

**TRUST POLICY AND PROCEDURE FOR DETAINING HOSPITAL
IN-PATIENTS UNDER SECTION 5(2) OF THE
MENTAL HEALTH ACT 1983**

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| Reference Number POL-CL/1793/06 | Version: 2.4.0 | | Status Final | Author: Lynne Fryatt Job Title: Assistant Director of Nursing (Clinical Governance) Advisor: Phil Hopkinson Job Title: Mental Health Act Manager Derbyshire Healthcare NHS Foundation Trust |
| Version / Amendment History | Version | Date | Author | Reason |
| | 1 | June 2006 | L. Fryatt | Original Policy |
| | 2 | January 2009 | Pam Twine | Reformatted to meet NHSLA standard. Review. |
| | 2.1 | April 2009 | Pam Twine | Amendments following Proc Doc |
| | 2.2 | January 2012 | Pam Twine | Minor amendments following review |
| | 2.3 | April 2016 | Jim Murray | Minor amendments following review |
| | 2.4 | April 2017 | Jim Murray | Minor amendments following review |
| Intended Recipients: Medical Staff and all Clinical Staff | | | | |
| Training and Dissemination: Via Trust Intranet and face to face updates in key departments | | | | |
| To be read in conjunction with: Trust Policy And Procedures For Maintaining A Safe Environment (Incorporating The Management Of Threatening Behaviors In The Workplace), Appendix 2 Restraint Procedures pages 19-24 | | | | |
| In consultation with and Date: Medical Advisory Committee (MAC); Joint Professions Advisory Group (JPAC); Divisional Nursing Directors (DNDs) and Head Of Midwifery (HOM); Mental Health Services; Legal Services. | | | | |

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| EIRA stage One Completed | Yes |
| Stage Two Completed | N/A |
| Procedural Documentation Review Group Assurance and Date | Yes January 2012 |
| Approving Body and Date Approved | April 2016 - Cathy Winfield Chief Nurse, Director of Patient Experience, Infection Prevention and |
| Date of Issue | April 2016 |
| Review Date and Frequency | April 2019 (then every 3 years) |
| Contact for Review | Deputy Chief Nurse |
| Executive Lead Signature | Medical Director |
| Approving Executive Signature | Director of Patient Experience and Chief Nurse |

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POLICY AND PROCEDURE FOR DETAINING HOSPITAL IN-PATIENTS UNDER SECTION 5(2) OF THE MENTAL HEALTH ACT 1983

1 Introduction

The policy sets out the obligations, entitlements and safeguards which, must be complied with when a patient requires detention under Section 5(2) of the Mental Health Act 1983.

Section 5(2) of the Mental Health Act only applies to hospital in-patients and cannot be used for patients in the Emergency Department, Outpatients, ambulatory patients or visitors to hospital premises.

2 Purpose and Outcomes

The policy applies in all circumstances where a patient is detained under Section 5(2) of the Mental Health Act and will ensure:

- That required documentation is completed correctly so as not to invalidate the Section and render the detention illegal.
- That the patient and their nearest relative are aware of their rights under section 5(2) and they are issued with appropriate documentation in accordance with Section 132 of the Act.

There are no exclusions.

3 Definitions Used

Section 5(2): An emergency provision under the Mental Health Act 1983, which allows an informal patient to be detained in hospital for a maximum of up to 72 hours in order for a full assessment of their liability on the grounds of mental ill health to be made. It is designed to be used as an **emergency holding order** to prevent a patient discharging himself or herself before there is time to arrange for an application under section 2 or 3 to be made in the case. The only ground for a Section 5(2) is that an application for admission under the Mental Health Act 'ought to be made' in the opinion of the doctor. The registered medical practitioner who exercises the doctor's holding power must be the doctor who is in charge of the person's care, or a deputy nominated by that doctor to act in his/her absence.

AMHP: Approved Mental Health Professional. A Social Worker or other professional approved by a Local Social Services Authority (LSSA) to carry out a variety of functions under the Mental Health Act.

4 Key Responsibilities/Duties

4.1 Responsible Clinician

Ideally, Section 5(2) will be implemented by the patient's Consultant as the Responsible Clinician. However, if the Consultant is not available, then Section 5(2) may be implemented by another fully registered medical practitioner who may act as the Consultant's 'nominated deputy'.

4.2 Nominated Deputy

There can only be one nominated deputy and this should be most senior doctor available covering the team that is in charge of the patient's care. This should be a Specialty Registrar level doctor or qualified General Practitioner, but in cases where none is available it can be a Senior House Officer/GP Registrar level doctor. Section 5(2) cannot be implemented by F1 doctors as they are not fully registered medical practitioners.

A flow chart detailing the Section 5(2) process is contained in Appendix 1 below.

4.3 Nurse in Charge

For the purposes of implementing Section 5(2), the Nurse in Charge refers to the nurse in charge, or duty co-ordinator, of the ward or unit where the patient is an in-patient.

4.4 Approved Mental Health Professional (AMHP)

Under Section 114 a local Social Services Authority must appoint a sufficient number of social workers or other professionals who have 'appropriate competence in dealing with persons who are suffering from mental disorder'. The Central Council issues guidance for Education and Training in Social Work as to the training, which should be provided in order for social workers or other approved professionals to fulfill this role. Most local authorities will ensure that an AMHP is available 24 hours a day in order to make assessments and thus to consider whether an application should be made for admission under the Mental Health Act.

The AMHP will be contacted by the Responsible Clinician or their nominated deputy and the contact numbers are below. If there are any difficulties the responsible clinician should contact the on-site Mental Health Liaison team via hospital switchboard for support.

Contact details for the AMHP

- Normal working hours (9-5 weekdays)
Derby City patients – 0300 1234011
Derbyshire patients – 01629 537904
- Out of hours – contact 'Careline' through Royal Derby Hospital switchboard

4.5 Head of Clinical Governance

The Head of Clinical Governance will ensure that guidelines and relevant documentation are available in designated areas. They will also offer advice and guidance regarding this policy.

Completed copies of documentation for the section will be kept in the Corporate Nursing Department and where the forms are not completed correctly, the Head of Clinical Governance will liaise with the relevant clinician and the Mental Health Trust.

5 Implementation of the Policy and Procedure for Dealing with In-patients Detained Under Section 5(2) of the Mental Health Act 1983

Guidelines and relevant documentation are on the Trust Intranet (Flo) in the Liaison Team webpages and are also available for use at any time in Trust Assessment Units (medical, surgical, trauma and gynecology).

In implementing the policy the following procedures must be followed:

5.1 Reporting Concerns that a Patient may Require Detention Under the Mental Health Act

Should it appear that a patient requires detention under the Mental Health Act, this matter should be raised immediately with the patient's Consultant or in their absence, their Nominated Deputy. This would normally happen when it appears to staff that the patient may be suffering from a mental illness which might pose a risk to themselves or others and that they are not prepared to stay in hospital long enough to have the issue formally assessed by a Psychiatrist and AMHP. If the patient were to leave hospital, there would need to be concerns that this might pose a risk to the patient, to others or to the patient's health. The Consultant or their nominated deputy should attend as soon as possible in order to determine whether or not a Section 5(2) should be implemented.

5.2 Restraint

If the patient tries to leave the hospital before being seen by the Consultant or their nominated deputy the nurse may use reasonable means to prevent the patient from leaving under their duty of care and Common Law. Minimum force for restraint may be used when all other methods of control have been exhausted. The principles of the Trust Maintaining a Safe Environment policy must be followed at all times.

5.3 Documentation by Consultant or Nominated Deputy

The Consultant or nominated deputy must complete the appropriate documentation. This is **form H1** 'Report on Hospital Inpatient' and must include the following:

- Full name of the Trust
- Full name of the medical practitioner (all given names as well as family name)
- Delete (a) or (b) depending on whether Consultant or nominated deputy completes it
- Full name of patient
- Delete 'consigning it to the Hospital Managers' internal mail system'
- Signature of medical practitioner (applicant)
- Date and time of report.

5.4 Documentation by the Nurse in Charge

The nurse in charge must complete Part 2 of the H1 form in order to receive the form on behalf of the Hospital Managers.

- Delete the phrase 'furnished to the hospital managers through their internal mail system'
- Complete the time and date in the next phrase
- Signature of nurse in charge
- Print name
- Date of completing form
- An IR1 form should be completed on DATIX with the relevant details to ensure that a central record is held for the patient details

This formally 'accepts' the detention.

5.5 Assessment for Possible Detention under Section 2 or 3

Arrangements must then be made for a Consultant Psychiatrist or Psychiatrist with Section 12 approval and an AMHP to assess the patient regarding possible further detention under Section 2 or 3 of the Mental Health Act. The Consultant or Nominated Deputy who implemented Section 5(2) should arrange for this to happen by contacting The Liaison Team during normal working hours, or the duty mental health social worker out of hours. The Liaison Team are able to advise at any time on the correct process.

It is considered best practice to contact the relevant people as soon as the Section 5(2) has been implemented.

If, after formal Mental Health Act assessment for possible detention under Section 2 or section 3, it is decided not to apply for such detention, the Section 5(2) holding power will cease.

If it is agreed that the patient is to be detained on a psychiatric ward under a section 2 or 3, the Nurse in Charge should make sure that the correct transfer paperwork accompanies the patient to the receiving Trust.

5.6 Informing the Patient and Relatives

If it is deemed appropriate to detain the patient under section 5(2) the patient must be informed of what is happening and why. Their rights need to be read to them from the patient information leaflet – **Section 5(2) of the Mental Health Act 'Detention of Patients already in Hospital'** available on the Trust Intranet (Search: Liaison Team). The patient's understanding of the information should be assessed and a record of information given to detained patients completed. It should be documented in the patient's medical records that they have been provided with this information.

The patients nearest relative must also be provided with the relevant information entitled **Section 5(2) 'Detention of Patients already in Hospital'** unless the patient objects. Should this objection occur, it must be documented in the medical records.

5.7 **Checking of Documents**

The original Section 5(2) paperwork must be filed in the medical records, and a photocopy must be sent to the Head of Clinical Governance, Corporate Nursing, Level 5, Royal Derby Hospital by the Nurse in Charge.

The Head of Clinical Governance will ensure that a daily review of new patients is identified on DATIX and incorrect or incomplete Section papers will be returned to the person making the application for the Section.

A clear rationale as to why the patient is being detained under Section 5(2) of the Mental Health Act must be recorded in the medical records.

Any queries regarding the Mental Health Act may be made to the Mental Health Liaison Team who are based in Royal Derby Hospital 24 hours a day, 7 days a week and can be contacted through hospital switchboard.

5.8 **Incorrect or Incomplete Documentation**

Incorrect or incomplete documentation must be returned to the person who made the error for amendment as soon as the error is spotted. This will be undertaken by the Governance team who report to the Head of Clinical Governance and it must be completed within 14 days of the application.

5.9 **Treatment**

Under section 5(2) of the Mental Health Act, treatment against a person's will, can only be given under the Mental Capacity Act.

5.10 **Transfer of a Patient Detained Under Section 5(2)**

Should a patient detained under section 5(2) be required to transfer to another hospital, the detention must cease. However, patients who are being transferred to a psychiatric hospital should be escorted between hospitals to ensure their safety, either because they are now under a Section 2 or 3, or under our duty of care to them and Common Law.

6 Monitoring Compliance and Effectiveness

Copies of all documentation will be monitored and retained in the Corporate Nursing Department. Incorrect completion of forms will be addressed with the relevant clinician by the Head of Clinical Governance, in liaison with the Mental Health Trust.

The policy will be monitored by the Trust Mental Health Steering Group who report to the Trust Quality Review Committee. This will include monitoring of staff training and compliance with the Mental Health Act.

7 **References**

Mental Health Act 1983 Code of Practice (2008), Chapter 12

Mental Health Act 1983, Draft Reference Guide to the MHA 1983 as amended by the MHA 2007

Mental Health Act Manager-Derbyshire Mental Health Services NHS Trust, Kingsway Hospital.

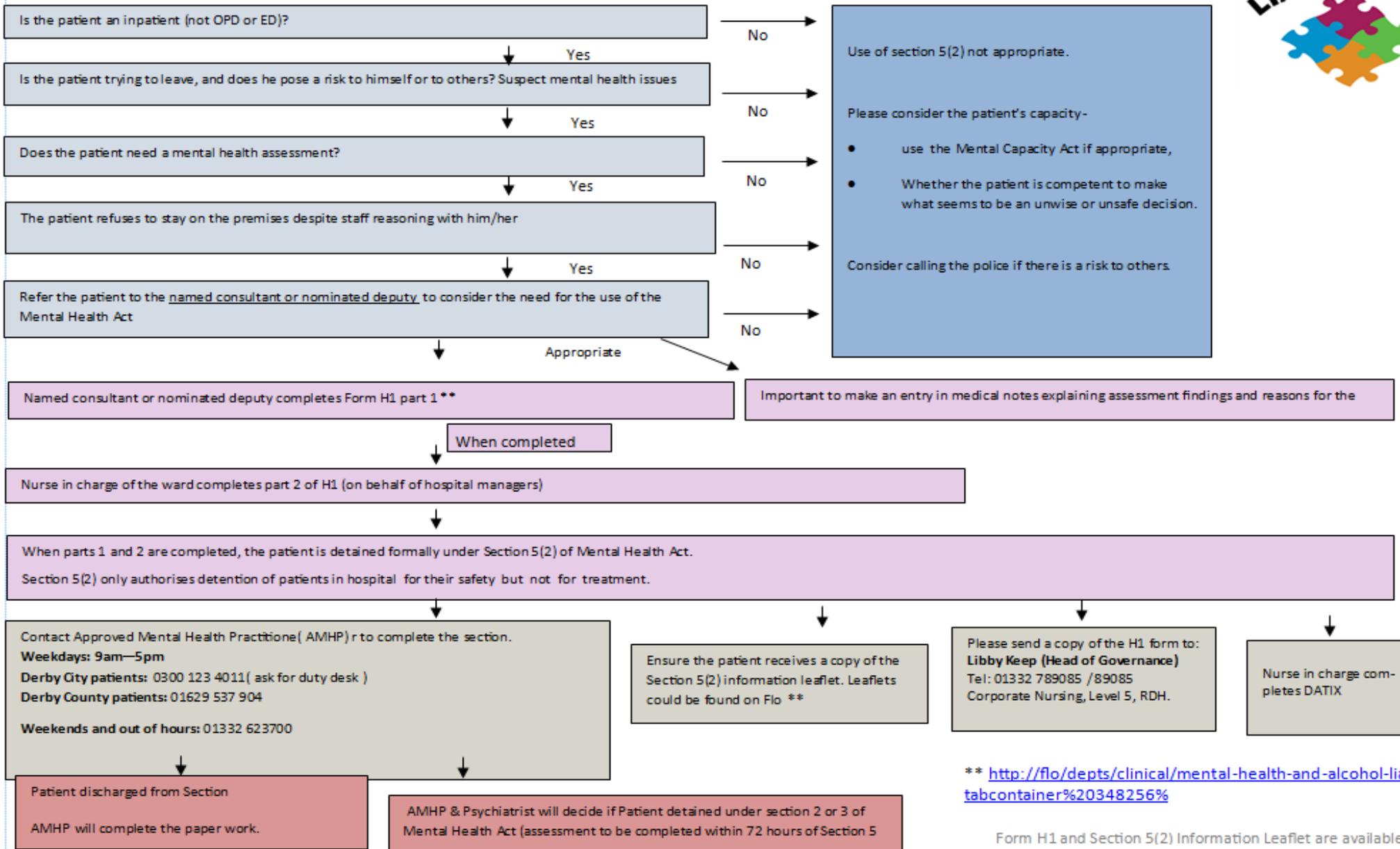
Trust Policy and Procedures for Maintaining a Safe Environment Appendix 2 Restraint Procedures pages 17-22

CQC Guidance: <http://www.cqc.org.uk/organisations-we-regulate/mental-health-services/mental-health-act-guidance/how-we-monitor-use-ment>

See CQC Guidance: Use of the Mental Health Act 1983 in General Hospitals without a Psychiatric Unit



Section 5 (2) Mental Health Act—Holding power (valid for 72 hours only)



** <http://flo/depts/clinical/mental-health-and-alcohol-liaison/?tabcontainer%20348256%>

Form H1 and Section 5(2) Information Leaflet are available on Flo