Livewell Southwest

Section 5(2)
Doctors and Approved Clinicians Holding Power
Mental Health and Learning Disabilities

Version No 3.1
Review: July 2019

Notice to staff using a paper copy of this guidance

The policies and procedures page of LSW Intranet holds the most recent version of this document and staff must ensure that they are using the most recent guidance.

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Reader Information

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Document Review History

Version no.	Type of change	Date	Originator of change	Description of change
For previous review history please contact the PRG secretary.				
V 1.1	Update	July 2009	Mental Health Act Administrator	Updating, V 1 was the incorrect version that went on to Healthnet.
V. 2		September 2009	Approved at Policy Ratification Group.	
V2:1	Reviewed	Sept 2011	Author	Minor amendments
V2:2	Extended	August 2013	Author	Extended, no changes.
V2:3	Extended	January 2014	Author	Extended, no changes.
V2:4	Reviewed	April 2014	Author	Reformatted. Definition of an in-patient added. Para 4.10-4.12
V3	Reviewed	July 2014	Author	Minor amendments
V3.1	Reviewed	May 2016	Author	Minor amendments following changes to the Reviewed Code of Practice 2015. Update details of Nominated Deputy

Section 5(2) Doctors and Approved Clinicians Holding Power. Mental Health and Learning Disabilities.

1 Introduction

1.1 Any course of action taken under the Mental Health Act 1983 (MHA'83) (as amended) must be done with consideration to the Guiding Principles contained within Chapter 1 of the Mental Health Act 1983 Code of Practice Revised 2015 (the Code). https://www.gov.uk/government/publications/code-of-practice-mental-health-act-1983

The Guiding Principles are:

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

All professionals working with individuals detained under the Mental Health Act 1983 (MHA'83) should have detailed knowledge of the Code including its purpose, function and scope.

1.2 The Code provides statutory guidance to registered medical practitioners ('doctors'), approved clinicians, managers and staff of providers and approved mental health professionals (AMHPs) on how they should proceed when undertaking duties under the Act. These professionals should have detailed knowledge of the Code, including its purpose, function and scope. Whilst the Act does not impose a legal duty to comply with the Code those listed must have regard to the Code. Any departure from the Code could give rise to legal challenge; therefore the reasons for departure must be recorded and sufficiently convincing in order to justify the departure.

1.3 This policy is reflective of the guidance provided in the Code, Chapter 18 Holding Powers**.** Further information is also contained in the MHA'83 Reference Guide (Revised 2015) Chapter 8 Applications for detention in hospital, Paragraphs 8.70 – 8.78.

2 Purpose

2.1 The purpose of this policy is to ensure that doctors and approved clinicians, who use the Section 5(2) holding powers, exercise this power lawfully and apply the Guiding Principles contained in Chapter 1 of the Code when making decisions under this section.

3 Duties

The **Chief Executive** is ultimately responsible for the content of all policies, implementation and review.

3.1 The Locality Management Team for Mental Health and Learning Disabilities are

responsible for ensuring this policy is in place.

3.2 Day to day use of the policy is monitored by Senior Clinical staff and the Mental Health Act Manager/Deputy Mental Health Act Manager. *"It is the hospital managers who have the authority to detain patients under the Act. They have the primary responsibility for seeing that the requirements of the Act are followed. In particular, they must ensure that patients are detained only as the Act allows, that their treatment and care accord fully with its provisions, and that they are fully informed of, and are supported in exercising, their statutory rights."* The Code Paragraph 37.3

4 The Use of Section 5(2)

4.1 The power can be used where the doctor or approved clinician in charge of the treatment of a hospital in-patient (or their nominated deputy) concludes that an application for detention under the Act should be made. It authorises the detention of the patient in the hospital for a maximum of 72 hours so that the patient can be assessed with a view to such an application being made. Decision-makers should always consider whether there are less restrictive alternatives to detention under the Act. The Code, Chapter 14 "Applications for detention in hospital" is applicable and must be referred to before further detention is considered.

4.2 The identity of the person in charge of a patient's medical treatment at any time will depend on the particular circumstances. A professional who is treating the patient under the direction of another professional should not be considered to be in charge.

4.3 There may be more than one person who could reasonably be said to be in charge of a patient's treatment, for example where a patient is already receiving treatment for both a physical and a mental disorder. In a case of that kind, the psychiatrist or approved clinician in charge of the patient's treatment for the mental disorder is the preferred person to use the holding power, if necessary.

4.4 The period of detention starts at the moment the doctor's or approved clinician's report is furnished to the hospital managers. For Livewell Southwest, this is usually a qualified nurse who has been authorised to carry out this function on behalf of the hospital managers. If there is any doubt the line/on-call manager should be consulted.

4.5 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 Act, is subject to a community treatment order, or a person who is being kept in a hospital in 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 (MCA) (See Code Chapter 13). 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.

4.6 The power cannot be used for an out-patient attending a hospital's accident and emergency department, or any other out-patient department. Patients should not be admitted informally with the sole intention of then using the holding power.

4.7 Section 5(2) should only be used if, at the time, it is not practicable or safe to take the steps necessary to make an application for detention without detaining the patient in the interim. Section 5(2) should not be used as an alternative to making an application, even if it is thought that the patient will only need to be detained for 72 hours or less.

4.8 Doctors and approved clinicians should use the power only after having personally examining the patient. If the power is used, it is the responsibility of the doctor or Approved Clinician (AC) to hand the completed form to the qualified nurse authorised to accept it. It is also their responsibility to inform the patient the power has been used.

4.9 Sometimes a report under Section 5(2) may be made in relation to a patient who is not at the time under the care of a psychiatrist or an approved clinician. In such cases, the doctor invoking the power should make immediate contact with a psychiatrist or an approved clinician to obtain confirmation of their opinion that the patient needs to be detained so that an application can be made. If possible, the doctor should seek such advice before using the power.

4.10 There may be occasions when a patient is receiving treatment at Derriford hospital for a physical need, but may require detaining for assessment under the MHA'83 for their mental health needs. In these instances only the Derriford Consultant in charge of the patient's care or their nominated deputy may use the holding powers. Doctors employed by Livewell Southwest may be called to give advice, however they are not able to use the holding power.

When does a person become in-patient?

4.11 Informal admission in this organisation occurs when the person has complied with the arrangements for arrival at the hospital voluntarily and has willingly accepted admission to hospital and arrived on the ward.

4.12 If after accepting admission to hospital and arriving on the ward the person starts to show resistance, either verbally or physically to staying on the ward Holding Powers under Section 5 may be used.

4.13 Completion of the admission paperwork confirms admission has taken place, but does not have to precede it. The key question as to whether someone is an in-patient is, "Did they accept admission and have they arrived on the ward?" If the patient does not arrive on the ward before they refuse hospital admission they cannot be considered to be an in-patient.

4.14 Where there are concerns for an individual's safety and they arrive at Glenbourne reception, if he/she lacks capacity to consent to remaining in hospital it is possible to prevent them leaving the reception area using the MCA but only if the detention is necessary to prevent harm to the person and the detention is a proportionate response to the likelihood of the person suffering harm and the seriousness of that

harm. Legal authority will be required if it is necessary to continue to detain the person. Either S136 or detention under the MHA are the options available. These options must be considered as a matter of urgency.

4.15 If the person has capacity and wishes to leave and there are concerns for their safety the police should be called to consider their use of S136 powers as the person will be in a place to which the public have access, i.e. the Glenbourne Reception.

With regard to the protection of others, "There is a general (common law) power to take such steps as are reasonably necessary and proportionate to protect others from the immediate risk of significant harm. This applies whether or not the patient lacks the capacity to make decisions for themselves." *R. (on the application of Munjaz) v Mersey care NHS Trust* [2003].

5 Nomination of deputies

5.1 Section 5(3) allows the doctor or approved clinician in charge of an in-patient's treatment to nominate a deputy to exercise the holding power in their absence. The deputy will then act on their own responsibility. Only a doctor or approved clinician 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.

5.2 It is permissible for deputies to be nominated by title, rather than by name – for example, the junior doctor on call for particular wards – 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.

5.3 At the Glenbourne unit during normal working hours 0900 -1700 the nominated deputy will be the allocated ward doctor

5.4 See the table below as to who has the authority to use Section 5(2) at any one time.

Glenbourne	Approved Clinician (If available) **Nominated Deputy** Ward Based Doctor	Mon-Fri 0900-1700
	On Call Consultant **or** **Nominated Deputy** Junior Doctors Rota	Mon-Fri 1700-0900 and Sat & Sun
Lee Mill	Approved Clinician (If available) **Nominated Deputy** Specialty Doctor	Mon-Fri 0900-1700
Lee Mill (OOH)	On Call Consultant **Nominated Deputy** 2nd On Call Speciality Doctor	Mon-Fri 1700-0900 Sat & Sun **Available during** Mon-Fri 1700-2200 Sat & Sun 0900-2100
Syrena	Approved Clinician (If available) **Nominated Deputy** Speciality Doctor	Mon-Fri 0900-1700
Syrena (OOH)	On Call Consultant **Nominated Deputy** 2nd On Call Speciality Doctor	Mon-Fri 1700-0900 Sat & Sun **Available during** Mon-Fri 1700-2200 Sat & Sun 0900-2100
Greenfields	Approved Clinician (If available) **Nominated Deputy** Core Trainee	Mon-Fri 0900-1700
Greenfields (OOH)	On Call Consultant **Nominated Deputy**	Mon-Fri 1700-0900 Sat & Sun **Available during**

	2nd On Call Speciality Doctor	Mon-Fri 1700-2200 Sat & Sun 0900-2100
Edgcumbe	Approved Clinician (If available) **Nominated Deputy** Ward Based Doctor	Mon-Fri 0900-1700
Edgcumbe (OOH)	On Call Consultant **Nominated Deputy** 2nd On Call Speciality Doctor	Mon-Fri 1700-0900 Sat & Sun **Available during** Mon-Fri 1700-2200 Sat & Sun 0900-2100
Cotehele	**Approved Clinician** (If available) **Nominated Deputy** Ward Based Doctor	Mon-Fri 0900-1700
Cotehele (OOH)	On Call Consultant **Nominated Deputy** 2nd On Call Speciality Doctor	Mon-Fri 1700-0900 Sat & Sun **Available during** Mon-Fri 1700-2200 Sat & Sun 0900-2100
Plym Neuro Kingfisher Skylark	Registered Practitioner in Charge of the treatment of the patient (If available) **Nominated Deputy** Speciality Doctor for the ward	Mon-Fri 0900-1700
Plym Neuro Kingfisher Skylark	On Cal Consultant **No Nominated Deputy**	Mon-Fri 1700-0900 and Sat & Sun

5.5 Doctors should not be nominated as a deputy unless they are competent to perform the role. If nominated deputies are not approved clinicians (or doctors approved under Section 12 of the Mental Health Act), they should wherever possible seek advice from the person for whom they are deputising, or from the on-call consultant psychiatrist before using Section 5(2). Hospital managers should see that arrangements are in place to allow nominated deputies to do this.

5.6 Nominated deputies should report the use of Section 5(2) to the person for whom they are deputising as soon as practicable. They must also inform the patient that the holding power has been used.

5.7 The Nominated deputy must make an entry on S1 that Section 5(2) has been invoked and the reasons for doing so. They must ensure that the completed form is handed to the qualified nurse authorised to accept it.

5.8 Doctors and approved clinicians may leave instructions with ward staff to contact them (or their nominated deputy) if a particular patient wants or tries to leave. But they may not leave instructions for their nominated deputy to use Section 5(2), nor may they complete a Section 5(2) report in advance to be used in their absence.

5.9 Arrangements for an assessment to consider an application under Section 2 or Section 3 of the Act should be put in place as soon as the Section 5(2) report is furnished to the hospital managers. This is the responsibility of the nurse receiving and receipting the completed form H1.

6 Information to the patient

6.1 When a patient is detained under Section 5(2), the Hospital Managers must ensure that the requirements of Section 132 “duty of managers of hospitals to give information to detained patients” are met.

6.2 Under Section 132 the Hospital Managers must ensure that all detained patients are given, and understand:-

- Information about how Section 5(2) applies to them, as soon as practicable after the power is invoked.
- Particular information in so far as it is relevant to that patient.

6.3 A section 132 form should be completed as soon as practicable by a qualified nurse and submitted to the MHA office. Further guidance is available in the s132 policy and in the Code of Practice Paragraphs Chapter 4.

7 Medical treatment of patients

7.1 Detaining patients under Section 5(2) does not confer any power under the Act to treat them without their consent. In other words, they are in exactly the same position in respect of consent to treatment as patients who are not detained under the Act.

8 Transfer of Patients

8.1 It is not possible for patients detained under Section 5(2) to be transferred to another hospital under Section 19 (because they are not detained by virtue of an application made under Part 2 of the Act). This does not prevent a patient from being moved to a general hospital should they require treatment for a physical condition, although the holding powers will cease at the time the patient is moved.

9 Receipt and Scrutiny of statutory paperwork (Form H1)

9.1 The holding powers are invoked when the completed Section 5(2) report has been received by someone authorised to receive it. In Livewell Southwest this is usually a qualified nurse who has been authorised to carry out this function on behalf of the hospital managers.

9.2 It is important that there is no delay in delivering the report to the Hospital Managers and that sufficient staff are authorised to enable reports to be received at any time. The 72 hours will commence once the form H1 has been received and receipted.

9.3 A Section 5(2) checklist should be completed on receiving of the H1 form. This provides guidance as to the validity of the form.

10 Ending Section 5(2)

10.1 Although the holding power lasts for a maximum of 72 hours, it should not be used to detain patients after:

- 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 (following assessment).
- An application under Section 2 or 3 is made.

10.2 Patients should be informed they are free to leave the hospital immediately they are no longer detained under the holding power, unless the patient is to be detained under some other authority, such as an authorisation under the Deprivation of Liberty safeguards in the Mental Capacity Act 2005.

10.3 The reasons for revoking the power should be entered in the patient's notes. All staff must be made aware if there has been a change to the patient's status.

11 Recording the end of detention

11.1 The time at which a patient ceases to be detained under Section 5(2) must be recorded in the patient's records. A regrade to informal form must also be completed. The reason why the patient is no longer detained under the power should also be recorded, as well as what happened next to the patient (e.g. the

patient remained in hospital voluntarily, was discharged, or was detained under a different power).

11.2 Detention under Section 5(2) cannot be renewed, but that does not prevent it being used again on a future occasion if necessary. If there are several occasions within a short period of time when the power is used, consideration must be given to making an application for assessment or treatment.

11.3 It is not acceptable for Section 5(2) to expire without a MHA assessment taking place. Should this occur the MHA office needs to be informed. This will be investigated, if necessary an incident form may need to be completed by a member of the ward staff.

12 Monitoring use

12.1 An audit will be undertaken annually monitoring the use of Section 5(2) including:

- How quickly patients are assessed for detention and discharged from the holding power.

- The proportion of cases in which applications for detention are, in fact, made following use of Section 5(2).

13 Practice Guidelines Section 5(2)

- The holding power, which authorises the detention of a patient for up to 72 hours, can be used only when the doctor or approved clinician in charge of the treatment of an informal patient (or their nominated deputy), concludes that a Mental Health Act Assessment is appropriate.

- The patient's doctor/approved clinician, or nominated deputy, should only use the power immediately after having personally examined the patient.

- The period of detention commences from the moment the Form H1 is completed and handed to the qualified nurse authorised to accept it.

- When a patient is detained under Section 5(2) the responsible manager for the area (usually ward manager) must ensure that the individual is provided with their Section 132 rights
-
- A patient detained under Section 5(2) who has the capacity to consent can only be treated if she/he consents to the treatment.

- Detaining patients under Section 5(2) does not confer any power under the Act to treat the individual without consent. In other words, they are in exactly the same position in respect of consent to treatment as patients who are not detained under the Act.

13.1 The Ending of Detention under Section 5(2)

- Detention under Section 5(2) will end immediately where:-

- The approved clinician decides that no assessment for possible detention under Section 2 or 3 needs to be carried out.

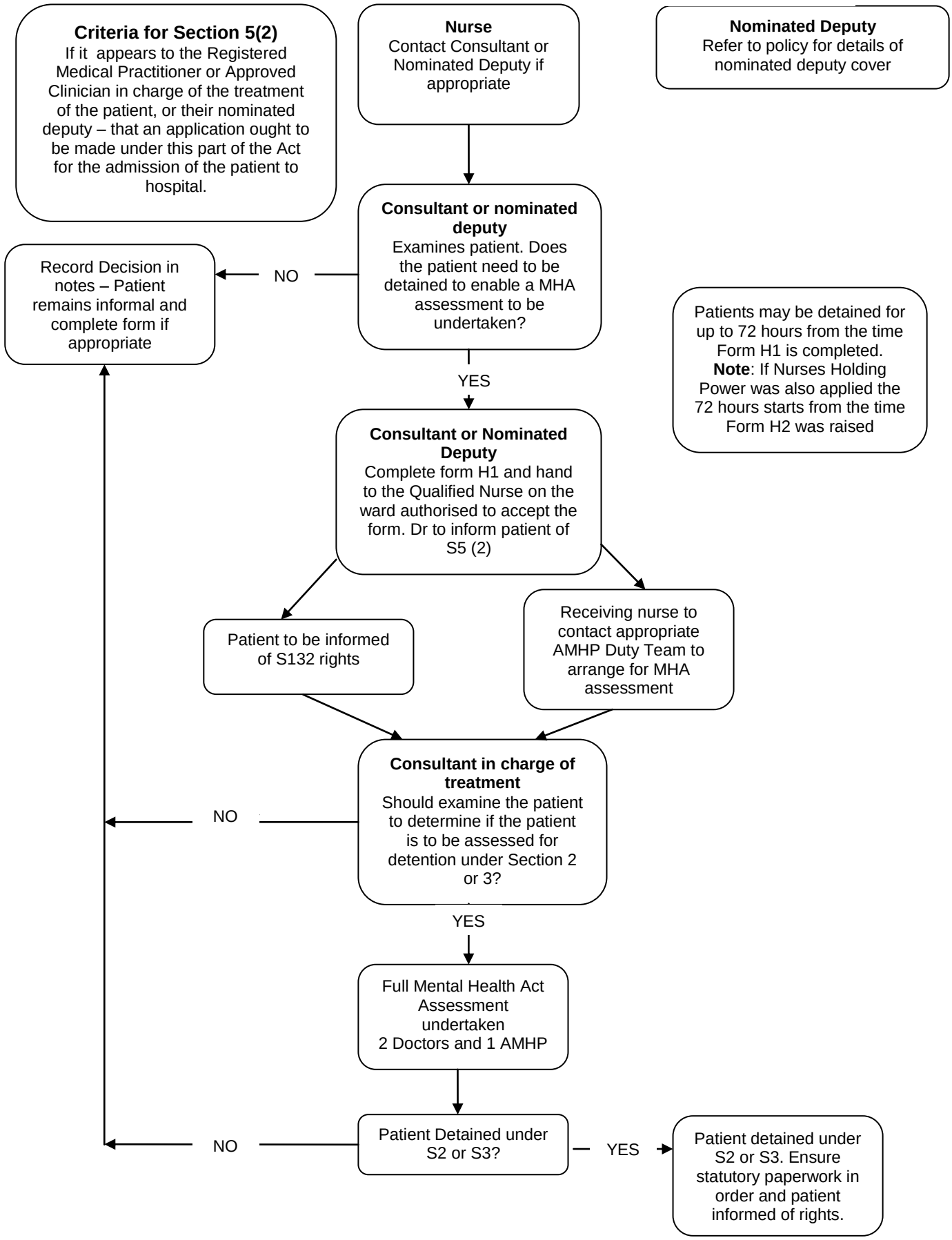
- An assessment for admission under Section 2 or 3 is made and an application for detention is not completed.

- An assessment for admission under Section 2 or 3 is made and an application for detention is completed.

- The patient is moved to another hospital under common law.

- The patient must be informed that he/she is no longer detained under the holding power. The decision, the reasons for this and the time should be recorded on the regrade form and in the patient's notes.

Procedure for Applying Doctors Holding Power Section 5(2)



All policies are required to be electronically signed by the Lead Director. Proof of the electronic signature is stored in the policies database.

The Lead Director approves this document and any attached appendices. For operational policies this will be the Locality Manager.

The Executive signature is subject to the understanding that the policy owner has followed the organisation process for policy Ratification.

Signed: Director of Professional Practice, Safety & Quality

Date: 13th July 2016

APPENDIX A

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)

continue overleaf

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

/ /