

# Section 5(4) Nurses Holding Power Policy

## Mental Health Act, 1983

### Policy information

626

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*Not applicable*

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Summary of document:

Section 5(4) allows a registered mental health or learning disability nurse to detain an inpatient for a maximum period of up to 6 hours in order for their assessment under the Mental Health Act. The policy provides information on how and who can implement it.

Scope:

Any mental health and learning disability inpatient setting where any person including children are receiving treatment for their mental disorder.

To be read in conjunction with:

[363 - Hospital Managers' Scheme of Delegation Policy \(sharepoint.com\)](#) – opens in a new tab

[596 - Doctors Holding Power Policy \(sharepoint.com\)](#) – opens in a new tab

[741 - Information to Patients Rights Procedure \(sharepoint.com\)](#) – opens in a new tab

Patient information:

[Mental Health and Learning Disabilities - Leaflet 5 - Section 5\(4\).pdf - All Documents \(sharepoint.com\)](#)

– opens in new tab

[Mental Health and Learning Disabilities - Taflen Wybodaeth y Claf 5 adran 5\(4\).pdf - All Documents \(sharepoint.com\)](#) – opens in new tab

Owning group:

*Mental Health Legislation Committee*

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*1.0 – New Policy*

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Keywords

Section 5(4), Nurses Holding Power, Mental Health Act, 1983

Glossary of terms

Term	Definition
AC	Approved Clinician – A mental health professional approved by the Welsh Ministers to act as an approved clinician for the purposes of the Act. In practice, Health Boards take these decisions on behalf of the Welsh Ministers
CTO	Community Treatment Order – Written authorisation on a prescribed form for the discharge of a patient from detention in a Hospital onto a supervised community treatment.
Form HO13	Statutory Welsh form to be completed by qualified nurse when implementing section 5(4)
RC	Responsible Clinician - The approved clinician with overall

	responsibility for the patient's case
IMHA	Independent Mental Health Advocate – An advocate independent of the team involved in patient care available to offer support to patients.
AMHP	Approved Mental Health Professional – A professional with training in the use of the Act, approved by a local authority to carry out a number of functions under the Act.
Mental Capacity Act (2005)	An Act of Parliament that governs decision-making on behalf of people who lack capacity, both where they lose capacity at some point in their lives and where the incapacitating condition has been present since birth.
MHRTfW	Mental Health Review Tribunal for Wales – A judicial body that has the power to discharge patients from detention, community treatment orders, guardianship and conditional discharge
Part 4, Mental Health Act	The Part of the Act which deals mainly with the medical treatment for mental disorder of detained patients (including conditionally discharged and community treatment order patients who have been recalled to hospital). In particular, it sets out when they can and cannot be treated for the mental disorder without their consent.
Section 2	Compulsory admission of a patient to hospital for assessment and for detention up to 28 days
Section 3	Compulsory admission to hospital for treatment and detention for up to six months
Section 17 leave	Formal permission for a patient who is detained in hospital to be absent from the hospital for a period of time; patients remain under the powers of the Act when they are on leave and can be recalled to hospital if necessary in the interests of their health or safety or for the protection of others.
Section 133	The duty of hospital managers to inform nearest relatives of a patient's discharge.

**Keypoints:**

Please summarise key points of the document

## Contents

Policy information.....	1
Approval information .....	1
Introduction .....	5
Scope.....	5
Aim.....	5
Objectives .....	5
Main body (Free typing add titles etc).....	5
DUTIES AND RESPONSIBILITIES OF NURSES OF THE PRESCRIBED CLASS.....	5
ASSESSMENT PRIOR TO IMPLEMENTATION .....	6
DOCTOR/APPROVED CLINICIAN RESPONSIBILITIES.....	7
SECTION 17 LEAVE .....	7
COMMUNITY TREATMENT ORDER PATIENTS .....	7
SECTION 18 ABSENT WITHOUT LEAVE (AWOL) .....	7
INAPPROPRIATE USE OF SECTION 5(4).....	7
ENDING OF SECTION 5(4).....	8
MEDICAL TREATMENT OF PATIENTS .....	8
TRANSFER TO OTHER HOSPITALS.....	8
APPEALS.....	8
MONITORING.....	9
TRAINING.....	9
Roles and Responsibilities.....	9
Chief Executive .....	9
Executive Lead .....	9
Qualified mental health and learning disability nurses.....	9
References.....	10
Attachment - Nurses Monitoring Form .....	11

## 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).

## 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 Legislation Committee is specifically for this purpose.

This policy relates to any mental health and learning disability inpatient setting where any person including children is receiving treatment for their mental disorder.

## Aim

The aims of this policy are to:

- Ensure staff are aware of their individual and collective responsibilities when considering and assessing individuals before implementing holding powers.
- Provide clear guidance to staff in relation to their legal responsibilities under the Act
- Ensure that statutory requirements under the Act are met.

## Objectives

Qualified Mental Health and Learning Disability Nurses should have due regard to the NMC Code of Practice, the Mental Health Act Code of Practice for Wales and specifically to its guiding principles when they are considering the use of nurses holding powers. This would ensure that considerations are given as to whether the objectives can be met in a less restrictive way.

## Main body

### 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 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

## **ASSESSMENT PRIOR TO IMPLEMENTATION**

Before using the power, nurses should make as full 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 aspects 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. Detention under section 5(4) cannot be renewed although this does not prevent it from being used on more than one occasion if necessary.

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 Care Partner, the patients' electronic record. A Form HO13 is completed by the nurse along with a local incident report form (Appendix A). These documents must then be emailed and posted to the Mental Health Act Administration Team.

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 into 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 Hywel Dda intranet. <http://howis.wales.nhs.uk/sitesplus/862/page/73945>

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.

### **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 possible. 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 on care partner, the patient's electronic record, together with the reasons and outcome.

### **SECTION 17 LEAVE**

A patient detained on section 5 (4) 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.

### **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.

### **SECTION 18 ABSENT WITHOUT LEAVE (AWOL)**

A patient detained under section 5(4) who leaves the hospital is AWOL and can be retaken (into care) but only within the six hour period.

### **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 under section 2, section 3 or section 4, 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.

## **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.
- An application under section 2 or section 3 is made.
- The patient is discharged for clinical reasons before an assessment can be undertaken.

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.

## **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.

## **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.

## **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.



## **MONITORING**

Day to day monitoring of all aspects of Mental Health Act documentation are carried out by the Mental Health Act administration team. Areas of non-compliance are addressed immediately with the patient's multi-disciplinary team. If the issues are to do with treatment they can be escalated to the Service Manager. If there is a need to escalate further these Issues can be discussed at Mental Health Scrutiny Group and ultimately to Mental Health Legislation Committee.

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.

## **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.

## **Roles and Responsibilities**

### **Chief Executive**

The Chief Executive Officer has overarching responsibility for ensuring that Hywel Dda University Health Board (HDUHB) is compliant with the law in relation to the Mental Health Act.

### **Executive Lead**

The Director of Operations is the Executive Lead for Mental Health and Learning Disabilities and has overarching responsibility for ensuring compliance with the contents of this policy.

### **Qualified mental health and learning disability nurses**

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 and that all relevant documents are received by the Mental Health Act administration team including the local incident report form.

### **Mental Health Act Administration Team**

The Mental Health Act Administration team are responsible for monitoring the use of Section 5(4).

- The Mental Health Act administrator will carry out the scrutiny of documents and ensure that forms comply with guidance and the persons completing the forms are authorised to do so.
- The Mental Health Act administrator will ensure that correspondence is sent to the nearest relative, if the patients' written permission has been obtained.
- 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 team.

## References

All staff will work within the Mental Health Act 1983 and in accordance with the Code of Practice for Wales 2016, Mental Capacity Act 2005, and Human Rights Act 1998.

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>

NMC Code of Practice 2015 [www.nmc.org.uk/standards/code/](http://www.nmc.org.uk/standards/code/)

**Appendix A**

Full name and address of Nurse (of prescribed class) | \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

used Section 5(4) (Nurses Holding Power) to detain

Patients full name \_\_\_\_\_

Ward name \_\_\_\_\_

Currently an Informal In-patient on \_\_\_\_\_ (Ward)

in \_\_\_\_\_ Hospital/Unit

Reasons for using Section 5(4) \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date & time Section 5(4) implemented: \_\_\_\_\_

Date & time Section 5(4) expires: \_\_\_\_\_

RC/AC/Nominated Deputy contacted at: Time \_\_\_\_\_

Date \_\_\_\_\_

Signed \_\_\_\_\_ Date \_\_\_\_\_

**N.B. THIS FORM SHOULD BE COMPLETED AND ATTACHED TO SEC. 5(4) PAPERS AND SENT TO THE MENTAL HEALTH ACT ADMINISTRATION TEAM**