

Reference Number:	Date of Next Review: 19/08/2024 Previous Trust/LHB Reference Number: UHB 412
Version Number: 2	
Section 5(2) Doctors' Holding Power Procedure Mental Health Act, 1983	
<p>Introduction and Aim</p> <p>This document supports the Section 5(2) Doctors' Holding Power Policy, Mental Health Act, 1983.</p> <p>To ensure staff are aware of their individual and collective responsibilities when considering use of the doctors' holding power under section 5(2).</p> <p>To Provide clear direction and guidance to staff in relation to their legal responsibilities under the Mental Health Act 1983 as amended by the MHA 2007.</p> <p>To Ensure that statutory requirements under the Mental Health Act 1983 are met.</p>	
<p>Objectives</p> <p>This Procedure describes the following with regard to a doctors' holding power:</p> <ul style="list-style-type: none"> • The purpose of a doctors' holding power • The process for assessing the suitability for the use of a doctors' holding power • The duties of the practitioners and agencies involved in the management of patients subject to a doctors' holding power <p>Practitioners must have due regard to the Mental Health Act Code of Practice generally and specifically to the Guiding Principles when they are considering the use of a doctors' holding power. This will ensure that considerations are given as to whether the objectives can be met in a less restrictive way.</p>	
<p>Scope</p> <p>This procedure applies to all of our staff in any inpatient setting where a person is receiving inpatient treatment in hospital and is not already liable to be detained or who is subject to a community treatment order (CTO).</p> <p>Patients who are in hospital by virtue of a deprivation of liberty authorisation under the Mental Capacity Act 2005 (MCA) may be detained under section 5(2). It does not matter whether the patient was originally admitted for treatment primarily for either a mental disorder or a physical condition.</p>	
Equality and Health Impact Assessment	There is potential for both positive and negative impact. The procedure is aimed at improving services and meeting diverse needs. Mitigation actions are already in place to offset any potential negative
	outcome, e.g. through the monitoring of the procedure. There is nothing, at this time, to stop the procedure being implemented.
Documents to read alongside this Procedure	<ul style="list-style-type: none"> • The Mental Health Act 1983 (as amended by the Mental Health Act 2007) • Mental Health (hospital, guardianship, community treatment and consent to treatment)(Wales) regulations 2008 • The Mental Capacity Act 2005 (including the Deprivation of Liberty Safeguards delegated to this Act under the Mental Health Act 2007)

	<ul style="list-style-type: none"> • The respective Codes of Practice of the above Acts of Parliament • The Human Rights Act 1998 (and the European Convention on Human Rights) • Domestic Violence, Crime and Victims Act, 2004 <p>All Cardiff and Vale policies on the Mental Health Act 1983 as appropriate including:</p> <p>Section 5(2) Doctors' Holding Power Policy Section 5(4) Nurses' Holding Power Policy Section 5(4) Nurses' Holding Power Procedure Hospital Managers' Scheme of Delegation Policy Hospital Managers' Scheme of Delegation Procedure</p>
Approved by	Mental Health and Capacity Legislation Committee

Accountable Executive or Clinical Board Director	<i>Chief Operating Officer</i>
Author(s)	<i>Mental Health Act Manager</i>
<p><u>Disclaimer</u></p> <p>If the review date of this document has passed please ensure that the version you are using is the most up to date either by contacting the document author or the Governance Directorate.</p>	

Summary of reviews/amendments			
Version Number	Date of Review Approved	Date Published	Summary of Amendments
1	<i>MHLCC</i>	<i>02/07/2018</i>	<i>New document</i>
2			<p><i>Removal of glossary of terms.</i></p> <p><i>Inserted clarity on the legal position relating to the use of section 5(2) and inpatient status in the Emergency Department, General Hospital and in relation to a conditionally discharged patient subject to restrictions by the Ministry of Justice.</i></p> <p><i>Enhanced section to clearly explain the procedure in relation to receiving the HO12 on behalf of the Hospital Managers.</i></p> <p><i>Inserted section in relation to support from the independent Mental Health Advocacy Service.</i></p> <p><i>Inserted:</i></p> <ul style="list-style-type: none"> • <i>Appendix 1 – Summary of complete s.5(2) procedure</i> • <i>Appendix 2 – HO12, Example</i> • <i>Appendix 3 – Ending of section 5(2) form</i>

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1. INTRODUCTION

Section 5(2) is the power under the Mental Health Act, 1983 (MHA) that allows a responsible doctor or approved clinician to detain a patient for a maximum period of up to 72 hours in order to make arrangements for their assessment for detention under section 2 or section 3 of the MHA. This power can only be used to detain patients who have already been informally admitted to a hospital. It can be used whether or not the patient has capacity to consent to their admission but cannot be used with out-patients, or with those attending the hospital in other capacities, e.g. as visitors.

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. It 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.

2. PROCEDURE STATEMENT

This procedure has been developed to guide staff on the implementation and management of section 5(2) doctors' holding powers in accordance with the Mental Health Act 1983 as amended by MHA 2007. This guidance has been developed in line with the Mental Health Act 1983 Code of Practice for Wales 2016 (Code of Practice).

Holding powers when implemented authorises the detention of the patient in the hospital for a maximum of 72 hours so the patient can be assessed with a view to an application for detention under the Act being made.

3. SCOPE

The Health Board has in place appropriate governance arrangements to monitor and review the exercise of functions under the Act on its behalf. The Mental Health and Capacity Legislation Committee is specifically for this purpose.

This procedure is applicable to all qualified doctors' within all Mental Health inpatient settings and general hospital settings.

4. DUTIES AND RESPONSIBILITIES OF DOCTORS' AND APPROVED CLINICIANS

Section 5(2) authorises the detention of the patient in the hospital for a maximum of 72 hours so the patient can be assessed with a view to an application for detention under the Act being made. It should only be used if, at the time, it is not practicable or safe to initiate an application for detention without also detaining the patient in the interim. That is, the patient must be unwilling to remain in hospital in order for the assessment for detention to be made and it must be necessary for the person to remain in hospital until the assessment can be undertaken.

Section 5(2) should not be used as an alternative to making an application, even if it is thought the patient will only need to be detained for 72 hours or less.

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

There may be more than one person who could reasonably be said to be in charge of a patient's treatment e.g. where a patient is receiving treatment for both a physical and a mental disorder. In such a case, the psychiatrist or approved clinician in charge of the patient's treatment for the mental disorder is the preferred person to use the power in section 5(2).

The Doctor must be fully aware of the diverse needs of the patient when considering detention and must take them in to account at all times. They must ensure the patient fully understands what is happening to them in a language and format which they are able to understand, this will include sensory and cognitive abilities and physical impairment. Where necessary, an interpreter should be obtained.

They must complete a written record of the assessment (Statutory Form HO12). As well as the completion of the statutory documentation, doctors' must make a record of the assessment including the start time of the section in the patients' clinical notes.

5. NOMINATION OF DEPUTIES

Section 5(3) allows the doctor or approved clinician in charge of an inpatient's treatment to nominate a deputy to independently exercise section 5(2) powers in their absence.

Only a doctor or approved clinician on the staff of the same hospital may be a nominated deputy. 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.

Doctors' and approved clinicians should only be nominated as a deputy if they are competent to perform the role. Nominated deputies should report the use of section 5(2) to the person for whom they are deputising as soon as practicable.

It is permissible for deputies to be nominated by title, rather than by name e.g. the junior doctor on call for particular wards, provided there is only one nominated deputy for any patient at any time and it can be determined with certainty who that nominated deputy is.

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. However, 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. The deputy must exercise their own professional judgment. Patients should not be admitted informally with the sole intention of then using the holding power.

6. DUTIES AND RESPONSIBILITIES OF QUALIFIED NURSES

The qualified nurse should check that the doctor has completed form HO12 correctly. The form must then be forwarded to the Mental Health Act Team for receipt on behalf of the Hospital Managers.

During office hours (09:00 – 17:00, Monday to Friday) detention papers must be submitted to the Mental Health Act Office in Hafan Y Coed, University Hospital

Llandough to enable the team to undertake receipt and scrutiny. Other sites must make contact with the Mental Health Act Office to inform them that they have detention papers to be received and make arrangements to fax or email a scanned copy the papers as a priority.

Outside of office hours between 17:00 and 20:30 the Shift Coordinator for the appropriate area i.e. Hafan Y Coed, MHSOP or Rehab must be contacted via bleep or through the main switchboard in order to make arrangements to receive detention papers.

The Night Site Manager is the delegated officer between 20:30 and 08:30 for the purpose of receipt of detention papers and can be contacted by bleep or the main switchboard.

The ward must keep a copy of the section papers in the patients file until the final version which has been processed by the Mental Health Act Office is available.

Once the detention papers have been formally received on behalf of the Hospital Managers outside of office hours it is the responsibility of the receiving officer to ensure the detention papers are forwarded to the Mental Health Act Office, Hafan Y Coed, University Hospital Llandough immediately.

Detention papers received off site must be faxed/scanned or emailed to the Mental Health Act Office. Once confirmation has been received the original detention papers must be sent to the Mental Health Act Office in the internal mail system.

Detention papers received on the Hafan Y Coed site must be placed in an envelope and delivered to the Mental Health Act Office letterbox staff to collect on the next working day.

The nurse should ensure that the patient is made aware of their rights under the Act and this is documented in the patients' notes. Information and leaflets are available on the Mental Health Act page, Cardiff and Vale intranet.

7. PROCEDURE

Holding powers can only be used on a patient who has been admitted to hospital. Admission should be defined as completion of the admission process performed by nursing staff or medical staff.

Patients who are in hospital by virtue of a deprivation of liberty authorisation under the Mental Capacity Act 2005 (MCA) may be detained under section 5(2). It does not matter whether the patient was originally admitted for treatment primarily for either a mental disorder or a physical condition.

If the doctor invoking the section 5(2) power is not a psychiatrist, approved clinician or nominated deputy they 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 a patient is already detained under section 5(4) the request from a nurse to assess for detention under section 5(2) should be treated as an emergency and be responded to accordingly i.e. within 6 hours of the section 5(4) commencing.

Although section 5(2) can last up to a maximum of 72 hours, the assessment process must be put in place once the HO12 is completed.

The Approved Mental Health Practitioner (AMHP) should be contacted at this stage in order to co-ordinate a Mental Health Act assessment and for those attending to consider the need for section 2 or section 3 of the Mental Health Act.

Patients subject to section 5(2) are not subject to consent to treatment provisions contained in Part 4 of the MHA. If the patient is mentally capable of making a decision about treatment, the common law enables him to refuse to be treated for either a physical or mental disorder. However, if the patient is assessed as being mentally incapable of making a decision about treatment, the treatment can be provided under the Mental Capacity Act 2005 if it is deemed to be in his best interests.

A record of the assessment must be made in the patient's clinical notes.

8. USE OF SECTION 5(2) IN A GENERAL HOSPITAL

Any doctor in charge of a patient's care may detain an informal patient under section 5(2), using form HO12. This includes a doctor in a non-psychiatric hospital.

The non-psychiatric doctor should, wherever possible, consult with a senior psychiatrist prior to the use of section 5(2). If this is not practicable then the senior psychiatrist should see the patient as soon as possible to determine whether the patient should be detained further.

The full Mental Health Act assessment should be requested as soon as possible after the use of section 5(2).

Section 5(2) cannot be used in an Accident and Emergency Department. However if a patient has been allocated a hospital bed and is occupying that bed he or she is an "in-patient" for the purposes of section 5(2). The internal classification of the patient is not legally relevant because whether a patient is an in-patient is a question of fact. The Mental Health Act 1983, Code of Practice for Wales defines and inpatient in this context as:

“any person who is receiving inpatient treatment in a hospital and who is not already liable to be detained or who is subject to a Community Treatment Order (CTO)”

A patient does not lose their inpatient status until they have physically removed themselves from the hospital (which includes the hospital grounds).

9. CONDITIONALLY DISCHARGED PATIENTS

There is nothing to prevent the holding powers contained in section 5(2) from being used on a conditionally discharged patient who is being treated in a psychiatric hospital informally. If this does occur the Ministry of Justice should be notified on 020 33343335 and 0300 303 2079 (outside of office hours).

10. SECTION 17 LEAVE

A patient detained on Section 5(2) cannot receive section 17 leave. They are not detained by virtue of either an application under Section 2 or Section 3 and therefore do not have a Responsible Clinician to grant such leave.

11. COMMUNITY TREATMENT ORDER PATIENTS

Section 5(2) is not applicable to a patient subject to a Community Treatment Order (CTO). Patients can be recalled even during periods when they are in-patients. Therefore where it is considered necessary, the recall procedure must be used to detain the patient and within the 72 hours allowed a decision must be made whether to revoke the CTO.

Section 5(2) cannot be used to keep a patient in hospital after the end of the 72 hour recall period if the CTO has not been revoked.

12. SECTION 18 ABSENT WITHOUT LEAVE (AWOL)

A patient detained under section 5(2) who leaves the hospital is AWOL and can be retaken but only within the 72 hour period.

13. INAPPROPRIATE USE OF SECTION 5(2)

Section 5(2) cannot be used in the following circumstances:

- For an outpatient attending an accident and emergency department or any other out-patient facility.
- For a patient who is already liable to be detained in hospital or who is subject to a CTO.
- Is not to be used as a holding power simply for the purpose of persuading the patient to stay.
- To prolong the detention of a patient whose section is about to expire.
- To provide time for an application to be made to the county court pursuant to s29(4) to displace a nearest relative after the expiration of the 28-day period of detention provided for under section 2.

The doctor or approved clinician should assess the patient as soon as practicable and discharge if appropriate. They should not wait until the end of the 72 hours, nor, should they allow the section 5(2) to lapse.

Patients should not be informally admitted with the sole intention of then using the holding power.

14. ENDING OF SECTION 5(2)

Section 5(2) holding powers last for a maximum of 72 hours and cannot be renewed.

Detention under section 5(2) will end if:-

- The result of the assessment is a decision not to make an application under section 2 or section 3.
- The power has been invoked by a nominee under section 5(3) and the doctor or approved clinician in charge decides that no assessment for possible detention needs to be carried out.
- An application under section 2 or section 3 is made.
- The patient is discharged for clinical reasons before an assessment can be undertaken.

The maximum period a patient may be held under section 5(2) is 72 hours, which will include anytime the patient is held on section 5(4) of the Act.

The patient should be informed once they are no longer held under section 5(2) and advised of the reasons why. If this is because section 2 or section 3 was not applied, the patient should be informed they are free to leave hospital.

15. MEDICAL TREATMENT OF PATIENTS

The rules in Part 4 of the Act do not apply to patients detained under section 5(2) and as such there is no 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.

16. TRANSFER TO OTHER HOSPITALS

Patients detained under section 5(2) cannot 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 includes transfer between hospitals managed by the same hospital managers.

A patient who is subject to section 5(2) of the Act 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.

If, following transfer, the patient tries to leave the receiving hospital, a new situation will have arisen. In this circumstance, the receiving hospital may need to use section 5(2) to provide authority to detain the patient in that hospital.

In all cases, if the conditions are met, an emergency application for detention under section 4 of the Act could be made by the sending hospital. The patient could then be transferred to the receiving hospital under section 19. Alternatively, an emergency application under section 4 could be submitted to the managers of the receiving hospital.

17. APPEALS

A patient detained under a section 5(2) cannot make an application to the Mental Health Review Tribunal for Wales or appeal to the hospital managers.

18. INDEPENDENT MENTAL HEALTH ADVOCACY

A patient detained under a section 5(2) is eligible to receive independent mental health advocacy services.

A qualifying patient may ask for the support of an Independent Mental Health Advocate (IMHA) at any time. It is the responsibility of the ward staff to ensure that the patient is informed that this service is available to them and how they may obtain it.

19. MONITORING

Hospital managers should monitor 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).

20. TRAINING

The health board will provide ongoing training for staff who have a delegated duty under the scheme of delegation. Details of training courses available can be found by contacting the mental health act administration team.

21. IMPLEMENTATION

This document will be widely disseminated to staff in Cardiff and Vale University Health Board. It will be published on the organisations intranet sites and referred to during training relevant to the Act.

22. RESPONSIBILITIES

22.1 Chief Executive

The Chief Executive Officer has overarching responsibility for ensuring that Cardiff and Vale University Health Board is compliant with the law in relation to the Mental Health Act.

22.2 Chief Operating officer

The Chief Operating Officer is the Executive Lead for Mental Health. He has overarching responsibility for ensuring compliance with the contents of this procedure.

22.3 Designated Individuals

This procedure applies to all ~~doctors~~ individuals who have defined responsibilities under the provisions of the Act.

23. REFERENCES

All staff will work within the Mental Health Act 1983 and in accordance with the Code of Practice for Wales 2007, Mental Capacity Act 2005, and Human Rights Act 1998.

Mental Health Act 1983 - www.legislation.gov.uk/ukpga/1983/20/contents

Mental Capacity Act 2005 - www.legislation.gov.uk/ukpga/2005/9/schedule/7

Mental Health Review Tribunal for Wales - www.justice.gov.uk/tribunals/mental-health

Human Rights Act 1998 - www.legislation.gov.uk/ukpga/1998/42/contents

Summary of complete S5.2 procedure

- Ensure you are the nominated doctor before acting (Duty Dr, on call Dr or patient's consultant).
- Assess situation and patient.
- Discuss with colleagues and senior on call.
- Complete form HO 12 as follows:
 1. The full and correct address of the hospital in which the patient is to be held under section 5(2).
 2. Your full name.
 3. Declare by deletion, your status for the purpose of section 5(2).
 4. The patient's full name.
 5. Full reasons why informal treatment is no longer available with evidence:
 - Suggesting the presence of mental disorder.
 - Suggesting that the patient was at risk.
 - That the patient would no longer remain on the ward informally.
 - That there is a need for a further assessment under the Act.
 6. The exact time that the completed form was furnished to the hospital managers - this means the time that the report is consigned to the hospital's internal mail system operated by the hospital managers. **N.B. due to the geography of Cardiff and Vale UHB this would normally be by fax/email/scan to eliminate any delay.**
 7. Sign and date the completed Form HO 12.
 8. Make arrangements for an assessment to consider section 2 or section 3 as soon as the report is furnished to the Hospital Managers.
 9. Accurately record in the patients' case notes the use of section 5(2), include the start and end dates and times.
- It is **essential** to deliver the form HO 12 to "Hospital Managers". Monday-Friday between 9am & 5pm by hand, scanned email (mentalhealthact.team.cav@wales.nhs.uk), or fax (02921 8 24740) to the MHA Office. If scanned or faxed, the originals **must** be sent in the internal mail. After 5pm and before 9am you **must** give the forms to the Shift Co-ordinator. You can contact the Shift Co-ordinator via switchboard.
- Inform RC and AMHP or their on-call colleagues.
- For further information between the hours of 9am and 5pm the MHA Team can be contacted on 02921 8 24744. Out of hours the Shift Coordinator should be contacted via switchboard.

Regulation 4(1)(g)

Mental Health Act 1983 section 5(2) - report on hospital in-patient

PART I

(To be completed by the registered medical practitioner or approved clinician in charge of the treatment of the patient under section 5(2) or any person nominated under section 5(3))

To the managers of

(name and address of hospital)

Cardiff and Vale University Local Health Board

Full Correct Address of Hospital - Current address list can be found on the

Mental Health Act Intranet Page

(full name)

I am Full name of Doctor - No Initials

and I am

Delete (a) or (b) as appropriate

(delete the phrase which does not apply)

(a) the registered medical practitioner/the approved clinician (who is not a registered medical practitioner)

OR

(b) a registered medical practitioner/an approved clinician who is the nominee of the registered medical practitioner or the approved clinician

in charge of the treatment of

(full name of patient)

Full name of Patient - No Initials

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)

For Mental Disorder only.

Full reasons why Informal treatment is no longer appropriate. Support this with evidence;- Suggesting the presence of Mental Disorder; Suggesting that the patient was at risk; That the patient would not remain informally;

That there is a need for further assessment under the Mental Health Act

Please turn over

Form HO 12 (Cont'd)

Delete the phrase which does not apply

I am furnishing this report by:

consigning it to the hospital managers' internal mail system today

(time)

at

delivering it (or having it delivered) by hand to a person authorised by the hospital managers to receive it.

Signed: Doctor to sign.....

Date: Doctor to 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

(time and date)

to receive this report at on

Signed: Shift Coordinator/MHA Administrator on behalf of the hospital managers

Name: Full Name.....

Date: Shift Coordinator or MHA Administrator to date.....



Ending of Detention under Section 5(2)

This form is to be completed in all cases by the Doctor, Approved Clinician or the Nominated Deputy and delivered to the Mental Health Act Office, Hafan Y Coed, University Hospital Llandough as soon as possible.

Patient's full name			
Patient's date of birth			
Commencement s.5(2)/s.5(4)	of	(date)	(time)
Ending of s.5(2)		(date)	(time)

Detention under section 5(2) ended because:

(Section 5(2) will end with one of the explanations below, please identify applicable reason)

- Following assessment it has been decided not to make an application under section 2 or 3.
OR
- Power has been invoked by a nominee under section 5(3) and the Dr or AC has decided that no assessment for possible detention needs to be carried out.
OR
- An application under section 2 or 3 has been made.
OR
- Patient has been discharged due to clinical reasons before assessment could be undertaken e.g the patients violent conduct leads to arrest and removal to police custody.

The patient has been informed of the outcome further to assessment and I have advised of the reasons why. The patient will be:

- Remaining in hospital on an informal basis.
OR
- Detained in hospital under section _____ .
OR
- Discharged from hospital

Signed:..... **Dr in charge of patient care, AC or Nominated Deputy**

Name:

Date:

