

**Public Board of Directors**  
**Item number: 32**  
**Date: 24 September 2025**

<b>Confidential/public paper:</b>	Public
<b>Report Title:</b>	<b>Mental Health Act Scheme of Delegation</b>
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<b>Presented by:</b>	Dr Helen Crimlisk, interim executive medical director
<b>Vision and values:</b>	This paper, and the accompanying Mental Health Act Scheme of Delegation, promotes the <b>value of we are inclusive</b> . It does this by providing a clear framework about who the Trust authorises to carry out certain Mental Health Act functions, thus reducing ambiguity and in turn helping staff to feel safe making important decisions. The Scheme of Delegation which is presented also contains some amendments as a result of learning which arose from a complaint. This is an example of how as a Trust <b>we keep improving</b> .
<b>Purpose:</b>	<p>The purpose of this paper is to:</p> <ul style="list-style-type: none"> <li>• review the Trust's Mental Health Act Scheme of Delegation, and</li> <li>• contribute to the governance of the scheme's arrangements (as per the requirement set out on the Mental Health Act Code of Practice, para 37.11).</li> </ul>
<b>Executive summary:</b>	<p>For the context of this paper, 'hospital managers' means the Board/Trust as a corporate, legal entity as opposed to individual post holders.</p> <p>As a hospital that is registered to provide care and treatment to individuals who are detained under the Mental Health Act 1983 (as amended), the hospital managers are given a significant range of powers in respect of patients which fall under the Act. A wide range of legal obligations are similarly placed upon the same.</p> <p>On a day-to-day basis, the overwhelming majority of powers granted by the Mental Health Act upon the 'hospital managers' are carried out by its officers/staff. As these tasks are, ultimately, the legal responsibility of the 'hospital managers' (i.e. the Trust as a corporate entity), the Trust is required to stipulate who within the organisation it authorises to carry out delegable tasks. The means by which this is undertaken is by the production of a Scheme of Delegation.</p> <p>The Mental Health Act Scheme of Delegation is required to be reviewed on an annual basis by the Mental Health Legislation Operational Group (MHLOG) and Mental Health Legislation Committee (MHLC). It has to be reviewed by the Trust's Board every three years.</p> <p>In additional to some minor clarifications, there are <b>two proposed changes</b> recommended to the pre-existing version. These recommended changes are to clarify decision making authority as to whether a Hospital Manager review should be held when:</p> <ul style="list-style-type: none"> <li>• patients (or their authorised representatives) ask Hospital Managers to review their detention or community treatment order, and</li> <li>• a patient's discharge by their nearest relative has been blocked by the</li> </ul>

	<p>patient's Responsible Clinician.</p> <p>The recommended amendments clarifies that the decision whether a hearing should, or should not, be undertaken in these two circumstances can be undertaken by the mental health legislation team.</p> <p>The Scheme of Delegation was reviewed, and recommended amendments supported, by Mental Health Legislation Operational Group on 11.8.25.</p>
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Which strategic objective does the item primarily contribute to:					
Effective Use of Resources	Yes		No		
Deliver Outstanding Care	Yes	✓	No		
Great Place to Work	Yes		No		
Reduce inequalities	Yes		No		

What is the contribution to the delivery of standards, legal obligations and/or wider system and partnership working.	
<p>The Scheme of Delegation has been produced to meet the requirement set out within paragraph 37.9 of the Mental Health Act 1983 (as amended) Code of Practice (2015). The production of a Scheme of Delegation is also illustrative of how the Trust has taken into account the Code's content – this being a statutory requirement under section 118 of the Act.</p> <p>Whilst the Scheme of Delegation is primarily around the discharge of legal functions, it also ensures that only appropriate professionals are being authorised to carry out certain tasks. This facilitates the delivery of standards because it limits the discharge of certain functions only to those who are competent to do so.</p>	
<b>Board assurance framework (BAF) and corporate risk(s):</b>	<p>BAF 0024</p> <p>There is a risk that the organisation fails to meet fundamental standards of care, legal regulatory, and safety requirements.</p>
<b>Any background papers/items previously considered:</b>	<p>This is an annual report to the Board.</p> <p>This paper was presented to:</p> <ul style="list-style-type: none"> <li>• MHLC on 03.09.25</li> <li>• Executive Management Team 04.09.2025</li> </ul>
<b>Recommendation:</b>	<p>The Board of Directors is asked to:</p> <ul style="list-style-type: none"> <li>• <b>Discuss</b> and <b>approve</b> the Mental Health Act Scheme (MHA) scheme of delegation.</li> </ul>

## **FUNCTIONS IMPOSED ON HOSPITAL MANAGERS BY THE MENTAL HEALTH ACT 1983 (as amended) AND ITS ASSOCIATED CODE OF PRACTICE**

### **SCHEME OF DELEGATION**

Hospital Managers<sup>1</sup> have the authority to detain patients under the Mental Health Act 1983 (as amended) (hereafter referred to as 'the Act'). They also have responsibility for:

- seeing that the requirements of the Act are followed,
- ensuring that patients are detained only as the Act allows,
- ensuring that patients are fully informed of their statutory rights and supported in exercising these rights, and
- ensuring that treatment and care complies fully with the provisions of the Act.

These responsibilities apply equally to those detained in hospital and those subject to community treatment orders.

On a day-to-day basis, most decisions are made by individual staff/groups of individual staff on the Manager's behalf. However, certain decisions will be made by panels of people who are specifically appointed to carry out a role eg. Associated Mental Health Act Managers considering appeals against detention and being subject to a Community Treatment Order (CTO).

Most of the functions of the Hospital Managers can be delegated to staff (sometimes referred to as 'officers of the Trust'), except for the power to discharge patients from a CTO or eligible detention<sup>2</sup>.

The Mental Health Act Code of Practice requires Hospital Managers to set out a 'Scheme of Delegation' which outlines who is authorised to take which decisions (para 37.9). This Scheme of Delegation aims to meet this requirement.

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<sup>1</sup> For purpose of the Act, the Trust itself is defined as the Hospital Manager (s145(1))

<sup>2</sup> Paras 38.3-38.4 MHA Code of Practice

## FUNCTIONS THAT CANNOT BE DELEGATED TO OFFICERS OF THE TRUST

Function	Statutory reference <sup>3</sup>	Code of Practice <sup>4</sup>	Authorised Person(s)/Committee
Review of renewal of patients' detention and extension of community treatment order	Section 20(3) Section 20A	Chapter 38	Non-executive Directors Associate Mental Health Act Managers
Exercise of hospital managers' power to discharge unrestricted detained patients and those subject to a community treatment order	Section 23(2)(a)	Chapter 38	Non-executive Directors Associate Mental Health Act Managers

## FUNCTIONS THAT CAN BE DELEGATED TO OFFICERS OF THE TRUST

Function	Statutory Reference	Code of Practice	Authorised Person(s)/Committee
Admission of patients under the MHA and to receive applications for detention (the 'receiving officer')	MHA sections 6(2), 40(1), 40(3), 47(3), 45B(2)  Regulation 3	Chapter 37. (paragraph 37.12)	Registered Nurse – Mental Health or LD <sup>5</sup> (Documents for admission will be deemed to have been served by delivering them to an officer acting on behalf of the hospital managers on the admitting ward/unit – ie. Registered Nurse – Mental Health or LD <sup>5</sup> )
Hospital Managers duty to give information to detained patients, those subject to a community treatment order and nearest relatives	S132 & 132A	Chapter 4	Registered Nurse; Named Nurse; Named Workers; Responsible Clinicians; Registered Medical Practitioners; Psychologists; Psychology Assistants; Allied Health Professionals; Social Workers; Nursing Associate; Support workers; <b>Physician Associates/Assistants;</b> Pharmacists; Mental Health Act Administration

<sup>3</sup> Mental Health Act 1983 (as amended by the MHA 2007).

The Mental Health (Hospital, Guardianship and Consent to Treatment) (England) Regulations 2008 (S.I. 1184)

<sup>4</sup> The Mental Health Act 1983 (as amended) Code of Practice (2015)

<sup>5</sup> A Registered Nurse is deemed to be a Registered Nurse in relation to Mental Health and/or Learning Disability if there is an entry on the nurse's professional register stating that the nurse's field of practice is either mental health nursing or learning disabilities nursing

Function	Statutory Reference	Code of Practice	Authorised Person(s)/Committee
Receipt, Scrutiny and Rectification of documents	MHA 11(2) MHA section 15  Regulation 4(3)	Chapter 35 (paragraph 35.4 – 35.9)  Chapter 35 (paragraph 35.11)  Chapter 35 (paragraph 35.12)	Receipt and initial checking of Documents to ensure an application has been duly completed: Registered Nurse – Mental Health or LD <sup>6</sup> Mental Health Act Administration  Administrative Scrutiny & rectification of Documents:- Mental Health Act Administration  Scrutiny of medical recommendations:- A senior clinician, with appropriate clinical expertise, and approved by the Mental Health Legislation Operational Group (MHLOG)
Recording of Admission (Form H3) (for sections 2,3 & 4)	MHA Sections 2,3 and 4  Regulations 4(4) and 4(5)	Chapter 35	Registered Nurse – Mental Health or LD <sup>7</sup>
Recording admission (Section 5(2) – Form H1 section 5(4) – Form H2)	MHA Sections 5(2) and 5(4) Regulation 4(g)	Chapter 18	Mental Health Act Administration Registered Nurse – Mental Health or LD <sup>8</sup> Registered Medical Practitioner or an approved clinician qualified to do so under s5(2)

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<sup>6</sup> See footnote 5

<sup>7</sup> See footnote 5

<sup>8</sup> See footnote 5

Function	Statutory Reference	Code of Practice	Authorised Person(s)/Committee
Receipt of Renewal documentation on behalf of Hospital Managers (Form H5)	MHA Section 20(3)(b) Regulation 13(3)	Chapter 32	Mental Health Act Administration
Receipt of order for the discharge of a patient, or notice of intention to make such an order from detention or CTO by RC or nearest relative	Section 23 Regulation 18	Chapter 32	<del>Mental Health Act Manager</del> Mental Health Act Administration
Decide whether to hold a review of a patient's detention, or CTO, having received a request to do so by the patient, independent mental health advocate, attorney, deputy, or carer <sup>9</sup>		Chapter 38	Mental Health Act administration
Decide whether to hold a review of a patient's detention, or CTO, when a patient's Responsible Clinician makes a report under section 25 (barring order) in response to the nearest relative to discharge a patient. <sup>10</sup>		Chapter 38	Mental Health Act administration

Continued →

<sup>9</sup> See Jones, R (2024). *Mental Health Act Manual* (para 1-420) confirming decision making can be delegated to officers of the hospital

<sup>10</sup> *ibid*

<b>Function</b>	<b>Statutory Reference</b>	<b>Code of Practice</b>	<b>Authorised Person(s)/Committee</b>
Transfer of Authority for detained patients (form H4) (to complete the H4 for transfer out and to receive a H4 for transfer in)	Section 19(1)(a) Regulation 7(2)(a), 7(3)	Chapter 37 (paragraph 37.36 – 37.29)	Decision to transfer detained patient must be made by RC.  Form H4 can be completed/received by Responsible Clinician, a Registered Nurse – Mental Health or LD, and Mental Health Act Administration
Receipt of Community Treatment order (Form CTO1)	Section 17A Regulation 6(1)(a),(b)and 6(2)(a)	Chapter 35 35.16 (paragraph 35.16)	Mental Health Act Administration
Receipt of order varying CTO conditions (Form CTO2)	Section 17B(4) Regulation 6(2)(b)	Chapter 29 (paragraphs 29.40- 29.43)	Mental Health Act Administration
Receipt of extension report for CTO (Form CTO7)	Section 20A(4)(b) Regulations 13(6)(a) (b) and 13(7)	Chapter 32 (paragraphs 32.11- 32.15)	Mental Health Act Administration
Receipt of notice recalling patient from CTO (Form CTO 3)	Section 17E(6) Regulation 6(3)(a)	Chapter 29 (paragraph 29.60)	Mental Health Act Administration
Record of detention in hospital after recall (Form CTO4)	Section 17E Regulations 6(3)(d)	Chapter 29 (paragraph 29.69)	Registered Nurse – Mental Health or LD <sup>11</sup>
Receipt of CTO Revocation order (Form CTO 5)	Section 17F(4) Regulation 6(8)(a) (b)	Chapter 29 (paragraph 29.68 paragraph 29.71)	Mental Health Act Administration
Transfer of recalled CTO Patient to a hospital under different managers (form CTO 6)	Section 17F(2) Regulation 9(3)(a), 9(5)	Chapter 37 (paragraph 37.30)	Decision to transfer made by RC  Mental Health Act Administration

<sup>11</sup> See footnote 5

<b>Function</b>	<b>Statutory Reference</b>	<b>Code of Practice</b>	<b>Authorised Person(s)/Committee</b>
Transfer of responsibility for CTO patient to a hospital under different managers (form CTO10)	Section 19A Regulation 17	Chapter 37 (paragraph 37.31)	Decision to transfer made by RC  Mental Health Act Administration
Duty to refer cases to First Tier Tribunal (Mental Health)	Section 68	Chapter 12 (paragraph 12.10) Chapter 19 (paragraph 19.110) Chapter 37 (paragraph 37.39 paragraph 37.42)	MHA Administration
Duty to request Secretary of State to refer a case to the First Tier Tribunal (Mental Health)	Section 67	Chapter 37 (paragraph 37.45 – 37.46)	Mental Health Act Administration
Transfer to guardianship (Form G6)	Section 19(1)(a) Regulation 7(4)	Chapter 30 (paragraph 30.36	Mental Health Act Administration
Withholding patients' correspondence	Section 134	Chapter 37 (paragraph 37.37)	Ward Manager In ward manager's absence, the Registered Nurse who is in charge of the ward at the time
Duties in respect of Victims of crime- Information for Victims	Domestic Violence, Crime and Victims Act	Chapter 40 (paragraph 40.18 – 40.20) Chapter 37 (paragraph 37.34)	Head of Mental Health Legislation Responsible Clinician Clinical Nurse Manager Ward Manager



## VERSION CONTROL

Version No.	Type of change	Date	Description of change(s)
V4	Update, review and refresh of content and presentation	January 2022	<ul style="list-style-type: none"> <li>• Nursing Associates added giving authorisation to give information to patients under s132 MHA</li> <li>• Definition of MH and LD nurse added for clarity</li> <li>• Requirement of the Trust to have a Scheme of Delegation set out with legal basis</li> <li>• Version control added</li> <li>• Review schedule added</li> <li>• Review history added</li> <li>• Grammatical and format/structure changes</li> </ul>
V5	Routine review	July 2024	<ul style="list-style-type: none"> <li>• Clarification in respect of receiving MHA documents</li> <li>• Clarification in respect of when MHA documents will be deemed to have been served upon the Trust</li> <li>• Staff groups who are authorised to provide information under s132/132A has been widened significantly</li> <li>• Clarification in respect of the receipt and initial checking of MHA documents</li> <li>• Clarification in respect of the administrative scrutiny carried out by the Mental Health Act office</li> <li>• Added that the decision of where clinical scrutineers are agreed is Mental Health Legislation Operational Group (MHLOG)</li> <li>• Added Registered Nurse as being authorised to complete H3, subject to RC consenting to patient transfer</li> <li>• Added Responsible Clinician to being authorised to</li> </ul>

			complete H3 <ul style="list-style-type: none"> <li>• Added that Registered Nurse and Responsible Clinician can also receive H4 on behalf of the Trust</li> <li>• Added role of Registered Medical Practitioner or AC in respect of completing Form H1 (s5(2))</li> <li>• Added nurse in charge to who can withhold correspondence under s134 should ward manager not be on shift</li> </ul>
			<ul style="list-style-type: none"> <li>• Version number and date of document updated</li> <li>• Clarification added in respect of scrutiny of medical recommendations</li> <li>• Error corrected in respect of Form H5</li> <li>• 'Continued' added to make clearer that the Scheme of Delegation had not concluded but continued overleaf</li> <li>• Added delegated decisions to MHA administration regarding the holding of reviews when requested to do so, and when discharge of patient has been barred by Responsible Clinician</li> </ul>

## REVIEW SCHEDULE

Reviewing group	Frequency
Mental Health Legislation Operational Group	Annual (or by exception)
Mental Health Legislation Committee	Annual (or by exception)
SHSC Trust Board	Every three years

## REVIEW HISTORY

Date of Review	Reviewing group
January 2022	Mental Health Legislation Operational Group
June 2023	Mental Health Legislation Operational Group via e-governance (no changes proposed)
June 2023	Mental Health Legislation Committee
Aug 2024	Mental Health Legislation Operational Group
Sep 2024	Mental Health Legislation Committee
Aug 2025	Mental Health Legislation Operational Group
Sep 2025	Mental Health Legislation Committee