

Detention of Patients Under the Mental Health Act Policy

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REVIEW DATES AND DETAILS OF CHANGES MADE DURING THE REVIEW

April 2024 Inclusion of the Emergency Floor Flowchart, revisions to all sections to reflect revised wording in the Mental Health Act. Inclusion of the enhanced UHL observation chart

October 2023

Revision of wording to section 7.2 and page 14 Appendix 1 revisions

June 2023

Revision to Appendices 2 and 3, removal of section 11

July 2020

Revision to Appendix 2

June 2016

Minor change to Section 6.1 to reflect new contact number for MHA office

June 2016

Changes to Roles and Responsibilities to include Executive Lead

May 2013

Changes to Roles and Responsibilities to make clear who within the organisation can authorise a detention under the mental health act. In addition a checklist was created to support staff and to ensure patients receive the correct information following detention.

KEY WORDS

Mental Health Act Policy, Detention under section, Mental Health Act

1 INTRODUCTION

- 1.1 This policy has been written to ensure that the necessary arrangements are in place to enable the Board of the University Hospitals of Leicester NHS Trust (hereafter known as UHL or the Trust) to meet its responsibilities as set out in the Mental Health Act (MHA) 1983, as amended by the 2007 Mental Health Act.
- 1.2 It covers the sections of the Mental Health Act that are most commonly used within a general hospital setting
- 1.3 This policy has been developed in line with the following documents:
- a) **Mental Health Act 1983 Revised Code of Practice** – Department of Health 2015 and which can be found at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/435512/MHA_Code_of_Practice.PDF

(And also via the Trust's Adult Safeguarding web pages on INsite)

UHL has a Service Level Agreement with The Mental Health Act office based in the Leicestershire Partnership Trust for managing the administration elements of a patient detention under the MHA. Their contact details are:

Telephone: **0116 2953030**

Email (preferred): **MENTALHEALTHACT (LEICESTERSHIRE PARTNERSHIP NHS TRUST) <lep-tr.mentalhealthact@nhs.net>**

2 POLICY AIMS

- 2.1 The aim of this policy is to ensure UHL (The Trust) meet its statutory obligations under the Mental Health Act and thereby:
- a) Ensuring that patients receive appropriate mental health assessment, understand their rights and receive treatment in accordance with the Act.
- b) Ensuring that a patient's detention is **legal** and in accordance with the provisions of the Act and conforms to best practice as outlined within the Code of Practice Providing clear guidance to staff regarding the process to follow when a section may be required

3 POLICY SCOPE

- 3.1 This policy applies to all UHL staff including those on a bank, agency or honorary contract with responsibilities for patients where they may be considered requiring detention under the Act or are detained under the Act.
- 3.2 This policy applies to situations where patients may need to be detained under sections 5(2) and 2 or 3 of the MHA and extends to situations:
- a) Where an inpatient at a UHL site are to be detained and also requires physical treatment
- b) Where an appeal is lodged against the continued detention of a patient detained at a UHL site

3.3 Exceptions to the Policy are:

- a) Patients who may be admitted to UHL already detained under a section of the MHA which was applied elsewhere and therefore remain the responsibility of the detaining authority
- b) This policy does not cover the use of the Mental Capacity Act or Deprivation of Liberty Safeguards; please see either the **Mental Capacity Act Policy (Trust Reference B23/2007)** or the **Deprivation of Liberty Safeguards Policy (Trust reference B15/2009)** on INsite documents.

4 DEFINITIONS

- 4.1 **AMHP- Approved Mental Health Professional** – who could be a social worker, or health care worker and who will be contacted by the attending Psychiatrist if a section 2 is required. **Doctors** cannot be AMHP's.
- 4.2 **AC- Approved Clinician** –AC – Approved Clinician – is a mental health professional approved by the secretary of state. Some decisions under the Act may only be taken by Approved Clinicians
- 4.3 **RC – Responsible Clinician** – all RCs must have AC status (see above). An RC is the AC with overall responsibility for the patient's case (in mental health).
- 4.4 **Hospital Manager** refers to the Chief Executive and Board of Directors although the role can be delegated. For UHL the Hospital Managers remain the Board, however their functions under the Mental Health Act will be undertaken by those Managers identified and appointed through Leicester Partnership Trust arrangements, for these purposes this would also include when relevant a non-executive board member of UHL. The Trust Board role can be delegated to Duty Managers for some elements of the process, i.e. accepting the patient on behalf of UHL, and completion of paperwork upon detention, but not for other purposes, e.g. hearing and appeal against detention.
- 4.5 **Second Opinion Appointed Doctor [SOAD]** is an independent doctor appointed by the Care Quality Commission who gives a second opinion on whether certain types of medical treatment for mental disorder should be given without the patient's consent. For contact details, please contact the Mental Health Act Office of Leicestershire Partnership Trust on 0116 2953030 or MENTALHEALTHACT (LEICESTERSHIRE PARTNERSHIP NHS TRUST) <lep-tr.mentalhealthact@nhs.net>
- 4.6 **Nearest Relative** are defined under section 26 of the Act as a person who has certain rights and powers under the Act in respect of a patient for whom they are the nearest relative.
Hierarchy:
 - a) Husband or Wife (or Civil Partner)
 - b) Son or Daughter
 - c) Father or Mother
 - d) Brother or Sister
 - e) Grandparent
 - f) Grandchild
 - g) Uncle or Aunt
 - h) Nephew or Niece

4.7 Independent Mental Health Advocate (IMHA)- The Act provides for the statutory right to certain categories of detained patients to have access to an IMHA, this Service is commissioned from POWHER through the local authorities. Further information should be sought from the MHA Office at LPT - MENTALHEALTHACT (LEICESTERSHIRE PARTNERSHIP NHS TRUST) <lep-tr.mentalhealthact@nhs.net

4.8 The Tribunal Service Mental Health (TSMH) [formerly the Mental Health Review Tribunal) is constituted by law and exists to hear appeals against detention under the Act. Its proceedings are generally formal and often the parties involved will be represented by lawyers. The Tribunal has the power to discharge patients from detention, supervised community treatment, guardianship and conditional discharge.

4.9 Mental Disorder means any disorder or disability of the mind.

5 THE MENTAL HEALTH ACT LEGISLATION

5.1 Provides a legal basis on which to detain, assess and treat patients with, or suspected of a mental illness / disorder.

5.2 Allows for the compulsory treatment of a mental illness, not the physical illness. However where physical illness is merely a manifestation or a symptom of a mental disorder then that physical illness may be treated under the Act. For example a patient who has been assessed as having a mental health illness such as the eating disorder anorexia nervosa can be treated with a prescribed enteral feed for the physical illness of malnutrition if this is deemed a symptom of the mental illness.

5.3 Drug and alcohol dependency are not mental disorders for the purposes of the Act. However, alcohol or drug dependence may be accompanied by, or associated with, a mental disorder which does fall within the Act's definition. If the relevant criteria are met, it is therefore possible (for example) to detain people who are suffering from mental disorder, even though they are also dependent on alcohol or drugs. This is true even if the mental disorder in question results from the person's alcohol or drug dependence.

5.4 In some circumstances patients may be treated for a mental disorder using common law powers provided that to do so is in the best interests of the patient. In practical terms these are restricted to emergency situations

5.5 **The Mental Health Act** is based on prevention of risk to him or herself and or others regardless of the patient's capacity.

5.6 **The Mental Capacity Act** affects people aged 16 or over and provides a statutory framework to empower and protect people who lack capacity to make some decisions for themselves because of an impairment of, or disturbance in the functioning of, the mind or brain.

5.7 The courts have made it clear that if the Mental Health Act can be used then it must be used in preference to the Mental Capacity Act and / or Deprivation of Liberty. The table in 5.8 will help with deciding which act to use

5.8 Act comparison table

Consider using the MHA if:		Consider using Mental Capacity Act and/or Deprivation of Liberty if:	
		(1) <u>Consider using DOLS if:</u>	
a	The patient fulfils the criteria for compulsory detention under the Act, MHA must be used.	A	Deprivation of liberty is necessary and in the patient's best interests and all criteria of DOLS assessment are met.
B	It is not possible to give mental health care or treatment without formally detaining the patient.	B	DOLS will only authorise deprivation of liberty (i.e. prevent patient from leaving), DOLS <i>will not</i> authorise treatment
c	The patient is resistant and needs substantial coercion to accept psychiatric treatment.	(2) <u>Consider using Mental Capacity Act if:</u>	
d	Not possible to assess or treat the person safely or effectively without compulsory detention.	A	Patient lacks mental capacity to make decisions on treatment; Section 5 MCA can be made to provide treatment to patient in best interests.
E	Treatment is needed to protect someone else provided all conditions of MHA apply.	B	Patient has capacity, and then patient consent must be obtained. If patient has capacity and refuses treatment, treatment cannot be provided.
		C	Patient lacks capacity and clinicians are unclear as to whether treatment is in patient's best interests, seek legal advice.

6 ROLES AND RESPONSIBILITIES

6.1 The **Chief Executive and Board of Directors** have overall responsibility for Trust compliance with the Law and Trust Policies and Procedures and the **Chief Nurse** is the Executive Director with lead responsibility for the Mental Health Act Policy within UHL. The Board delegates responsibility under the Act as follows:

6.2 The Hospital Managers (UHL Duty Managers):

- Have the authorisation to accept both the recommendations and applications to detain patients under the Act i.e. not a doctor or AMHP, and completion of checklist appendix 2
- Have the ability to delegate this responsibility to authorise the detention of a patient under section 5(2) of the Act, for UHL this has been delegated to the Site Duty Managers
- Are responsible for ensuring that the requirements of the Act are met and that the process for placing a patient on a section is followed correctly, including completion of the checklist Appendix 3.
- Have the power to authorise officers or employees of the Trust to receive relevant documents or paperwork on their behalf
- Are responsible for responding to requests from clinical staff to authorise the detention of a patient under a section 5(2) of the act and confirming that the procedure has been followed correctly and all paperwork is completed (see section 8.4 and appendix 1 for further details)
- Are responsible for keeping a stock of all forms and information leaflets to be used under this Policy for immediate use by UHL staff and shall obtain them as required from the MHA Office. The forms can be photocopied if required.

- Are responsible for informing the Mental Health Act Office (MENTALHEALTHACT (LEICESTERSHIRE PARTNERSHIP NHS TRUST) lep-tr.mentalhealthact@nhs.net or **0116 2953030** that a patient has been detained under the MHA.
- Are responsible for informing the UHL Adult Safeguarding Team that the patient has been detained. Via e mail AdultSafeguarding@uhl-tr.nhs.uk

6.3 Responsible Clinician (see definition above)

- The RC has certain decisions that only he/she has responsibility for, such as undertaking the consent to treatment requirements of the Act, therefore the RC should ensure the patients mental health needs are assessed and reviewed throughout their detention
- Ensure that risk assessments and care plans are updated to ensure that the persons mental health needs are met whilst in hospital
- Ensuring that the team caring for the patient have the appropriate resources and escalating concerns if these cannot be met to the duty management team
- Ensure that where the patient requires enhanced observation, the enhanced observation criteria is applied (Appendix 4)

6.4 Nurse in Charge of the Ward / Unit:

- Is responsible for contacting the Duty Manager to access the correct section forms and information leaflets and inform them of the need to section a patient.
- Is responsible for ensuring that section papers are completed and filed in the patient's notes.
- Is responsible for ensuring that the patient has been informed of his/her rights.
- Is responsible for forwarding copies of the paperwork to the UHL Safeguarding Administration team, Knighton Street Offices, LRI within 24 hours of the detention, via AdultSafeguarding@uhl-tr.nhs.uk
- Is responsible for notifying the Nearest Relative if the patient consents.
- Is responsible for providing the patients and relatives (when appropriate) with the relevant patient information as provided by the MHA office. In the event that a patient (a) is detained under the Act or (b) indicates a wish to appeal their detention then Ward Staff shall report either of these facts to the Safeguarding Administration Team immediately if within normal working hours or, if outside of normal working hours, then as soon as possible.

6.5 Junior Medical Staff – responsibilities under section 5(2) holding power:

- Are responsible for ensuring an assessment is completed to confirm that immediate holding powers and detention is required – the patient has to be an inpatient in the true sense of the word i.e., patients on the Emergency Floor cannot have a section 5 (2) and in these situations advice must be sought from the All age mental health team..
- Are responsible for ensuring that a referral is made to the consultant psychiatrist and the monitoring arrangements are in place, to review the patient's mental health requirements.
- Are responsible for informing the consultant in charge of the patient.

6.6 UHL Consultant in Charge of the patient:

- Is responsible for confirming the junior doctors assessment that the patient requires immediate holding powers and detention under section 5(2) to enable a mental health assessment
- Is responsible for contacting or supporting their Registrar to contact the on Call Psychiatrist and inform them of the application of the Section 5(2) and request immediate review, and at least within the 72 hours' time limit of section 5(2) of the MHA.
- Is responsible together with the On-Call Psychiatrist (from LPT) the UHL Consultant

is responsible for ensuring a mental health care plan is in place for the patient following their assessment by the On-Call psychiatrist.

- d) Is responsible for ensuring that the mental health care plan is clearly communicated to medical and nursing staff and visible within the patient notes, and the observation criteria is applied (Appendix 4)

6.7 The Attending Psychiatrist

- a) Is responsible for undertaking the patient assessment and recording the outcome of the assessment in the patient's medical notes making it clearly visible.
- b) Is responsible for all required psychiatric treatment and monitoring of the patient and has a duty to provide both in and out of hours contact details to the medical and nursing staff
- c) In partnership with the UHL consultant will develop the mental health care plan including specified psychiatric reviews, communicating any nursing care issues to the Nurse in charge and complete the mental health assessment form checklist and associated documentation as described in Appendix 4. Together with completion of the UHL mental health assessment form checklist. Appendix 2 and observation criteria Appendix 4

6.8 The Head of Safeguarding

- Is responsible for overseeing the operational management of this policy in collaboration with the Leicestershire Partnership Trust (LPT) Mental Health Act Office.
- Is responsible for holding a record of the numbers of patients detained in UHL under the MHA, in conjunction with the mental health act office
- In the event of a patient appealing against a detention the Safeguarding Team will contact the MHA Office at LPT to arrange for their support.
- Is responsible for providing staff training on the Mental Health Act to staff where it is essential to their role
- Is responsible for ensuring the existence of relevant, up to date policy and practice guidelines for senior clinical staff and on call managerial staff
- Is responsible for liaising with Leicestershire Partnership Trust to ensure that the principles outlined in the Mental Health Act are upheld, and to ensure that the person detained has access to advocacy services, to ensure their rights and needs are understood.

6.9 The Mental Health Act Office

- By virtue of the service level agreement (SLA) the MHA office at Leicestershire Partnership Trust (LPT) is responsible for checking that the administration process associated with detention is correctly completed and providing appropriate patient information to Ward Staff.
- Is responsible for providing support to the Safeguarding team in the event of an appeal against detention.
- Is responsible for ensuring that patients, who are detained, have access to independent mental health support and advocacy services.

7 POLICY STATEMENTS AND PROCEDURES

7.1 It is **unlawful** to detain someone without the correct procedure being followed.

7.2 Procedure for Detention

- a) Patients can be detained under various sections of the Act depending on which pre-conditions apply.
- b) This Policy provides procedures and information only for those sections which are likely to be encountered in the acute setting namely:

a Section 5(2) detention – Where the patient is firmly expressing a wish to leave, or there is believed to be a risk that he may do so, this section is a lawful means to detain the patient **for up to 72** hours in order to enable a full Mental Health Act assessment to take place (See appendix 1 for the procedure in detail). Application of a 5(2) detention should only be applied following discussion with the on call mental health liaison team's contact details available via INsite. **ONLY** patients who have been formally admitted to UHL can be detained under section 5 and cannot be transferred whilst subject to that order.

a Section 2 detention – detention for up to 28 days for the purposes of assessing and treating a patient for their psychiatric illness/event. This procedure is led by the attending Psychiatrist.

a Section 3 detention - is a longer term detention used for the purpose treating a patient for their psychiatric illness, and most often used in the Trust for shared treatment of an eating disorder

- c) There are however other sections as indicated in the table below. For advice on these sections please contact the Assistant Director of Corporate and Legal Affairs on extension 18960.

7.3 The hospital manager can only agree to accept a detention under the mental health act, where the patient's physical illness necessitates an admission onto a hospital ward. Where there is no physical illness, then arrangements would be made by the duty management team to arrange admission to a mental health ward.

7.4

7.5 In circumstances where a mental health bed is not available and there is no reason for admission to a UHL ward. Then the RC will follow the LPT bed escalation policy and arrangements will be made via this process to manage the detention via the LPT authorisation route

Section	Title	Duration	Requirements
5(2)	Holding Power in respect of a patient already in hospital	Up to 72 hours	The patient must be seen by the AC to decide whether to convert to another Section or to discharge. The section must not be allowed just to expire. Before considering this, contact must be made with the duty mental health team to discuss alternative options. This option should only be used following agreement with the liaison psychiatry service
136	Application in respect of mentally disordered persons found in a public place	Up to 72 hours	A police officer that suspects a person is in need of immediate care which requires removing them to a place of safety. The agreed CQC Registered Place of Safety for Leicester is The Bradgate Unit, Glenfield. However, patients may also be conveyed to the Emergency Department at LRI if they require assessment / treatment for a physical problem / illness as well as their MH condition. Once assessed they must be transferred by the police to the place of safety
2	Admission for assessment and treatment	Up to 28 days	2 medical recommendations (1 must be by an approved clinician), plus an application from AMHP or Nearest Relative.
3	Admission for treatment	Up to 6 months	As per Section 2 above
17	Is used when a detained patient is allowed to go on leave.	N/A	Staff at UHL require copies of the Section 17 Leave Form completed by the RC
19	Is used when a detained patient is transferred to the care of another Mental Health Trust	N/A	The original section papers must be transferred to the receiving hospital with Form H4 (refer to appendix 1)

7.6 General rules when detaining a patient under section 5(2)

- a) Section 5(2) allows emergency holding powers to be granted to enable a mental health assessment to be undertaken and mental health treatment provided as necessary within 72 hours. It should only be applied following agreement with the duty Mental Health liason service based at the Leicester Royal Infirmary
- b) Compulsory treatment under the Mental Health Act must not be given unless the patient consents as long as the patient is detained under Section 5(2). If the patient lacks capacity the patient may be treated in his best interests under the Mental Capacity Act.
- c) Section 17 Leave cannot be granted.

- d) Patients cannot be transferred to another Trust on a Section 5(2) to enable a transfer to take place the section would need to be altered to a section 2 by the attending Psychiatrist, or if there is insufficient time, an application can be made under section 4 of the Mental Health Act.
- e) The Patient cannot leave hospital without permission of the approved section 12 Psychiatrist (AC). If a detained patient is thought to be missing this should be reported immediately to The Nurse in charge who must immediately invoke the **Missing Patients – Adults Policy** (Trust Reference B15/2005)

7.7 General rules for detention under a section 2

- a) A section 2 allows compulsory admission and detention for assessment followed by treatment for a mental disorder. This section can last for up to 28 days.
- b) **Application** – this can be made by the Nearest Relative (exceptionally) or most commonly an AMHP
- c) **Medical Recommendations** – Each medical recommendation shall include a statement that the grounds of the application are complied with and must be signed on or before the date of the application. One medical recommendation may be given by the patient's primary Consultant. The recommendation must be from two doctors one of whom must be Section 12 approved (a psychiatrist). Two doctors must examine the patient together or separately within 5 days of each other. Doctors must not be from the same hospital.
- d) **Treatment** – for the mental disorder can be given without consent, but reasonable steps to obtain the patient's co-operation must be taken.
- e) **Leave of absence** – Section 17 permits this but it can only be granted by the patient's Responsible Clinician. If a detained patient is thought to be missing this should be reported immediately to the nurse in charge who must organise an immediate search of the ward. If the patient is not found then the UHL Missing Patients Policy (Trust Reference B17/2005) must be invoked.
- f) The patient may be compelled to return, using reasonable force, by an AMHP, a member of UHL staff or a police officer. The patient cannot be compelled to return if s/he remains out of hospital beyond the 28 day period.
- g) **Transfer** – Form H4 must be completed by the Duty Manager All original section papers must accompany the patient.
- h) **Discharge** – Patients can be discharged before the 28 days have elapsed if there is a formal review by the Psychiatrist and the patient is discharged from the section.
- i) **Mental Health Review Tribunal** – Patients have a right to appeal to the Mental Health Review Tribunal and the Hospital Managers against their detention. An appeal to the Hospital Managers can be made at any time, to ensure that patients and their relatives are aware of their rights. An independent mental health advocate (IMHA) will be made available and will visit the patient ensure they are aware of their rights. Arrangements for this will be organised by the Mental Health Act Office
- j) **Receipt of papers** – The original detention papers **MUST** be filed in the patient's notes and copies sent to the UHL Safeguarding Admin Team, Knighton Street Offices, LRI who will then forward to the Mental Health Act Office.

- k) The nurse in charge must confirm with the Psychiatrist the patient requirements for psychiatric nursing care whilst the patient is undergoing treatment at UHL. The Mental Health liaison team **0116 2256218** can be consulted for assistance with this or if there are concerns or issues in meeting the care plan.

7.8 Statutory Paperwork

- a) Whilst it remains the responsibility of UHL staff to ensure completion of the statutory paperwork for a person to be lawfully detained under the Act, the MHA Office staff at LPT will assist in the administrative process. All documentation will be checked by Manager of the Mental Health Act Office, LPT on the next working day following detention
- b) The forms will need to be checked for accuracy, the MHA Administrator will complete this if they are available to attend the Ward at the time. The originals will be left in the patient's record. Copies will be retained by the Mental Health Act Office
- c) The MHA Office will notify the Head of Safeguarding if any problems are identified with the statutory paperwork and, where necessary take action to rectify this.
- d) The completed forms should be filed in the patient's notes

7.9 Patient Information

At various stages of the process information must be given to patients or patient advocates informing the patient of their rights. A stock of required information will be held in the duty manager's office on all 3 hospital sites and is accessed via the Duty Manager. Once a patient is detained, on the next working day, The Head of Safeguarding will arrange with Leicestershire Partnership Trust for an IMHA to be allocated and to visit the patient to ensure their rights are understood

7.10 Appeal Process

An appeal may be lodged against the continued detention of a patient through a number of sources, namely the patient, the nearest relative or a solicitor. If such an appeal is lodged the MHA Office should be contacted as soon as is practicable and they will subsequently advise of the correct process. The Trust will arrange for information regarding access to tribunals and Hospital Manager appeal meetings to be provided to the patients, at request. When a hospital management meeting is requested, a panel will be set up by Leicestershire Partnership Trust and will always include at least one UHL non-executive director.

8 EDUCATION AND TRAINING REQUIREMENTS

- 8.1 Reference to the Mental Health Act is included in the Essential to Job Role 'Consent, Mental Capacity Act / DoLS' eLearning modules which are available on e-UHL.
- 8.2 A table of frequently asked questions in relation to this policy is in appendix 2
- 8.3 Site Duty managers will receive training and updates on the mental health act, as arranged by the Head of Safeguarding through an annual safeguarding update training session

9 PROCESS FOR MONITORING COMPLIANCE

Element to be monitored	Lead	Tool	Frequency	Reporting arrangements
Correct completion of paperwork	Head of Safeguarding	Review of patient records	Each case record	Quality Assurance Committee via quarterly report
Ensuring patients are provided with correct information	Head of Safeguarding	Review of patient records , and contact with patient	Each case record	Quality Assurance Committee via quarterly report
Compliance with the Mental Health Act	Head of Safeguarding	Report to the Quality Assurance Committee	Quarterly	Quality Assurance Committee via quarterly report

9.2 If through monitoring correction or improvement is required to ensure the detention is legal, this will be addressed by the Head of Safeguarding, consistent evidence of poor practice will be reported through the UHL Trust Board. In addition any known areas of non-compliance with this policy will be recorded as an untoward incident and investigated via DATIX, including an action plan in response to findings.

10 EQUALITY IMPACT ASSESSMENT

- 10.1 The Trust recognises the diversity of the local community it serves. Our aim therefore is to provide a safe environment free from discrimination and treat all individuals fairly with dignity and appropriately according to their needs.
- 10.2 As part of its development, this policy and its impact on equality have been reviewed and no detriment was identified.

Suitable Professional Indemnity Insurance Cover is generally available from the various Royal Colleges and Professional Institutions

11 SUPPORTING REFERENCES, EVIDENCE BASE AND RELATED POLICIES

UHL Policies

Deprivation of Liberty Safeguards Policy (Trust reference B15/2009)

Mental Capacity Act Policy (Trust reference B23/2007)

Missing Patients - Adults Policy (Trust Reference B17/2005)

Guidance from the Care Quality Commission re use the Mental Health Act

<https://www.cqc.org.uk/guidance-providers/mental-health-services/how-we-regulate-mental-health-services>

12 PROCESS FOR VERSION CONTROL, DOCUMENT ARCHIVING AND REVIEW

- 12.1 This policy will be stored on INsite and archived through the SharePoint system
- 12.2 This is a revised policy and will be reviewed every three years, or earlier if there are any significant changes to national policy or local working practice, by the Head of Safeguarding

Procedure for implementing a Section 5(2) in UHL

This procedure applies to all staff who may need to implement a section 5(2) to apply emergency holding powers to a UHL inpatient whilst arranging for an urgent mental health assessment by a psychiatrist

Following consultation and agreement with the duty mental health team the UHL Doctor believes the patient requires The Mental Health Act to be applied to enable assessment and treatment of a mental disorder in addition to the treatment for a physical condition Doctor must inform and request permission from the UHL Consultant or Registrar of the proposed detention of the patient under the mental health act. **This option only be used following discussion with the mental health liaison service**

If the Consultant agrees the non-psychiatric doctor in charge of the patient's treatment completes the relevant report to detain the patient under the provisions of section 5(2) which gives immediate holding powers to enable psychiatric evaluation. As this only lasts up to **72 hours** a Senior Psychiatrist must see the patient as soon as possible after the application of the section to determine whether the detention should continue, or to assess whether an application under Section 2 (or Section 3) would be more appropriate. If the patient is non-compliant with the detention and is trying to leave the clinical area it is essential that the Psychiatrist is informed of this to help them prioritise the assessment

The UHL Doctor will contact the Psychiatrist on call (who must be section 12 approved) via UHL switchboard. During office hours the Mental Capacity Office can be contacted for support and advice on 0116 2953030

The UHL Doctor records the details of the referral in the patient's medical notes and completes the section 5(2) paperwork - **Form H1** and files it in the patient notes and notifies the Duty Manager and the UHL Adult Safeguarding Team of the detention (leave a message out of hours).

The patient must be assessed by the Psychiatrist as soon as is possible (but must be **within 72 hours**). The psychiatrist will decide the most appropriate section for the patient. The decision must be discussed face to face with UHL's Medical Staff in charge of the patients care and clearly documented in the patient notes.

A Multi-professional mental health care plan detailing the circumstances of the detention, medication and supervision arrangements must be put in place and clearly communicated by the Psychiatrist to the multi professional team following the assessment The Psychiatrist must ensure that the jointly agreed care plan and associated documentation are placed so they are clearly visible within the patient notes.

The nurse in Charge must inform the patient of their rights and give the Patient/advocate a leaflet relevant to **Section 5(2)** or **Section 2** stating his/her rights. The reason why the patient has been sectioned must be explained to the patient until he/she demonstrates understanding (Leaflet 3). The patient's relatives need to be informed of the patient's admission and detention – **but only if the patient consents to them being informed**

The nurse in charge must contact the CMG Matron on duty to inform them of the application of the section

The original detention papers **MUST** be filed in the patients notes and copies sent to the UHL Adult Safeguarding Team who will then forward to the Mental Health Act Office

Question	Answer
How do we ensure the detention is valid?	<p>If the answer to any of these questions is NO:</p> <ul style="list-style-type: none"> • Do I have all the correct forms? • Are the documents signed? <p>The detention is invalid and the patient is not legally detained</p>
Where do we obtain the relevant 'Patient Information Leaflets'?	Duty managers office and Mental Health Act Office LPT
How do we contact the duty consultant psychiatrist?	Via the UHL switchboard, to request the All Age Mental Health Team
What do we do with the statutory MHA papers once they have been completed?	The original detention papers MUST be filed in the patients notes and copies sent to the Mental Capacity Act office at LPT.
Where do we obtain the statutory MHA paperwork?	From the Duty Manager's Office
Mistakes which can / cannot be rectified.	<p>Administrative errors i.e. spelling or middle name missing can be corrected by the person who has signed the relevant form(s). The person completing the form must initial any such corrections.</p> <p>Fundamental errors cannot be corrected. It is not possible to retrospectively correct a fundamental error for example, failure to complete a form within prescribed time limits, failure to sign an application or failure by the appropriate individual to complete all of the relevant paperwork (for example where a form has been inappropriately completed by another individual on behalf of someone else).</p>
What do we do if we discover that the detention papers are invalid?	<p>This means that the patient has been detained illegally. As such, the patient and their representative have the right to seek legal redress, as they have been denied their civil liberties and their human rights may have been breached. <u>This is why it is so important that the trust ensures that it complies with the provisions of the MHA.</u> If it is discovered that such an error has occurred the Chief Executive (or nominated deputy) will need to write to the patient and inform them of what has happened and advise them that they may seek redress.</p> <p>Complete a Data incident form</p>
What do we do if the patient wants to appeal against their Section?	Contact the Mental Health Act Office – MENTALHEALTHACT (LEICESTERSHIRE PARTNERSHIP NHS TRUST) <lep-tr.mentalhealthact@nhs.net> or 0116 2953030
Where can we get advice regarding the MHA?	<ul style="list-style-type: none"> • All age UHL Mental Health Liaison Team, Telephone via UHL switchboard • Head of Safeguarding 0116 258 5446 / 7703 in hours. • Assistant Director of Corporate and Legal affairs 0116 5027079 or via switchboard if out of hours

DUTY MANAGER CHECKLIST BEFORE SIGNING

DOCUMENTATION FOR DETENTION UNDER

THE MENTAL HEALTH ACT

- The patient has been assessed by a Registrar / Consultant Psychiatrist
- There is evidence that at least two Doctors approve detention
- There is a clear written Plan of Care which outlines the monitoring and supervision from Mental Health Services and a ligature risk assessment completed
- Evidence that an explanation has been given to the patient of the reasons for detention and their rights
- It is clearly written in the medical notes any restrictions placed on the patient and the level of supervision required and assurance that the supervision arrangements can be adhered to
- That a copy of the paperwork is forwarded to the Trust Safeguarding Office
- That the patient has received the patient information leaflet S5(2)

Signed Duty Manager

Names of lead Psychiatrist and contact number

University Hospitals of Leicester NHS Trust

Appendix 4

Enhanced Patient Observation (EPO) Descriptors: Levels 1-4 Mental Health			
Pre MHLS review ... (assessing clinician to prescribe level of enhanced observation)			
EPO1: Within Ward Establishment	EPO2: Bay/Tag Nursing Within line of sight	EPO3: Continuous Enhanced Observation	EPO4: Security
Patients who have the mental capacity to understand and retain relevant information. No risk to health and safety if they were to leave the hospital against medical advice.	The patient is mobile. At low risk to self-harm or others. At low risk of leaving the safe environment. Symptoms of anxiety or depression, but no suicidal ideation or intent. The patient is cooperative, compliant and returns when guided back or verbally requested to return.	Patient is at medium risk of unintentionally or intentionally leaving the protected (safe) environment. Agitated but settles. Current suicidal ideation Psychotic symptoms (not severe or distressing) Non-compliance/refusing treatment <i>Consider/risk assess if Security presence is required (e.g. if patient alone)</i>	Patient has significant mental capacity needs or is a high risk of unintentionally or intentionally leaving the protected (safe) environment. Will need high level of restraining if patient tries to leave the environment.
Post MHLS assessment ... (Mental Health assessing clinician to prescribe level of enhanced observation)			
Level 1: Within Ward Establishment	Level 2: Bay/Tag Nursing Within line of sight	Level 3: Continuous Enhanced Observation	Level 4: Security
Patient has the mental capacity to understand and retain relevant information. Limited risk to health and safety if they were to leave the hospital against medical advice.	Patient may require regular support and reassurance. <i>Consider option to wait for admission from home if accompanied.</i>	Patient is agitated , restless but responds well if distracted and engaged in meaningful activity <i>Consider/risk assess if Security presence is required (e.g. if patient alone)</i>	Patient is in an alternative reality, acute psychosis or delirious with regular episodes of agitation, hallucinations or violent behaviour and/or harm to self or towards staff or other patients.

Appendix 5

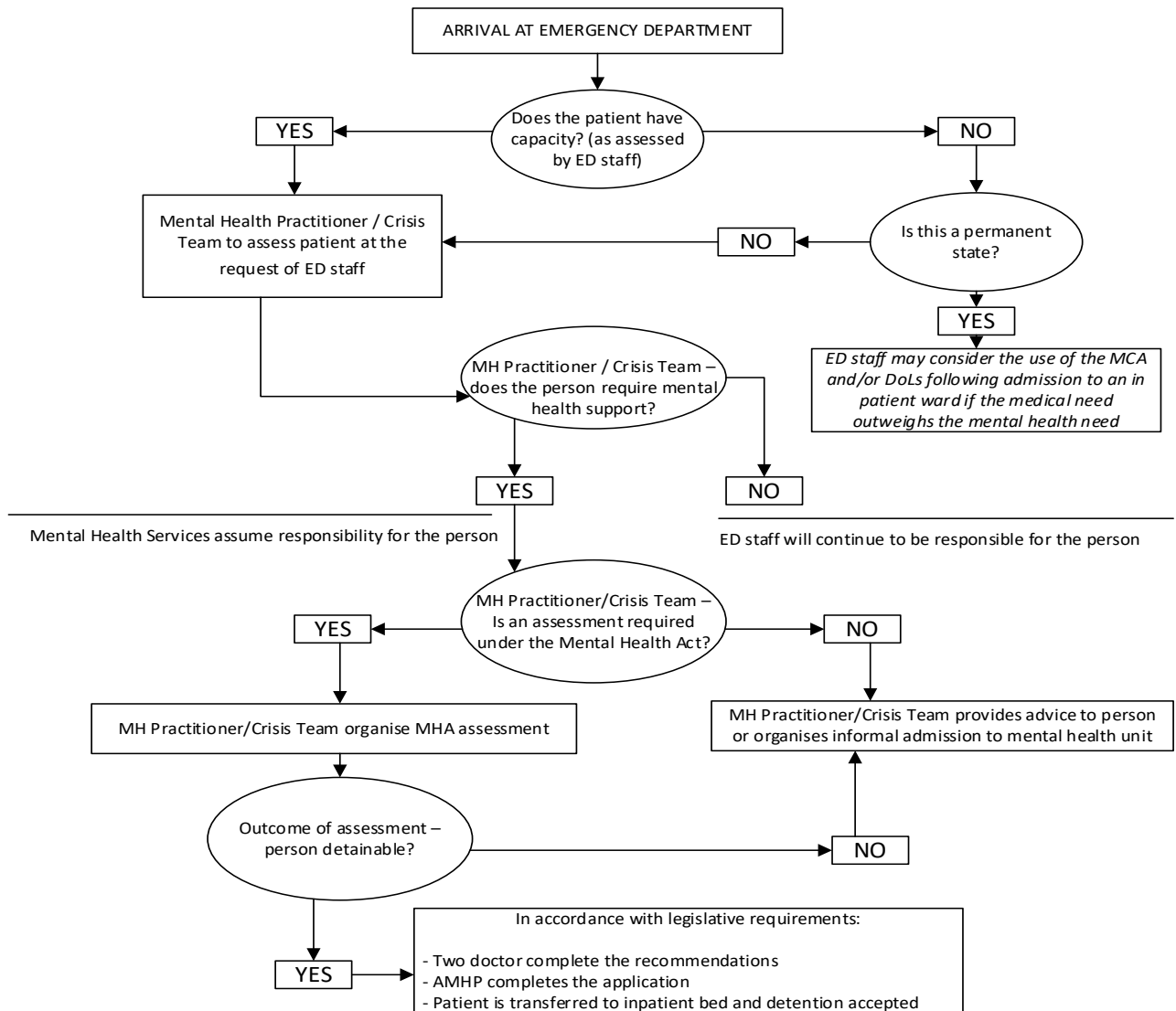
After arrival at the Emergency Department (ED) a person may be triaged and either remain in ED or be transferred to any of the following:

- Emergency Decisions Unit
- Ward 7
- Acute Frailty Unit
- Acute Medical Assessment Unit
- GP Assessment Unit
- Children's Short Stay Unit

Cumulatively these are known as the 'Emergency Floor' - it is important to note that whilst a person is on any of these wards they are NOT an inpatient in the true sense of the word and therefore Section 5(4) and 5(2) of the MHA cannot be used

THE PERSON WITH PRESUMED MENTAL HEALTH NEEDS PRESENTING AT THE EMERGENCY DEPARTMENT

The RISK presented by the patient to themselves or others remains paramount and should be considered at all times



Points of note:

- The Act does not provide for a situation where a bed is not available, moreover the Act is clear that where two recommendations are completed the AMHP has a duty to complete an application if they are in agreement
- The Act requires that where a patient is detained they are allocated a Responsible Clinician, this is a delegated role and requires Section 12 status, therefore it cannot, generally, be undertaken by a Consultant in psychiatric health