

<b>Reference Number:</b> <i>UHB 414</i>  <b>Version Number:</b> 2	<b>Date of Next Review:</b> 19/08/2024 <b>Previous Trust/LHB Reference Number:</b> N/A
<b>Section 5(4) Nurses' Holding Power Procedure Mental Health Act, 1983</b>	
<b>Introduction and Aim</b>  This document supports the Section 5(4) Nurses' Holding Power Policy, Mental Health Act, 1983.  To ensure staff are aware of their individual and collective responsibilities when considering use of the nurses' holding power under section 5(4).  To Provide clear guidance to staff in relation to their legal responsibilities under the Mental Health Act 1983 as amended by the MHA 2007.  To Ensure that statutory requirements under the Mental Health Act 1983 are met.	
<b>Objectives</b>  This procedure describe the following with regard to a nurses' holding power: <ul style="list-style-type: none"> <li>• The purpose of a nurses' holding power</li> <li>• The process for assessing the suitability for the use of a nurses' holding power</li> <li>• The duties of the practitioners and agencies involved in the management of patients subject to a nurses' holding power</li> </ul> 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.	
<b>Scope</b>  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).  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(4).  This power can only be used in respect of patients who are receiving hospital treatment for mental disorder; it is not sufficient for the patient to be merely suffering from a mental disorder. Although the power can be invoked in any hospital where the patient is receiving treatment for mental disorder, it is unlikely that a non-psychiatric ward will be staffed with nurses' of the "prescribed class". <sup>1</sup>	
<b>Equality and Health Impact Assessment</b>	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

<sup>1</sup> <http://www.legislation.gov.uk/wsi/2008/2441/article/2/made>

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	procedure. There is nothing, at this time, to stop the procedure from being implemented.
<b>Documents to read alongside this Procedure</b>	<ul style="list-style-type: none"> <li>• The Mental Health Act 1983 (as amended by the Mental Health Act 2007)</li> <li>• Mental Health (hospital, guardianship, community treatment and consent to treatment)(Wales) regulations 2008</li> <li>• The Mental Capacity Act 2005 (including the Deprivation of Liberty Safeguards delegated to this Act under the Mental Health Act 2007)</li> <li>• The respective Codes of Practice of the above Acts of Parliament</li> <li>• The Human Rights Act 1998 (and the European Convention on Human Rights)</li> <li>• Domestic Violence, Crime and Victims Act, 2004</li> </ul> <p>All Cardiff and Vale policies on the Mental Health Act 1983 as appropriate including:</p> <p>Section 5(4) Nurses' Holding Power Policy  Section 5(2) Doctors' Holding Power Policy  Section 5(2) Doctors' Holding Power Procedure  Hospital Managers' Scheme of Delegation Policy  Hospital Managers' Scheme of Delegation Procedure</p>
<b>Approved by</b>	Mental Health and Capacity Legislation Committee

<b>Accountable Executive or Clinical Board Director</b>	<i>Mental Health Clinical Board Director of Operations</i>
<b>Author(s)</b>	<i>Mental Health Act Manager</i>

**Disclaimer**  
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](#).

<b>Summary of reviews/amendments</b>			
<b>Version Number</b>	<b>Date of Review Approved</b>	<b>Date Published</b>	<b>Summary of Amendments</b>
1	26/06/2018	02/07/2018	<i>New document</i>
2			<i>Removal of glossary of terms.  Inserted section to clearly explain the duties and responsibilities of qualified</i>

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			<p><i>nurses and the procedure in relation to receiving the HO13 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"> <li>• <i>Appendix 1 – Informal to 5(2)/5(4) flowchart</i></li> <li>• <i>Appendix 2 – HO13 example</i></li> </ul>
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## 1. INTRODUCTION

Under section 5(4) nurses' of the prescribed class may detain a hospital inpatient who is already receiving treatment for the mental disorder for up to six hours. The decision to invoke the power is the personal decision of the nurse, who cannot be instructed to exercise the power by anyone else. This power may only be used where the nurse considers:

- 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 the protection of other people.
- The patient is not an informal patient who is also subject to a community treatment order.
- It is not practicable to secure the attendance of a doctor or approved clinician who can submit a report under section 5(2).

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(4). The internal classification of the patient is not legally relevant because whether a patient is an in-patient is a question of fact.

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

## 2. PROCEDURE STATEMENT

This procedure has been developed to guide staff on the implementation and management of nurses' holding powers (Section 5(4)) 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 six 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 nurses' within all mental health inpatient settings.

## 4. DUTIES AND RESPONSIBILITIES OF NURSES' OF THE PRESCRIBED CLASS

A nurse of the prescribed class is defined in the Mental Health (Nurses') (Wales) Order 2008 as a nurse registered in sub-part 1 or 2 of the nurses' part of the Register

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of the Nursing and Midwifery Council, with a recordable qualification in mental health or learning disability nursing as follows:

A nurse registered in

- Sub-part 1** of the register, whose entry includes an entry to indicate the nurse's field of practice is mental health nursing
- Sub-part 2** of the register, whose entry includes an entry to indicate the nurse's field of practice is mental health nursing
- Sub-part 1** of the register, whose entry includes an entry to indicate the nurse's field of practice is learning disabilities nursing
- Sub-part 2** of the register, whose entry includes an entry to indicate the nurse's field of practice is learning disabilities nursing

## 5. ASSESSMENT PRIOR TO IMPLEMENTATION

Before using the power, nurses' should make as full as an assessment as possible in the circumstances, but sometimes it may be necessary to invoke the power on the basis of only a brief assessment e.g. when events occur very quickly and the patient is determined to leave, the result of which could potentially have serious consequences if the patient was successful in leaving.

When making a full assessment they should assess:

- The likely arrival of the doctor or approved clinician
- The likely intention of the patient to leave, as it may be possible to persuade the patient to wait until a doctor or approved clinician arrives
- The harm that might occur to the patient or others if the patient were to leave the hospital before the doctor or approved clinician arrives. In this regard, the nurse should consider all aspect of the patient's communication and behaviour, including:
  - The patient's expressed intentions
  - The likelihood of the patient harming themselves or others, or behaving violently
  - Any evidence of disordered thinking
  - Any changes to their usual behaviour and any history of unpredictability or impulsiveness
  - Dates of special significance for the patient
  - Any recent disturbances on the ward
  - Any relevant involvement of other patients
  - Any formal risk assessments, which have been undertaken
  - Any other relevant information

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 at the place the person is being detained, whichever is the earlier. It is the responsibility of the

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nursing staff to ensure a doctor or approved clinician is notified of the section 5(4). Detention under section 5(4) cannot be renewed although this does not prevent it from being used on more than one occasion if necessary.

A nurse using section 5(4) should use the least restricting intervention to prevent the patient leaving hospital.

The nurse 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.

The patient is detained from the moment the nurse makes the necessary record. The reasons for invoking the power and the time this was done should be entered on PARIS, the patients' electronic record. A Form HO13 is completed by the nurse.

## 6. DUTIES AND RESPONSIBILITIES OF QUALIFIED NURSES

~~These documents~~ Form HO13 must ~~then~~ be forwarded to the Mental Health Act Team for receipt on behalf of the Hospital Managers. ~~faxed and posted to the Mental Health Act administration team.~~

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 of 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.



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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 for 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.

~~A nurse using section 5(4) should use the least restricting intervention to prevent the patient leaving hospital.~~

~~The nurse 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.~~

~~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 to download from the Cardiff and Vale, Mental Health Act intranet page.~~

Hospital managers should ensure suitably qualified, experienced and competent nurses' are available to all wards where there is a possibility of section 5(4) being invoked.

## **7. DOCTOR/APPROVED CLINICIAN RESPONSIBILITIES**

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 practicable. The doctor or approved clinician should not wait the maximum time of six hours before attending.

The power to detain lapses once the doctor or approved clinician arrives to assess the patient. The time at which the patient ceased to be detained under section 5(4) should be recorded in the patient's record, together with the reasons and outcome.

## **8. MENTAL HEALTH ACT ADMINISTRATOR RESPONSIBILITIES**

~~The Mental Health Act administrator will ensure that all relevant documents are received within the Mental Health Act Administration department.~~

The Mental Health Act administrator will carry out the scrutiny of documents and ensure that the forms are compliant with the MHA ~~comply with guidance~~ and the persons completing the forms are authorised to do so.



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The Mental Health Act administrator will ensure that the original detention papers are filed in the patients' statutory file within the Mental Health Act administration department and are uploaded to PARIS.

## **9. CONDITIONALLY DISCHARGED PATIENTS**

There is nothing to prevent the holding powers contained in section 5(4) 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(4) cannot be granted ~~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(4) 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(4) 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(4) who leaves the hospital is AWOL and can be retaken but only within the six hour period.

## **13. INAPPROPRIATE USE OF SECTION 5(4)**

Section 5(4) 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.

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

## **14. ENDING OF SECTION 5(4)**

Section 5(4) holding powers last for a maximum of six hours and cannot be renewed.

Detention under section 5(4) will end if:-

- The result of the assessment is a decision not to make an application under section 2 or section 3.

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- An application under section 2 or section 3 is made.
- The patient is discharged for clinical reasons before an assessment can be undertaken.
- No doctor or approved clinician able to make a report under 5(2) has attended within six hours

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 six hours, nor, should they allow the section 5(4) to lapse.

The patient should be informed once they are no longer held under section 5(4) 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

Patients subject to section 5(4) 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 them 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 their best interests.

## 16. TRANSFER TO OTHER HOSPITALS

Patients detained under section 5(4) 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(4) 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(4) 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 section 5(4) cannot make an application to the Mental Health Review Tribunal for Wales or appeal to the hospital managers.

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## 18. INDEPENDENT MENTAL HEALTH ADVOCACY

A patient detained under a section 5(4) 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(4), 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(4).
- Ensure the patients are made aware of their rights under section 132 of the Mental Health Act.

## 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 or on the Mental Health Act intranet page.

## 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

All qualified nursing staff caring for patients on mental health inpatient wards should be familiar with the procedures detailed in the document and other related policies/procedures.

## 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.

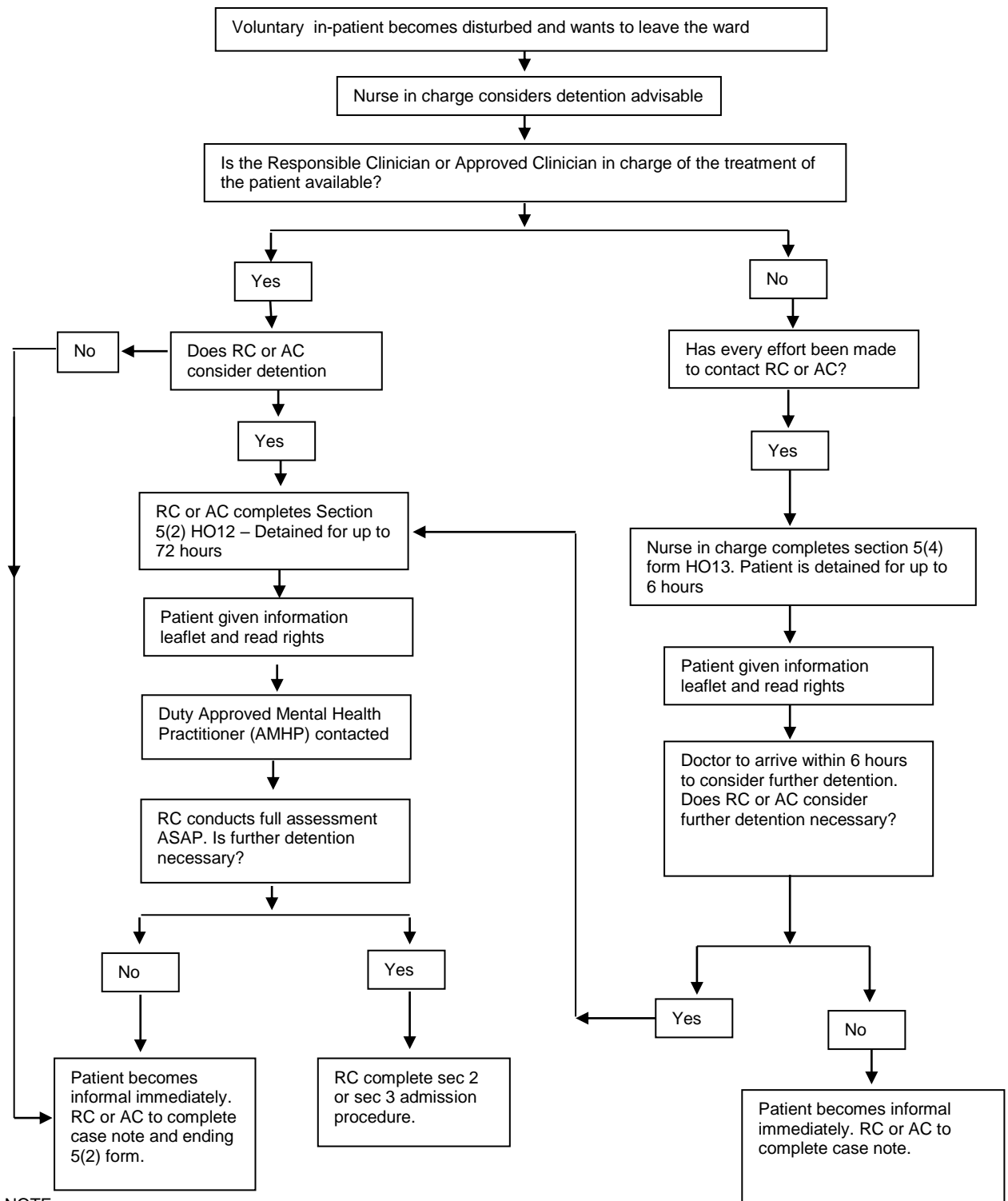
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Mental Health Act 1983 - [www.legislation.gov.uk/ukpga/1983/20/contents](http://www.legislation.gov.uk/ukpga/1983/20/contents)  
Mental Capacity Act 2005 - [www.legislation.gov.uk/ukpga/2005/9/schedule/7](http://www.legislation.gov.uk/ukpga/2005/9/schedule/7)  
Mental Health Review Tribunal for Wales [www.justice.gov.uk/tribunals/mental-health](http://www.justice.gov.uk/tribunals/mental-health)  
Human Rights Act 1998 - [www.legislation.gov.uk/ukpga/1998/42/contents](http://www.legislation.gov.uk/ukpga/1998/42/contents)  
<http://www.legislation.gov.uk/wsi/2008/2441/article/2/made>

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**Appendix 1**

**Informal patient to Section 5(4) and/or Section 5(2)**



**NOTE:**

- i. Section 5(4) cannot be immediately renewed
- ii. Time detained under section 5(4) becomes part of 72 hours if section 5(2) follows
- iii. Section 5(2) can be used in General Hospitals
- iv. Section 5(4) can be used in General Hospitals (by a nurse of the prescribed class only)
- v. Cannot be used on CTO patients
- vi. **All forms must be sent to MHA Office/Shift Coordinator ASAP**

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**Appendix 2**

# Form HO 13

## Regulation 4(1)(h)

### Mental Health Act 1983 section 5(4) - record of hospital in-patient

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 of the patient)

Full name of the patient – No Initials

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 for the purpose of furnishing a report under section 5(2) of the Mental Health Act 1983.

(full name)

I am Full name of nurse – No Initials

a nurse registered -

- (a) in Sub-Part 1 of the register, whose entry includes an entry to indicate the nurse's field of practice is mental health nursing

OR

- (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

OR

- (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

OR

- (d) registered 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: .....