



### Powers of restraint and/or detention

Mental Health staff are often doubtful about the extent to which they can restrain or detain patients, other than by using the Mental Health Act ('the Act').

However, there are statutory and common law powers of restraint and detention, which can be relied upon by mental health professionals in their everyday care of patients. The table below summarises in an easy reference format some of the further powers that can be used in order to restrain and/or detain patients.

Power	Established by statute or case law?	Further details
To restrain a patient in order to prevent him from causing harm to himself.	Statute – s.6 of the Mental Capacity Act 2005	The power can only be used in relation to patients that are mentally incapacitated and subject to the following three conditions:  (1) the staff member using the restraint must reasonably believe that its use is necessary in order to prevent harm to the patient; (2) the restraining act is a proportionate response to- a. the likelihood of the patient suffering harm, and b. the seriousness of that harm; (3) the restraining act is in the patient's best interests.
To detain, in a situation of necessity, a person of unsound mind who is a danger to himself or others.	Case law – see the case of <i>Black v. Forsey</i> [1]	Lord Griffiths stated in <i>Black v. Forsey</i> that the power is " <i>confined to imposing temporary restraint on a lunatic who has run amok and is a manifest danger either to himself or to others - a state of affairs as obvious to a layman as to a doctor.</i> "

Power	Established by statute or case law?	Further details
		<p>The power therefore allows a mental health professional (or indeed any individual) to act quickly in order to prevent a mentally unsound person from causing harm. If the power is exercised, the individual must be able to justify his actions by proving the mental disorder of the detainee and the necessity of the detention.</p> <p>The power can only be used to detain an informal patient for a short period of time, since the power is extinguished as soon as the crisis subsides. It therefore cannot be used as an alternative to the procedures set out in the Act.</p>
<p>To restrain a person in order to prevent a breach of the peace.</p>	<p>Case law</p> <p>There is no breach of the peace unless an act is done or threatened to be done which: (a) actually harms a person or, in his presence, his property; (b) is likely to cause such harm; or (c) puts a person in fear of such harm.[2]</p> <p>The “breach” can take place in public or on private property.</p> <p>The “harm” must be unlawful harm.</p>	<p>Lord Bingham in <i>R (on the application of Laporte) v. Chief Constable of Gloucestershire Constabulary</i>[3] stated that “Every constable, and also every citizen, enjoys the power...to prevent, by arrest or other action short of arrest, any breach of the peace occurring in his presence, or any breach of the peace which (having occurred) is likely to be renewed, or any breach of the peace which is about to occur.”</p> <p>For example, the power would enable the restraint of a patient whose words or behaviour are such that imminent violence is expected on a hospital ward.</p> <p>The power should be exercised with caution, since there must be a “sufficiently real and present threat to the peace to justify the extreme step of depriving of his liberty a citizen who is not at the time acting unlawfully.”[4]</p> <p>Detention under this power can only be justified for a short period. Prolonged detention must be authorised by either the Mental Health Act or by arresting the person concerned. Further rules apply once a person has been arrested.</p>

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Power	Established by statute or case law?	Further details
To use reasonable force to prevent a crime or to effect/assist a lawful arrest.	Statute – s.3(1) Criminal Law Act 1967	<p>The power can be used in relation to both informal and detained patients, and permits the use of reasonable force either to restrain the patient (or place him in seclusion) in self defence or in the defence of others or to protect property.</p> <p>It does not apply where the patient is insane within the meaning of the M'Naghten rules, because such a person is not deemed capable of committing a crime.</p> <p>A patient is regarded as insane within the M'Naghten rules when, at the time of the alleged offence, he was labouring under a defect of reason owing to a disease of the mind so as not to know the nature and quality of his act or, if he knew this, so as not to know that what he was doing was wrong.</p>
To take such steps as are reasonably necessary and proportionate to protect others from the immediate risk of significant harm.	Case Law	Hale L.J. stated in the case of <i>R (on the application of Munjaz) v. Mersey Care NHS Trust</i> that the power applies “ <i>whether or not the patient lacks capacity to make decisions for himself</i> ”. [5]

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### Footnotes

- [1] [1987] SLT 681  
 [2] R v. Howell [1982] QB 416  
 [3] [2006] UKHL 55  
 [4] Per Beldam LJ, Foulkes v. Chief Constable of Merseyside Police, as above  
 [5] [2003] EWCA Civ 1036

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