Cumbria Partnership NHS
NHS Foundation Trust

Mental Health Act Guidelines on Section 5(2) 72 Hour Holding Power

Document Summary

Guidance on the use and implementation of Section 5(2) 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)

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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.

Here for you

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1 SCOPE

The use of Section 5(2) 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

Where it is necessary to invoke Section *5(2)* of the Mental Health Act 1983 it is understood that an Approved Clinician or Doctor 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 MHA (83) (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 MHA (83). 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

Doctors and AC's 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 MHA (83)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 MHA (83)

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 THE SECTION 5(2) PROCESS

6.1 Grounds for Detention

The 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.

For the purpose of Section 5(2), informal patients are usually voluntary patients, that is, those who have the capacity to consent and who consent to enter hospital for in-patient treatment. Patients who lack the capacity to consent but do not object to admission for treatment may also be informal patients. Admission procedures should not be implemented with the sole intention of the use the power in section 5(2).

6.2 The Application

The application, which authorises the detention of the patient for up to 72 hours, can be used only where the doctor in-charge of the treatment of an informal patient, or an Approved Clinician, or the doctor's nominated deputy, concludes that an application for admission under one of the relevant sections of the MHA (83) is appropriate. A professional who is treating the patient under the direction of another professional should not be considered to be in-charge. For this purpose, informal in-patients includes those who are being treated for physical disorders that need treatment for a mental disorder. The period of detention commences the moment the **Mental Health Act 1983 section 5(2)—report on hospital in-patient** (**Appendix 1: Form H1**) is delivered to the Hospital Managers, or someone authorised to receive such a report (see policy on Guidelines on receipt and scrutiny of section papers).

The patient's doctor, nominated deputy or Approved Clinician will only use the power immediately after having personally examined the patient. The applicant will not complete a section 5(2) Form H1 and leave it on the ward with instructions for others to submit it to the Hospital Managers or someone authorised to receive such a report, if in their view the patient is about to leave.

The applicant will contact the AMHP via Customer Services to notify them that Section 5(2) has been implemented. Out of hours the applicant will notify the Urgent Care Team on telephone 01228 526690.

Detention under section 5(2) will end immediately where:

- the doctor or approved clinician decides that, in fact, no assessment for a possible application needs to be carried out, or
- a decision is taken not to make an application for the patient's detention.
- The section 5(2) cannot be renewed, but circumstance may arise where, subsequent to its use and the patient's reversion to informal status, its use can be considered again.

6.3 Nominated Deputy

Only a doctor or AC on the staff of the same hospital may be a nominated deputy (although the deputy does not have to be a member of the same profession as the person nominating them). Only one deputy may be authorised at any time for any patient, and it is unlawful for a nominated deputy

to nominate another. It is acceptable to identify the doctor other than by name (i.e. by nominating "the doctor on call for the hospital") if all doctors on such rota are competent to undertake the role. The deputy will then act on their own responsibility. Any Doctor who is not either Section 12(a) Approved or an AC should seek advice from such.

6.4 Treatment of Patients Detained Under Section 5(2)

Part IV of the MHA (83) does not apply to a patient under section 5(2). A patient detained under section 5(2) 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 doctor or AC invoking Section 5(2) is entitled to use (or authorise others to do so) 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 regard 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 AMHP, an officer on the staff of the hospital or a police officer, may retake a patient detained under Section 5(2) who is AWOL. The patient cannot be retaken if he/she remains out of custody beyond the 72-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(2) is needed, Rights Leaflet should be to be given to the patient. *Section 132 Patient Rights* policy must 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.

6.9 Transfer to Other Hospitals

Patients detained under Section 5(2) of the MHA (83) are not detained by virtue of an application, and therefore the transfer provisions of Section 19 do not apply. Transfers of patients on Section 5(2) can be affected in the following circumstances:

- When the patient is consenting.
- Where there is a pressing need and transfer would be lawful under Common Law. In such circumstances, the transfer would be considered as part of the

emergency treatment. All such cases should be fully documented, and monitored by the hospital managers.

- If the patient lacks capacity to consent to the transfer, any transfer must be carried out in accordance with the MCA, including that it is in the person's best interests and any restrictions on the person's liberty are permitted by the MCA.
- If, following transfer, the patient tries to leave the receiving hospital, a new situation will have arisen. In this circumstance, the receiving hospital may need to use section 5(2) to provide authority to detain the patient in that hospital.
- Where hospitals are comprised of two or more sites, this is the equivalent in law to transferring a patient from one ward to another, within a single hospital.
- The Care Quality Commission considers that it is undesirable to transfer acutely disturbed patients. This practice can be dangerous, disruptive and frightening for the patient.
- When transfer to more appropriate facilities is indicated, the patient should be fully assessed to determine whether detention under Section 2 , 3 or 4 is required.

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 report**	**Group / committee / individual responsible for ensuring that the 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
Use is by a	Administrative	Mental Health	Quarterly	MHA Hospital	MHA Hospital

Registered Doctor only	Scrutiny	Legislation Officer		Managers & Associates	Managers & Associates
All patients detained receive appropriate Section 132 rights information.	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
POL/001/008	Prevention and Management of Violence and Aggression (PMVA)

Appendix 1: Form H1

Regulation 4(1)(g)

Mental Health Act 1983 section 5(2)—report on hospital in-patient

PART 1
(To be completed by a medical practitioner or an approved clinician qualified to do so under section 5(2) of the Act)

To the managers of [name and address of hospital]
……
……
……
I am [PRINT full name]
……
……
……
and I am
<*Delete (a) or (b) as appropriate*>

(a) the registered medical practitioner/the approved clinician (who is not a registered medical practitioner)<*delete the phrase which does not apply*>
(b) a registered medical practitioner/an approved clinician (who is not a registered medical practitioner)* who is the nominee of the registered medical practitioner or approved clinician (who is not a registered medical practitioner)
<**delete the phrase which does not apply*>

in charge of the treatment of [PRINT full name of patient],
……
……
……
who is an in-patient in this hospital and not at present liable to be detained under the Mental Health Act 1983. It appears to me that an application ought to be made under Part 2 of the Act for this patient's admission to hospital for the following reasons—
……
……
……..
[The full reasons why informal treatment is no longer appropriate must be given. If you need to continue on a separate sheet please indicate here [ ] and attach that sheet to this form.]

I am furnishing this report by: <*Delete the phrase which does not apply*>
consigning it to the hospital managers' internal mail system today at [time]
delivering it (or having it delivered) by hand to a person authorised by the hospital managers to receive it.

Signed……

Date……

PART 2

(To be completed on behalf of the hospital managers)

This report was <*Delete the phrase which does not apply*>

furnished to the hospital managers through their internal mail system
delivered to me in person as someone authorised by the hospital managers to receive this report at [time] on [date] ……

Signed……..

on behalf of the hospital managers

PRINT NAME…….

Date……