Cambridgeshire and Peterborough NHS
NHS Foundation Trust

MENTAL HEALTH ACT 1983

CONSENT TO TREATMENT UNDER THE MENTAL HEALTH ACT POLICY
Sections 58- 64a

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Responsible committee/individual	Mental Health Act Legislation Group
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A. M. Thomas.

Signed on behalf of the Trust: ……
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Version Control Sheet

Version	Date	Author	Comments
01	April 2009	Paul Collin Head of Social Work	Approved and ratified by the MHA Committee
2.0	March 2015	Orna Clark Mental Health Legislation Manager	Rewrite of the original policy to reflect both legal and procedural guidance. Reflect changes presented by the new MHA CoP 2015 Reflect relevant case law development Reflect changes following the recommendation and comments made by the CQC following their visits to the Trust. . In addition the policy now includes a Standard Operating Procedures for the consent processes, Record of Urgent Treatment under Section 62a form, a capacity to consent assessment form and Section 58 check list
2.1	May 2015	Orna Clark Mental Health Legislation Manager	A minor addition to the policy (more details re use of CTO12 form, as requested by clinicians)

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1. Introduction, purpose and scope.

1.1 Part 4 and 4A of the Mental Health Act 1983 (the Act, or the MHA) provides specific powers and safeguards relating to the medical treatment for mental disorder of patients liable to be detained in hospital and to those subject to Community Treatment Order (CTO). In certain circumstances, treatment for their mental disorder may be given without their consent. Part 4A specifically covers those patients subject to CTO who have not been recalled to hospital.

1.2 Treatment without consent **cannot** be given to informal/voluntary patients, or to those subject to sections 4, 5(2), 5(4), 37(4), 135, 136, 35, 45A, 'conditional discharge' or 17A (unless recalled to hospital), unless in an emergency situation, or in accordance with the Mental Capacity Act 2005 (Refer to the MCA Policy)

1.3 The policy should be read in conjunction with the MHA Code of Practice (CoP) 2015, in particular:

Chapter 1 - The 5 new over arching Guiding Principles, which must be considered when making decisions in relation to care, support, or treatment provided under the Act are:

- Least restrictive option and maximising independence.
- Empowerment and involvement.
- Respect and dignity
- Purpose and effectiveness
- Efficiency and equity.

Chapter 3 – Human Rights, Equality and Health Inequalities. Staff will need to consider the legislation and international convention, which provide a framework to deliver the best possible outcome to everyone who uses the Trust's services (also cross reference to Chapter 24.42 – 24.44 with regards to the link between consent to treatment and articles 8 and 3 of the European Convention on Human Rights (ECHR).

Chapters 9 - Wishes expressed in advance

Chapter 24 - Medical treatment. The chapter gives guidance on medical treatment for mental disorder under the Act, especially treatment given without patients' consent, as well as on promoting good physical healthcare for patients subject to the Act.

Chapter 25 - Treatments subject to special rules and procedures. This chapter gives guidance on the special rules and procedures in the Act for certain types of medical treatment for mental disorder.

Chapter 19 - Children and young people under the age of 18

Chapter 8 - Privacy, safety and dignity.

Chapter 9 - Wishes expressed in advance.

1.4 The MHA CoP 2015 provides statutory guidance to staff working with the Act. Staff must ensure that they are familiar with its content and follow the guidance. Any deviation from the Act and the Trust policy must be explained and well documented by staff in the patient's RiO clinical notes.

1.5 The policy and procedures guidance should be read in conjunction with the Trust policies and guidance on the Mental Capacity Act 2005 (MCA), Consent, Advance Decisions, and Electro- Convulsive Therapy (ECT).

1.6 This policy and procedures relates to medical staff, all qualified staff working in inpatient areas, those working with detained patients in the community and to staff in the Mental Health Administration Department.

2. Definitions

2.1 Approved Clinician (AC)

A person approved by the Secretary of State to act as an Approved Clinician. Only Approved Clinicians may act as the Responsible Clinician to take overall responsibility for a detained patient's care.

2.2 Responsible Clinician (RC)

The Approved Clinician (AC) with overall responsibility for a detained person's care. The functions of the RC may not be delegated. The RC may change and the role may be occupied on a temporary basis in the absence of the usual RC.
The patient's RC will change from the community AC to the inpatient RC when a patient is admitted to hospital either informally or following a recall, and from the inpatient AC to the community AC when a person is discharged from their hospital bed.

2.3 Second Opinion Appointed Doctor (SOAD)

An independent medical practitioner appointed by the Care Quality Commission.

2.4 Statutory Consultee

SOADs are required to consult two people before issuing certificates approving treatment. One must be a nurse, the other must not be either a nurse or doctor. Both must have been professionally concerned with the patient's medical treatment.

3 Duties and responsibilities

3.1 **The Chief Executive and Medical Director are** responsible for assuring this policy is implemented within the Trust.

3.2 **Clinical Directors** - are responsible for ensuring procedures are understood and carried out by medical staff involved in the implementation of this policy.

3.3 **Associate Clinical Directors, Service Managers, Ward Managers, a**re responsible for:

- Ensuring that all appropriate employees in posts in the Trust clinical services attend appropriate training.
- Implementation of the Section 58 processes that are documented within this policy.

3.4 **Trust employees working in roles to provide healthcare in direct clinical contact with service users (Qualified Practitioners, including Approved Clinicians)** are responsible for:

- Ensuring awareness of the content of this policy
- Carry out leave procedures in line with the standards detailed within this policy
- Maintaining their individual competence in the practice of the MHA and attending training as required by their roles

3.5 Locality Mental Health Act Administrators, as responsible for:

- Monitoring compliance with Part 4 and 4A consent to treatment processes and reporting any breaches to the relevant Directorate Senior Management Team and Mental Health Legislation Manager.
- Sending reminders for the consent to treatment in line with the Trust's procedures and the Act's requirements.
- Giving advice, as necessary with regards to the above procedure.

3.6 **The Mental Health Legislation Manager** is responsible for:

- The development, monitoring and review of this policy and practice standards
- The provision of appropriate mandatory training and education to support the policy standards.
- Reporting compliance with S58, S62 and S64B to the Directorate via the monthly PREs meeting.
- Advising the Mental Health Legislation Group that monitors the use of the MHA and reports to the Safety, Quality and Governance Committee of any issues relating to the implementation of the policy.

4 When Consent is Required- Section 58 (See appendix 1 S58 Standard Operating Procedure)

4.1 A detained patient (see paragraph 1.2 above) may be given treatment for their mental disorder compulsorily for three months from the day on which any medication for mental disorder was first administered during their current period of continuous detention under the Act. This includes any time spent under CTO. After this time, the provisions of Section 58 require either a certificate of the patient's consent or the authorisation of a Second Opinion Appointed Doctor (SOAD) from the Care Quality Commission (CQC).

4.2 Section 58 does not apply to the administration of electroconvulsive therapy (ECT). See point 9 below for guidance on section 58A treatments.

4.3 At the end of the three month period, medication can not be continued unless:

4.3.1 The approved clinician in charge of the treatment, or a SOAD, certifies that the patient has to capacity to consent and has done so;

4.3.2 A SOAD certifies that the treatment is appropriate and either:

- The patient does not have the capacity to consent, or
- The patient has the capacity to consent but has refused to do so.

4.4 Six weeks into the patient's detention (including detention under section 2) the MHA Administrator will write to the RC requesting Forms T2, or a SOAD request form (including the RiO S58 Capacity Assessment Form) (**see a sample in appendix 2**)

4.5 A further reminder will be sent to the RC two weeks before the due date.

5. Procedure for Assessing Capacity

5.1 Before the end of the three month period, or whenever ECT is proposed, the RC must personally determine whether the patient has the capacity to give valid consent to continue any medication prescribed or undergo any course of ECT.

5.2 In accordance with section 3(1) of the MCA, all individuals over the age of 16 are presumed to have capacity to make a treatment decision unless they are unable:

(a) To understand the information relevant to the decision,
(b) To retain that information,
(c) To use or weigh that information as part of the process of making the decision, or
(d) To communicate his decision (whether by talking, using sign language or any other
means).

5.3 It is the Trust's policy to carry out capacity assessment and evidence the patient's capacity to consent to treatment before medication is administered/upon admission (for formal and informal patients) and prior to S58 and S64B consent to treatment processes.

5.3.1 The Code of Practice paragraphs 24.40 and 24.42 state that:

- 24.40 - To give time to develop a treatment programme suitable for the patient's needs, the Act allows treatment to be given in the initial three month period starting the day on which any form of medication for mental disorder was first administered to the patient during the current period in which the patient is liable to be detained under the Act.

- 24.41 - During this time, the patient's consent should still be sought before any medication is administered, wherever practicable. The patient's consent, refusal to consent, or a lack of capacity to give consent should be recorded in the case notes. If a person has capacity to consent, but such consent is not forthcoming or is withdrawn during this period, the clinician in charge of the treatment must consider carefully whether to proceed in the absence of consent, to give alternative treatment or stop treatment.

- 24.42 - Clinicians authorising or administering treatment without consent under the Act are performing a function of a public nature and must therefore comply with the Human Rights Act (HRA) 1998, which gives effect in the UK to certain rights and freedoms guaranteed under the European Convention on Human Rights (ECHR).

5.4 It must also be remembered that:

5.4.1 Any assessment as to an individual's capacity has to be made in relation to a particular treatment.

5.4.2 Capacity can be variable over time and should be assessed at the time the treatment is proposed.

5.5 It is the duty of the RC proposing to give treatment to use reasonable care and skill, not only in giving information prior to seeking the patient's consent, but also in

meeting the continuing obligation to provide the patient with adequate information about the proposed treatment and alternatives to it.

5.6 The information given should be related to the particular patient, the particular treatment and the relevant medical knowledge and practice. Sufficient information must be given to ensure that the patient understands in broad terms the nature, likely effects and risks of that treatment, including the likelihood of its success and any alternatives to it. Additional information is a matter of professional judgment for the doctor proposing the treatment.

5.7 For treatment proposed under section 58, due regard should be given to all current Advanced Decisions that exists for the patient.

5.8 Under section 58A, ECT may not be given to a patient where a valid and applicable Advance Decision refusing ECT exists, unless in an emergency (see the Trust's ECT policy and procedures for additional guidance)

5.9 All staff assessing capacity must do so in accordance with the MCA and the Trust policies and guidance on Consent, the MCA and Advance Decisions.

5.10 A record of the discussion with the patient with reference to his or her capacity to consent to treatment must be made by the RC in the patient's RiO Capacity to consent to treatment electronic form and the RiO clinical notes.

6. Consent from Patients with Capacity to Consent – (Section 58 – medication) Appendix 1

6.1 If the patient is capable and willing to consent to the treatment proposed, the RC must certify accordingly on Form T2.

6.2 On the certificate, the RC should indicate all drugs proposed, including medication given "as required", either by name or, ensuring that the number of drugs authorised in each class is indicated, by the classes described in the British National Formulary (BNF). The maximum dosage and route of administration must be clearly indicated for each drug proposed. Where BNF category 4.2.1 is included, the RC must also specify whether Clozapine is to be used.

6.3 Copies of the Form T2 must be retained as follows:-

- The original T2 form must be scanned and uploaded onto the patient's RiO records and the original Pink T2 must be sent to the Locality MHA Administrator.
- The MHA Administrator will scrutinise the T2 form and upload the scrutinised version onto the patient RiO's MHA electronic folder. The original form will be filed in the patient's manual section file and held in the Locality MHA Administration Office.
- A copy of the T2 will be sent to the locality pharmacist by the MHA Administrator.
- A copy of the T2 form must be kept with the patient's drug chart on the ward.

6.4 A patient may withdraw consent at any time. Fresh consent or the implementation of Section 58 procedures is then required before further treatment can be carried out or reinstated. Where the patient withdraws consent, he or she should receive a clear explanation of the implications and new procedures required, which must be recorded in the patient's RiO clinical records.
This may include the likely consequences of not receiving the treatment; that a

second medical opinion under Part 4 of the Act may or will be sought, if applicable, in order to authorise treatment in the continuing absence of the patient's consent; of the doctor's power to begin or continue urgent treatment under Section 62 until a second opinion has been obtained, if applicable.

6.5 Ward staff must ensure that any consent forms which have become invalid because the patient has withdrawn consent are crossed out and marked as cancelled. Staff must also inform the Mental Health Act Administrator who will arrange for the copy they hold to be marked accordingly.

7. Consent from Patients with Capacity to Consent (Section 58A - ECT) (This section must be read in conjunction with the Trust's ECT policy and procedures)

7.1 If the patient is aged 18 or over and is capable and willing to consent to the ECT treatment proposed, the RC must certify accordingly on Form T4.

7.2 On the certificate, the RC should indicate the number of treatments proposed.

7.3 Copies of the Form T4 must be retained as follows:-

- The original T4 form must be scanned and uploaded onto the patient's RiO records and the original Pink T4 must be sent to the Locality MHA Administrator.
- The MHA Administrator will scrutinise the T4 form and upload the scrutinised version onto the patient RiO's MHA electronic folder. The original form will be filed in the patient's manual section file and held in the Locality MHA Administration Office.
- A copy of the T4 will be sent to the locality pharmacist by the MHA Administrator.
- A copy of the T4 form must be kept with the patient's drug chart on the ward.

7.4 A patient may withdraw consent at any time. Fresh consent or the implementation of Section 58A procedures is then required before further treatment can be carried out or reinstated. Where the patient withdraws consent, he or she should receive a clear explanation of the implications and new procedures required, which must be recorded in the patient's RiO clinical records. This may include the likely consequences of not receiving the treatment; that a second medical opinion under Part 4 of the Act may or will be sought, if applicable, in order to authorise treatment in the continuing absence of the patient's consent; of the doctor's power to begin or continue urgent treatment under Section 62 until a second opinion has been obtained, if applicable.

7.5 Where a patient has made a valid and applicable Advance Decision to refuse ECT, or where the patient has an attorney or deputy who is refusing ECT, no further treatment may be given unless in an emergency.

7.6 Ward staff must ensure that any consent forms, which have become invalid because the patient has withdrawn consent are crossed out and marked as cancelled. Staff must also inform the MHA Administrator who will arrange for the copy they hold to be marked accordingly.

8. Procedure for Second Opinions (Section 58 - medication)

8.1 Where a patient is unwilling to or is incapable of giving valid consent, a visit by a SOAD is required.

8.2 It is the personal responsibility of the patient's RC to ensure a request for a visit is made from the Care Quality Commission (CQC).

8.3 The request is made by the RC electronically via: https://webdataforms.cqc.org.uk/Checkbox/SOAD.aspx

8.4 The RC must print a copy of the request before electronically submitting it and scan it onto RiO. A printout of SOAD request should be sent to the MHA Administrator and filed in the patient's manual section file.

8.5 The CQC will arrange for the SOAD to contact the ward with the date and time of their visit. Ordinarily, the Commission aims to arrange for a visit from a SOAD within five working days of the request.

8.6 SOADs are required to consult two people who have been professionally concerned with the patient's medical treatment prior to issuing a certificate of second opinion (statutory consultees). The RC/Nurse in Charge of the patient's should ensure that the following are available to meet the SOAD as statutory consultees:

8.6.1 A nurse involved in the treatment of the patient

8.6.2 A therapist who has been involved in the treatment of the patient (note that this therapist **must not** be a doctor, or a nurse). This person should have direct knowledge of the patient in their professional capacity and should consider whether they are sufficiently concerned professionally with the patient's care to fulfil the function.

8.7 The Nurse in Charge must also ensure that the patient is available to meet with the SOAD and that the SOAD has access to the patient's RiO clinical notes.

8.8 Upon arrival of the SOAD, ward staff should check their identity. The SOAD will interview the patient and view the patient's RiO clinical notes. He/she must also discuss the patient's case with the RC, either in person or via telephone. The SOAD must also consult with the two statutory consultees. Amongst the issues that the "Consultees" should consider commenting upon are:

8.8.1 The proposed treatment and the patient's ability to consent to it;

8.8.2 Their understanding of the past and present views and wishes of the patient;

8.8.3 Other treatment options and the way in which the decision on the treatment proposal was arrived at;

8.8.4 The patient's progress and the views of the patient's carers;

8.8.5 Where relevant, the implications of imposing treatment on a patient who does not want it and the reasons why the patient is refusing treatment.

8.9 Statutory consultees must ensure that they make a record of their consultation with the SOAD in the patient's RiO clinical records.

8.10 When the SOAD has reached a decision regarding the patient's treatment plan, he/she will complete Form T3.

8.11 Copies of the Form T3 and SOAD report must be retained as follows:-

- The original T3 form and SOAD report must be scanned and uploaded onto the patient's RiO records and the original T3 form must be sent to the Locality MHA Administrator.

- The MHA Administrator will scrutinise the T3 form and upload the scrutinised version onto the patient RiO's MHA electronic folder. The original form will be filed in the patient's manual section file and held in the Locality MHA Administration Office.

- A copy of the T3 form must be kept with the patient's drug chart on the ward.

- A copy of the T3 will be sent to the locality pharmacist by the MHA Administrator.

- A copy of the T3 will be given to the SOAD as his/her copy.

8.12 Following the case of *R* [on the application of Wooder] versus Dr Feggetter and the Care Quality Commission, the patient has a right to receive information regarding the SOAD's visit except for the circumstances in point 8.13 below.

8.13 The SOAD will record details of the visit and the reason for the decision made, either on Form T3, or on a SOAD report form and will provide the RC/Ward with a copy. The SOAD will also indicate whether in his/her view disclosure of the documentation will cause serious harm to the physical or mental health of the patient, or any other person. Note that the SOAD report form may be sent to the RC following the visit rather than left on the day.

8.14 Communicating the result of the SOAD visit to the patient is the personal responsibility of the RC. The details and outcome of this discussion must be recorded in the Patient RiO clinical records.

9. Procedure for Second Opinions (Section 58A - ECT) (This section must be read in conjunction with the Trust's ECT policy and procedures)

9.1 Where a patient is capable of consenting to ECT - but is refusing, treatment may not be given unless in an emergency.

9.2 Where a patient is incapable of giving valid consent, a visit by a SOAD is required.

9.3 A SOAD may only authorise ECT to be given where:

9.3.1 The treatment is appropriate;

9.3.2 No valid and applicable advance decision has been made by the patient under the MCA refusing the treatment;

9.3.3 No authorised attorney or deputy objects to the treatment on the patient's behalf;

9.3.4 The treatment does not conflict with a decision of the Court of Protection preventing the treatment from being given.

9.4 The process shown at 8.2 – 8.14 above should be followed where a SOAD visit is required for ECT.

9.5 The SOAD will complete form T6 recording his decision.

10. Children and Young People Under the Age of 18

10.1 General guidance on the treatment of young people under the age of 18 can be found at Chapter 19 of the Code of Practice.

10.2 In addition to the guidance contained in this document the following specific requirements apply to the treatment of young people under the age of 18:

10.2.1 No person under the age of 18 may be given ECT without the approval of a SOAD (unless in an emergency), even if they consent to it. Form T5 must be completed by the SOAD. The procedures for requesting a SOAD visit should be followed as in paragraph 8 above.

11 Community Treatment Order/CTO - Part 4A patients (Appendix 3) (This section should be read in conjunction with the Trust's CTO policy and procedures)

11.1 Part 4A refers to patients subject to CTO who have not been recalled to hospital.

11.2 Part 4A patient who have the capacity to consent may not be given treatment unless they consent to it. Treatment without their consent can only be given if they are recalled to hospital.

11.3 Part 4A patients who lack capacity to consent to the treatment may be given it if they have an attorney or deputy appointed under the MCA and they consent to it on their behalf or if the Court of Protection has authorised it.

11.4 Part 4A patients who lack capacity may be given treatment under the direction of the RC providing:

11.4.1 There is no valid and applicable Advance Decision refusing the treatment;

11.4.2 No attorney or deputy appointed under the MCA for the patient objects to the treatment and no Court of Protection ruling objecting to the treatment exists;

11.4.3 The patient does not object to taking the treatment.

11.5 No patient can be treated forcibly in the community under CTO, except in very limited emergency situations, where the patient lacks capacity and the treatment is immediately necessary to prevent harm to the patient.

11.6 Part 4A patients may be given treatment for mental disorder only if their RC certifies that the patient is consenting, CTO12, or a Second Opinion Appointed Doctor (SOAD) has certified that the treatment is appropriate, using a Part 4A certificate, CTO11. This is needed for:

11.6.1 Treatments that would require a certificate under section 58 if the patient were detained in hospital; and

11.6.2 ECT and other types of treatment to which section 58A applies.

11.7 Section 58 type treatment will need to be authorised within one month following discharge from hospital on CTO (unless they have been detained for less than 3 months in total, in which case it will apply at 3 months from first detention).

11.8 This period of time can vary with each individual case, depending on how long they have been detained on Section 3. On receipt of Form CTO1 the MHA Admin team

will write to the new community RC, requesting that form CTO12, or the online SOAD request form, be completed.

11.9 It may be that section 64 needs to be completed to continue to administer medication until a SOAD has visited and completed form CTO11. Where applicable, the SOAD visit must be requested within 48 hours of the patient being placed on the CTO in order that sufficient time is given for the SOAD to attend.

11.10 If the patient is able to consent, the RC should complete the electronic RiO capacity to consent to treatment form, record that the patient has capacity (or competence if under 16) to consent to the treatment in question and has done so using Form CTO12.

11.11 Copies of the Form CTO12 must be retained as follows:-

- The original CTO 12 form must be scanned and uploaded onto the patient's RiO records and the original Form must be sent to the Locality MHA Administrator.

- The MHA Administrator will scrutinise the CTO12 form and upload the scrutinised version onto the patient RiO's MHA electronic folder. The original form will be filed in the patient's manual section file and held in the Locality MHA Administration Office.

11.12 Where the patient is not able to consent to the treatment in question, this must be authorised by a SOAD on Form CTO11.

11.13 The SOAD will not certify as to a patient's consent status, but may make it a condition of their approval that particular treatment may only be given in certain circumstances.

11.14 It is the personal responsibility of the Community RC to ensure a request for a SOAD visit is made from the Care Quality Commission (CQC) ***within 48 hours*** of the start of the CTO.

11.15 The CQC must be contacted via the online link and a copy of the request must be printed scanned and uploaded onto the patient's RiO clinical document folder. The paper copy of the request should be sent to the locality MHA Administrator and filed in the patient's manual section file. Note that an appropriate venue for the SOAD visit must be arranged.

11.16 The RC must ensure that a named person is identified who will be responsible for coordinating the arrangements and liaising with the SOAD. This person must be able to make contact with the patient to discuss the SOAD's visit and should be aware of any dates and times that the visit would not be able to take place when liaising with the SOAD to confirm a date and time.

11.17 The CQC will arrange for the SOAD to contact the RC, or the patient's Care Coordinator with the date and time of their visit.

11.18 The named person responsible for co-ordinating the arrangements must ensure that the patient is contacted the day prior to the visit to remind them of the date, time and venue and to confirm travel arrangements. This may include arranging transport to the venue where the patient is incapable of doing so themselves. Patients with capacity must be advised that if they fail to attend the appointment, this will be taken as a refusal to meet the SOAD and that they could be recalled to facilitate a visit. <u>The discussion details must be recorded in the patient RiO clinical notes, as the CQC will expect to see evidence that this interaction has taken place.</u>

11.19 SOADs are required to consult two people who have been professionally concerned with the patient's medical treatment prior to issuing a certificate of second opinion (statutory consultees).

11.20 The RC should ensure that of the two professionals available to meet the SOAD as statutory consultees, only one is a doctor and neither is the patient's RC.

11.21 The RC/Care Coordinator must also ensure that the patient is available to meet with the SOAD and that the SOAD can access the patient's RiO electronic health records.

11.22 Upon arrival of the SOAD, staff should check their identity. The SOAD will interview the patient and view the patient's RiO health records. He/she must also discuss the patient's case with the RC, either in person or via telephone. The SOAD must also consult with the two statutory consultees. Amongst the issues that the "Consultees" should consider commenting upon are:

11.22.1 The proposed treatment and the patient's ability to consent to it;

11.22.2 Their understanding of the past and present views and wishes of the patient;

11.22.3 Other treatment options and the way in which the decision on the treatment proposal was arrived at;

11.22.4 The patient's progress and the views of the patient's carers;

11.23 Statutory consultees must ensure that they make a record of their consultation with the SOAD in the patient's RiO clinical records.

11.24 When the SOAD has reached a decision regarding the patient's treatment plan, he/she will complete Form CTO11.

11.25 Copies of the Form CTO11 must be retained as follows:-

- The original CTO11 form and SOAD report must be scanned and uploaded onto the patient's RiO records and the original CTO11 form must be sent to the Locality MHA Administrator.

- The MHA Administrator will scrutinise the CTO11 form and upload the scrutinised version onto the patient RiO's MHA electronic folder. The original form will be filed in the patient's manual section file and held in the Locality MHA Administration Office.

- A copy of the CTO form will be given to the SOAD as his/her copy.

11.26 Following the case of *R* [on the application of Wooder] versus Dr Feggetter and the Care Quality Commission, the patient has a right to receive information regarding the SOAD's visit except for the circumstances in point 11.27 below.

11.27 The SOAD will record details of the visit and the reason for the decision made, either on Form CTO11, or on a SOAD report form and will provide the RC with a copy. The SOAD will also indicate whether in his/her view disclosure of the documentation will cause serious harm to the physical or mental health of the patient or any other person. Note that the SOAD report form may be sent to the RC following the visit rather than left on the day.

11.28 Communicating the result of the SOAD visit to the patient is the personal responsibility of the RC. The details and outcome of this discussion must be recorded in the Patient RiO clinical records.

11.29 Copies of the SOAD report form must also be scanned and uploaded onto the patient's RiO clinical record and the original must be forwarded to the MHA Administrator.

11.30 If a patient deemed incapable fails to attend the appointment, the CQC will treat this as a failure by the Trust to make suitable arrangements and the SOAD will advise the RC and named person that they will be required to submit a new Second Opinion request form to facilitate a further SOAD visit.

11.31 Where a patient with capacity does not attend, the SOAD may advise the RC/ Care Coordinator that they do not believe appropriate arrangements were made and again request a new Second Opinion request form be submitted.

12. Community Treatment Order - Patients Recalled to Hospital.

12.1 Part 4A does not apply to the treatment of CTO patients who have been recalled to hospital.

12.2 Treatment of such a patient that would otherwise require a certificate under section 58 or 58A may be given if it is expressly approved on the patient's Part 4A certificate to be given if the patient is recalled to hospital.

12.3 It cannot authorise treatment without the consent of a person who has capacity to consent to ECT, nor can it authorise section 58A treatment contrary to a valid and applicable advance decision, the decision of an attorney or deputy, or the Court of Protection.

12.4 No certificate is required for the administration of medication to any patient who has been subject to CTO for less than one month.

12.5 Treatment already in progress on the basis of a Part 4A certificate before the patient was recalled can be continued temporarily if the RC considers that withdrawing the treatment would cause serious suffering to the patient, pending compliance with normal section 58 and 58A requirements.

13. Review of Treatment

13.1 All treatments should be regularly reviewed and the patient's care plan should include details of when this will take place.

13.2 A formal review of treatment should take place when:

13.2.1 There is a change in the treatment plan from that recorded
13.2.2 Consent is re-established after being withdrawn
13.2.3 The patient becomes incapable of consent
13.2.4 The patient withdraws consent
13.2.5 There is a break in the patient's detention
13.2.6 There is a permanent change of RC
13.2.7 The patient's detention is renewed

14. Section 61

14.1 Where a patient has been treated under the authority of a SOAD form, the RC must provide a Section 61 Review of Treatment report **(Appendix 4)** to the CQC on the treatment and the patient's condition:

14.1.2 When the authority of detention is reviewed under Section 20[3] and 20A (renewal)

14.1.3 at any time the CQC requires him/her to do so.

14.2 It should be noted that a report will only be required for Community Treatment Order patients where they have been recalled and treatment provided at some point during their last period of detention.

14.3 A copy of the Section 61 Review of Treatment Form must be scanned and uploaded onto the MHA RiO clinical document folder and the original must be sent to the MHA Administrator who will forward it to the CQC. The RC must arrange for a copy to be given to the patient.

14.4 On receipt of the Section 61 Review of Treatment form, the CQC will consider whether a SOAD should re-assess the patient and notify the RC whether treatment may continue as prescribed, or if necessary, will arrange a further SOAD visit.

15. Cancellation of Forms

15.1 In accordance with the guidance outlined in Chapter 24 of the CoP, all forms must be clearly marked as superseded or cancelled in the box provided for this purpose on the forms where updated forms are completed, or the form becomes invalid.

16. Urgent Treatment (Section 62 - medication)

16.1 Urgent treatment under Section 62 **(see Appendix 5)** may only be given under the direct authority of the RC to detained patients.

16.2 The treatment proposed must be:

16.2.1 Immediately necessary to save patient's life; or

16.2.2 (Not being irreversible), be immediately necessary to prevent a serious deterioration of his condition; or

16.2.3 (Not being irreversible or hazardous) be immediately necessary to alleviate serious suffering by the patient; or

16.2.4 (Not being irreversible or hazardous) be immediately necessary and represents the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or to others.

16.3 Where it is decided that urgent treatment for medication is necessary, the RC must complete the Section 62 Urgent Treatment – Authority for Medication form. The form must be scanned and uploaded onto RiO and the original must be sent to the MHA Administrator.

17. Urgent Treatment (Section 62(1A) - ECT)
(This section must be read in conjunction with the Trust's ECT policy and procedures)

17.1 Urgent ECT under Section 62(1A) may only be given under the direct authority of the RC to detained patients

17.2 In all cases, including those where the patient is capable of consent but refusing, and those where the patient is incapable of consent and a valid and applicable advance decision exists refusing ECT, or where an attorney or deputy acting for the patient has refused to consent to ECT, urgent treatment with ECT may only be given where the treatment is:

17.2.1 Immediately necessary to save patient's life; or

17.2.2 (Not being irreversible), be immediately necessary to prevent a serious deterioration of his condition;

17.3 Where it is decided that urgent treatment with ECT is necessary, the RC must complete the Urgent Treatment – Authority for Electro-convulsive Therapy form. (Form must be uploaded onto RiO and the original must be sent to the locality Mental Health Act Administrator)

18 Process for monitoring compliance and effectiveness

18.1 A checklist is available (**Appendix 6)** for auditing compliance with the provisions of Section 58. In addition to ward monitoring processes, the use of this form in regular ward documents checks is encouraged. This checklist will also be used by the Mental Health Administration Office(s) during MHA checks of compliance.

18.2 Compliance with this policy will be monitored through the mechanisms detailed in the table below. The audit and review findings will be incorporated into the MHA Quality Assurance Quarterly and Annual reports, which will highlight any areas of non-compliance. Where compliance is deemed to be insufficient and the assurance provided is limited, then remedial actions will be drawn together through an action plan. This progress against the action plan will be monitored at the specified group/ Committee.

Aspect of compliance or effectiveness being monitored	Monitoring Method	Individual or department responsible for the monitoring	Frequency of the Monitoring activity	Group/Committee or forum which will receive the findings/monitoring report	Committee or individual responsible for ensuring that the actions are completed
Compliance with legal provisions of Section 58	Exception Reporting	Mental Health Legislation Manager	Monthly	Triangulation Meetings and Divisional PREs	COO
Compliance with legal provisions of Section 58	Exception Reporting	Mental Health Legislation Manager	Quarterly/ Annually	Mental Health Legislation Group	SQGC

19. References

Mental Health Act 1983 as amended by the Mental Health Act 2007

DoH. (2015) Code of Practice - Mental Health Act 1983

DoH. (2015) Reference Guide to the Mental Health Act 1983

Mental Capacity Act 2005

Care Quality Commission Mental Health Notification

APPENDIX 1 - Consent to Treatment under the MHA 83 – For Inpatients (v2)

The following procedure is applicable to patients detained under sections 2, 3, 36, 37, 38 and 45A 37/41, 47, 47/49, 48, 48/49

At a point of admission, the RC should assess both formal and informal patients' mental capacity to consent to treatment
The outcome must be recorded on the RiO Capacity to Consent to Treatment Assessment Form and detailed of discussion with the patient must be recorded on the form and in the RiO clinical notes.

Is the treatment for Mental Disorder?

YES
What is the treatment proposed?

NO
The MHA does not provide sufficient lawful authority to provide the treatment.

Alternative lawful authority is required (i.e. Common Law, if patient has capacity and consents, or Mental Capacity Act, if patient lacks capacity).

ECT (S58A)
18+ with capacity and consent – Form T4
<18 with capacity and consent – Form T5
(SOAD)
Lacks capacity – Form T6
(SOAD) (This can't conflict with LPA or ADRT)

(ALSO REFER TO CPFT ECT POLICY)

Medication after 3 months SECTION 58 must be followed
Form T2
Or SOAD request

Medication during the first 3 months of detention can be given without consent under SECTION 63

Patient GIVES A VALID CONSENT to treatment proposed

RC to record the outcome of the capacity assessment on the RiO S58 Capacity Assessment Electronic Form, record details of discussion with the patient in the RiO clinical notes and completes Form T2 (Upload onto RiO)
Both original forms must be sent to the MHA Administrator before the three months period end. MHA Administrator will upload the scrutinised forms onto RiO

The MHA Administrator will file the original forms in the patient section file,

The T2 or 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 T2 or T3 Form must be completed as appropriate.

Where a T2 is in place and the RC changes, a fresh 'capacity assessment to consent to treatment' must be made. If the patient consents a new T2 Form must be completed.

All original capacity assessment and T Forms must be uploaded onto RiO. Originals must be sent to the MHA Administrator

A copy of Form T2 must be attached to the patient's Medication Chart.
(MHA Admin will send a s58 reminder to the RC on section renewal and also half way through each period of detention)

Patient DOES NOT consent to treatment proposed

RC to record the details of discussion with patient in the RiO clinical notes, complete a RiO S58 Capacity Assessment Electronic Form and an on line SOAD request for 'Non-CTO patients' https://webdataforms.cqc.org.uk/Checkbox/SOAD.aspx
RC must print a copy of the request before electronically submitting it and scan it onto RiO. The original capacity assessment form and printout of SOAD request to be sent to the MHA Administrator and filed in the patient's section file.

Six weeks into the patient's detention (including detention under section 2) the MHA Administrator will write to the RC requesting
Forms T2, or a SOAD request form (including the local Capacity Assessment Form)

If a Form T2, or a SOAD Request has not been received by the MHA Administrator - 2 weeks before the ' three months' period ends, the MHA Administrator will send a last reminder to the RC (which will be copied in to the Clinical Director for his/her information)

It is possible to have concurrent Form T2 and Form T3 where the patient consents to some elements of treatment but not to others

Treatment in an emergency must follow the provisions of section 62.

If medication is to be provided in an emergency - Section 62 local form must be completed, uploaded onto RiO and original must be sent to the MHA Administrator.

Patient LACKS CAPACITY to consent to treatment proposed

SOAD will arrange a visit date with RC/Nurse in charge and will attend the ward. He/She will discuss the proposed treatment with the RC, one nurse and one other professional (non nurse/non medic) involved in the patient's care, as nominated by RC.

Date and outcome of the visit must be recorded by the RC in the RiO clinical notes.

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

Form T3 and SOAD report must be uploaded onto RiO.

A copy of Form T3 must be attached to the patient's Medication Chart.

The original forms must be sent to the MHA Admin

The MHA Administrator will file the original forms in the patient section file.

RC Responsibilities

MHA Administrator's Responsibilities

APPENDIX 2 - **ASSESSMENT OF CAPACITY TO CONSENT TO TREATMENT**

Under Section 58 of the Mental Health Act 1983 (COMPLETE FORM ON RIO)

Patient Name		**RiO number**	
Ward		**Responsible Clinician**	

Give details of the decision, or other specific issues, in relation to which the patient's capacity is being assessed
Evidence the steps taken to enhance the patient's decision making capability - as per second principle of the MCA. ('All practical steps must be taken to help a person make decisions before that person is treated as unable to make decisions")

Please answer the following question.

<u>If the answer to the question 1 is yes, you can proceed with a capacity assessment under the MCA</u>

1. Does the patient have an impairment of the mind or brain, or is there some sort of disturbanc affecting the way their mind or brain works?	**Yes**	**No**
Comments supporting decision:		

If the answer to question 1 was yes, all of the following questions must be answered as part of the capacity assessment:

2. Is the patient able to comprehend the information relevant to the decision?	**Yes**	**No**
Comments supporting decision:		
3. Is the patient able to retain this information to arrive at a decision?	**Yes**	**No**
Comments supporting decision:		
4. Is the person able to use and weigh this information to arrive at a decision?	**Yes**	**No**
Comments supporting decision:		
5. Is the patient able to communicate the decision, whether by talking, using sign language or a other means?	**Yes**	**No**
Comments supporting decision:		

If the answer to any of the above is "no", clinical judgment guided by current professional practice and legal requirements should suggest that the above named patient <u>does not</u> possess the capacity to provide a valid consent as required under Section 58 or 58A of the Mental Health Act.

Based on the above assessment, does the patient have capacity to consent to treatment?	**Yes**	**No**
Is the patient's likely to recover capacity?	**Yes**	**No**
If patient lacks capacity, when was a SOAD assessment was requested? (Date)		

If the patient has capacity to consent to treatment complete the section below

<u>RC statement</u>:

- I have explained the nature of the assessment and/or treatment to the patient. In particular, I have explained; (Tick when applicable)
- The intended benefits. **( )**
- Serious, or frequently occurring risks. **( )**
- Any extra procedures which may become necessary. **( )**
- I have also discussed what the assessment and/or treatment is likely to involve, the benefits and risks of any available alternatives (including no treatment) and any particular concerns of this patient. **( )**

Record the details and outcome of the discussion with the patient

Name of the Responsible Clinician assessing	
Date of assessment:	
Date T form completed:	

APPENDIX 3 - Consent to Treatment under the MHA 83 for CTO Patients V1

The following procedure is applicable to patients detained under section 17a (Community Treatment Order)
(Treatment of CTO patients not recalled to hospital/ Part 4A of the Act – Sections 64A - 64K)

Is the treatment for Mental Disorder?

NO - The MHA does not provide sufficient lawful authority to provide the treatment. Alternative lawful authority is required (i.e. Common Law, if patient has capacity and consents, or Mental Capacity Act, if patient lacks capacity)

YES - What is the treatment proposed?

Medication
(S58 type treatment)

CTO12 Or SOAD request

ECT (S58A type treatment)
18+ with capacity and consent – Form CTO12
<18 with capacity and consent – Form CTO11 (SOAD).
Lacks capacity – Form CTO11 (SOAD)
(This can't conflict with LPA or ADRT)

On receipt of Form CTO1 the MHA Admin team will write to the new community RC, requesting that form CTO12, or the online SOAD request form, be completed.

A capacity assessment must be carried out by the RC and the outcome should be recorded on the RiO capacity assessment form.
If the patient consents to the treatment, a "Consent to Treatment" form must be completed and signed by the patient.
Copies of the forms should be attached to the "T" form (CTO12 or SOAD request) and sent to the MHA Administrator.

2 weeks before the one month period ends, if a Form CTO12 or a SOAD Request has not been received by the MHA admin team, a last reminder will be sent to the RC (which will be copied in to the Medical Director).
The Medical Director will then contact the RC to request action.

Does the patient consent to all the treatment, or the plan of treatment proposed (discussion and outcome must be documented by RC)

YES - RC and patient to complete Form CTO12 including BNF category, route of administration and dosage

NO - RC to complete an online SOAD request for CTO patient, record the date of request in progress notes and inform MHA admin team by emailing copy of request. MHA admin team to record date of request and chase if necessary.
(Please note: If a CTO patient refuses to consent, the CQC will continue to accept requests to consider certifying that certain treatment proposed for the patient while in the community is appropriate, even though such certification provides no authority to give the treatment where a patient refuses consent; and/or b) Certain treatment would be appropriate (and could be given without consent) if the patient was recalled to hospital.)

SOAD attends the pre-arranged venue. They will discuss the proposed treatment with the RC, one nurse and one other professional (non nurse/non medic - e.g. OT, social worker, psychologist, dietician, pharmacist, physiotherapist, etc) involved in the patient's care. The discussion outcome MUST be documented in the progress notes

If SOAD believes treatment is appropriate (and where against patient's wishes it is medically necessary) they will complete Form CTO11

The RC is to give a copy of the relevant CTO Form (and consent form) to the patient and ensure that these are scanned and uploaded to RiO. The original CTO form must be sent to the MHA Administrator. MHA Administrator will upload the scrutinised CTO form onto RiO.

It is possible to have concurrent Form CTO11 and Form CTO12 where the patient consents to some elements of treatment but not to others

The CTO11 or CTO12 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 CTO11 or CTO12 Form should be completed as appropriate. Where a CTO12 is in place and the RC changes, a fresh capacity and consent assessment must be made and a new CTO Form completed as appropriate.
All CTO Forms must be scanned and uploaded to RiO and the original form then sent to the MHA Admin Team.
(Reminder will be sent to the RC to check this on renewal and also half way through each period of detention)

Treatment in an emergency must follow the provisions of section 64G.
If medication is to be provided in an emergency - Section 64 local form must be completed uploaded to RiO and sent to the Locality MHA Administrator. The MHA Administrator will upload the scrutinised S64 form to RiO.

RC Responsibilities

MHA Administrator's Responsibilities

APPENDIX 4

Section 61 Review of Treatment form

(previously Form MHAC1)

Please enclose a copy of the current statutory certificate authorising treatment with this form

Official sensitive

This form must be completed by the approved clinician in charge of the treatment and forwarded to the Care Quality Commission when a patient is being treated under Section 58(3)(b), 58A (4) or (5) or 62A (in accordance with a Part 4A certificate) on the occasions referred to in Section 61.

The form does not relate to Section 57(2) treatments (neurosurgery for mental disorder); you should complete a separate form for this specific treatment, which is available from our Mental Health Operations team (contact details at the back).

Please fill in all sections of this form

I examined: (Full name of patient in **capital letters**)	
Name of provider: (NHS trust or service provider responsible for patient)	
Name of hospital: (N/A for SCT)	
Ward: (N/A for SCT)	
Contact name and telephone: (Please provide a name and number to contact if CQC requires further information regarding this form)	Name: Telephone:
Patient's date of birth: (dd/mm/yyyy)	
Gender:	**Male:** ☐ **Female:** ☐
Date of examination: (dd/mm/yyyy)	
Date patient was first detained in this period of detention or date of SCT: (dd/mm/yyyy)	
Current section:	
Date statutory certificate was last given by a registered medical practitioner appointed for the purposes of Part IV of the Act: (dd/mm/yyyy)	(Please provide a copy of the statutory certificate with this form)

Date statutory certificate expires if applicable: (dd/mm/yyyy)	

Please indicate whether certificate is for ECT or medication:	Please tick one box: **Medication:** ☐ **ECT:** ☐

Describe the treatment given:

a) Please state present medication by drug name, route and dosage

Drug name:	**Route:**	**Dosage:**

b) Number of ECTs given:	

Please describe the progress made:

Please delete a) or b) below as appropriate:

a) I intend to continue the treatment as authorised.

b) The patient is now consenting to the treatment and I have completed a statutory form to indicate this, a copy of which is enclosed with this report. Completion of this form is taken to cancel any previous SOAD certificate. (Not applicable for SCT patients.)

Signature of approved clinician in charge of treatment		**Date:**
Name of approved clinician in charge of treatment	(Please use capital letters)	

Mental Health Act 1983 – Review of Treatment, Section 61

Notes to help you complete form

1. Sections 58 and 58A relate to treatment requiring consent or a second opinion.
2. Section 61 provides for reports to be given in relation to treatments given under Section 57, 58, 58A or 62A. This form does not relate to Section 57 treatments. You should complete a separate form for these treatments.
3. This form is issued by the Care Quality Commission (CQC) and notifies:

   a. Health authorities
   b. NHS trusts, and
   c. Mental health nursing homes, registered to take detained patients

   of the arrangements for reports to be given by the approved clinician in charge of a patient's treatment under Section 61 of the Mental Health Act 1983. Please ensure that you provide a copy of the current statutory certificate with the completed form.

4. Section 61 provides that where a patient is given treatment in accordance with Section 57(2) or Section 58(3)(b), 58A (4) or (5) or 62A (i.e. where a treatment plan has been authorised by a doctor appointed by CQC), the approved clinician in charge of the patient's treatment must give CQC a report on the treatment and the patient's condition:

   a) on the next and subsequent occasions that the authority for the patient's detention is renewed under Section 20(3), 20A(4) or 21B(2);
   b) at any other time if so required by CQC, and
   c) in the case of patients subject to a restriction order, at the end of the first six months, if treatment began during this period, and subsequently on each occasion that the responsible clinician is statutorily required to report to the Secretary of State.

5. Unless the treatment was initially authorised on Form T3, T5 and T6, a report is not required when the treatment has been given after the approved clinician has certified on Form T2 that the patient is capable of understanding the nature, purpose and likely effects of the treatment and has consented to it.
6. When a report has been given to CQC, as required by Section 61, permission to continue treatment as authorised may be assumed to be given unless CQC gives notice of the withdrawal of the statutory form in use at the time. If such notice is given, a further certificate will be required before treatment may be continued, except for urgent treatment given under the provisions of Section 62 or 64.
7. Please issue a copy of this document to the patient on completion.
8. Guidance on reviews of treatment can be found in paragraphs 24.72 to 24.76 of the Code of Practice.
9. Please send your completed forms to:

   CQC Mental Health Act, Citygate, Gallowgate, Newcastle upon Tyne, NE1 4PA

   Tel: 03000 616161 (press option 1 when prompted), **Fax: 0115 873 6251.**

APPENDIX 5

Cambridgeshire and Peterborough NHS
NHS Foundation Trust

- Mental Health Act 1983

Section 62 (URGENT TREATMENT)

To the Managers of _____
(Name of Hospital)

Patient's full name_____Hospital number _____

I_____am the approved clinician in charge of the treatment of the above named patient who is an in-patient in this hospital detained under **Section_____of the Mental Health Act 1983**.

I consider that it is necessary to give **urgent treatment** without informed consent for the following reason:

Please delete those that do not apply:

(a) it is immediately necessary to save the patient's life;

(b) it is immediately necessary to prevent a serious deterioration of the patient's condition, and the treatment does not have unfavourable physical or psychological consequences which cannot be reversed;

(c) it is immediately necessary to alleviate serious suffering by the patient a, and the treatment does not have unfavourable physical or psychological consequences which cannot be reversed and does not entail significant physical hazard;

(d) it is immediately necessary to prevent the patient behaving violently or being a danger to themselves or others, and the treatment represents the minimum interference necessary for that purpose, does not have unfavourable physical or psychological consequences which cannot be reversed and does not entail significant physical hazard

Note: If the treatment is ECT (or medication administered as part of ECT) only the first two categories above apply.

I have/have not requested a second opinion from the Care Quality Commission

Please give details of the proposed treatment or plan of treatment and the reasons why it is immediately necessary:

_____

_____

_____

_____

_____

Signed_____Date: _____
(AC in charge of treatment)

APPENDIX 6

Section 58 Checklist

Patient's Name	RiO no	Section	RC's name	Date

	CHECKLIST	YES(√)
1.	Form T2 or T3 are placed and uploaded onto the patient's RiO MHA clinical documents folder.	
2.	A copy of form T2 is attached to the drug chart for patients who consent to treatment.	
3.	There is a documented record of the patient's capacity to consent.	
4.	There is a documented record of the discussion regarding patient's consent or refusal to treatment and the information given to the patient.	
5.	A treatment plan is recorded in the patient's notes (**CARE PLAN**)	
6.	Regular reviews of the treatment plan are recorded in patient notes.	
7.	There is written evidence of whether the care plan has been discussed with the patient, or reasons for not doing so.	
8.	Written evidence is provided that the patient has been encouraged to use advocacy support	
	FORM T3 – Certificate of Second Opinion - For patients who either lack capacity to consent or refuse consent to treatment after the first 3 months.	
1.	A scanned copy of the T3 form is uploaded and filed in the RiO clinical document section. (original always kept with Mental Health Act Administration Team)	
2.	A copy of the current T3 form is attached with the drug chart for SOAD approved treatment.	
3.	There are entries in the RiO clinical records made by the two named consultees of their consultation with the SOAD.	
4.	A SOAD report was completed, scanned and uploaded onto the RiO clinical document section.	
5.	There is a record in the RiO clinical records RC/AC has informed the patient of the SOAD's decision (or a reason for not disclosing the SOAD's decision).	