



Policy:

NPCS 011 Nominated Deputy: Section 5(2) Mental Health Act 1983 (as amended)

Executive Director Lead	Executive Medical Director
Policy Owner	Head of Mental Health Legislation
Policy Author	Head of Mental Health Legislation

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Summary of policy

This policy has been produced in order to meet a requirement contained within the Mental Health Act Code of Practice.

The policy is intended to provide clarification with regards to the holding power arising from section 5(2) Mental Health Act 1983 (as amended), along with the process for a Registered Medical Practitioner, or Approved Clinician, who is in charge of the patient's mental health treatment to nominate a deputy to exercise this power.

Target audience	Registered Medical Practitioners; Approved Clinicians; in-patient nursing staff; Mental Health Act office; On-call managers
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Keywords	Section 5(2); holding powers; nominated; deputy
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Storage & Version Control

Version 6 of this policy is stored and available through the SHSC intranet/internet.. This version of the policy supersedes the previous version (V5 June 2021). Any copies of the previous policy held separately should be destroyed and replaced with this version.

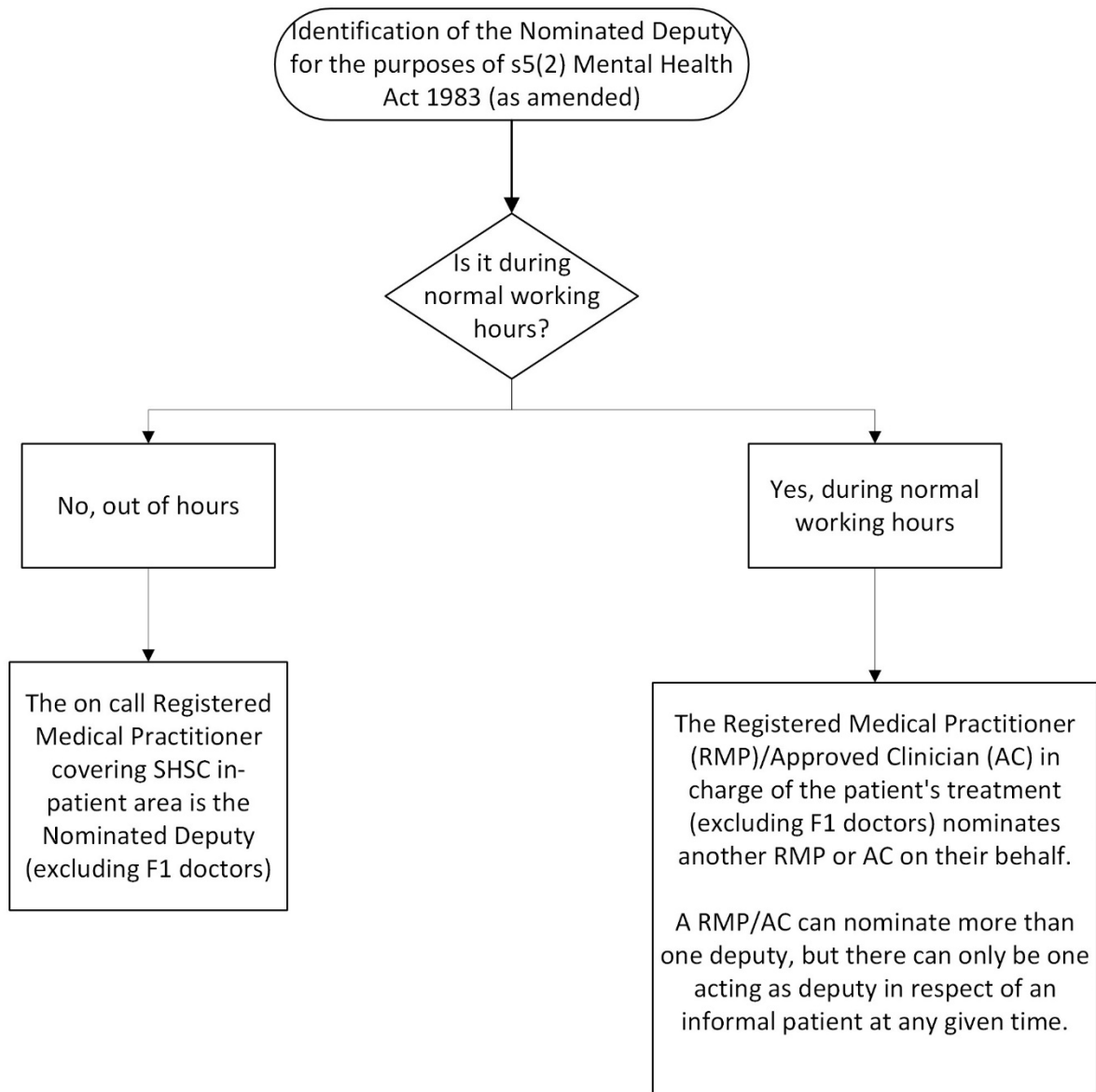
Version Control and Amendment Log

Version No.	Type of Change	Date	Description of change(s)
1	Draft policy creation	29 December 2008	Previous guidance in operation updated to policy status.
1.1	Review/Ratification	7 May 2009	Amendments made during consultation, prior to ratification.
2	Updated	February 2014	Put on new policy template
3	Updated	March 2016	Changes to references to Revised Code of Practice
4	Updated	May 2018	Changes to those able to be nominated Further alignment with Code of Practice
5	Updated	May 2021	Changes to contact details, Change of name of department who will audit, monitor and review
6	Scheduled review and update	September 2024	New policy template used Responsible Executive Director and Policy Owner updated Terminology updated to reflect changes to professional roles Spelling errors corrected Purpose of policy clarified Nomination of deputy process by email added Compliance monitoring updated. Points of contact added

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Flowchart



1 Introduction

The Mental Health Act 1983 (as amended) Code of Practice requires each hospital to have a clear procedure whereby the Registered Medical Practitioner, or Approved Clinician, who is in charge of the treatment of an informal patient can nominate a deputy who is authorised to exercise the Holding Power under section 5(2) Mental Health Act. At any one time there can only be one authorised deputy in respect of each individual patient.

This policy describes the arrangements to be followed within Sheffield Health and Social Care NHS Foundation Trust (SHSC).

2 Scope

This policy applies across all in-patient services provided by Sheffield Health and Social Care NHS Foundation Trust (SHSC).

This policy does not apply to in-patients in Sheffield Teaching Hospital NHS Foundation Trust (STH). STH, as a different NHS Trust, is responsible for producing its own nominated deputy policy.

3 Purpose

The purpose of this Policy is to:

- set out who, within SHSC, has legal authority to nominate other Registered Medical Practitioners, or Approved Clinicians, to have the power to use holding powers under s5(2) Mental Health Act 1983 (as amended);
- set out who is legally allowed to act as a Nominated Deputy; and
- help clarify and identify who (if anyone) is acting as Nominated Deputy at any given point in time.

4 Definitions

Mental Health Act (MHA)

The Mental Health Act 1983 as amended by the Mental Health Act 2007 (ie. Mental Health Act 1983 (as amended))

Informal Patient

An in-patient who is admitted to a SHSC ward but not detained under the MHA.

Approved Clinician (AC)

A dedicated professional who has been approved under the MHA to carry out the role as a Responsible Clinician

Responsible Clinician (RC)

An Approved Clinician (AC) who has overall legal responsibility for a patient's case under the MHA

Registered Medical Practitioner (RMP)

A fully registered person, within the meaning of the Medical Act 1983, who holds a licence to practise under that Act.

Holding Powers

For the purposes of this policy, Holding Powers are the provisions under Section 5(2) MHA where a Registered Medical Practitioner, or Approved Clinician, in charge of treatment can authorise the short-term (up to 72 hours) detention in hospital of a patient who is currently an informal patient, in order for an assessment to take place under the Mental Health Act.

5 Detail of the policy

Detail of policy are set out in section 7.

6 Duties

The **Executive Medical Director** has delegated responsibility for ensuring that clinical practice is carried out in accordance with Mental Health Act legislation.

Clinical Directors are responsible for ensuring that practices within their service areas are carried out in accordance with MHA legislation.

Ward/Team Managers are responsible for ensuring that staff members are aware of the policies that apply to their areas of practice and for monitoring such practices. Ward Managers are also responsible for ensuring that staff on the ward are aware of who the Nominated Deputy is for each Registered Medical Practitioner or Approved Clinician with informal patients on that ward.

A **Registered Medical Practitioner or Approved Clinician** who is in charge of the treatment of an informal patient is able to nominate a Nominated Deputy in respect of each of their informal patients. Where a Deputy is nominated then the Registered Medical Practitioner or Approved Clinician is responsible for ensuring that this information is passed to Mental Health Act Administration Office and to the relevant ward.

The **Mental Health Act Administration Manager** is responsible for monitoring MHA compliance.

All staff implementing the provisions of the Mental Health Act must be aware of their duties and responsibilities under the Act. This guidance seeks to ensure that staff members are aware of their duties.

7 Procedure

7.1 Code of Practice

Chapter 18 of MHA Code of Practice gives guidance in respect of the use of Section 5(2). This should be followed at all times.

7.2 Competency

The Code of Practice states that Registered Medical Practitioners/Approved Clinicians should not be nominated as a deputy unless they are competent to perform this role. Registered Medical Practitioners will receive training in using the Holding Powers to ensure they are competent. However, it remains the responsibility of the Registered Medical Practitioner, or Approved Clinician, who is authorising a deputy to ensure that the individual is competent to perform the role.

7.3 Powers of the Nominated Deputy

These are limited to the exercise of the s5(2) Holding Power in the absence of the Registered Medical Practitioner or Approved Clinician in charge of the patient's treatment. The nominated deputy does not have authority in other aspects of the Mental Health Act.

7.4 Nomination of a Deputy

Where a Registered Medical Practitioner, or Approved Clinician, wishes to nominate a Deputy to use the Holding Powers during working hours, then they should write to the Mental Health Act Office (a specimen letter is attached as an appendix). This letter should also be copied to the Ward Manager(s) for the ward(s) for which the Registered Medical Practitioner or Approved Clinician works.

The Registered Medical Practitioner, or Approved Clinician, can also email the Mental Health Act office to advise them of the nominated deputy's identity. The text from the specimen letter should be copied/pasted into the email and the required information added. This email should be sent to mentalhealth.actoffice@shsc.nhs.uk.

A Registered Medical Practitioner, or Approved Clinician, can nominate more than one nominated deputy, but only one can be nominated in respect of each informal patient at any given time.

7.5 Out of Hours Arrangements

Outside of normal working hours the nominated deputy for each Registered Medical Practitioner or Approved Clinician will be the on call registered medical practitioner on the on call rota covering the inpatient areas. The identity of this person can be determined from the on call rota.

If the Nominated Deputy is not an Approved Clinician, or a Registered Medical Practitioner with section 12 approval, the Nominated Deputy should discuss using the holding power (before using it) with the person who authorised them to act as Deputy, an Approved Clinician, or section 12 approved Registered Medical Practitioner. If, however, doing this would cause a delay resulting in increased risk to the patient's health, safety, or safety for others, then the Nominated Deputy should go ahead and use the powers.

7.6 Cover Arrangements for the Nominated Deputy

Temporary arrangements can be made for another Registered Medical Practitioner, or Approved Clinician, to be nominated in the absence of the current Nominated Deputy. These arrangements must be undertaken by the Registered Medical Practitioner, or Approved Clinician, who made the original nomination and not by the Nominated Deputy themselves. The Nominated Deputy cannot delegate to others.

The Mental Health Act Office and the relevant ward(s) must be informed in writing as per 7.4.

7.7 Use of the Holding Powers

When a Nominated Deputy uses the s5(2) holding powers, s/he must send an email to the Registered Medical Practitioner/Approved Clinician in charge of the treatment of the patient to inform them that the holding power has been used. A referral must also be made, by the Nominated Deputy, to the Central AMHP service to organise a MHA assessment.

7.8 Nominated Deputies in Sheffield Teaching Hospital NHS Foundation Trust (STH).

Sheffield Teaching Hospitals NHS Foundation Trust has a procedure for the nomination of a deputy for the purpose of section 5(2). Staff employed by SHSC cannot act as the Nominated Deputy in STH meaning they cannot complete section 5(2), but SHSC staff will need to advise the Registered Medical Practitioner or nominated deputy at STH about the need for a Mental Health Act Assessment.

8 Development, Consultation and Approval

This policy is based upon version 5 of the policy.

Changes have been made to the policy primarily owing to changes in mental health legislation especially in respect of professional roles associated with s5(2).

Both core and associate members of the Mental Health Legislation Operational Group (MHLOG) have been issued with a copy of version 5 for any comments/amendments to be fed back. The policy was discussed and proposed changes agreed at the Mental Health Legislation Operational Group (MHLOG) on 23.9.24.

9 Audit, Monitoring and Review

Monitoring Compliance Template						
Minimum Requirement	Process for Monitoring	Responsible Individual/group/committee	Frequency of Monitoring	Review of Results process (e.g. who does this?)	Responsible Individual/group/committee for action plan development	Responsible Individual/group/committee for action plan monitoring and implementation
A) Incidents related to the policy	<ol style="list-style-type: none"> 1. Via incident reports submitted through Ulysses 2. Verbal feedback to MHLOG member 	<p>All staff to report any incidents should they arise.</p> <p>Head of Mental Health Legislation to include incidents in monthly report to MHLOG.</p> <p>MHLOG to monitor incidents.</p>	Ongoing	Mental Health Legislation Operational Group	<p>Head of Mental Health Legislation</p> <p>Mental Health Legislation Operational Group</p>	<p>Mental Health Legislation Operational Group</p> <p>Mental Health Legislation Committee.</p>

The policy review date should be September 2027, or earlier if there are any changes to legal requirements or should best practice require an earlier review.

10 Implementation Plan

- No specific implementation plan is needed as the policy is largely unchanged.

Action / Task	Responsible Person	Deadline	Progress update
Upload new policy onto intranet and remove old version	Corporate Governance		
Circulate approved policy to Mental Health Legislation Operational Group members	Head of Mental Health Legislation	21.10.24	

11 Dissemination, Storage and Archiving (Control)

Version	Date added to intranet	Date added to internet	Date of inclusion in Connect	Any other promotion/ dissemination (include dates)
3	May 2016	May 2016	May 2016	
4	June 2018	June 2018		
5	July 2021	July 2021	July 2021	
6				

12 Training and Other Resource Implications

Registered Medical Practitioners will receive training in respect of s5(2) and Trust policy.

Ward staff will be made aware of this policy and the Trust's nomination process when being inducted at their specific work sites.

13 Links to Other Policies, Standards (Associated Documents)

- All SHSC Mental Health Act policies
- Interpretation Act 1978
- Medicines Act 1983
- Mental Health Act 1983 (as amended)
- Mental Health Act 1983 (as amended) Code of Practice, 2015

14 Contact Details

<i>Title</i>	<i>Name</i>	<i>Phone</i>	<i>Email</i>
Head of Mental Health Legislation	Jamie Middleton	271 8110	jamie.middleton@shsc.nhs.uk
Mental Health Act Administration Officer	Mike Haywood	27 18102	mike.haywood@shsc.nhs.uk

Appendix A

Equality Impact Assessment Process and Record for Written Policies

Stage 1 – Relevance - Is the policy potentially relevant to equality i.e. will this policy potentially impact on staff, patients or the public? This should be considered as part of the Case of Need for new policies.

NO – No further action is required – please sign and date the following statement.
I confirm that this policy does not impact on staff, patients or the public.
 Jamie S Middleton, 23.9.24

I confirm that this policy does not impact on staff, patients or the public.
 Name/Date:

YES, Go to Stage 2

Stage 2 Policy Screening and Drafting Policy - Public authorities are legally required to have ‘due regard’ to eliminating discrimination, advancing equal opportunity and fostering good relations in relation to people who share certain ‘protected characteristics’ and those that do not. The following table should be used to consider this and inform changes to the policy (indicate yes/no/ don’t know and note reasons). Please see the SHSC Guidance and Flow Chart.

Stage 3 – Policy Revision - Make amendments to the policy or identify any remedial action required and record any action planned in the policy implementation plan section

SCREENING RECORD	Does any aspect of this policy or potentially discriminate against this group?	Can equality of opportunity for this group be improved through this policy or changes to this policy?	Can this policy be amended so that it works to enhance relations between people in this group and people not in this group?
Age	No	N/A	N/A
Disability	No	N/A	N/A
Gender Reassignment	No	N/A	N/A
Pregnancy and Maternity	No	N/A	N/A

Race	No	N/A	N/A
Religion or Belief	No	N/A	N/A
Sex	No	N/A	N/A
Sexual Orientation	No	N/A	N/A
Marriage or Civil Partnership	No		

No changes made.

Impact Assessment Completed by:
 Jamie S Middleton, 23.9.24

Appendix B

Review/New Policy Checklist

This checklist to be used as part of the development or review of a policy and presented to the Policy Governance Group (PGG) with the revised policy.

		Tick to confirm
Engagement		
1.	Is the Executive Lead sighted on the development/review of the policy?	✓
2.	Is the local Policy Champion member sighted on the development/review of the policy?	N/A
Development and Consultation		
3.	If the policy is a new policy, has the development of the policy been approved through the Case for Need approval process?	N/A
4.	Is there evidence of consultation with all relevant services, partners and other relevant bodies?	✓
5.	Has the policy been discussed and agreed by the local governance groups?	✓
6.	Have any relevant recommendations from Internal Audit or other relevant bodies been taken into account in preparing the policy?	✓
Template Compliance		
7.	Has the version control/storage section been updated?	✓
8.	Is the policy title clear and unambiguous?	✓
9.	Is the policy in Arial font 12?	✓
10.	Have page numbers been inserted?	✓
11.	Has the policy been quality checked for spelling errors, links, accuracy?	✓
Policy Content		
12.	Is the purpose of the policy clear?	✓
13.	Does the policy comply with requirements of the CQC or other relevant bodies? (where appropriate)	✓
14.	Does the policy reflect changes as a result of lessons identified from incidents, complaints, near misses, etc.?	✓
15.	Where appropriate, does the policy contain a list of definitions of terms used?	✓
16.	Does the policy include any references to other associated policies and key documents?	✓
17.	Has the EIA Form been completed (Appendix 1)?	✓
Dissemination, Implementation, Review and Audit Compliance		
18.	Does the dissemination plan identify how the policy will be implemented?	✓
19.	Does the dissemination plan include the necessary training/support to ensure compliance?	✓
20.	Is there a plan to i. review ii. audit compliance with the document?	✓
21.	Is the review date identified, and is it appropriate and justifiable?	✓

Appendix C – Specimen letter/email text for Nominating a Deputy

To:

Mental Health Act Administration Manager email: mentalhealth.actoffice@shsc.nhs.uk
Mental Health Act Office
Michael Carlisle Centre

Dear

Re Nominated Deputy – Section 5(2) MHA 1983

I am writing to inform you of my arrangements for nominating a deputy for the purpose of section 5(2) MHA.

(Name of nominee) is currently working as a (specify grade) in my team on (ward) (or if part of another team & ward state whose team and ward) and has agreed to be my nominated deputy for the purpose of section 5(2) during 9am-5pm Monday to Friday.

These arrangements will remain in place until.....

I will inform you in writing of any changes to these arrangements.

Yours sincerely

Registered Medical Practitioner/Approved Clinician

Copy to: Ward Manager