Mental Health Act 1983
PROCEDURE FOR THE USE OF SECTION 5(2)
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1. **INTRODUCTION**

**What is a section 5(2)?**

A Section 5(2) is more commonly referred to as the **DOCTOR'S HOLDING POWER** and allows a doctor or other professional (non-medical approved clinician (AC)) in charge of the treatment of a hospital in-patient (or their nominated deputy) to prevent someone who is suspected to be suffering from a mental disorder from leaving the hospital for a period of up to 72 hours in order that an assessment can be made for possible detention under Section 2 or 3 of the Mental Health Act 1983 (MHA 1983).

*NB: For Patients detained under section 5(4) immediately prior to the section 5(2) being applied – the 72 hours will begin from the time when the section 5(4) was applied*

2. **PURPOSE**

The purpose of this procedure is to set out the arrangements within the Trust for the detention of an inpatient under a section 5(2).

3. **SCOPE**

The contents of this procedure apply to all clinical staff working within the Trust across the Mental Health and Learning Disability Business Divisions.

With regards to the patients that fall under the scope of this procedure the Code of Practice 2015 (18.7) states that “In this context, a hospital in-patient means any person who is receiving in-patient treatment in a hospital. It does not apply to a patient who is already liable to be detained under Section 2, 3 or 4 of the MHA 1983, subject to a community treatment order or a person who is being kept in a hospital as a place of safety under section 135 or 136. It includes patients who are in hospital by virtue of a deprivation of liberty authorisation under the Mental Capacity Act 2005. It does not matter whether or not the patient was originally admitted for treatment primarily for a mental disorder. The patient could be receiving in-patient treatment in a general hospital for a physical condition.”

The power cannot be used for an out-patient attending a Hospital’s Accident and Emergency Department or any other out-patient.

Patients should not be admitted informally with the sole intention of then using the powers to detain under section 5(2).

4. **RESPONSIBILITIES, ACCOUNTABILITIES AND DUTIES**

4.1 **Mental Health Legislation Committee**

The Trust Mental Health Legislation Committee is responsible for:

- Monitoring compliance with the legal requirements of the MHA 1983.
The review and issuing of all Mental Health Act policies and procedures.

Advising on any staff training needs in respect of the MHA 1983, and the associated Trust policies and procedures.

4.2 Doctor or other professional (non-medical approved clinician)

The Doctor or other professional (non-medical AC) in charge of the patients care is responsible for their overall care and treatment whilst they are receiving care as an inpatient. Wherever possible the Doctor or other professional (non-medical AC) should be involved in decision making, and have a responsibility to provide the required care in the least restrictive way.

However, it is recognised that the Doctor or other professional (non-medical AC) may not always be available when an assessment for detention under section 5(2) is required and the MHA 1983 makes provision for them to nominate a deputy to assume their responsibilities in their absence.

In the event that a deputy exercises their nominated powers the Doctor or other professional (non-medical AC) should review the decision to detain at the earliest opportunity.

4.3 Nominated Deputy

The Code of Practice 2015 (18.12) allows the Doctor or other professional (non-medical AC) in charge of an in-patient’s treatment to nominate a deputy to exercise section 5(2) powers in their absence. The responsibility will therefore devolve to the Deputy.

It is permissible for deputies to be nominated by title, rather than by name e.g. the junior doctor on call (provided that there is only one nominated deputy for any patient at any time and it can be determined with certainty who that nominated deputy is). If nominated deputies are not Approved Clinicians (or Section 12(2) approved) they should wherever possible seek advice from the person for whom they are deputising before using a Section 5(2).

It is also to be noted that only doctors who are fully registered to practice can apply a section 5(2). Therefore FY1 Doctors cannot apply a section 5(2) as they only have provisional registration.

**NB: Only a doctor or approved clinician on the staff of the same hospital may be a nominated deputy. It is unlawful for a nominated deputy to nominate another. (Code of Practice 2015 (18.13))**

4.4 Nurse in Charge of the Ward

It is the responsibility of the Nurse in Charge of the ward to:

- Check and receipt the detention papers on behalf of the Hospital managers.
- Photo copy the detention papers, and send the originals to the Mental
Health Act Office.

- Provide the patient with an explanation of their legal rights both verbally and in writing (please refer to the Trust procedure for informing detained service users of their legal rights under section 132 of the MHA 1983); and

- Notify the Approved Mental Health Professional (AMHP) of the fact that a section 5(2) has been applied.

5. **PROCEDURE/IMPLEMENTATION**

5.1 **When can a section 5(2) be applied**

A section 5(2) can only be applied if the person is receiving care as an informal inpatient. It is only to be used in an emergency situation when all other least restrictive measures have been tried and failed and when it is not possible or safe to wait for the completion of an assessment for detention under Section 2 or 3.

The holding power should only be used immediately after the doctor has **PERSONALLY** examined the patient (Code of Practice 2015 (18.10)).

5.2 **Required Documentation**

The doctor must complete the Form H1 which, once completed, will allow for the patient to be detained for up to 72 hours.

The period of detention starts at the moment the doctor’s report is furnished to the Hospital Managers (i.e. when handed to the nurse in charge of the ward).

The Nurse in Charge of the ward will then accept and receipt the section on behalf of the Hospital Managers (refer to procedure for acceptance of Section papers).

The reason for invoking the Section 5(2) must be entered into the patient’s clinical records by the doctor who is applying it.

In any areas that still operate with separate medical and nursing records the nurse in charge of the ward should also make an entry into the nursing records.

The detention of the patient should also be recorded on the Ward’s 24 hour (or equivalent) report.

5.3 **Explanation of the patient legal rights**

The Trust procedure for informing detained patients of their legal rights under section 132 of the MHA 1983 must be followed. The patient must be informed of the consequences of the Section 5(2) and provided with an explanation and a leaflet for the Section 5(2) should be handed to them.
5.4 Additional Action required if the Section 5(2) is applied by the Nominated Deputy

Wherever possible, the Nominated Deputy must contact the Nominating Doctor (Consultant or other professional (non-medical AC)) or Consultant on-call before applying the Section 5(2).

If it is not practical to consult the Nominating Doctor (Consultant/other professional (non-medical AC)/Consultant on-call) before applying the Section 5(2), the Nominated Deputy should report the use of it, to them as soon as possible.

5.5 Action following the application of a section 5(2)

Arrangements for an assessment to consider an application under Section 2 or 3 of the MHA 1983 should be put in place as soon as the Section 5(2) is received.

The Nurse in Charge will notify either the local Mental Health Act (MHA) Office, or the local Access Team of the fact that a Section 5(2) has been applied (following the area specific guidance below). This is to ensure that a Consultant/Section 12(2) Doctor and AMHP may undertake a MHA assessment as soon as possible to establish whether an application under Part II of the MHA 1983 should be made.

Notification of this contact with the local MHA Office / Access Team will be recorded by the nurse in charge on the appropriate audit form (Appendix 1), which will then be forwarded to the MHA Office, for monitoring purposes.

**Rotherham**

Monday to Friday 9:00am–5:00pm
contact the MHA Office on 01709 447540 / 447541
Outside of normal working hours (incl. Bank Holidays)
Contact the Access Team on 01709 302670

**Doncaster**

Monday to Friday 9:00am–5:00pm
contact the MHA Office on 01302 798187 / 01302 798197
Outside of normal working hours (incl. Bank Holidays)
contact the Access Team on 01302 798400

**North Lincolnshire**

Monday to Friday 9:00am–5:00pm
Contact the MHA Office on 01724 382041 & 01724 382069
Outside of normal working hours (incl. Bank Holidays)
contact the Access team on 01724 382015

5.6 In-patients on the Mental Health Unit who are transferred during their stay to the General Hospital Trust

For any informal patient from the Mental Health Unit who during their admission is transferred to the Acute General Hospital for physical care and treatment, for the purposes of Section 5(2), the consultant psychiatrist is the doctor in charge of treatment for their mental disorder and can invoke the powers under Section 5(2)
In the event that the patient is deemed to require increased levels of observation staff should refer to the Trust policy on the care for in-patients who are identified as posing a significant risk to themselves or others.

5.7 Patients admitted directly to the General Hospital Trust

Any patient admitted directly to the General Hospital Trust, who is not at the time under the care of a psychiatrist or approved clinician, and who subsequently requires detention under Section 5(2) of the MHA 1983, will remain the responsibility of the consultant physician / surgeon.

It is permissible for deputies to be nominated by title, i.e. Junior Doctor on call, provided that there is only one nominated deputy for any particular patient at any time and that it can be determined with certainty who that nominated deputy is.

If the doctor normally in charge of a patient’s treatment, or that doctor’s nominated deputy, has little experience of operating the Act (or indeed treating mental disorder), he or she should wherever possible seek advice from someone who is an approved clinician or ‘section 12’ approved doctor (Code of Practice 2015, 18.14).

General Hospital Consultants/Doctors invoking a Section 5(2) should make immediate contact with the MHA Office / Access Team to facilitate a MHA assessment.

N.B. The Consultant Psychiatrist or his nominated deputy cannot initiate a Section 5(2) on behalf of the General Hospital Trust if at the time they are not under their care for their mental disorder.

The nursing care of the patient is the responsibility of the General Hospital Trust and we do not provide nurses to do one to one observations in these circumstances. If this is required, the General Hospital Trust would have to engage agency staff to provide it.

The General Hospital Trust is responsible for receipting the detention papers, and reading the patient their legal rights if they detain a patient under Section 5(2). Guidance can be offered to the nursing staff of the General Hospital Trust, if requested, and staff should refer to the Trust procedure for informing detained patients of their legal rights under section 132 of the MHA 1983, and the guidance to staff on the receipt and scrutiny of section papers.

On completion of the Section papers contact should be made with the MHA Office.

N.B. Under no circumstances can a patient be transferred to any of our units from a General Hospital ward on a Section 5(2).

For a transfer to occur the patient would either have to come informally or under a Section 2 or 3 unless certain criteria are met (see 5.8 below)
5.8 When can a patient detained on a Section 5(2) be lawfully transferred?

A patient who is subject to section 5(2) of the MHA 1983 but needs to go to another hospital urgently for treatment, security or other exceptional reasons, can only be taken there:

- If they consent to the transfer.
- 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 the patient requires lifesaving treatment (such as following an overdose).

5.9 When does detention under Section 5(2) end?

The Code of Practice 2015 (18.20) states that “detention under Section 5(2) will end immediately where:

- An assessment for admission under Section 2 or 3 is made and a decision is taken not to make an application for detention under Section 2 or 3, or
- The Doctor or other professional (non-medical AC) decides that no assessment for possible detention under Section 2 or 3 needs to be carried out.

In each of these cases the patient’s Doctor /other professional (non-medical AC) MUST complete the local Form Section 23 to re-grade the patient to informal status and the patient should be notified that they are no longer detained under the holding power and are free to leave the Hospital, unless of course the patient is to be detained under some other authority.

5.10 Treatment

As a Section 5(2) is a holding power to enable assessment to take place for possible detention under a Section 2 or 3, there is no power under the MHA 1983 to treat them without their consent.

However, there may be extreme circumstances where, due to the distress caused to the patient by their mental state, it would be negligent not to give some medication. In this case, it is administered under common law as we owe a duty of care to our patients.

However only short acting drugs prescribed by the medic would be given and certainly not a regular long acting depot injection, as it would have no immediate effect on the patient’s mental state.

6. Training Implications

There are no separate identified training needs in respect of the contents of this policy as an explanation of Section 5(2) is included in the Trust Mental Health Act training.
7. MONITORING ARRANGEMENTS

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<th>Who by</th>
<th>Reported to</th>
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<td>MHA Administrators</td>
<td>Local Mental Health Legislation Monitoring Groups</td>
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8. EQUALITY IMPACT ASSESSMENT

The completed Equality Impact Assessment for the Protocol for the procedure for the use of section 5(2) has been published on the Equality and Diversity Web page of the RDaSH Website as follows: EQUALITY AND DIVERSITY IMPACT ASSESSMENT

8.1 Privacy, Dignity and Respect

| The NHS Constitution states that all patients should feel that their privacy and dignity are respected while they are in hospital. High Quality Care for All (2008), Lord Darzi’s review of the NHS, identifies the need to organise care around the individual, ‘not just clinically but in terms of dignity and respect’. | Indicate how this will be met |
| As a consequence the Trust is required to articulate its intent to deliver care with privacy and dignity that treats all service users with respect. Therefore, all procedural documents will be considered, if relevant, to reflect the requirement to treat everyone with privacy, dignity and respect, (when appropriate this should also include how same sex accommodation is provided). | There are no additional requirements identified in relation to privacy, dignity and respect |

8.2 Mental Capacity Act

| Central to any aspect of care delivered to adults and young people aged 16 years or over will be the consideration of the individuals capacity to participate in the decision making process. Consequently, no intervention should be carried out without either the individuals’ informed consent, or the powers included in a legal framework, or by order of the Court. Therefore the Trust is required to make sure that all staff working with individuals who use our service, are familiar with the provisions within the Mental Capacity Act 2005. For this reason all procedural documents will be considered, if relevant to reflect the provisions of the Mental Capacity Act 2005 to ensure that the interests of an individual whose capacity is in question can continue to make as many decisions for themselves as possible. | Indicate how this will be achieved |
| All individuals involved in the implementation of this policy should do so in accordance with the Guiding Principles of the Mental Capacity Act 2005 (Section 1). |
9. **LINKS TO OTHER TRUST PROCEDURAL DOCUMENTS**

- Procedure for informing detained patients of their legal rights under section 132 of the Mental Health Act 1983 – Clinical Policies, Mental Health Act section;
- Procedure for the transfer of service users detained under the Mental Health Act 1983 to another Mental Health Hospital - Clinical Policies, Mental Health Act section;
- Procedure for the use of section 5(4) - Clinical Policies, Mental Health Act section;
- Guidance to staff on the receipt and scrutiny of section papers - Clinical Policies, Mental Health Act section;
- Policy for the care of inpatients who are identified as posing a significant risk to themselves or others – Clinical Policies, General Section.

10. **REFERENCES**

11. **APPENDICES**
Appendix 1 - AUDIT FORM FOR THE USE OF SECTION 5(2)
MENTAL HEALTH SERVICES

AUDIT FORM FOR THE USE OF SECTION 5(2)

THIS FORM MUST BE COMPLETED FOR ALL PATIENTS DETAINED UNDER SECTION 5(2)

Patient Name: 
Ward: 
Date & Time s5(2) Was Implemented: Date: Time:

PLEASE TICK ONE OF THE BELOW

Informal to 5(2)

Or

Section 5(4) to 5(2)

Consultant was notified: Date: Time:
Consultant attended: Date: Time:

AMHP was notified: Date: Time:
AMHP attended: Date: Time:

GP / S12(2) was notified: Date: Time:
GP / S12(2) attended: Date: Time:

Outcome of the Assessment:

PLEASE TICK ONE OF THE BELOW

Regraded Informal
S2 Applied
S3 Applied