

Livewell Southwest

**Section 5(4)
Nurses Holding Powers
Mental Health and Learning Disabilities**

Version No 1:4
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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.

Author: Mental Health Act Manager

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Author Contact Details	<p>By post: Local Care Centre Mount Gould Hospital 200 Mount Gould Road Plymouth Devon PL4 7PY</p> <p>Tel: 0845 155 8085 Fax: 01752 272522 (LCC Reception)</p>

Document Review History

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0.1	Updating and reformatting	November 2008	C. Flynn	Updating in line with Mental Health Act Amendments.
V1	Minor amendments/ formatting changes	April 2009	Practice Facilitator MH & LD/ Policy ratification group secretary	Formatting/updating/clarifying.
v1:1	Minor amendments	October 2010	Mental Health Act Manager	Minor amendments
v1:2	Minor amendments	June 2012	Mental Health Act Manager	Minor amendments Updating of Practice Guidelines
v1:3	Minor amendments	January 2014	Mental Health Act Manager	Minor amendments Grammatical changes
V1.4	Minor amendments	May 2016	Mental Health Act Manager	Minor amendments following reissue of the Mental Health Act Code of Practice (2015)

Contents		Page
1	Introduction	5
2	Purpose	5
3	Definitions	5
4	Duties	5-6
5	Use of Section 5(4)	6-7
6	Monitoring The Use of Section 5(4)	9
7	Practice Guidelines - Invoking Section 5(4)	10
Appendix A	Form H2	11
Appendix B	Record of time at which power to detain under Mental Health Act 1983 – Section 5(4) elapsed	12

Section 5(4) Nurses Holding Powers Mental Health & Learning Disabilities

1 Introduction

- 1.1 This policy provides guidance on the use of Holding Powers available to nurses of the 'Prescribed Class,' (Nurses registered in either sub-part 1 or 2 of the register maintained by the Nursing and Midwifery Council whose entry in the register indicates that their field of practice is either mental health or learning disability nursing).
- 1.2 This policy is reflective of the guidance contained in Chapter 18 of The Code of Practice Mental Health Act 1983 as published 2015 (CoP). Section 5(4), permits for a nurse of the prescribed class to detain a person who is receiving treatment for mental disorder as **an in-patient** in a hospital, for a period of six hours from the time when that fact is so recorded, or until a medical practitioner arrives whichever is sooner.

2 Purpose

- 2.1 The purpose of this policy is to ensure that nurses who use the Section 5(4) holding powers, exercise this power lawfully, applying the guiding principles contained in chapter 1 of the CoP when making decisions under this section.

3 Definitions

The Mental Health Act Code of Practice 2015 - (COP)

The Mental Health Act 1983 (as amended 2007) - (MHA'83)

Mental Health Act Governance Group - (MHAGG)

Form H2 – Mental Health Act 1982 Section 5(4) – Record of hospital in-patient

Section 5(2) – Holding power of doctors and approved clinicians

Section 132 – Duty of managers of hospitals to give information to detained patients

The Mental Capacity Act 2005 – (MCA)

Section 19 – Regulations as to transfer of patients

4 Duties

- 4.1 The Locality Management Team for Mental Health and Learning Disabilities are responsible for ensuring this policy is in place.

- 4.2 Day to day use of the policy is monitored by Senior Clinical staff and the Mental Health Act/Deputy 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.” CoP 30.3
- 4.3 The Mental Health Act Manager will present to the Mental Health Act Governance Group (MHAGG) any matters relating to Section 5(4) incidents or any inappropriate use of 5(4). Corrective actions will be agreed and provided to the relevant unit/ward manager for remedial action.

5 Use of Section 5(4)

- 5.1 Nurses of the “prescribed class” may invoke section 5(4) of the Act in respect of a hospital in-patient who is already receiving treatment for mental disorder.
- 5.2 This power may be used only where the nurse considers that:
- The patient is suffering from mental disorder to such a degree that it is necessary for the patient to be immediately prevented from leaving the hospital either for the patient’s health or safety or for the protection of other people.
 - It is not practicable to secure the attendance of a doctor or approved clinician who can submit a report under section 5(2).
 - It can be used only when the patient is still on the hospital premises.
- 5.3 The use of the holding power permits the patient’s detention for up to six hours or until a doctor or approved clinician with the power to use section 5(2) arrives, whichever is the earlier. It cannot be renewed.
- 5.4 Once completed the form must be delivered to the managers of the hospital as soon as possible after it is made. The MHA Manager or Deputy MHA Manager have been authorised to receive detention papers on behalf of the hospital managers. The six hours begin from the time the form is completed.
- 5.5 The decision to invoke the power is the personal decision of the nurse, who cannot be instructed to exercise the power by anyone else.

5.6 Managers should ensure that suitably qualified, experienced and competent nurses are available to all wards where there is a possibility of section 5(4) being invoked, particularly acute psychiatric admission wards and wards where there are patients who are acutely unwell or who require intensive nursing care. Where nurses may have to apply the power to patients from outside their specialist field, it is good practice for managers to arrange suitable training in the use of the power in such situations.

5.7 Assessment before invoking section 5(4)

5.7.1 Before using the power, nurses should assess:

- The likely arrival time of the doctor or approved clinician, as against the likely intention of the patient to leave. It may be possible to persuade the patient to wait until a doctor or approved clinician arrives to discuss the matter further; and
- The consequences of a patient leaving the hospital before the doctor or approved clinician arrives – in other words, the harm that might occur to the patient or others.

5.8 In doing so, nurses should consider:

- the patient's expressed intentions
- the likelihood of the patient harming themselves or others
- the likelihood of the patient behaving violently
- any evidence of disordered thinking
- the patient's current behaviour and, in particular, any changes in their usual behaviour
- the patient's recent communications with family and friends
- whether the date is one of special significance for the patient (eg the anniversary of a bereavement)
- any recent disturbances on the ward
- any relevant involvement of other patients
- any history of unpredictability or impulsiveness
- any formal risk assessments which have been undertaken (specifically looking at previous behaviour), and
- any other relevant information from other members of the multi-disciplinary team.

5.9 Nurses should be particularly alert to cases where patients suddenly decide to leave or become determined to do so urgently.

5.10 Nurses should make as full an assessment as possible in the circumstances before using the power, but sometimes it may be necessary to invoke the power on the basis of only a brief assessment.

5.11 Action once section 5(4) is used

- 5.12 The reasons for invoking the power should be entered on S1 and a Form H2 completed. Details of any patients who remain subject to the power at the time of a shift change should be given to staff coming on duty.
- 5.13 The use of section 5(4) is an emergency measure, and the doctor or approved clinician with the power to use section 5(2) in respect of the patient should treat it as such and arrive as soon as possible. The doctor or approved clinician should not wait six hours before attending simply because this is the maximum time allowed.
- 5.14 If the doctor or approved clinician arrives before the end of the six hour maximum period, the holding power lapses on their arrival. If the doctor or approved clinician then uses their own holding power, the maximum period of 72 hours runs from when the nurse first made the record detaining the patient under section 5(4).
- 5.15 If no doctor or approved clinician who is able to make a report under section 5(2) has attended within six hours, the patient is no longer detained and may leave if not prepared to stay voluntarily. This should be considered as a serious failing, and should be reported via an Incident Form. Section 5(4) Elapsed Form (Appendix B) must also be completed.
- 5.16 The time at which a patient ceases to be detained under section 5(4) should be recorded on S1 and a locally produced Section 5(4) Elapsed Form completed (see appendix B). The reason why the patient is no longer detained under the section 5(4) must be recorded on S1, as well as the outcome e.g. the patient remained in hospital voluntarily, was discharged, or was detained under a different power.

5.17 General Points

- 5.17.1 Detention under section 5(4) cannot be renewed, but that does not prevent it being used again on a future occasion if necessary. If there is a frequent use of section 5(4) for a particular individual the reason as to why it is being used should be considered at the next available ward round and alternatives decided.

5.18 Information

- 5.18.1 Hospital managers must ensure that patients detained under section 5(4) are given information about their rights, as required by section 132 of the Act and also the effects of the Section.

5.19 Medical treatment of patients

- 5.19.1 Detaining patients under section 5(4) 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. Treatment may only be given with the patient's consent if they have

capacity, or by using the Mental Capacity Act if a patient lacks capacity. The principles of the MCA are to be applied on all occasions. It is important that any rationale behind the decision making process to forcibly treat an individual is recorded.

5.19.2 If an individual lacks capacity to consent and the MCA is used to restrain and provide medication the following two conditions must apply:

- The person taking action must reasonably believe that restraint is necessary to prevent harm to the person who lacks capacity, and
- The amount or type of restraint used and the amount of time it lasts must be a proportionate response to the likelihood and seriousness of harm.

5.20 Transfer to other hospitals

5.20.1 It is not possible for patients detained under section 5(4) 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). Should a patient who lacks capacity need to be transferred to another hospital for urgent medical treatment this would be carried out under the Mental Capacity Act (MCA). Patients with capacity are able to consent or refuse the transfer to another hospital. A proportionate amount of restraint could be used to effect the transfer of a patient under the MCA, however this would need to be necessary to prevent harm to the individual. The likelihood of suffering harm and the seriousness of that harm must also be considered. Once the patient leaves the detaining hospital the section 5(4) would cease. If a patient needs to be transferred to a more suitable mental health unit and they are continuing to refuse hospital admission, transfer can only take place once a Mental Health Assessment has taken place and the patient has been further detained.

6 Monitoring The Use of Section 5(4)

6.1 The use of section 5(4) will be monitored. Monitoring arrangements will include:

- 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); and
- The proportion of cases in which applications for detention are, in fact, made following use of section 5.

This information will be provided to the MHAGG on an annual basis or when there are serious concerns.

7 Practice Guidelines - Invoking Section 5(4)

1. Section 5(4) is an emergency measure to be used when it is immediately necessary to prevent an informal patient from leaving the hospital.
2. Nurses of the prescribed class (see form H2) may invoke section 5(4) of the Act if a person is receiving treatment for mental disorder as an in-patient in hospital **and** the disorder is of such a degree that it is necessary for the person's health **or** safety **or** for the protection of others that they are immediately restrained from leaving hospital **and** it is not practicable to secure the immediate attendance of a doctor or approved clinician to complete a section 5(2) instead.
3. The nurse wishing to detain a patient completes Form H2 (section 5(4) record of hospital in-patient) following which the patient may be detained for up to six hours. (See Appendix A). The power to detain takes effect at the time the nurse makes his or her report. It can only be used if the patient is indicating either verbally or otherwise that he or she wishes to leave the hospital.
4. The nurse in charge and the ward/duty doctor should be informed immediately a section 5(4) is used.
5. The patient's level of observation must be reviewed and the care plan updated to reflect the level of observations decided as necessary.
6. The nurse who detained the patient, or another suitably qualified nurse must inform the patient of their rights and provide the relevant rights leaflet.
7. As soon as possible after the nurse in charge arrives on the ward the nurse who detained the patient must provide an oral report of why section 5(4) was necessary.
8. If, within three hours, a doctor authorised to make a report under Section 5(2) has not attended and made decision as to whether section 5(2) is appropriate the nurse in charge should be informed.
9. As soon as the doctor arrives on the ward, the nurse who detained the patient or another appropriately qualified nurse completes the Section 5(4) elapsed Form and submits to the Mental Health Act Office.
10. The nurse who detained the patient, writes a full account in the patient's records of what led up to the detention and what happened after Section 5(4) was used.
11. If the detaining nurse is going off duty a clear handover of the patient's detention status to the nurse in charge of the shift must take place. The handover details must include, the events leading up to the detention, the time the detention became effective and an update of the Section 5(2) doctor's arrival time.

Appendix A

FORM H2 Regulation 4(1)(h)
Section 5(4) – record of hospital in-patient

Mental Health Act 1983

To the managers of (name and address of hospital)

.....
.....
.....
.....

(PRINT full name of the patient)

.....

It appears to me that –

- (a) this patient, who is receiving treatment for mental disorder as an in-patient of this hospital, is suffering from mental disorder to such a degree that it is necessary for the patient’s health or safety or for the protection of others for this patient to be immediately restrained from leaving the hospital;

AND

- (b) it is not practicable to secure the immediate attendance of a registered medical practitioner or an approved clinician (who is not a registered medical practitioner) for the purpose of furnishing a report under section 5(2) of the Mental Health Act 1983.

I am (PRINT full name)

.....

A nurse registered –

(Delete whichever do not apply)

- (a) in Sub-Part 1 of the register, whose entry includes an entry to indicate the nurse’s field or practice is mental health nursing;
- (b) in Sub-Part 2 of the register, whose entry includes an entry to indicate the nurse’s field of practice is mental health nursing;
- (c) in Sub-Part 1 of the register, whose entry includes an entry to indicate the nurse’s field of practice is learning disabilities nursing;
- (d) in Sub-Part 2 of the register, whose entry includes an entry to indicate the nurse’s field of practice is learning disabilities nursing.

Signed Date

Time

Appendix B



NHS No:
Hosp No:
DOB:

Record of time at which power to detain under Mental Health Act 1983 – Section 5(4) elapsed

Full name of Patient
.....

Complete (a) or (b) whichever occurred first

(a) Registered medical practitioner (name)arrived

(time) at..... (date)

(b) The patient ceased to be detained **WHY**

(time) at

(date) on
.....

SignedPrint.....

Status

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 and Quality

Date: 19/05/16