Clinical

Mental Health Act 1983:
Section 5(4) Nurses Holding Power: Standard Operating Procedure

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Change Control – Amendment History

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1. Introduction

1.1 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 to prevent them from leaving the premises when they believe it is necessary for the individual’s health or safety or for the protection of others.

1.2 Chapter 18 of the Mental Health Act 1983 Code of Practice (the Code) and chapter 8 (8.79 to 8.84) of the Reference Guide contain further guidance.

2. Purpose

2.1 This policy details the requirements and processes involved in the use of the power of section 5(4).

2.2 This guidance should be read in conjunction with the Trust SOPs on Section 5(2), Section 132; Mental Capacity Act 2005 and with the information found at 1.2 above.
3. **Scope**

3.1 This document is applicable to all staff involved in providing care and treatment to any persons in all Trust inpatient settings.

4. **Definitions**

**Nurse of the Prescribed Class**

Regulation 2(1) of the Mental Health (Nurses) (England) Order 2008 (SI 2008/1207)

A nurse registered in either Part 1 or 2 or the register maintained under the Nursing and Midwifery Order 2001, whose registration includes an entry specified in paragraph (2) (“(a) mental health nursing, or (b) learning disabilities nursing”).

5. **Duties and Responsibilities**

5.1 **The Chief Executive** is responsible for assuring this policy is implemented within the Trust.

5.2 **The Mental Health Legislation Manager** is responsible for:

- The development, monitoring and review of this policy and practice standards
- The provision of appropriate mandatory training and education to support the policy standards.
- Advising the Mental Health Legislation Committee that monitors the use of the MHA and reports to the Quality Effectiveness and Risk Committee, of any issues relating to the implementation of the policy.

5.3 **Service Directors, Clinical Directors and Service Managers** are responsible for:

- Implementation and monitoring of this policy in their areas of responsibility
- Ensuring that systems and processes are in place and monitored to meet the requirements outlined in this policy

5.4 **Team leaders, departmental heads, ward and unit managers** are responsible for:

- Ensuring that all appropriate employees in posts in the Trust clinical services attend appropriate training.
- Implementation of the Section 5(4) processes that are documented within this policy.

5.5 **Qualified mental health and learning disability nurses providing care in inpatient settings** are responsible for:

- Ensuring awareness of the content of this policy
- Carrying out Section 5(4) procedures in line with the standards detailed within this policy
• Maintaining their individual competence in the practice of the MHA and attending training as required by their roles

5.6 **Other Trust employees working in roles to provide healthcare in inpatient settings** are responsible for:
• Ensuring awareness of the content of this policy
• Carrying out Section 5(4) procedures in line with the standards detailed within this policy
• Maintaining their individual competence in the practice of the MHA and attending training as required by their roles

6. **Purpose of Section 5(4)**

6.1 Nurses of the “prescribed class” (see 4 above) may invoke section 5(4) of the Act in respect of a hospital in-patient who is already receiving treatment for mental disorder where:

6.1.1 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; and

6.1.2 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.

6.2 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.

6.3 The patient may be detained from the moment the nurse makes the necessary record using Form H2. The record must then be sent to the hospital managers.

6.4 The decision to invoke the power is the personal decision of the nurse, who cannot be instructed to exercise the power by anyone else.

7. **Assessment before Invoking Section 5(4)**

7.1 Before using the power the nurse should assess:

7.1.1 The time the doctor or approved clinician is likely to arrive, as against the likely intention of the patient to leave. Some patients who express a wish to leave hospital can be persuaded to wait until an approved clinician arrives to discuss the matter further; and

7.1.2 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.
7.2 In doing so, nurses should consider:

7.2.1 The patient’s expressed intentions;
7.2.2 The likelihood of the patient harming themselves or others;
7.2.3 The likelihood of the patient behaving violently;
7.2.4 Any evidence of disordered thinking;
7.2.5 The patient’s current behaviour and, in particular, any changes in their usual behaviour;
7.2.6 Whether the patient has recently received messages from relatives or friends;
7.2.7 Whether the date is one of special significance for the patient (e.g. the anniversary of a bereavement);
7.2.8 Any recent disturbances on the ward;
7.2.9 Any relevant involvement of other patients;
7.2.10 Any history of unpredictability or impulsiveness;
7.2.11 Any formal risk assessments which have been undertaken (specifically looking at previous behaviour); and
7.2.12 Any other relevant information from other members of the multi-disciplinary team.

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

7.4 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.

8. Action once Section 5(4) is used

8.1 The reasons for invoking the power must be entered in the patient’s notes. 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.

8.2 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 must be immediately informed of the use of the holding power. The doctor or approved clinician should 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.

8.3 If the doctor or approved clinician arrives before the end of the six hour maximum period, the holding power lapses on their arrival. But 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).

8.4 If no doctor or approved clinician 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 in accordance with the Trust’s Incident SOP.
9. Recording the end of detention

9.1 There is no statutory form for recording the end of detention under section 5(4). The time at which a patient ceases to be detained under section 5(4) should be recorded in the patient’s record. The reason why the patient is no longer detained under the power should also be recorded, as well as what then happened to the patient (e.g., the patient remained in hospital voluntarily, was discharged, or was detained under a different power).

9.2 Detention under section 5(4) cannot be renewed, but that does not prevent it being used again on a future occasion if necessary.

10. Information

10.1 Patients detained under section 5(4) must be given information about their position and their rights, as required by section 132 of the Act (see Trust Section 132 SOP).

11. Medical treatment of patients

11.1 Detaining patients under section 5(4) does not confer any power under the Act to treat them without their consent. Any treatment provided must be given in accordance with the Mental Capacity Act 2005 (see Trust Mental Capacity Act SOP).

12. Transfer to other hospitals

12.1 It is not possible for patients detained under section 5 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).

13. Process for monitoring compliance and effectiveness

13.1 The MHA Administrators will monitor the use of section 5, including:

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

13.2 Usage and attendance times will be reported on an exception basis to the Mental Health Legislation Committee.
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<th>Aspect of compliance or effectiveness being monitored</th>
<th>Monitoring method</th>
<th>Individual or department responsible for the monitoring</th>
<th>Frequency of the monitoring activity</th>
<th>Group/committee or forum which will receive the findings/monitoring report</th>
<th>Committee/individual responsible for ensuring that the actions are completed</th>
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<td>Usage of power and attendance times</td>
<td>Local monitoring</td>
<td>Mental Health Legislation Department</td>
<td>Ongoing</td>
<td>By exception Mental Health Legislation Committee / QERC</td>
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14. References

Mental Capacity Act 2005
Mental Capacity Act 2005 Code of Practice
Mental Health Act 1983
Mental Health (Nurses) (England) Order 2008 (SI 2008/1207)