NHS
Sheffield Health and Social Care
NHS Foundation Trust

Policy:

NPCS 011 Nominated Deputy: Section 5(2) of the Mental Health Act 1983

Executive Director lead	Executive Director of Nursing, Professions and Care Standards
Policy author/ lead	Consultant Psychiatrist Mental Health Act Administration Manager
Feedback on implementation to	Mental Health Act Legislation Operational Group

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Policy Version and advice on document history, availability and storage of Version 5
This version was reviewed and updated in order to bring practice in line with the requirements of the MHA Code of Practice and to update the information in respect of which staff can be nominated.
This policy is stored and available through the SHSC intranet and internet. This version of the policy supersedes the previous version (v3, previously entitled Designation of Deputy Policy s5(2)).

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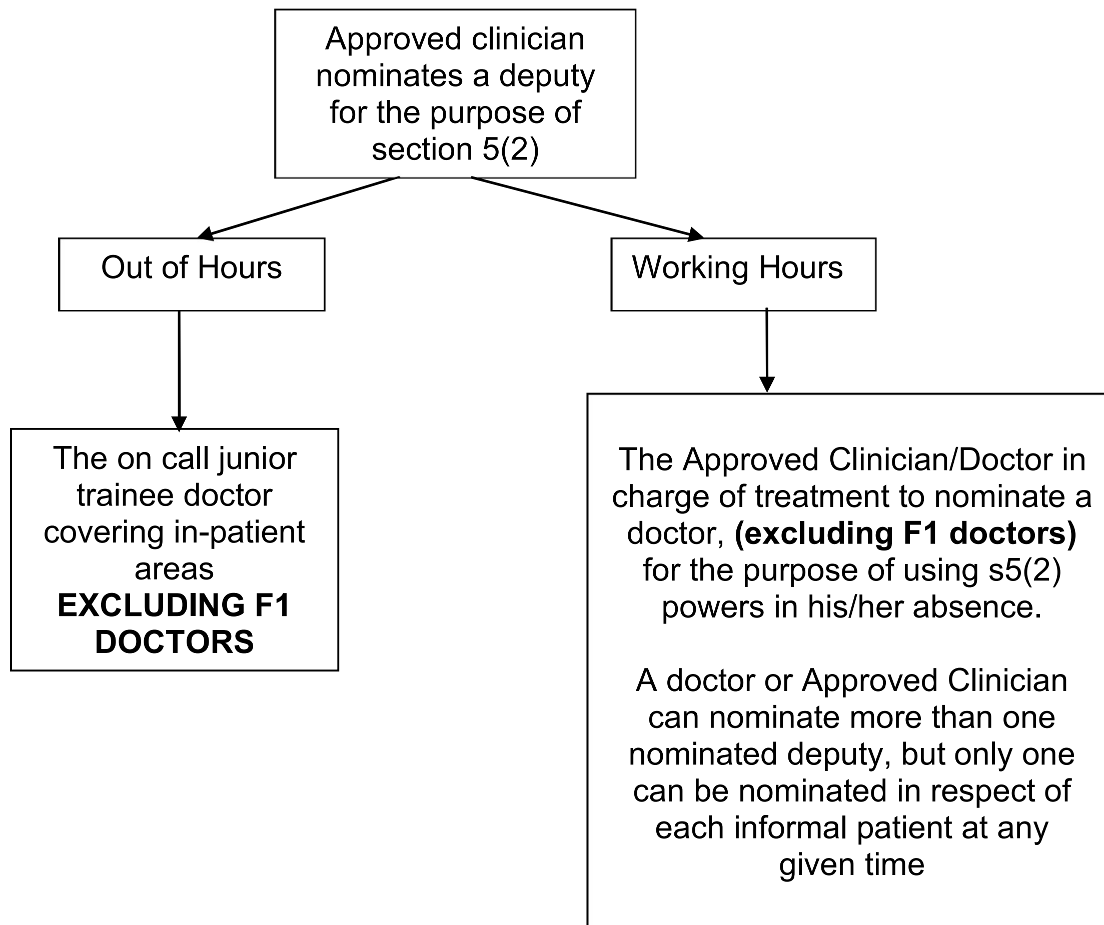
Nominated deputy for purpose of Section 5(2)



1. Introduction

The Code of Practice for the Mental Health Act requires each Trust to have a clear procedure whereby the Doctor or Approved Clinician who is in charge of the treatment of an informal patient can nominate a deputy who is authorised to exercise the Doctors Holding Power under section 5(2) of the 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.

2. Scope of this policy

This policy applies across all in-patent services provided by Sheffield Health and Social Care NHS Foundation Trust.

3. Definitions

Mental Health Act
References to the Mental Health Act are to the Mental Health Act 1983 as amended by the Mental Health Act 2007.

Informal Patient
An in-patient on a ward within Sheffield Health and Social Care who is informal (i.e. not currently detained under the Mental Health Act).

Approved Clinician (AC)
A person approved under the Mental Health Act to act as the Responsible Clinician (the person in charge of the treatment for a patient who is detained under the Mental Health Act).

Doctor or Approved Clinician
This policy relates to patients who are currently informal. The Mental Health Act uses the phrase "Doctor or Approved Clinician who is in charge of the treatment of a hospital inpatient" to describe the arrangements for informal patients. Currently all Approved Clinicians within Sheffield Health and Social Care are Medical staff. This policy will need to be updated when staff from other professions take on this role. This policy uses the phrase "Doctor or Approved Clinician" to refer to the person who is in charge of the treatment of an informal patient. For the most part this will be the Consultant or Consultant(s) for the ward on which the person is an in-patient.

Holding Powers
This refers to the provisions under Section 5(2) of the Mental Health Act whereby a Doctor or Approved Clinician in charge of treatment can authorise the 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.
Currently all Approved Clinicians within Sheffield Health and Social Care NHS FT are medical staff. This policy will need to be updated when staff from other professions take on this role.

On Call Junior Trainee Doctors Covering Inpatient Areas
Titles for trainee doctors are changing. This policy uses the phrase „on call junior trainee doctors‟ to include F2 doctors, Core Trainees, and GPVTS who are designated to cover inpatient areas out of hours.

4. Purpose

The purpose of this policy is to clarify the arrangements for the nomination of a deputy for the purposes of section 5(2) of the Mental Health Act.

5. Duties

The Executive Director of Nursing, Professions and Care Standards has delegated responsibility for ensuring that clinical practice is carried out in accordance with Mental Health Act legislation.

Associate 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 Doctor or Approved Clinician with informal patients on that ward.

A Doctor 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 Doctor 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 Manager/Administration Manager - Mental Health Legislation 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.

6. Specific details

6.1 Code of Practice

Chapter 18 of the Code of Practice gives advice on good practice in respect of the use of Section 5(2). This should be followed at all times.

6.2 Competency
The Code of Practice states that Doctors should not be nominated as a deputy unless they are competent to perform this role. Trainees will receive training in using the Holding Powers to ensure they are competent. However, it remains the responsibility of the Doctor or Approved Clinician who is authorising a deputy to ensure that the individual doctor is competent to perform the role.

6.3 Powers of the Nominated Deputy

These are limited to the exercise of the Doctors Holding Power in the absence of the Doctor 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.

6.4 Nomination of a Deputy

Where a Doctor 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 Appendix G). This letter should also be copied to the Ward Manager(s) for the ward(s) for which the Doctor or Approved Clinician works.

A Doctor 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.

6.5 Out of Hours Arrangements

Outside of normal working hours the nominated deputy for each Doctor or Approved Clinician will be the on call junior trainee doctor on the on call rota covering the inpatient areas. The identity of this person can be determined from the on call rota.

The Nominated deputy should discuss using the holding power with a s12 doctor before using it, if possible and safe. If this would cause a delay resulting in increased risk to the patient health or safety or safety for others, then the nominated deputy should go ahead and use the powers.

6.6 Cover Arrangements for the Nominated Deputy

Temporary arrangements can be made for another Doctor to be nominated in the absence of the current Nominated Deputy. These arrangements must be undertaken by the Doctor or Approved Clinician who made the original nomination and not by the Nominated Deputy themselves. The Nominated Deputy cannot delegate to other doctors. The Mental Health Act Office and the relevant ward(s) must be informed in writing.

6.7 Use of the Holding Powers

When a nominated deputy uses the holding powers, s/he must send an email to the Doctor/Approved Clinician in charge of the treatment of the patient to informing them that the holding power has been used. A referral must be made to the Central AMHP service to organise a MHA assessment.

6.8 Nominated Deputies in the Sheffield Teaching Hospital Trust.

Sheffield Teaching Hospitals Trust has a procedure for the nomination of a deputy for the purpose of section 5(2). Doctors employed by Sheffield Health and Social Care Trust cannot act as the nominated deputy in Sheffield Teaching Hospitals Trust and so cannot complete section 5(2) but will need to advise the doctor or nominated deputy at Sheffield Teaching Hospital about the need for a Mental Health Act Assessment.

7. Dissemination, storage and archiving (Control)

This policy will replace the previous version on placed on SHSC Intranet.

8. Training and other resource implications

This policy will form part of the induction for new senior trainee doctors within the Trust. There are no resource implications.

9. Audit, monitoring and review

Mental Health Act Office will review, on a quarterly basis, the information records on nominated deputies and take action to remedy any deficits.

10. Implementation plan

Section 7 above covers Dissemination. Clinical Directors will be responsible for implementation of the policy through supervision of Doctors and Approved Clinicians.

Action / Task	Responsible Person	Deadline	Progress update
Put new policy onto intranet and remove old version	Head of Communications/Communications Team	Within 5 days of ratification	
Notify relevant staff of new policy	Communications Team via „Connect Bulletin‟	First available after ratification	

11. Links to other policies, standards and legislation (associated documents)

Mental Health Act 1983, as revised 2007
Mental Health Act Code of Practice. Revised 2015
All other Mental Health Act policies.

12 Contact details

Title	*Name*	*Phone*	*Email*
Executive Director of Nursing professions and Care Standards (Executive Lead for Mental Health Act)	Beverley Murphy	16791	Beverley.Murphy@shsc.nhs.uk
Head of MH legislation	Jamie Middleton	18110	jamie.middleton@shsc.nhs.uk
Mental Health Act Administration Manager	Mike Haywood	18102	mike.haywood@shsc.nhs.uk
Consultant Psychiatrist Co-Chair Mental Health Act Committee	Ajay Pawar	18233	ajay.pawar@shsc.nhs.uk
Consultant Psychiatrist, Co-Chair Mental Health Act Committee	Sobhi Girgis	16948	sobhi.girgis@shsc.nhs.uk

13. References

Mental Health Act 1983, as revised 2007
Mental Health Act Code of Practice. Revised 2015

Appendix A – 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

Appendix B – Dissemination Record

Version	Date on website (intranet and internet)	Date of "all SHSC staff" email	Any other promotion/ dissemination (include dates)
3.0	May 2016	May 2016 – via Communications Gazette	
4.0	June 2018	Via Connect and all staff e mail	
5.0	July 2021	July 2021	

Appendix C – Stage One Equality Impact Assessment Form

Equality Impact Assessment Process for Policies Developed Under the Policy on Policies

Stage 1 – Complete draft policy

Stage 2 – **Relevance** - Is the policy potentially relevant to equality i.e. will this policy potentially impact on staff, patients or the public? If **NO** – No further action required – please sign and date the following statement. If **YES –** proceed to stage 3

This policy does not impact on staff, patients or the public (insert name and date)

Stage 3 – **Policy Screening** - 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 on equality impact assessment for examples and detailed advice. This is available by logging-on to the Intranet first and then following this link https://nww.xct.nhs.uk/widget.php?wdg=wdg_general_info&page=464

	Does any aspect of this policy actually 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**		
DISABILITY	**No**		
GENDER REASSIGNMENT	**No**		
PREGNANCY AND MATERNITY	**No**		
RACE	**No**		
RELIGION OR BELIEF	**No**		
SEX	**No**		
SEXUAL ORIENTATION	**No**		

Stage 4 – **Policy Revision** - Make amendments to the policy or identify any remedial action required (action should be noted in the policy implementation plan section)
Please delete as appropriate: Policy Amended / Action Identified / no changes made.

Impact Assessment Completed by (insert name and date) Anne Cook 31.05.2018

Appendix D - Human Rights Act Assessment Form and Flowchart

You need to be confident that no aspect of this policy breaches a person"s Human Rights. You can assume that if a policy is directly based on a law or national policy it will not therefore breach Human Rights.

If the policy or any procedures in the policy, are based on a local decision which impact on individuals, then you will need to make sure their human rights are not breached. To do this, you will need to refer to the more detailed guidance that is available on the SHSC web site
http://www.justice.gov.uk/downloads/human-rights/act-studyguide.pdf
(relevant sections numbers are referenced in grey boxes on diagram) and work through the flow chart on the next page.

1. Is your policy based on and in line with the current law (including case law) or policy?

☐ ✓ **Yes. No further action needed.**

☐ **No. Work through the flow diagram over the page and then answer questions 2 and 3 below.**

2. On completion of flow diagram – is further action needed?

☐ ✓ **No, no further action needed.**

☐ **Yes, go to question 3**

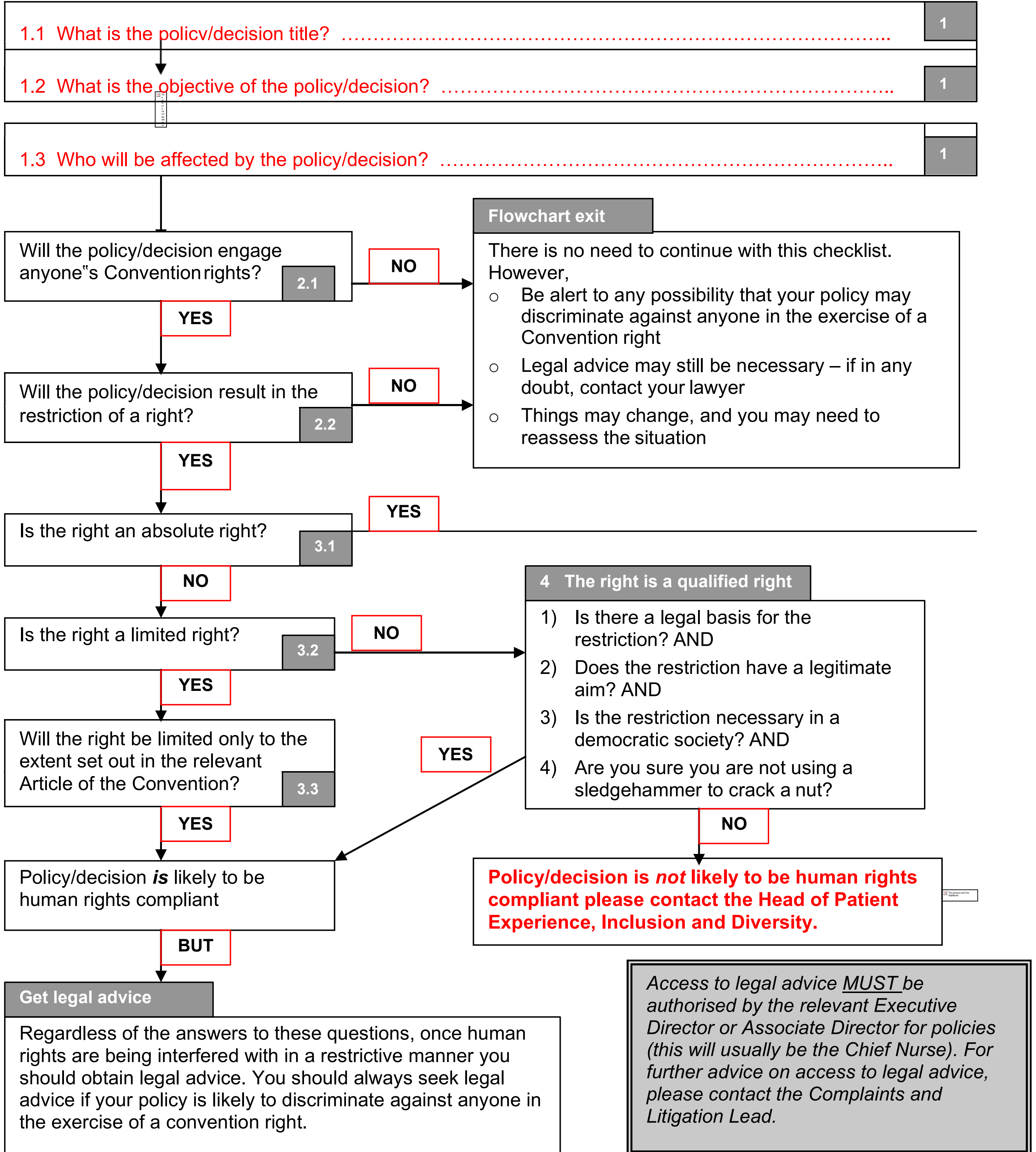
3. Complete the table below to provide details of the actions required

Action required	By what date	Responsible Person

Human Rights Assessment Flow Chart

Complete text answers in boxes 1.1 – 1.3 and highlight your path through the flowchart by filling the YES/NO boxes red (do this by clicking on the YES/NO text boxes and then from the Format menu on the toolbar, choose „Format Text Box" and choose red from the Fill colour option).

Once the flowchart is completed, return to the previous page to complete the Human Rights Act Assessment Form.



Appendix E – Development, Consultation and Verification

This policy has been developed over time in line with changes to the Mental Health Code of Practice

Consultation with relevant staff took place prior to this latest amendment, including Consultant Psychiatrists, Junior Medical Staff and Trainee doctors

This is Version 4 of this policy, replacing Version 3 which was issued in May 2016, with the previous title „Designation of Deputy Policy, s5(2).

Appendix F –Policies Checklist

Please use this as a checklist for policy completion. The style and format of policies should follow the Policy template which can be downloaded on the intranet (also shown at Appendix G within the Policy).

1. Cover sheet ☐

All policies must have a cover sheet which includes:

- The Trust name and logo √
- The title of the policy (in large font size as detailed in the template) √
- Executive or Associate Director lead for the policy √
- The policy author and lead √
- The implementation lead (to receive feedback on the implementation) √
- Date of initial draft policy √
- Date of consultation √
- Date of verification √
- Date of ratification √
- Date of issue √
- Ratifying body √
- Date for review √
- Target audience √
- Document type √
- Document status √
- Keywords √
- Policy version and advice on availability and storage √

2. Contents page

3. Flowchart √

4. Introduction √

5. Scope √

6. Definitions √

7. Purpose √

8. Duties √

9. Process √

10. Dissemination, storage and archiving (control) √

11. Training and other resource implications √

12. Audit, monitoring and review √

This section should describe how the implementation and impact of the policy will be monitored and audited and when it will be reviewed. It should include timescales and frequency of audits. It must include the monitoring template as shown in the policy template (example below).

13. Implementation plan	√
14. Links to other policies (associated documents)	√
15. Contact details	√
16. References	√
17. Version control and amendment log (Appendix A)	√
18. Dissemination Record (Appendix B)	√
19. Equality Impact Assessment Form (Appendix C)	√
20. Human Rights Act Assessment Checklist (Appendix D)	√
21. Policy development and consultation process (Appendix E)	√
22. Policy Checklist (Appendix F)	√

Appendix G – Specimen Letter for Nominating a Deputy

Mental Health Act Administration Manager
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

Approved Clinician

Cc Ward Manager