



MENTAL HEALTH SERVICES POLICY

USE OF SECTION 5(2)

DOCTOR'S HOLDING POWER POLICY

Mental Health Act 1983 as amended by the Mental Health Act 2007

Introduction

This 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.

The power to detain lasts a maximum of 72 hours so that the patient can be assessed with a view to such an application being made. This power can only be used for informal patients.

Section 5(2) is not renewable

This power can be used whether or not the patient has capacity to consent to their admission to hospital but cannot be used with out-patients.

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

Using the Power in DRH

This power should only be used after the patient's doctor or Approved Clinician (or their nominated deputy) has personally examined the patient and when it is unsafe to wait for a full assessment to admit under Part 11 of the Act.

If the patient is already detained under S.5(4) the request from a nurse to access for detention under S.5(2) should be treated as an emergency and responded to quickly.

The doctor or Approved Clinician should complete Form H1. The power to detain operates from the time the form is completed, signed and a copy given to the Home Manager or person in charge at the time. A copy should be sent to the Chief Executive or Deputy Chief Executive.

Patients who try to leave while Form H1 is being completed can be prevented from doing so under common law.

Nominated Deputies

Section 5(3) allows the doctor or an 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 one deputy may be authorised at any one time for any patient, and it is unlawful for a nominated deputy to nominate another.

Nominated Deputies should report the use of a S.5(2) to the person for whom they are deputising as soon as practicable.

Nursing staff should be informed who the nominated deputy for a particular patient is at any given time.

Assessment for Admission

Arrangements for an assessment to consider an application under Part 11 of the Act should be put in place as soon as the S.5(2) report has been given to the Hospital Manager.

Ending the Section 5(2)

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

- The doctor or Approved Clinician decides that 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

Patients should be informed immediately that they are no longer under the holding power and are free to leave the hospital, unless the patient is to be detained under some other authority.

The time at which the patient ceases to be detained under this power should be recorded together with the reason why the patient is no longer detained and what has happened to the patient.

Information

Patients detained under S5(2) must be provided with information about their position and their rights as required by Section 123 of the Act.

Treatment

Detaining patients under S.5(2) does not confer any power under the Act to treat them without their consent.

Transfer to other hospitals

It is not possible for a patient under S.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).