

GUIDELINES ON SECTION 5(4) NURSES SIX HOUR HOLDING POWER

Document Summary

Guidance on the use and implementation of Section 5(4) of the Mental Health Act (1983) as amended by the Mental Health Act (2007) in relation to the Nurses Holding power to ensure compliance with MHA Code of Practice in respect of the application of the Mental Health Act (1983)

DOCUMENT NUMBER	POL/001/005/004
DATE RATIFIED	September 2017
DATE IMPLEMENTED	October 2017
NEXT REVIEW DATE	October 2019
ACCOUNTABLE DIRECTOR	Director of Quality & Nursing
POLICY AUTHOR	Head of MHLU & Legal Services

Important Note:

The Intranet version of this document is the only version that is maintained.

Any printed copies should therefore be viewed as “uncontrolled” and, as such, may not necessarily contain the latest updates and amendments.

TABLE OF CONTENTS

1	SCOPE.....	3
2	INTROUCTION	3
3	STATEMENT OF INTENT	3
4	DEFINTIONS / ABBREVIATIONS.....	3
5	DUTIES.....	4
6	DETAILS OF THE PROCEDURAL PROCESS.....	4
	6.1 GROUNDS FOR DETENTION.....	4
	6.2 ASSESSMENT BEFORE IMPLEMENTATION OF SECTION 5(4).....	4
	6.3 THE APPLICATION	5
	6.4 TREATMENT OF PATIENTS DETAINED UNDER SECTION 5(4).....	6
	6.5 USE OF RESTRAINT	6
	6.6 ABSENCE WITHOUT LEAVE (AWOL)	6
	6.7 PATIENTS RIGHTS	6
	6.8 LOCKING WARD DOORS	6
7	TRAINING.....	6
8	MONITORING COMPLIANCE	6
9	REFERENCES / BIBLIOGRAPHY	7
10	Related Trust Policy/Procedures.....	7
	Appendix 1: Form H2	8

1 SCOPE

The use of Section 5(4) of the Mental Health Act (1983) within Cumbria Partnership NHS Foundation Trust

2 INTRODUCTION

These procedural guidelines have been formed by the Mental Health Act 1983, Code of Practice 2015, and Reference Guide to the Mental Health Act 2015

When it is necessary to invoke Section 5(4) of the Mental Health Act 1983 it is understood that the prescribed level nurse will be acting in a professional capacity on behalf of Cumbria Partnership NHS Foundation Trust and the action taken within these guidelines will be supported by Cumbria Partnership NHS Foundation Trust.

3 STATEMENT OF INTENT

To provide guidance on the operation of section 5(4) of the Mental Health Act (1983) in compliance with the Code of Practice 2015. The Code of Practice provides statutory guidance to registered medical practitioners, approved clinicians, managers and staff of providers and approved mental health professionals on how they should proceed when undertaking duties under the MHA (83). However, everyone within the organisation has a role in ensuring that the MHA (83) and the Code are complied with. The Code applies to the care and treatment of all patients in England who are subject to the exercise of powers and the discharge of duties under the MHA (83). The Code requires all those undertaking functions under the MHA (83) understand the five sets of overarching principles which should always be considered when making decisions in relation to care, support or treatment provided under the Act. Those key principles are;

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

All decisions must be lawful and informed by good professional practice. Lawfulness necessarily includes compliance with the Human Rights Act 1998 (HRA) and Equality Act 2010.

4 DEFINITIONS / ABBREVIATIONS

Nurses may not authorise the detention of patients who are not already receiving in-patient treatment for mental disorder in the hospital.

An inpatient is defined as one who has understood and accepted the offer of a bed, who has freely appeared on the ward, and who has co-operated in the admission procedure.

AC	Approved Clinician
AMHAHM	Associate Mental Health Act Hospital Manager
AMHP	Approved Mental Health Professional
AWOL	Absent Without Leave
CoP	Code of Practice
CrtP	Court of Protection
CTO	Community Treatment Order
LSSA	Local Social Services Authority
MDT	Multi-disciplinary team
MHA (83)	Mental Health Act 1983
MHAA	Mental Health Act Administrator
MHAHM	Mental Health Act Hospital Manager
MHLO	Mental Health Legislation Officer
MHLU	Mental Health Legislation Unit
MHT	Mental Health Tribunal
MoJ	Ministry of Justice
RC	Responsible Clinician
SCT	Supervised Community Treatment

5 DUTIES

5.1 Mental Health Act Hospital Managers

The Mental Health Act (1983) requires the Trust's Mental Health Act Hospital Managers have in place policy, procedures and guidelines in respect of application of the nurse holding powers under Section 5(4) of the Act

5.2 Executive Director of Operations and Executive Nurse

The Director of Quality & Nursing is the accountable Director for this policy.

5.3 The Responsible Clinician and Unit/Ward Manager

The Responsible Clinician and Unit/Ward Manager have management responsibility for ensuring this policy is implemented.

6 DETAILS OF THE PROCEDURAL PROCESS

6.1 GROUNDS FOR DETENTION

An inpatient is suffering from mental disorder to a degree that makes it necessary for his/her health or safety or for the protection of others, for him/her to be immediately restrained from leaving hospital. It can only be used if the patient is indicating either verbally or otherwise that he/she wishes to leave the hospital premises.

And

It is not practicable to secure the immediate attendance of a doctor or approved clinician for the purpose of furnishing a report under Section 5(2).

6.2 ASSESSMENT BEFORE IMPLEMENTATION OF SECTION 5(4)

Before using Section 5(4) the nurse should assess

(a) The likely arrival time of the doctor as against the likely intention of the patient to leave. Most patients who express a wish to leave hospital can be persuaded to wait until a doctor arrives to discuss it further. Where this is not possible the nurse must try to predict the impact of any delay upon the patient.

(b) The consequences of a patient leaving hospital immediately, the harm that might occur to the patient or others, taking into account:

- What the patient says he will do;
- The likelihood of the patient committing self-harm;
- The patient's current behaviour and in particular any changes in usual behaviour;
- The likelihood of the patient's behaving in a violent manner;
- Any recently received messages from relatives or friends;
- Any recent disturbances on the ward/unit (which may or may not involve the patient);
- Any relevant involvement of other patient's;

(c) The patient's known unpredictability and any other relevant information from other members of the multi-disciplinary team

6.3 THE APPLICATION

The use of the holding power under Section 5(4) of the Mental Health Act 1983 gives the power to detain patients in hospital for maximum of 6 hours. It is a personal decision of the nurse who cannot be instructed to exercise this power by anyone else. A nurse of the prescribed class shall be a nurses registered in sub-parts 1 or 2 of the register maintained by the Nursing and Midwifery Council whose entry in the register indicates that their field of practice is either mental health nursing or learning disabilities nursing.

The holding power begins after the nurse has recorded his/her opinion on FORM H2 (**APPENDIX 1**). This must be delivered to MHLO as soon as possible after completion. It is essential that:

- a) the reasons for invoking the power are entered in the patient's nursing and medical notes. Details of any patients who remain subject to the power at the time of a shift change should be given to staff coming on duty.
- b) The use of Section 5(4) is an emergency measure and the doctor should treat it as such, arriving as soon as possible.
- c) The holding power lapses upon the arrival of the doctor. The doctor/AC can either complete a report under Section 5(2) or he/she may decide not to detain the patient.
- d) If it is not possible to obtain the attendance of a doctor within the prescribed period the nurse should contact the on call manager for advice

A section 5(4) cannot be immediately renewed – further detention can only be by section 5(2).

6.4 TREATMENT OF PATIENTS DETAINED UNDER SECTION 5(4)

Part IV of the Act does not apply to a patient under section 5(4). A patient detained under section 5(4) who has capacity to consent can only be treated if he or she consents to the treatment. Patients who lack capacity to consent may only be treated under the provisions of the Mental Capacity Act (2005)

6.5 USE OF RESTRAINT

A nurse invoking Section 5(4) is entitled to use the minimum force necessary to prevent the patient from leaving hospital. See Dealing with Aggression and Violence Policy for guidelines on restraint. For those individual lacking capacity regards must be given to the procedures for the use of restraint outlined in the Mental Capacity Act Code of Practice

6.6 ABSENCE WITHOUT LEAVE (AWOL)

An Approved Mental Health Professional, an officer on the staff of the hospital or a police officer, may retake a patient detained under Section 5(4) who is AWOL. The patient cannot be retaken if he/she remains out of custody beyond the six-hour period of the order.

6.7 PATIENTS RIGHTS

The senior nurse on the ward should explain to the patient, in private, why Section 5(4) is needed, Rights Leaflet Number One to be given to the patient.
Section 132 Patient Rights policy to be followed.

6.8 LOCKING WARD DOORS

If the ward doors need to be locked to prevent the detained patient from leaving hospital, Guidelines on Locking Ward Doors on Open Wards is to be followed.

7 TRAINING

Training required to fulfil this policy will be provided in accordance with the Trust's Training Needs Analysis. Management of training will be in accordance with the Trust's Learning and Development Policy

8 MONITORING COMPLIANCE WITH THIS DOCUMENT

The table below outlines the Trusts' monitoring arrangements for this policy/document. The Trust reserves the right to commission additional work or change the monitoring arrangements to meet organisational needs.

Aspect of compliance or effectiveness being monitored	Monitoring method	Individual responsible for the monitoring	Frequency of the monitoring activity	Group / committee which will receive the findings / monitoring	Group / committee / individual responsible for ensuring that the

				report	actions are completed
Use does not exceed the maximum periods identified in the guidelines	Administrative Scrutiny	Mental Health Legislation Officer	Quarterly	MHA Hospital Managers & Associates	MHA Hospital Managers & Associates
Number of Sec 5(4) converted to 5(2)	Administrative Scrutiny	Mental Health Legislation Officer	Quarterly	MHA Hospital Managers & Associates	MHA Hospital Managers & Associates

9 REFERENCES/ BIBLIOGRAPHY

Human Rights Act 1998 c.42
Mental Health Act 1983 c.20
Department of Health, Code of Practice Mental Health Act 1983 (TSO 2015)
Reference Guide to the Mental Health Act 1983 (TSO 2015)
The Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008 S.I. 1184

10 RELATED TRUST POLICY/PROCEDURES

- [POL/001/005/013](#) Consent to Treatment, Part IV Mental Health Act 1983
- [POL/001/005/005](#) Informal Patients Leave Arrangements Guidelines
- [POL/001/005/007](#) Mental Health Act Guidelines on Receipt and Scrutiny of Section Papers
- [POL/001/005/003](#) Mental Health Act Guidelines on Section 5 (2) 72 Hour Holding Power
- [POL/001/005/015](#) Policy and Guidance on Section 132, 132A and 133 Patient's Rights
- [POL/001/005/006](#) Section 17 Leave of Absence MHA (1983) Guidelines

Appendix 1: Form H2

Regulation 4(1)(h)

Mental Health Act 1983 section 5(4)—record of hospital in-patient

To the managers of [name and address of hospital]

.....
.....
.....

[PRINT full name of the patient]

.....
.....
.....

It appears to me that—

- (a) this patient, who is receiving treatment for mental disorder as an in-patient of this hospital, is suffering from mental disorder to such a degree that it is necessary for the patient's health or safety or for the protection of others for this patient to be immediately restrained from leaving the hospital;

AND

- (b) it is not practicable to secure the immediate attendance of a registered medical practitioner or an approved clinician (who is not a registered practitioner) for the purpose of furnishing a report under section 5(2) of the Mental Health Act 1983.

I am [PRINT full name],

.....
.....
.....

a nurse registered—

<Delete whichever do not apply>

- (a) in Sub-Part 1 of the register, whose entry includes an entry to indicate the nurse's field of practice is mental health nursing;
- (b) in Sub-Part 2 of the register, whose entry includes an entry to indicate the nurse's field of practice is mental health nursing;
- (c) in Sub-Part 1 of the register, whose entry includes an entry to indicate the nurse's field of practice is learning disabilities nursing;
- (d) in Sub-Part 2 of the register, whose entry includes an entry to indicate the nurse's field of practice is mental health nursing.

Signed.....

Date.....

Time.....