South West London and St George's NHS
Mental Health NHS Trust

GUIDANCE ON SECTION 5(2) AND SECTION 5(4) OF THE MENTAL HEALTH ACT 1983
~ HOLDING POWERS ~

Version:	1.0
Ratified by:	Mental Health Law Governance Group
Date ratified:	10/09/2012
Name of originator/author:	Mental Health Act Manager
Name of responsible committee/individual:	Mental Health Law Governance Group
Date issued:	September 2012
Review date:	September 2014
Target audience:	Clinical Staff
Document Reference:	

Version Control Summary

Version	Date	Status	Comment/Changes

Executive Summary

This policy provides guidance on the use of holding powers available to doctors and approved clinicians under section 5(2) of the Act and to certain nurses under section 5(4).

1. Introduction

This policy sets out the Trusts procedure for implementing the Acts Holding Powers lawfully. It gives a definition of an informal patient, explains the nature of the power and the identity of the person who can carry out this power. This policy also sets out how the Hospital Managers should monitor the use of section 5.

This guidance has been written in accordance with:

- The Mental Health Act 1983 hereafter referred to as 'the Act'.
- The Code of Practice 2008 hereafter referred to as 'the Code'.

Appendices

Appendix A – Cessation Form

2. Purpose

The purpose of this policy is to clearly explain the Trusts procedure for holding powers.

3. Duties & Ratification process

Key Area	Lead Director	Working Group	Ratification Body
Mental Health Act	Medical Director		Mental Health Law Governance Group

4 Policy

4.1 Definition of an Informal Patient

Para 12.6 of the Code states that an informal patient, for the purposes of section 5 of the Act is *'… any person who is receiving in-patient treatment in a hospital, except a patient who is already liable to be detained under section 2, 3 or 4 of the Act, or who is a supervised community treatment patient. It includes patients who are in hospital by virtue of a deprivation of liberty authorisation under the Mental Capacity Act 2005….'*

4.2 Who is authorised to exercise the power of section 5(2)

4.2.1 Only the doctor or approved clinician in charge of the treatment of a hospital in-patient is authorised to use this power after personally examining the patient. The identity of this person may depend on particular circumstances, for example, where a patient is already receiving treatment for both a physical and mental disorder. In this case, the psychiatrist or approved clinician in charge of treatment for the mental disorder would be the preferred doctor to use the holding power.

4.2.2 Section 5(3) of the Act allows this identified doctor or approved clinician to nominate a deputy to exercise the holding power in their absence. The deputy must then act on their own responsibility so should be competent to perform the role.

4.2.3 If a nominated deputy is not an approved clinician or section 12 approved, they should seek advice from a suitably qualified person, ie a section 12 approved doctor or approved clinician before using section 5(2).

4.2.4 If a nominated deputy exercises their power, they should inform the person they are deputising for as soon as practicable.

4.2.5 A nominated deputy can be nominated by title, rather than name. South West London normally delegates this power to the junior doctor on call for particular wards / hospitals. Each ward should be provided with or know how to find out who the nominated deputy is at a particular time.

4.3 Section 5(2) Procedure

4.3.1 Section 5(2) authorises the detention of an in-patient for a maximum of up to 72 hours for the purpose of assessing the patient with a view to an application for continued detention being made.

4.3.2 The 72 hour detention period begins at the time the Form H1 is delivered in person to an Authorised Officer or when it is put in the internal mail system. The 72 hours will include any time spent on section 5(4) if relevant.

4.3.3 The Trust acknowledges receipt of this report and records the date and time that the power begins, when the Authorised Officer completes part 2 of Form H1.

4.3.4 Any rights under section 5(2) should be explained to the patient as soon as is practicable. Information given to the patient should be recorded on the s.132 Form.

4.3.5 If the patient is intent on leaving the hospital between the time of his/her examination and the time when the completed Form H1 is delivered to the authorised person, the Common Law powers should provide authority for the patient to be detained during that period. Once the Form H1 has been received by the authorised person, the patient can be detained <u>even though he/she may have left the ward by that time</u>.

4.3.6 If however, the patient has left the hospital before the Form H1 has been received, there is no authority for detention and return to hospital. As such, in these circumstances the patient would have relinquished their in-patient status which is a prerequisite for using section 5(2). This is the interpretation of in-patient status according to the Code of Practice. However, consideration may be given for exercising Common Law powers.

4.3.7 Patients detained under Section 5(2) are not subject to Consent to Treatment provisions of the Act. Treatment can only be given with the patient's consent or in an emergency under the Common Law "doctrine of necessity in his/her own best interests".

4.3.8 The power cannot be renewed but circumstances may arise where, subsequent to its use and the patient's reversion to informal status, its use can be considered again.

4.3.9 As soon as the report is furnished to the hospital managers, arrangements for an assessment to consider an application under section 2 or 3 should be put in place.

4.3.10 The holding power will automatically end after:

- The approved clinician or Approved Mental Health Professional 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.

Appendix A should be completed and forwarded to the Mental Health Act Office.

4.3.11 The patient should be informed immediately that they are no longer detained under this holding power and are free to leave the hospital.

4.4 Who is authorised to exercise the power of Section 5(4)

4.4.1 Para 12.21 of the Code states that *'Nurses of the 'prescribed class may invoke a section 5(4) of the Act in respect of a hospital in-patient who is already receiving treatment for mental disorder.'*

4.4.2 Before invoking a section 5(4), the nurse should:

- Attempt to secure the immediate attendance of the doctor, approved clinician or the nominated doctor, who will decide what action is to be taken, i.e. either implementation of Section 5(2) or allowing the patient to leave hospital.

- If it is not possible to secure immediate attendance of the doctor, approved clinician or the nominated doctor, the nurse should attempt to encourage the patient to remain in hospital until they can be seen by the doctor.

- Only after all avenues of persuasion have failed and the above steps have been taken should the nurse consider Section 5(4).

4.5 Section 5(4) Procedure

4.5.1 The nurse should attempt to secure the immediate attendance of the doctor, approved clinician or the nominated deputy, who will decide what action is to be taken, i.e. either implementation of Section 5(2) or allowing the patient to leave hospital.

4.5.2 If it is not possible to secure immediate attendance of the doctor, the nurse will attempt to convince the patient to remain in hospital until he/she can be seen by the doctor.

4.5.3 Only after all avenues of persuasion have failed and the above steps have been taken should the nurse consider Section 5(4).

4.5.4 The nurse should consider the factors as set out in chapter 12.28 of the Code of Practice before invoking the section such as the likelihood of the patient harming themselves or others; any evidence of disordered thinking; and any formal risk assessments which have been undertaken.

4.5.5 The registered nurse should complete the Form H2 to detain the patient under section 5(4).

4.5.6 The patient should be informed of the effect of Section 5(4) and a s132 form should be completed once their rights have been explained.

4.5.7 The change in the patient's care and status should be fully documented and communicated to all relevant staff.

4.5.8 When the doctor arrives, assesses and decides to complete a report for Section 5(2) the total time (72 hours) is inclusive of any time the patient is detained under Section 5(4).

4.7 Section 5(4) Good Practice

4.7.1 The Code of Practice emphasises that Section 5(4) is an emergency measure and the doctor should treat it as such by arriving as soon as possible.

4.7.2 Where no doctor attends within six hours the holding power ceases, and the patient becomes informal.

4.7.3 The Ward Manager or nominated deputy will give an oral report to the Service Manager or on-call Manager. A written report should be sent to the Chief Executive.

4.7.4 Within 24 hours a full report will be written by the registered nurse who completed Form H2. This will be sent to the Mental Health Act Manager who will keep a record for the benefit of the Care Quality Commission. The Mental Health Act Manager will place a copy in the patient's notes and will send a copy to the Manager of the Acute Mental Health Services.

4.8 Transfer whilst on Section 5

4.8.1 Para 12.40 of the Code states: *'It is not possible for patients detained under section 5 to be transferred to another hospital under section 19 …'*

4.8.2 Transfer within the same hospital grounds is possible for a patient being held on a section 5(2), for example if being transferred to another more suitable ward.

4.8.3 It is not possible to transfer a non-consenting patient to the PICU ward at Springfield Hospital from any other hospital as the patient would be deemed informal when they left the original hospital site.

4.8.4 If it is deemed of urgent necessity to transfer a patient on a section 5(2) to the PICU ward at Springfield Hospital, an AMHP must decide whether the criteria is met for Section 4.

4.8.5 A section 4 assessment must take place and the patient transferred to the PICU on this section.

4.9 Absent without Leave – AWOL

4.9.1 If a patient is liable to detention under section 5(2), they may be returned from a period of absence without leave (AWOL) within the duration of the original liability to detention.

4.9.2 If a patient liable to detention under section 5(2) is returned from a period of AWOL, the Act makes no provision for an extension of that section. Staff must complete their assessment of the patient's mental health and detain them under a further section of the Act if appropriate, within the time remaining of the original liability to detention.

4.9.3 Once the section has lapsed, a new assessment and further detention, other than under section 5(2) would be required before there would be authority under the Act to return the patient to hospital against their will.

5. Consultation Process

This policy has been developed by the Mental Health Act Department. After an adequate consultation period with those professionals involved in the use of Section 5(2) and 5(4), the policy is ratified by the Mental Health Law Governance Group.

6. Training Needs

The Trust must ensure that ward staff are made fully aware of the nominated deputy for a particular patient / ward and must ensure that sufficient numbers of s12 approved doctors are available at all times.

The Trust must also ensure that suitably qualified, experienced and competent nurses are available to all wards where there is a possibility of section 5(4) being invoked. Where nurses may have to apply the power to patients from outside their specialist field, it is good practice for hospital managers to arrange suitable training in the use of the power in such situations.

7. Monitoring Compliance With and the Effectiveness of Procedural Documents

The Hospital Managers must ensure that measures are put in place to monitor the following:

- How quickly patients are assessed for detention and discharged from the holding power;
- The attendance times of doctors and approved clinicians following the use of section 5(4);
- The proporation of cases in which applications for detention are made following use of section 5.

Element to be monitored	**Lead**	**Tool**	**Frequency**	**Reporting arrangements**	**Acting on recommendations and Lead(s)**	**Change in practice and lessons to be shared**
All sections of this policy	*Medical Director*	*Checklist for the Review and Approval of Procedural Document*	*The Mental Health Act Manager will review the policy every two years.*	*Important issues reported to policy author are incorporated into next revision of the policy.*	*Mental Health Act Manager, Medical Director*	*Required changes to practice will be identified and actioned within a specific time frame. Lessons will be shared with all the relevant stakeholders.*

8 References

- The Mental Health Act 1983 hereafter referred to as ‘the Act’.
- The Code of Practice 2008 hereafter referred to as ‘the Code’.

Equality Impact Assessment Tool

To be completed and attached to any procedural document when submitted to the appropriate committee for consideration and approval.

		Yes/No	Comments
1.	**Does the policy/guidance affect one group less or more favourably than another on the basis of:**		
	• Race	No	
	• Ethnic origins (including gypsies and travellers)	No	
	• Nationality	No	
	• Gender	No	
	• Culture	No	
	• Religion or belief	No	
	• Sexual orientation including lesbian, gay and bisexual people	No	
	• Age	No	
	• Disability - learning disabilities, physical disability, sensory impairment and mental health problems	No	
2.	**Is there any evidence that some groups are affected differently?**	No	
3.	**If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable?**	N/A	
4.	**Is the impact of the policy/guidance likely to be negative?**	N/A	
5.	**If so can the impact be avoided?**	N/A	
6.	**What alternatives are there to achieving the policy/guidance without the impact?**	N/A	
7.	**Can we reduce the impact by taking different action?**	N/A	

If you have identified a potential discriminatory impact of this procedural document, please refer it to [*insert name of appropriate person*], together with any suggestions as to the action required to avoid/reduce this impact.
For advice in respect of answering the above questions, please contact [*insert name of appropriate person and contact details*].

Checklist for the Review and Approval of Procedural Document
To be completed and attached to any document which guides practice when submitted to the appropriate committee for consideration and approval.

	Title of document being reviewed:	Yes/No/ Unsure	Comments
1.	**Title**		
1.1	Is the title clear and unambiguous?	Yes	
1.2	Is it clear whether the document is a guideline, policy, protocol or standard?	Yes	
2.	**Rationale**		
2.1	Are reasons for development of the document stated?	Yes	
3.	**Development Process**		
3.1	Is the method described in brief?	Yes	
3.2	Are people involved in the development identified?	Yes	
3.3	Do you feel a reasonable attempt has been made to ensure relevant expertise has been used?	Yes	
3.4	Is there evidence of consultation with stakeholders and users?	Yes	
4.	**Content**		
4.1	Is the objective of the document clear?	Yes	
4.2	Is the target population clear and unambiguous?	Yes	
4.3	Are the intended outcomes described?	Yes	
4.4	Are the statements clear and unambiguous?	Yes	
5.	**Evidence Base**		
5.1	Is the type of evidence to support the document identified explicitly?	Yes	
5.2	Are key references cited?	Yes	
5.3	Are the references cited in full?	Yes	
5.4	Are supporting documents referenced?	Yes	
6.	**Approval**		
6.1	Does the document identify which committee/group will approve it?	Yes	
6.2	If appropriate have the joint Human Resources/staff side committee (or equivalent) approved the document?	Yes	
7.	**Dissemination and Implementation**		
7.1	Is there an outline/plan to identify how this will be done?	Yes	
7.2	Does the plan include the necessary training/support to ensure compliance?	Yes	
8.	**Document Control**		
8.1	Does the document identify where it will be held?	No	
8.2	Have archiving arrangements for superseded documents been addressed?	No	

	Title of document being reviewed:	Yes/No/ Unsure	Comments
9.	**Process to Monitor Compliance and Effectiveness**		
9.1	Are there measurable standards or KPIs to support the monitoring of compliance with and effectiveness of the document?	yes	
9.2	Is there a plan to review or audit compliance with the document?	No	
10.	**Review Date**		
10.1	Is the review date identified?	Yes	
10.2	Is the frequency of review identified? If so is it acceptable?	Yes	
11.	**Overall Responsibility for the Document**		
11.1	Is it clear who will be responsible for co-ordinating the dissemination, implementation and review of the document?	Yes	

Individual Approval			
If you are happy to approve this document, please sign and date it and forward to the chair of the committee/group where it will receive final approval.			
Name	Tom Lelmezh	Date	10.9.2012
Signature			
Committee Approval			
If the committee is happy to approve this document, please sign and date it and forward copies to the person with responsibility for disseminating and implementing the document and the person who is responsible for maintaining the organisation's database of approved documents.			
Name	Ruth Allen	Date	10.09.2012
Signature			

Acknowledgement: Cambridgeshire and Peterborough Mental Health Partnership NHS Trust

FOR USE WITH SECTIONS 5(2), 135 AND 136

RECORD OF ASSESSMENT AND CESSATION OF SECTION UNDER THE MENTAL HEALTH ACT 1983

This form is to be completed by a doctor or an Approved Mental Health Professional (AMHP) following completion of an assessment where no further detention under the Mental Health Act is required.

Name of Patient: _____ RiO Number: _____

Ward: _____

Section: _____

Section start date and time: _____

An assessment has been carried out on the above named. Section 2 or 3 is not appropriate on this occasion; therefore a decision has been made to end their detention under this holding power.

This decision was made on:

Date: _____ Time: _____

I confirm that the decision to end the detention has been communicated to the patient and recorded in the RiO notes.

Signed: _____ Date: _____

Print Name: _____

Designation: _____