### POLICY SUMMARY

The Essex Partnership University NHS Foundation Trust has (EPUT) has a statutory obligation to ensure that its service users, who become subject to the Mental Health Act 1983 as amended by the Mental Health Act 2007 (here after referred to in this document as the ‘Act’) are treated lawfully.

EPUT has produced this policy to regulate the Administrative process its employees and any staff seconded to the Trust must observe when providing services and care for the service users subject to the Act.

The Trust monitors the implementation of and compliance with this policy in the following ways;

- The Trust will monitor the implementation of and compliance of this Policy & Procedure by MHA Audits, Scrutiny of Mental Health Act Documentation. The Policy will be reviewed on an annual basis; however any changes in Mental Health Law may necessitate changes/amendments to be made immediately.

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<tr>
<th>Services</th>
<th>Applicable</th>
<th>Comments</th>
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<td>Trustwide</td>
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The Director responsible for monitoring and reviewing this policy is

**The Executive Nurse**
1.0 INTRODUCTION

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ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST

POLICY FOR THE ADMINISTRATION OF THE MENTAL HEALTH ACT 1983

1.0 INTRODUCTION

1.1 Essex Partnership University NHS Foundation Trust (EPUT) has a statutory obligation to ensure that its service users who become subject to the Mental Health Act 1983 as amended by the Mental Health Act 2007 (hereafter referred to in this document as the 'Act') are treated lawfully.

1.2 EPUT has produced this policy to regulate the administrative process its employees and staff who may be seconded to the Trust must observe when providing services and care for a service user subject to the Act.

1.3 Failure to comply with this Policy may leave individual Practitioners and the Trust liable to legal proceedings.

2.0 DUTIES

2.1 In England, NHS Hospitals are managed by NHS Trusts, NHS Foundation Trust and Clinical Commissioning Groups. For these Hospitals, the Trusts themselves are defined as the Hospital Managers for the purposes of the Act.

2.2 In an Independent Hospital, the person or persons in whose name the Hospital is registered are the ‘Hospital Managers’. It is the Hospital Managers who have 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.

2.3 Individuals subject to the particular Sections of the Act have the right to appeal to the Associate Hospital Managers to be released from the Act. The Associate Hospital Managers have a duty to review all the evidence; and do have the powers to discharge an individual if they determine that it is right and lawful to do so.

2.4 If an individual’s detention is to be renewed by the Responsible Clinician, the Associate Hospital Managers must always decide whether the individual should be discharged. A Renewal Hearing must take place with 3 or more Associate Hospital Managers present. They will review all the relevant reports provided by the Specialist Care Team and they will take time to hear the individual themselves. The detained person has the right to be represented at the Renewal Hearing by a Solicitor, Advocate or Relative. It is the Hospital Managers’ duty to decide whether the individual's detention is renewed or that they should be discharged.
2.5 On occasions ‘Paper Reviews’ will take place for uncontested Renewal Hearings. The decision to complete a ‘Paper Review’ will be predicated on whether:-

- The Associate Director for Professional Development/Mental Health Act Senior Manager/Mental Health Act Manager/Mental Health Act Administrator has received a capacity statement from either the Responsible Clinician or the Care Co-ordinator that indicates that, in their opinion, the service user has the capacity to decide that they neither wish to contest or attend, nor avail themselves of legal support at their Renewal Hearing;
- Have a written request for a ‘Paper Review’ from the service user’s Solicitor.

3.0 DEFINITIONS

3.1 This policy confirms the Trust’s commitment to providing services and care within the confines of current statutory legislation, thereby meeting its statutory obligations.

3.2 The policy will provide the foundation of consistent administrative processes for all Trust employees or any staff seconded to the Trust, to confidently administer, reassure and advise a service user who is subject to the Act; or the service user’s lawful nearest relative.

3.3 This policy applies to all EPUT employees and any staff seconded to the Trust’s services; but specifically to Associate Director for Professional Development/Mental Health Act Senior Manager/Mental Health Act Managers, Mental Health Act Administrators and any other Mental Health Act Administration staff, Clinicians, Approved Mental Health Professionals who come into contact with service users who are subject to the Act. This policy supports the Mental Health Act Administration Procedural Guideline in respect of their actions of administration when a service user becomes, or is subject to the Act and it must be adhered to at all times.

3.4 This policy is not within scope to direct employees and any staff seconded to the Trust as to when a service users should, or should not become subject to the Act.

4.0 PRINCIPLES

4.1 To ensure that EPUT meets its obligations to administer and manage a service user lawfully, whilst subject to the Act.

4.2 That EPUT employees and any staff seconded to the Trust services have clear guidelines of a single administrative process to follow, enabling them to comply with the legal framework that governs the rights of an individual who is subject to the Act.
5.0 MONITORING OF IMPLEMENTATION AND COMPLIANCE

5.1 Specific statutory forms must be used when a service user becomes subject to the Act.

5.2 The Trust's Hospital Managers delegate their duties to receive and scrutinise the statutory forms to the Associate Director for Professional Development/Mental Health Act Senior Manager/Mental Health Act Manager/Mental Health Act Administrator for the Trust. The statutory forms will be scrutinised for accuracy and completeness; to ensure they do not reveal any infringement to comply with procedural requirements within the Act.

Scheme of Delegation – Any of the following matters – Part A

- Admission and detention of patients
- Receipt and scrutiny of documents for the detention or treatment of patients under Part 2, Part 3 or Part 4 of the Mental Health Act
- Recording the admission of patients
- Receipt of documents for the renewal of patients detention or treatment under Part 2, Part 3 or Part 4 of the Mental Health Act
- Authorisation for the transfer of patients
- Supply of information to patients and relatives
- Withholding of patients correspondence
- Authorising persons to keep in custody patients on leave of absence when considered necessary under Section 17(3) of the Mental Health Act
- Authorising persons to take and convey patients to hospital in accordance with Regulations 11 & 12 (of the MHA 2008 Regulations) or Section 18 of the Mental Health Act

For each of these matters in Part A any one of the following members of staff of the Trust have the delegated authority:-

- Executive Nurse
- Associate Director for Professional Development
- Operational Service Manager
- Clinical Manager
- Mental Health Act Senior Manager
- Mental Health Act Manager
- Mental Health Act Administrator
- Ward Manager
- Charge Nurse
- Staff Nurse

Scheme of Delegation – Any of the following matters – Part B

- Ratification and (rectification if appropriate) of applications and of the supporting medical recommendations for detention of patients (Section 15(1) Mental Health Act 1983.
- Referral of patients to Mental Health Review Tribunals (Code of Practice – 12. 10)
• Submission of statements to Mental Health Review Tribunals (Code of Practice – 12.10)
• Authorisation for the assignment of responsibility for a Community Patient to another hospital and recording the agreement of the Managers of the new responsible hospital (in accordance with MHA Regulation 17 of the 2008 Regulations).
• Agreement to assignment of responsibility for a Community Patient by receiving hospital
• Notifying local Social Services authorities of patients detained on the basis of applications by the Nearest Relative (under Section 14 Mental Health Act).

For each of these matters in Part B any one of the following members of staff of the Trust have the delegated authority:-

- Executive Nurse
- Associate Director for Professional Development
- Operations Service Manager
- Mental Health Act Senior Manager
- Mental Health Act Manager
- Mental Health Act Administrator

Medical recommendations should be scrutinised by an appropriate clinician (section 12 approved) with the expertise to check that the reasons for application are sufficient to support the detention of an individual.

**Scheme of Delegation** – The following matter – Part C

- Receipt of Nearest Relative’s notice to discharge a patient and receipt of Responsible Clinician’s report under Section 25 of the Mental Health Act

For the matter in Part C any one of the following members of staff of the Trust has the delegated authority:-

- Associate Director for Professional Development
- Mental Health Act Senior Manager
- Mental Health Act Manager
- Mental Health Act Administrator

5.3 It is the responsibility of the Mental Health Act Senior Manager/Mental Health Act Manager/Mental Health Act Administrator for the Trust to ensure that the details of an individual’s Mental Health Act spell and its associated activities are recorded accurately onto the respective electronic patient records (Mobius & Paris). This will support the administering of the various complex components of the Act, including all types of appeal hearing, treatment documentation and correspondence. In addition this will allow for centralised data collection within the Mental Health Minimum Data Set.
5.4 The Mental Health Act Procedural Guidance document will identify the individual Sections of the Act that can be utilised to: -

- Convey an individual to Hospital;
- Transfer an individual from one Hospital to another, including outside the UK;
- Admit an individual to Hospital;
- Hold an individual and prevent them from leaving Hospital;
- Detain an individual within a Hospital;
- Assess an individual for Mental Disorder;
- Treat an individual who becomes subject to the Act;
- Notifying the Care Quality Commission of a death of a detained patient.

5.5 The Mental Health Act Procedural Guidance document will outline the specific lawful documents that need to be accurately and timely completed to ensure that an individual is not kept detained or treated unlawfully.

5.6 The relevant documentation can be obtained from the Mental Health Act Offices or a small supply can be found in Ward Offices across the Trust. Once completed the documentation must be returned to the relevant Mental Health Act Office in order that a full administrative and medical scrutiny of the documents can take place to ensure that the Trust meets its legal obligation to any individual who becomes subject to the Act.

5.7 Medical Recommendations should be scrutinised by an appropriate clinician with the expertise to check that the reasons for application are sufficient to support the detention of an individual.

6.0 POLICY REFERENCES / ASSOCIATED DOCUMENTATION

6.1 External documentation to be read in conjunction with this policy:-

- Mental Health Act 1983
- The Mental Health Act Code of Practice
- Care Quality Commission – Guidance Notes – The admission of Children & Adolescents to Adult Mental Health Wards and the duty to provide Age Appropriate Services. www.cqc.org.uk

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7.0 REFERENCE TO OTHER TRUST POLICIES/PROCEDURES

7.1 Suggested Policies to be read in conjunction with this Policy:

- Section 136 Policy – Joint Policy with Essex Police – MHA20
- ECT Treatment Policy & Procedure – CLP26
- Community Treatment Order Procedural Guidelines – MHAPG30
- Missing Person Policy – CLP34
- Consent to Examination or Treatment Guidelines – CLP16
- Advance Directives Guidelines – CG6
- Search Policy – CLP75
- Mental Capacity Act and Deprivation of Liberty Safeguards Policy – MCP2
- Care Programme Approach (CPA) and Non CPA Policy – CLP30
- Clinical Risk Management Policy - CLP28
- Engagement and Supportive Observation Policy – CLP8
- Policy on Joint Working between Mental Health and Learning Disability teams within Essex – CLP66

END