

## **Procedure for Section 5(2) of Mental Health Act 1983 (Doctor's Holding Power)**

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**POLICY APPROVED BY:** Executive Management Team

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## Document Control Sheet

<b>Policy Title</b>	<b>Procedure for Section 5.2 of Mental Health Act (Doctor's Holding Power)</b>
<b>Purpose of Policy/Assurance Statement</b>	The purpose of this procedure is to ensure that the use of Section 5(2) of Mental Health Act 1983 (MHA) within the North East London NHS Foundation Trust (NELFT) is applied within a legal and best practice framework. It outlines the powers provided by the MHA as amended by the Mental Health Act 2007 and gives guidance on the powers and provisions of Section 5(2). This procedure aims to give assurance to patients that Section 5(2) will be used correctly in accordance with the law and in response to patient user needs.
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<b>Lead</b>	Robert Keys, Mental Health Law Manager
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## Assurance Statement

The purpose of this procedure is to ensure that the use of Section 5(2) of Mental Health Act 1983 (MHA) within the North East London NHS Foundation Trust (NELFT) is used lawfully and within a best practice framework. It outlines the powers provided by the Mental Health Act (MHA) 1983 as amended by the Mental Health Act 2007<sup>1</sup> and gives guidance on the powers and provisions of Section 5(2). This procedure aims to give assurance to patients that Section 5(2) will be used correctly in accordance with the law and in response to patients needs.

### 1. Introduction

Section 5(2) is the power under the MHA that allows the responsible consultant or their nominated deputy to detain an existing informal in-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 1983. The legal definition of Section 5(2) is given at 4.1 as is the definition of who can use the power of Section 5(2). Its use is not confined to Mental Health Services, though it is always likely to be more common there.

### 2. Aims and Objectives

- 2.1 To outline the scope of the power to hold patients and any limitations, as defined in the MHA.
- 2.2 To define best practice and provide guidance to staff including Social Services Staff
- 2.3 To clarify the changes in use of the powers introduced by the MHA 2007.

### 3. Duties and Responsibilities

- 3.1. **Medical Director:** To oversee the working of this policy in cooperation with the Mental Health Law Manager. To address any concerns about medical assessment issues.
- 3.2. **Consultant Doctors**<sup>2</sup>: To personally assess in-patients for S.5(2). When contactable but not able to attend the ward to nominate a deputy to implement S.5.2.
- 3.3. **Middle Grade Doctors:** To carry out assessments under S.5(2) where specifically nominated to do so by the responsible consultant.
- 3.4. **Junior Doctors**  
Out of hours to act as the nominated deputy for S.5(2) assessments. Within hours to act as the nominated doctor for S.5(2) when nominated by the responsible consultant or automatically when the consultant is not available.
- 3.5. **Approved Mental Health Professionals**<sup>3</sup> (AMHP): to coordinate an assessment for patient's possible detention under S.2 or S.3.

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<sup>1</sup> Section 9 of Mental Health Act 2007 amended Section 5(2) and (3) of the 1983 Act so that an Approved Clinician who is not a registered medical practitioner may hold a patient under S.5(2) An approved clinician (AC) is a person approved by the Secretary of State to act as an approved clinician for the purposes of the MHA . Currently and for the foreseeable future NELFT does not have ACs who are not doctors. Consultant Psychiatrists are almost always ACs. The actual wording of the MHA refers to the ' registered medical practitioner in charge of the treatment of the patient' , which in practice is almost always a consultant level doctor

<sup>3</sup> A social worker or other professional approved by a local social services authority (LSSA) to carry out a variety of functions under the MHA 1983. S13 (1) of MHA 1983 outlines the duty of the Local Social Services Authority (LSSA) to

- 3.6. **Locality Mental Health Act Managers:** To arrange for the medical/administrative scrutiny of S.5(2) statutory forms. To provide advice to staff and others about the power.
- 3.7. **Mental Health Law Manager:** To monitor the use of S.5(2), preparing reports and statistics and raising concerns as necessary. To provide advice to staff and others on correct use of the power.
- 3.8. **Nursing staff:** To contact the responsible consultant or( if they are not available) the duty doctor when S.5 (2) appears to be indicated. To arrange for an AMHP to attend to assess for Section 2 or 3. To ensure that patients are given information and informed of their rights<sup>4</sup>.

#### 4. Criteria and Definition

4.1 This section is defined in MHA 1983 as follows:

- *5 (2) If, in the case of a patient who is an in-patient in a hospital, it appears to the registered medical practitioner or approved clinician in charge of the treatment of the patient that an application ought to be made under this Part of this Act for the admission of the patient to hospital, he may furnish to the managers a report in writing to that effect; and in any such case the patient may be detained in the hospital for a period of 72 hour from the time when the report is so furnished.*
- *5 (3) The registered medical practitioner or approved clinician in charge of the treatment of a patient in a hospital may nominate one (but not more person) to act for him under subsection (2) above in his absence<sup>5</sup>.*

4.2 An in-patient is any person who is receiving in-patient treatment. Informal admission occurs when the following criteria are met. The person has:

- been assessed by a healthcare professional
- complied with the arrangements for arrival at the hospital
- understood and accepted the offer of a bed and cooperated with the admission procedure
- was not at the time of admission, either verbally or physically being resistant to staying at the hospital premises.

#### 5. Purpose of Section 5(2)

- 5.1. An informal patient<sup>6</sup> has the right to discharge themselves from hospital at any time they wish.
- 5.2. The S.5(2) power allows an informal patient to be detained for up to 72 hours to allow an assessment under the MHA with a view to an application under S.2 or 3.

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arrange of an Approved Mental Health Professional (AMHP) to carry out an assessment for an application for sections 2 or 3.

<sup>4</sup> S132 of MHA outlines the duty of Managers to give information to detained patients. Information must be given to the patient both orally and in writing. These are not alternatives Code of Practice Para. 2.9

<sup>5</sup>Section 5 (3a) of MHA: for the purposes of subsection 3 above, (a) the RMP may nominate another RMP or an AC, on the staff of the hospital and (b) the AC may nominate another AC, or a RMP on the staff of the hospital

<sup>6</sup> S131 of MHA 1983 provides for a patient to enter hospital for assessment/treatment for mental disorder on an informal basis or remain in hospital on an informal basis once the authority for his or her original detention has come to an end

- 5.3. Using S.5(2) provides a lawful means to detain an informal in-patient who is firmly expressing a wish to and/or trying leave the hospital. Its purpose is to prevent an inpatient from discharging themselves whilst a full mental health act assessment is carried out. It is not a short-term detention order and should not be used as such (Code of Practice, 12.8.)

## 6. Use of Section 5(2)

- 6.1. Section 5(2) can only be used for an inpatient (see 4.2 above).
- 6.2. A person who is incapable of understanding and accepting the offer of a bed will also be classed as being informally admitted provided all of the other criteria outlined above are met.
- 6.3. An informal in-patient includes a person who has been detained under the MHA, discharged from detention and agreed to stay in hospital on an informal basis.
- 6.4. S.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.

## 7. Use of Section 5(2) Power within NELFT

7.1 The responsible consultant <sup>7</sup> in charge of the treatment of an in-patient, or their nominated deputy, can furnish a written report to the managers of the hospital to detain the patient **for a maximum of 72 hours** if they conclude that an application for detention under the MHA should be made.

7.2 At present within NELFT the nominated deputy should preferably be a Section 12 doctor but may if necessary be the duty doctor. Out of hours it will automatically be the duty doctor.

## 8. Powers of Delegation to a Nominated Deputy

- 8.1. S.5(3) allows the consultant doctor in charge of an in-patient's treatment to nominate a deputy to exercise the holding power. The deputy will then act on their own responsibility<sup>8</sup>.
- 8.2. Doctors should not be nominated as deputies unless they are competent to perform the role and understand the power and the purpose of S.5(2).
- 8.3. Nominated deputies who are neither ACs nor doctors approved under section 12, should where necessary seek advice from the person for whom they are deputising, or from someone else who is an AC or S.12 Approved Doctor, before using S.5(2).
- 8.4. Nominated deputies should report the use of Section 5(2) to the person for whom they are deputising as soon as practicable<sup>9</sup>.
- 8.5. Consultants may leave instructions with ward staff to contact them (or their nominated deputy) if a particular patient wants or tries to leave. But they may not leave instructions

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<sup>7</sup> The MHA 2007 extends this power to Approved Clinicians who are not doctors but at the time of the publication of this procedure, NELFT only uses doctors as ACs. To qualify as an AC, professionals from the other four eligible groups (nursing, psychology, Occupational Therapy and AMHP) would need to fulfil required competencies having reached an advanced level of experience and undertaken an AC course.

<sup>8</sup> MHA Code of Practice 2008 Para 12.11

<sup>9</sup> MHA Code of Practice 2008 Para 12.14

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<sup>10</sup>.

- 8.6. Only one deputy may be authorised at any time for any patient. In this context however, it is permissible for deputies to be nominated by title rather than by name (eg. duty doctor).
- 8.7. It is unlawful for a nominated deputy to delegate this duty by nominating another person.

## **9. Action Required to instigate Section 5(2)**

- 9.1. The nurse in charge should normally first attempt to contact the responsible consultant, who is the first point of contact for the use of S.5(2)
- 9.2. Outside the normal working hours of 9am to 5pm, Monday – Friday, the duty doctor will automatically be the nominated deputy to carry out a S.5(2).
- 9.3. Where the responsible consultant is contactable and available; it is preferable for them to assess the patient themselves.
- 9.4. Alternatively, where the Consultant/AC is contactable, but it is not reasonably practical for them to attend the ward, they may choose to nominate another doctor (e.g. a Speciality Doctor or the Ward doctor who has the advantage that they know the patient).
- 9.5. Where the Consultant is not contactable the position will be the same as for out of hours: that the nominated deputy is the duty doctor.
- 9.6. Where the Consultant is contactable, they can always nominate the duty doctor if they choose to do so.

## **10. Application of Section 5(2)**

- 10.1. The Consultant or nominated deputy should personally examine the patient to assess whether detention under S 5(2) is appropriate. This should be combined with information obtained from nursing staff or RiO progress notes about the patient's recent behaviour and presentation.
- 10.2. A nominated deputy should use their own clinical judgement in deciding whether to place the person on S.5(2) or allow them to leave hospital following assessment.
- 10.3. A duty doctor assessing out of hours should always contact the senior doctor on-call before allowing a person to leave hospital because they do not appear to meet the criteria for S.5(2).
- 10.4. If S.5(2) is appropriate the assessing Doctor must state on Form H1 Part 1<sup>11</sup> how the criteria are met and the reasons why informal treatment is no longer appropriate.
- 10.5. The Doctor must inform the patient of their reasons for invoking Section 5(2) and record those reasons in the patient's notes.
- 10.6. The 72 hour period during which the patient may be detained begins when the Form H1 is delivered in person to an authorised officer of the Hospital Managers or consigned to the

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<sup>10</sup> MHA Code of Practice 2008 Para 12.17

<sup>11</sup> Mental Health Act 1983 Section 5(2) Report on hospital in-patient H1 Forms are available on NELFT wards

Hospital Managers internal mail system. In practice the H1 will normally be given directly to the nurse in charge of the ward.

- 10.7 A person authorised by the Hospital Managers (normally the nurse in charge) must complete Part 2 of Form H1.
- 10.8 Within Mental Health these documents must be delivered to the MHA Office and a copy placed in the patient file. Outside of Mental Health there is no requirement to deliver to the MHA Office.
- 10.9 The nurse in charge must also complete the S.5(2) monitoring form (Appendix 1). This should be kept on the ward until the section is regraded or revoked. Within Mental Health Services it should then be sent to the MHA office.

## **11 Assessment for Section 2 or Section 3**

- 11.1 The purpose of the assessment under S.5(2) is to consider the need for S.2 or 3.
- 11.2 If a consultant uses S.5(2) they should immediately complete a recommendation for S.2 or 3, since this is the sole person of detaining a patient on S.5(2).
- 11.3 Where the S.5(2) has been invoked by the nominated deputy, who is a Section 12 doctor, they should also complete a recommendation for S.2 or 3 immediately.
- 11.4 The nurse in charge must also arrange for an AMHP to attend with a second S.12 doctor as soon as the first medical recommendation has been completed.
- 11.5 It should not be assumed that patients detained on S.5(2) on Friday evenings or at weekends can safely be left until Monday before being seen by the Consultant. Where necessary the nurse in charge must arrange for an outside S.12 doctor to attend and complete a medical recommendation for S.2 or 3 if appropriate, in which case the nurse should also arrange for an AMHP to attend with a second S.12 doctor.
- 11.6 A record of the assessment should always be made on RIO as soon as S.5(2) is used.

## **12 Ending Section 5(2)**

- 12.1 Section 5(2) holding powers last for a maximum of 72 hours and cannot be renewed.
- 12.2 Section 5 (2) ends as soon as:
  - the Consultant/AC attends the ward and decides that no application for S.2 or 3 needs to be carried out and the patient reverts to informal status.
  - the patient is detained under S.2 or S.3
  - the patient is transferred to another hospital
- 12.3 Patients should be informed immediately that they are no longer detained under S.5(2).
- 12.4 The time at which a patient ceases to be detained under S.5(2) and the reasons for this should be recorded on RiO and on the monitoring form.
- 12.5 Although detention under S.5(2) cannot be renewed, once the patient is informal S.5(2) could be used again for the same patient within the same episode but an interval of time must have elapsed. It is unlawful to use a second S.5(2) backed onto a first because an assessment has not been completed.



12.6 Frequent use of S.5(2) must indicate that the patient has been inadequately assessed or managed and should not normally arise.

### **13 Nurses Use of Section 5(4) Holding Power**

13.1 Efforts should be made by nursing staff to persuade and encourage those patients, who are at risk and attempting to leave, to return to or remain on the ward area until a doctor can attend to assess under S.5(2).

13.2 However where the patient cannot be persuaded to wait and it is likely the doctor will be more than 15 minutes or takes more than 15 minutes to attend the ward, a nurse who is a registered mental health nurse can consider invoking a S.5(4)<sup>12</sup>.

13.3 Where a patient is detained under Section 5(4) this power ends automatically on the arrival of a doctor qualified to use S.5(2) but that doctor can decide whether or not to further detain them under Section 5(2).

13.4 Any period during which the patient has already been detained under Section 5 (4) counts as part of the 72 hours they may be detained under Section 5(2).

13.5 See the Trust's separate procedure on S.5(4) for further information.

### **14 Medical Treatment**

14.1 The Consent to Treatment provisions of Part 4 of the MHA do not apply to patients subject to Section 5(2). This means that they are in exactly the same position as patient who are not detained under MHA and cannot be given medication or ECT without their consent (Code of Practice, 12.39.)

14.2 However, treatment for mental and physical disorder can be given to a patient provided the patient has the capacity to make their own decision about a proposed treatment and consents to it.

14.3 A patient can also be treated under the Mental Capacity Act 2005 if it can be shown that the patient lacks capacity to consent to treatment and treatment is necessary and in their best interests provided there is no advance decision or lasting power of attorney/Deputy of the Court of Protection saying that treatment cannot be given.

14.4 Therefore, in the absence of consent, capable patients have the right to refuse treatment unless in an emergency for the protection of the patient or other persons, treatment can be justified under common law.

### **15 Information to the patient**

15.1 In accordance with Section 132 the Hospital Managers have a duty to ensure that the patient receives information about their detention (Code of Practice 12.38.)

15.2 In practice this is delegated to the nurse in charge/named nurse who has a duty to verbally explain to the patient their rights and provide a copy of the appropriate patient information leaflet.

15.3 Patients should be told that the maximum period of detention under S.5(2) is 72 hours.

15.4 Patients should always be advised as soon their status changes i.e. when they are no longer detained under S.5(2) and are free to leave the hospital if they do not wish to stay informally. Alternatively, where applicable patients should be advised as soon as they are regraded to a Section 2 or 3 of MHA.

15.5 The nurse in charge must complete the Trust's S132 Patient's Rights Form.

## **16 Section 17 Leave:**

A patient detained on Section 5(2) cannot receive S17 leave. They are not detained by virtue of either an application under Section 2 or 3 and therefore do not have a Responsible Clinician<sup>13</sup> to grant such leave.

## **17 Section 17 (A) Supervised Community Treatment and In-Patient Status:**

17.1 Section 5(2) is not applicable to a patient subject to Supervised Community Treatment (SCT)<sup>14</sup>. Patients can be recalled even during periods when they are in-patients. Therefore where it is considered necessary, the recall<sup>15</sup> procedure must be used to detain a patient subject to SCT who has been admitted as an inpatient informally and within the 72 hours allowed a decision must be made whether to revoke the CTO.

17.2 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<sup>16</sup>.

## **18 Section 18 Absent Without Leave:**

18.1 A patient detained under S.5(2) who leaves the hospital is AWOL and can be retaken but only within the 72 hour period<sup>17</sup>.

## **19 Section 19 Transfer to another hospital:**

19.1 A patient detained under S 5(2) cannot lawfully be transferred to another hospital using the powers under S19<sup>18</sup>.

19.2 The patient can be moved to another hospital if they consent or are incapable<sup>19</sup> of giving consent to the transfer and it is necessary and in their best interests.

19.3 If a decision is made to remove a S.5(2) patient to another hospital then the MHA Office should be informed as soon as is practicable.

19.4 If the patient returns to the hospital where S.5(2) applies its power is re-activated, if it is within the original 72 hour period<sup>20</sup>.

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<sup>13</sup> Nurses registered in sub parts 1 or 2 of the register maintained by the Nursing and Midwifery Council whose entry in the register indicates that their field of practice is either mental health nursing or learning disability. – MHA Code of Practice 2008 Para 12.21. Also see Trust's procedure for Section 5(4)

<sup>14</sup> Community Treatment Orders – S17 (A-G) of MHA 1983

<sup>15</sup> S17 (E) of MHA 1983

<sup>16</sup> MHA Reference Guide 2008 Para 15.63

<sup>18</sup> MHA Reference Guide 2008, page 98.

<sup>18</sup> Section 19 is only applicable to patients detained in hospital by virtue of an application under Part II of MHA

<sup>20</sup> See R. Jones, Mental Health Manual, 14<sup>th</sup> edn, 1-078

## **20 Inappropriate/Unlawful Use of Section 5(2)**

20.1 S.5(2) cannot be used in the following circumstances:

- For an out-patient attending an accident and emergency department, or any other out-patient
- For a patient who is already liable to be detained under section 2, 3 or 4, or who is a Supervised Community Treatment patient.
- A patient who has been persuaded to come to a ward, or brought there under S.136, but has not voluntarily agreed to an admission or co-operated with an admission procedure.

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

20.3 Section 5(2) should not be used as an alternative to Section 2 or 3 even if it is thought the patient will only need to be detained for 72 hours or less.

## **21 Standards/Key Performance indicators**

21.1. 100% of Section 5(2) use to be lawful.

21.2 90% of assessments under Section 5(2) should be completed within 12 hours.

21.3 100% of Section 5(2) used will be documented on the Trust's monitoring form (Appendix 1).

## **22 Process for implementation**

22.1 This procedure will be publicised in the monthly team brief.

22.2 Ward Managers and Associate Medical Directors will discuss this policy in team meetings when it is issued.

22.3 Appendices 1, 2 and 3 will be distributed separately to publicise key parts of the policy.

## **23 Equality Statement**

23.1 This policy reflects the organisation's determination to ensure that all parts of our community have equality of access to services and that everyone receives a high standard of service as a service user, a carer or employee. This policy anticipates and encompasses the Trust's commitment to prevent discrimination on any illegal or inappropriate basis and recognise and respond to the needs of individuals based on good communication and best practice. We recognise that some groups of the population are more at risk of discrimination or less able to access to services than others and that services can often unintentionally put barriers in place that can limit or

prevent access. The organisation is continually working to prevent this from happening

- 23.2 Admission to hospital and in particular admission under the Mental Health Act can be affected by ethnicity resulting in disproportionate admissions/detentions of (especially black) ethnic groups. Care and treatment decisions can also be affected by ethnicity. Because of this the Trust's monitoring of Section 5(2) use will take particular notice of ethnic status and concerns will be raised as appropriate at the Integrated Governance Group in order to inform and influence the Trust's equalities agenda.

## **24 Training**

25.1 The training needs of this Procedure will be met as follows;

- All introductory and refresher training on the MHA will include the use of section 5(2).
- The junior doctors introductory and post-graduate education will include the use of Section 5(2).
- Both of the above training content will be in line with this procedure.

## **25 Links to Other Policies**

This policy should be read together with the:

Procedure for Section 5(4).

Procedure for Section 132.

Policy for Supervised Community Treatment.

## **26 References**

Mental Health Act 1983

Mental Health Act 2007

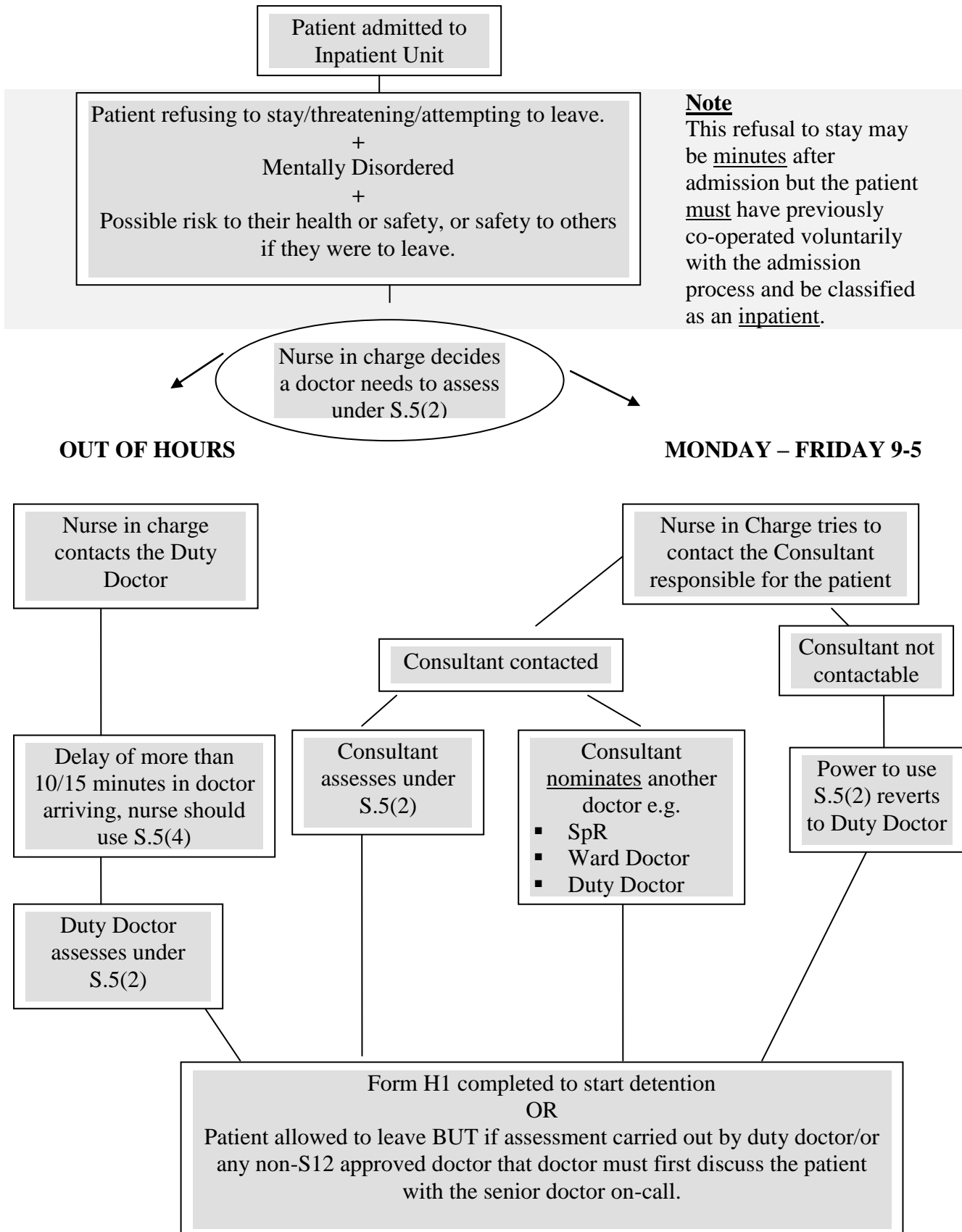
Code of Practice 2008 DOH

Reference Guide to Mental Health Act 2008 DOH

## MONITORING FORM FOR SECTION 5(2)

<b>PART A</b>	
Patient Name	
Ward/Unit	
Consultant	
<ul style="list-style-type: none"> <li>• Consultant/Duty Doctor contacted:                      Date _____ Time _____</li> <li>• Patient placed on S.5(4) in interim                      YES/NO      If Yes      Time _____</li> <li>• Patient placed on S.5(2) by:               <ul style="list-style-type: none"> <li>- Consultant    <input type="checkbox"/>      Name _____</li> <li>- Nominated Middle Grade                                      <input type="checkbox"/>      Name _____</li> <li>- Duty Doctor    <input type="checkbox"/>      Name _____</li> </ul> </li> <li>• Form H1 given to Nurse in Charge                      Date _____ Time _____</li> <li>• Duty AMHP contacted    Date _____ Time _____</li> </ul>	
<b>PART B</b>	
<ul style="list-style-type: none"> <li>• 1st Medical Recommendation Completed                      <input type="checkbox"/>      Date _____ Time _____</li> <li>• 2<sup>nd</sup> Medical Recommendation Completed                      <input type="checkbox"/>      Date _____ Time _____</li> <li>• AMHP attended    <input type="checkbox"/>      Date _____ Time _____</li> </ul>	
Section 5(2) ended	Date _____ Time _____
Outcome      Patient reverted to informal inpatient <input type="checkbox"/> Patient discharged against medical advice <input type="checkbox"/> Patient placed on Section 2 <input type="checkbox"/> Patient placed on Section 3 <input type="checkbox"/>	
Comments:	_____ _____ _____
Name of the Nurse Completing Form: _____	
<b><i>This form must be sent to the MHA Office and uploaded to Windip</i></b>	

**FLOW CHART: PROCEDURE FOR USE OF SECTION 5(2), MHA**



**Note**  
This refusal to stay may be minutes after admission but the patient must have previously co-operated voluntarily with the admission process and be classified as an inpatient.

## Section 5(2) Checklist

When considering the use of Section 5(2) please consider the following points:

➤ **Do you have the legal authority to use this power?**

i.e. Are you one of the following:

- the Approved Clinician responsible for the patient's care (the RC)
- covering for that doctor e.g. on an out-of-hours rota, or during the RC's sickness/leave
- other Responsible Doctor (e.g. on a medical ward)
- nominated by the RC or Responsible Doctor
- duty doctor acting out of hours or in the absence of the RC or other nominated doctor

**Is the patient an existing informal inpatient? This rules out patients who are:**

- In A&E,
- Attending Outpatients,
- At the Section 136 Suite
- On a ward but without having agreed to be an informal inpatient (e.g. transferred there unwillingly from another hospital/S.136 Suite, persuaded to come to see a doctor but not agreeing to be admitted. To be an informal patient the person must have co-operated with the admission procedure).

➤ **Is the patient refusing to stay or threatening to leave the ward/unit?**

Note S.5 (2) is a holding power to prevent an informal patient from leaving whilst a mental health assessment is carried out. Its use is not a legitimate response to aggression, refusal to take medication, behavioural problems, self-harm unless combined with refusal to stay on the ward.

➤ **Personal Assessment**

Have you personally assessed the patient? This is essential unless, exceptionally, you already know the patient well and have reliable advice about their recent behaviour.

➤ **Forms**

- Have you completed form H1? As well as the full patient/ward details, your reasons why informal treatment is no longer appropriate must be given including a clinical description and evidence of attempts/threats to leave the hospital.
- Have you correctly deleted (a) or (b)?  
Note, delete (b) if you are the doctor in charge of the patient. Delete (a) if you are the nominee of that doctor

## Equality Impact Assessment Screening Tool

(Please include this as part of your procedural document)

Directorate/Department	Quality & Patient Safety
Policy or Operating Procedure or Guidelines Title/Service	Procedure for Section 5(2) of Mental Health Act 1983
New or Existing Policy/Service?	Existing Policy (Revised)
Name and role of Assessor	Robert Keys
Date of Assessment	21/06/2012

**Please complete the following questions**

		Yes/No	Comments
1	<b>Does the policy/Guideline affect one group less or more favourably than another on the basis of:</b>		
	• Race, Ethnic origins (including, gypsies and travellers) and Nationality	No	
	• Gender (including transgender and gender reassignment)	No	
	• Age	No	
	• Religion, Belief or Culture	No	
	• Disability – mental and physical disability	No	
	• Sexual orientation including lesbian, gay and bisexual people	No	
	• Married/or in civil partnership	No	
	• Pregnant	No	
2	<b>Is there any evidence that some groups are affected differently?</b>	Yes	*
3	<b>Is there a need for external or user consultation?</b>	No	Completed Internal+
4	<b>If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable?</b>	No	
5	<b>Is the impact of the policy/Guideline likely to be negative?</b>	No	
6	<b>If so, can the impact be justifiable?</b>	N/A	
7	<b>What alternatives are there to achieving the policy/guidelines without the impact?</b>	N/A	
8	<b>Can we reduce the impact by taking different actions?</b>	N/A	

<b>Recommendation</b>	
Full Equality Impact Assessment required:	NO <input checked="" type="checkbox"/> YES <input type="checkbox"/>
<b>Assessor's Name:</b> Robert Keys	<b>Date:</b> 21/06/2012
<b>Name of Director:</b> Steven Feast	
<b>Assessment authorised by: Name:</b>	<b>Date:</b>
<b>(member of the Equality and Diversity Group)</b>	

+ Service User representative and nominee for advocacy/user group sits on the MHA/MCA governance committee

\*Nationally, all use of MHA to detain is skewed towards BME groups. It is not felt that this is markedly the case in NELFT but the intention is that this policy is applied irrespective of bias towards particular ethnic or other groups .



**Health and Safety Impact Assessment**  
(Please include this as part of your procedural document)

<b>Directorate/Department</b>	<b>Quality and Patient Safety</b>
<b>Policy or Operating Procedure or Guidelines Title/Service</b>	<b>Procedure for Section 5(2) of Mental Health Act 1983</b>
<b>New or Existing Policy/Service</b>	<b>Revised</b>
<b>Name and role of Assessor</b>	<b>Robert Keys</b>

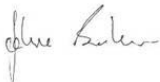
Please complete the following questions and where answered "Yes", please give explanation and/or details of action/mitigation in the comments column.

		<b>Yes/No</b>	<b>Comments</b>
<b>1</b>	Does this policy or change in working practice have significant implications for H&S?	<b>NO</b>	
<b>2</b>	Are there increased risks to public, staff or service users?	<b>NO</b>	
<b>3</b>	Is there a need to review existing or undertake new risk assessments?	<b>NO</b>	
<b>4</b>	Is there a need to review existing or undertake new Staff Training?	<b>NO</b>	<b>The policy is covered by existing training</b>
<b>5</b>	Does this impact on H&S Governance reporting?	<b>NO</b>	
<b>6</b>	If there are implications for H&S have these been mitigated?	<b>NO</b>	
<b>7</b>	Others ( <i>please specify</i> )		

<b>Recommendation</b>			
Addition detailed risk assessment required	NO	<input checked="" type="checkbox"/>	YES <input type="checkbox"/>
<b>Assessors Name:</b>	<b>Robert Keys</b>	<b>Date:</b>	<b>21/06/2012</b>
<b>Name of Director:</b>	<b>Steven Feast</b>	<b>Date:</b>	
<b>Assessment authorised by : Name</b>		<b>Date:</b>	

**CONFIRMATION & EMT/LEADERSHIP TEAM APPROVAL SHEET FOR POLICIES/OPERATING PROCEDURE OR GUIDELINES**

Today's date: 20 December 2012

POLICY /OPERATING PROCEDURE OR GUIDELINES NO:	Title of Policy/Operating Procedure or Guidelines	Lead Director	Author of Policy	Date Quality checked	Date sent to EMT with Cover report	Date ratified by EMT	Signature of Lead Director/Chair of EMT
MHS/MH0001/v001	Procedure for SECTION 5 (2) of MHA 1983 (Doctor's Holding Power)	Steven Feast	Robert Keys, Mental Health Law Manager	06/12/12/	20/12/12	20/12/12	

Reason why the policy/Operating Procedure or Guidelines have not been ratified:

Once the form has been agreed/not agreed for ratification by the Lead Director or Chair of Executive Management Team please send this form back to **Nominated Lead** as confirmation of this via email:

Thank you.