominated doctor is the junior doctor on call, named on the duty list. Where the nominated doctor is not a Consultant he/she must wherever possible contact the doctor in charge of the patient's care, who would normally be registered as an Approved Clinician, or failing this, the duty consultant, in order to discuss the case before making a written report under Section 5(2). The nominated doctor should have easy access to the nominating doctor or the Consultant psychiatrist on call.

The nominated doctor should report the use of Section 5(2) to the consultant in charge of the patient's care as soon as possible. The nominated doctor must not nominate another.

The Trust has decided to delegate the authority to receive these reports to the classes of officers mentioned in I (above). Reports under this section must be passed as expeditiously as possible to the Mental Health Act Administrator or deputy and kept in safe custody.

2.3 Reports renewing authority for detention (Section 20)

The initial authority for the detention of a patient under Section 3 lasts for six months, as does the first renewal. Subsequent renewals are for one year. The Responsible Clinician must review the need for continued detention periodically. Section 20(3) requires the Responsible Clinician to examine a patient admitted for treatment during the two months preceding the day on which the authority for his detention is due to expire. If it appears to him/her that the patient should continue to be detained, and is satisfied that the conditions set out in Section 20(4) are satisfied, he/she must consult with and obtain the written agreement of another professional, and in the case of section 20A, SCT, the agreement must be from an Approved Mental Health Professional, and then report that to the Trust.

Mental Health Act Administrators and their deputies will need to ensure that the provisions of the Act are complied with in respect of the review of patients under Section 20.

The reports, on being furnished to the Trust, renew the authority for a patient's detention and are to be submitted by the Responsible Clinician to the Mental Health Act Administrator or their deputy who are authorised to receive them on behalf of the Trust.

2.4 An Order for the discharge of a patient or a notice of intention to make such an order given by the nearest relative (Section 23)

During office hours, the Mental Health Act Administrator and his/her deputy are authorised to receive these documents. Out of hours this authority is delegated to the nurse in charge of the ward. Relatives are required to give 72 hours notice in writing of their intention to exercise their powers of discharge. The receiving officer must ensure that the notice is produced immediately to the Responsible Clinician so that he/she may consider issuing a report barring discharge within 72 hours of the document being received by the person authorised.

The Responsible Clinician must, if he/she issues a report barring discharge under Section 25, deliver this report to the Mental Health Act Administrator or their deputy within the 72-hour time limit.

2.5 Transfer of Patients (Section 19)

The Leicestershire Partnership NHS Trust has delegated the authority given under Regulation 7 to the patient's Responsible clinician, or in his absence to the nurse who is at the time in charge of the ward.

2.6 Retaking of Patients (Section 18)

Under section 18 of the Act, any officer on the staff of the hospital is authorised to retake a patient who is liable to be detained and is absent without leave from hospital. A patient, who is liable to be detained may also, be returned to the hospital by any other person authorised in writing by the patient's Responsible Clinician or nominated deputy.

2.7 Amendment of application for admission and supporting medical recommendations (Section 15)

The Leicestershire Partnership NHS Trust has authorised Mental Health Act Administrators and their deputies, to consent on its behalf to the amendment of these documents. Current statutory versions of the forms must be used.

Authorised Mental Health Act Administrators and their deputies in agreement with a Responsible Clinician and in accordance with the Trust 'Three-tier Scrutiny Process', (Appendix 5) may reject a medical recommendation on the grounds that these are insufficient to warrant a patient's detention.

2.8 Nurses Holding Power (Section 5(4))

A nurse of the prescribed class may detain an informal inpatient for up to six hours if it appears to him/her that:

- i) The patient is suffering from mental disorder to such a degree that it is necessary for his health or safety, or for the protection of others, for him to be immediately restrained from leaving the hospital: and
- ii) It is not practicable to secure the immediate attendance of a medical practitioner for the purposes of furnishing a report.

The use of this holding power is the personal decision of the nurse, who cannot be instructed to exercise this power by anyone else.

The holding power starts after the nurse of the prescribed class has recorded his or her opinion on the form H2. At the earliest opportunity the nurse must contact the consultant in charge of the patient's care or, in their absence, the nominated deputy. The use of Section 5(4) is an emergency measure and may only be applied for up to six hours or until a doctor with the power to use Section 5(2) arrives, whichever is the earlier. If the doctor has not arrived within four hours, the duty consultant should be contacted and should attend. Where no doctor has attended within six hours, an oral report, (suitably recorded), should be made to the responsible senior manager.

The completed form H2 must be delivered by the nurse (or a person authorised by the nurse), to the Mental Health Act Administrator or their deputy as soon as possible after completion. It is also essential that; the reason for invoking the power are entered into the patient's nursing and medical notes; an incident report form is completed and submitted; and that the details of any patients who remain subject to the power at the time of a shift change are given to staff coming on duty.

2.9 Reference to Mental Health Review Tribunal (Section 68)

The Leicestershire Partnership NHS Trust has delegated authority to the Mental Health Act Administrators and their deputies, to carry out the functions of the Hospital Managers under section 68, for the referral of patients under Part II and III of the Act to a Mental Health Review Tribunal, where such a hearing has not been requested by the patient or his/her nearest relative and where the case has not been referred to the Tribunal by the Secretary of State within the specified time limits.

Where a Tribunal hearing has been arranged, the Mental Health Act Administrators and their deputies are authorised by the Trust to inform health and local authorities and request the provision of reports.

2.10 Inspection and Opening of Postal Packets (Section 134)

Mental Health Act Administrators and their deputies, together with nurses qualified to exercise the six-hour holding power, are authorised by the Trust to carry out the functions under the provisions of Section 134 of the Act.

A postal packet addressed by any detained patient may be withheld from the Post Office if the person to whom it is addressed has asked that he/she should receive no correspondence from that patient. A request from a person that correspondence addressed to him/her by the patient should be withheld, must be in writing and must be given to the Mental Health Act Administrator or their deputy and the Responsible Clinician or the Secretary of state. Any decision to withhold post will be made following consultation with the Responsible Clinician.

2.11 The provision of Information (Section 132)

All medical staff, nurses qualified to exercise the six-hour holding power, and Mental Health Act Administrators and their deputies, are for the purposes of section 132 of the act, authorised by the Trust, to carry out the requirement of the Trust, to provide written and oral information to detained patients of their legal position and rights. It is also their delegated responsibility to ensure that records are kept of the information given, that in circumstances the information is given appropriately and that where possible, it is understood by the patient.

The duty to inform the patient's nearest relative in writing is delegated to the Mental Health Act Administrators and their deputies.

The duty under Section 133 to inform the nearest relative, (if practicable), at least seven days before the patient's discharge, is delegated to the patient's Responsible Clinician.

2.12 Section 23 – Discharge

Leicestershire Partnership NHS Trust (LPT) delegates the power to discharge certain categories of detained patients under Section 23 of the Act to members of a committee, appointed by the Trust, but not employees of the Trust, who are trained specifically to undertake this role.

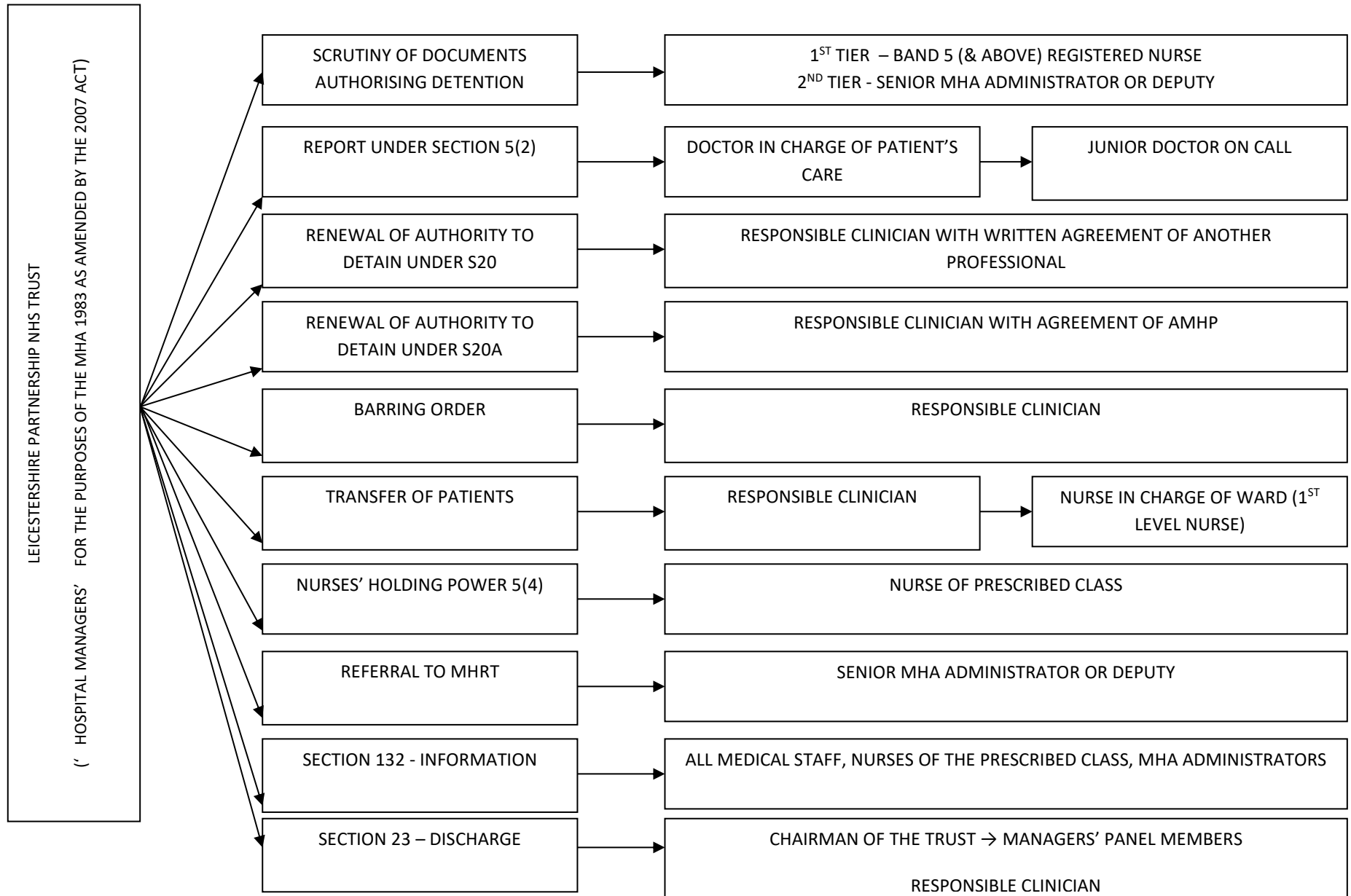
Chapter 38 of the Code outlines the responsibilities of the 'Managers' Panel' in their power of discharge.

2.12.1 Section 23 – Management Responsibilities

The Code of Practice identifies three key roles on consideration of the power of discharge:

- The Chairman of the Trust
- The Non-Executive Directors of the Trust
- The member of a committee of sub-committee authorised for the purpose
 - The Chairman of Leicestershire Partnership Trust retains responsibility for the Panel Members.
 - The day to day management is delegated by the Chairman of the Trust to the Senior Mental Health Act Administrator.

3. Delegation of Authority – Identification of Responsibility Flowchart



Due Regard Screening Template

Section 1	
Name of activity/proposal	DELEGATION OF STATUTORY FUNCTIONS OF THE LEICESTERSHIRE PARTNERSHIP NHS TRUST IN RELATION TO PATIENTS DETAINED UNDER THE MENTAL HEALTH ACT 1983
Date Screening commenced	April 2016
Directorate / Service carrying out the assessment	Quality
Name and role of person undertaking this Due Regard (Equality Analysis)	Helen Wallace Regulation and Assurance Lead
Give an overview of the aims, objectives and purpose of the proposal:	
<p>AIMS: 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>OBJECTIVES: 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>PURPOSE: 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 <u>tick</u> appropriate box below.			
High risk: Complete a full EIA starting click here to proceed to Part B		Low risk: Go to Section 4.	<input checked="" type="checkbox"/>
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

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

Appendix 2 - Training Requirements

Training Needs Analysis

Training Required	YES	NO
Training topic:	Mental Health Act 1983 and associated Code of Practice	
Type of training: (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	
Division(s) to which the training is applicable:	<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	
Staff groups who require the training:	<i>Mental health clinicians</i>	
Regularity of Update requirement:	Once every 3 years for qualified mental health nurses (Band 5 and above) Once every three years for senior medical staff	
Who is responsible for delivery of this training?	MHA Office Medical directorate team	
Have resources been identified?	Yes	
Has a training plan been agreed?	Yes	
Where will completion of this training be recorded?	<input checked="" type="checkbox"/> ULearn <input type="checkbox"/> Other (please specify)	
How is this training going to be monitored?	Legislative Committee	

Appendix 3 - 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

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

Appendix 4- Stakeholders and Consultation

CONTRIBUTION LIST

Key individuals involved in developing the document

Name	Designation
Alison Wheelton	Senior MHA Administrator

Circulated to the following individuals for comments

Name
Members of the Legislative Committee

Responsibilities for the Receipt and Scrutiny of Part 2 documents

