



Department  
of Health

# Stronger Code: Better Care

Consultation on proposed changes to the  
Code of Practice: Mental Health Act 1983

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# Ministerial foreword

When we published *Closing the Gap: Priorities for Essential Change in Mental Health* and *Transforming care: A national response to Winterbourne View Hospital* we promised to improve mental health services, and to protect the most vulnerable in society. This review of the Code of Practice for the Mental Health Act reflects my personal commitment to ensuring this improvement and protection applies to all.

In 2012-13, there were more than 45,000 detentions in hospital in England under the Mental Health Act 1983 ('the Act'). The Act affects the lives and liberty of many people, impacting upon them, their families and community. Significant numbers of health and care professionals, police officers and many others are involved in supporting people subject to the Act.

The Code underpins the Act. The Code routinely informs the practice of healthcare and social care professionals, safeguarding patients' rights and ensuring compliance with the law. The Code is used by patients who are detained or otherwise subject to the Act, and their families, carers and advocates. It is there to help make sure that anyone experiencing mental ill health and being treated under the Act gets the right care, treatment and support. To be effective it must be up to date. Quite rightly, any changes to the Code must be subject to robust scrutiny.

We know that the Care Quality Commission's annual report into the application of the Act indicates that across the country, the Code has not been consistently applied, can be misunderstood, or ignored altogether. We are reminded by the failings at Winterbourne View Hospital, where over two thirds of patients were at one point detained under the Act, of the potential consequences when this happens.

The present Code was introduced in 2008, since when there have been substantial changes and updates in legislation, policy, and professional practice. The Department of Health is consulting on proposed changes to the Code to ensure that it remains fit for purpose.

I invite everyone with an interest in mental health to take part in this consultation and I look forward to hearing from as many of you as possible. My ambition is to have a revised Code which presents information in a straightforward and accessible way for patients, families, carers and professionals.



A handwritten signature in black ink, appearing to read 'Norman Lamb', with a horizontal line underneath.

**Norman Lamb**  
Minister for Care and Support

# The view of experts by experience

You could ask almost anyone using mental health services what really matters to them and they would say the same: 'The one thing that makes a difference is knowing that your voice is being heard.'

Those of us who are service users, or support someone who is, know from personal experience what works well within mental health services, and what needs improving. Having the opportunity to share these views in this consultation is very important because it reassures us that the decision makers are listening.

Too many times in the past, people have tried to speak up about their concerns. They are ignored, their concerns are not acted upon and allowed to escalate until a person has the courage to acknowledge what they are saying or blow the whistle and awful failings and abuse are exposed, as in the case of Winterbourne View. The Code of Practice is designed to prevent such atrocities happening and we are hoping that the revised Code will do just that.

There is no doubt that being in a mental health crisis yourself, or trying to support a distressed individual, is incredibly stressful. Knowing what your rights are, and what is being proposed in these circumstances, can save a great deal of distress. However the information needs to be straightforward and presented in a way that everyone understands, especially in acute situations. The inclusion of questions in this consultation about how to make the Code more accessible and available to service users and carers, as well as professionals, is therefore particularly welcome.

One of the most common themes for this group has been the issue of practitioner training. We know that best practice, throughout all the different scenarios in mental healthcare, is detailed in the Code. These guidelines now need to be enforced, without exception, and for this to happen training has to be consistent and robust across the board.

Finally we have one shared wish for when the new Code of Practice comes into force: 'Everyone needs to know about the Code and all communication channels — from bottom to top and vice versa — should remain open.'

All service users, their families and carers are encouraged to take up the opportunity to make their views known on any aspect of the Code, or its implementation, in the consultation period from 7 July to 12 September 2014.

## **Mental Health Act Code of Practice Expert Reference Group**

(Consisting of 9 service users and 6 carers with current or recent experience of care and treatment under the Mental Health Act 1983)

# 1 Executive summary

- 1.1** This consultation sets out the proposed changes to the *Mental Health Act 1983: Code of Practice* ('the Code'), which was last revised in 2008. The Code is a document which provides guidance to mental health professionals and others in respect of the Act, to help them safeguard patient's rights and ensure that they work within the law. It also provides people that are detained or treated under the Act, with information about their rights and expectations.
- 1.2** In *Transforming Care*, the Department of Health committed to reviewing and consulting on a revised Code and publishing a new version by the end of 2014, which would take account of the findings of the investigations into Winterbourne View. The Care Quality Commission's (CQC) annual report on the Act identified areas where the safeguards of the Act were either not applied or where there were concerns with the quality and safety of care being delivered. The updates proposed here address these issues and support delivery of a number of actions in *Closing the Gap: priorities for essential change in mental health*.
- 1.3** This review of the Code does not affect the existing legislation, but aims to address these and other concerns about the practice. Since 2008 there have been changes and updates in legislation, policy, case law, and professional practice that also need to be reflected in the Code. These changes indicate that now is a suitable time to update the Code in order to ensure that it is up to date and fit for purpose.
- 1.4** The Department has been actively engaging with patients, former patients, carers, professionals and stakeholders to identify issues they would like clarified. The major issues identified that can be addressed by the Code, are included in the proposed revisions to the Code.
- 1.4.1** The draft Code being consulted upon, provides clarity and information to address concerns raised at Winterbourne View, in CQC inspections and Act Annual Reports, including:
- i.** ensuring reviews happen and patients are discharged as soon as possible
  - ii.** ensuring individuals, especially those who lack capacity, have a say in their care and treatment and can complain
  - iii.** ensuring commissioners, local authorities and other health professionals are clear on their role
  - iv.** ensuring blanket restrictions are avoided
  - v.** ensuring individuals are able to maintain contact with friends and family
  - vi.** reducing restrictive interventions – this complements the new *Positive and Proactive Care: reducing the need for restrictive interventions guidance* (2014) by providing additional and specific information for patients being treated for mental disorder in hospital and makes clear that the least restrictive principle applies.

- 1.5** The consultation draft includes a significantly rewritten chapter 19 on children and young people – this aims to provide far greater clarity and information for professionals and practitioners.
  
- 1.6** The consultation draft includes a new chapter on the Act’s interface with the Mental Capacity Act (MCA) including the Deprivations of Liberty Safeguards (DoLS) – this is designed to provide clarity to aid professionals needing to make a choice between treating an individual under the Act, the MCA or both.

## 2 Stronger Code: Better Care – making the Code relevant today

- 2.1** This consultation sets out proposed changes to the *Code of Practice: Mental Health Act 1983*<sup>1</sup> ('the Code'). The Code is a key document in that it provides guidance to professionals in respect of the Mental Health Act 1983 ('the Act') in England. It is helpful to individuals subject to detention, voluntary patients in hospital, or on supervised community treatment or guardianship in the community under the Act. It is also useful to their families and carers, as it explains how the Act should be applied and what to do in certain situations. We know that approved mental health professionals (AMHPs), responsible clinicians, hospital managers and other professionals consult it on a daily basis to inform their practice. The Code is the key document which professionals use to ensure patients' rights are protected and that their practice is consistent with the law. If their practice is challenged, the guidance given in the Code will be relevant in determining the challenge. It is useful to other professionals, such as the police and ambulance staff, who need to ensure its safeguards are being applied appropriately.
- 2.2** Updating and revising the Code is an important part of the Secretary of State for Health's responsibility for the effective administration of the Act with the Secretary of State for Justice and for ensuring that the rights of patients who are detained, subject to a community treatment order (CTO) or subject to guardianship under the Act are protected in England.<sup>2</sup> It will embed policy developments in the areas of use of restraint and seclusion, use of sections 135 and 136 by the police, and the use of CTOs, and overall make real differences to the care of detained patients. The Code also has impact on people who are not detained, such as those who are assessed but then not detained or receiving section 117 after-care.
- 2.3** The new Code is designed to reflect the changes in health and care professional practice and ensure that practice meets the needs set out by Robert Francis,<sup>3</sup> Camilla Cavendish<sup>4</sup> and others, in their call for a more compassionate and humane care system, fit for the 21st Century. Winterbourne View clearly illustrated that this was not happening in a mental health hospital where many patients were detained under the Act. Annual Reports by the Care Quality Commission indicate the extent to which care often falls short of the standards set out by the Act and the Code.<sup>5</sup>
- 2.4** In January 2014 the Government published *Closing the Gap: priorities for essential change in mental health*<sup>6</sup> outlining its 25 priority areas for action. The new proposed Code is a key lever for facilitating these changes, for patients subject to the Act, their families and carers.
- 2.5** In addition to the requirements of the Act, professionals should also consider the requirements of the Care Act 2014.<sup>7</sup> The Care Act applies to the care and support arranged or provided by local authorities to patients in the community, such as patients on CTOs or subject to guardianship. The Care Act introduces principles about the centrality of the individual and an integrated approach to care and support.

- 2.6** The revised draft Code reflects this approach and includes a new framework for the delivery of mental healthcare grounded firmly on five core sets of principles and embedding human rights (chapter 1 and chapter 3). It seeks to make it easier to use by patients, families and carers and non-mental health professionals, including what to do if the safeguards of the Act are not being properly applied.
- 2.7** The Code was last published in 2008. Since 2008 there have been changes and updates in legislation, policy, case law, and professional practice that need to be reflected in the Code. The review of the Code and its accompanying reference guide will ensure that they are up to date, fit for purpose, and make real differences to the care of detained and voluntary patients. In particular, the revised Code aims to:
- embed policy developments in the areas of use of restraint and seclusion, use of sections 135 and 136 by the police, independent mental health advocates (IMHAs), and the use of Community Treatment Orders (CTOs)
  - clarify the interaction between the Act and the Mental Capacity Act 2005 (MCA), particularly the Deprivation of Liberty Safeguards (DoLS)
  - reflect changes resulting from the Health and Social Care Acts 2008 and 2012, Care Act 2014 and Children and Families Act 2014<sup>8</sup>
  - address relevant recommendations from CQC's annual reports about their use of the Act<sup>9</sup>
  - consider issues raised by the recent Health Select Committee report on the post-legislative scrutiny of the Mental Health Act 2007, and Her Majesty's Inspectorate of Constabulary/Care Quality Commission report on the use of section 136
  - tackle relevant issues arising from the serious case review into Winterbourne View and subsequent investigations and reports by the Care Quality Commission<sup>10</sup>, and
  - support the delivery of a number of actions in *Closing the Gap: priorities for essential change in mental health*<sup>11</sup>:
    - promote high quality services focused on recovery
    - radically reduce the use of all restrictive interventions and take action to end the use of high risk restraint, including face down restraint
    - identify poor quality services sooner and take action to improve care and where necessary, protect patients
    - ensure carers are better supported and more closely involved in decisions
    - ensure mental healthcare and physical healthcare are better integrated, and
    - stamp out discrimination and stigma around mental health.

## Responding to the consultation

- 2.8** The scope of this consultation does not include any changes to the Act; it is limited to the Code of Practice in England only. The revised Code does however reflect the new primary legislation in the Care Act 2014 on after-care. Responses to consultation questions should therefore be focused on those issues that the Code can address and do not require any amendments to the Act.
- 2.9** The Code is being revised in accordance with section 118 of the Act. This requires that the Secretary of State for Health consult such bodies as appear to him to be concerned with the Code. It also requires that the Code is laid before Parliament, subject to the negative parliamentary procedure. This consultation begins on 7 July and ends on 12 September 2014.
- 2.10** In preparing the draft Code for consultation we have:
- held a call for evidence
  - consulted CQC and the evidence in their annual reports on the implementation of the Act
  - engaged with professionals and practitioners
  - established an expert reference group of and carers with current or recent experience of the Act
  - sought views from specific stakeholders via our steering group and meetings with experts by experience, professionals and representative bodies, including the Mental Health Alliance.
- 2.11** Where relevant, changes have been made to the guidance given in the Code to reflect developments in case law, legislation and policy. If there are any other developments which you think need to be reflected in the guidance, or you are able to share evidence of good or poor practice, please include that in your response.
- 2.12** In this consultation document the references to particular chapters or paragraphs, refer to the draft Code currently being consulted upon, rather than the 2008 edition currently in force. Where the text refers to the 2008 Code this will be clearly stated. The consultation document sets out changes made by reference to the relevant chapter or paragraph, in chronological order. The new Code has been structured into key themes corresponding to aspects or key episodes of the patient's journey.

**2.13** A summary of the key consultation questions and how to respond to the consultation is provided at chapter 12 of this document. A summary of the main proposed changes to the draft Code is included at chapter 14. This includes cross references to the discussion and rationale for these changes in this consultation document, the related questions and the relevant paragraphs in both the draft Code being consulted upon and the 2008 Code. We have also prepared a consultation stage impact assessment which we have provided to give details of the main impacts of the proposed changes.

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- <sup>1</sup> Department of Health. Code of Practice: Mental Health Act 1983. 2008. [http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/@dh/@en/documents/digitalasset/dh\\_087073.pdf](http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_087073.pdf)
- <sup>2</sup> Though the Act covers England and Wales, there is a separate Code of Practice for each. The Act does not apply to Scotland and Northern Ireland, where they have their own legislation. The Welsh Code is available at: <http://www.wales.nhs.uk/sites3/Documents/816/Mental%20Health%20Act%201983%20Code%20of%20Practice%20for%20Wales.pdf>
- <sup>3</sup> [www.midstaffspublicinquiry.com/report](http://www.midstaffspublicinquiry.com/report)
- <sup>4</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/236212/Cavendish\\_Review.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236212/Cavendish_Review.pdf)
- <sup>5</sup> Care Quality Commission. Monitoring the Mental Health Act in 2012/13. 2014. <http://www.cqc.org.uk/content/mental-health-act-annual-report-201213>
- South Gloucestershire Safeguarding Adults Board, Winterbourne View Hospital: a Serious Case Review. 2012. <http://hosted.southglos.gov.uk/ww/report.pdf>
- Care Quality Commission. Review of Compliance: Castlebeck Care Ltd. 2011. [http://www.cqc.org.uk/sites/default/files/documents/1-116865865\\_castlebeck\\_care\\_teesdale\\_ltd\\_1-138702193\\_winterbourne\\_view\\_roc\\_20110517\\_201107183026.pdf](http://www.cqc.org.uk/sites/default/files/documents/1-116865865_castlebeck_care_teesdale_ltd_1-138702193_winterbourne_view_roc_20110517_201107183026.pdf)
- Transforming Care: a national response to Winterbourne View Hospital Department of Health Review: Final Report. December 2012. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/213215/final-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213215/final-report.pdf)
- <sup>6</sup> Department of Health. *Closing the Gap*: priorities for essential change in mental health. 2014. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/281250/Closing\\_the\\_gap\\_V2\\_-\\_17\\_Feb\\_2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/281250/Closing_the_gap_V2_-_17_Feb_2014.pdf)
- <sup>7</sup> <http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted>
- <sup>8</sup> <http://www.legislation.gov.uk/ukpga/2008/14/contents> <http://www.legislation.gov.uk/ukpga/2012/7/contents/enacted> <http://www.legislation.gov.uk/ukpga/2014/23/contents/enacted> <http://www.legislation.gov.uk/ukpga/2014/6/contents/enacted>
- <sup>9</sup> Care Quality Commission. Monitoring the Mental Health Act in 2012/13. 2014. <http://www.cqc.org.uk/content/mental-health-act-annual-report-201213>
- <sup>10</sup> South Gloucestershire Safeguarding Adults Board, Winterbourne View Hospital: a Serious Case Review. 2012. <http://hosted.southglos.gov.uk/ww/report.pdf>
- Care Quality Commission. Review of Compliance: Castlebeck Care Ltd. 2011. [http://www.cqc.org.uk/sites/default/files/documents/1-116865865\\_castlebeck\\_care\\_teesdale\\_ltd\\_1-138702193\\_winterbourne\\_view\\_roc\\_20110517\\_201107183026.pdf](http://www.cqc.org.uk/sites/default/files/documents/1-116865865_castlebeck_care_teesdale_ltd_1-138702193_winterbourne_view_roc_20110517_201107183026.pdf)
- Transforming Care: a national response to Winterbourne View Hospital Department of Health Review: Final Report. December 2012. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/213215/final-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213215/final-report.pdf)
- <sup>11</sup> Department of Health. *Closing the Gap*: priorities for essential change in mental health. 2014. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/281250/Closing\\_the\\_gap\\_V2\\_-\\_17\\_Feb\\_](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/281250/Closing_the_gap_V2_-_17_Feb_)

## 3 Introduction

The updated introduction includes guidance on the Act and how it relates to other pieces of legislation. It provides information about assurance and oversight, including how the Care Quality Commission (CQC) will inspect against the Code, the role of other professionals, NHS commissioners, local authorities and what you can do if you think the safeguards of Code are not being properly applied. This section provides further information on the main changes and additions to this introductory section. These changes particularly support *Closing the Gap* action 1 on promoting recovery, action 11 on identifying poorer quality services sooner and action 13 on integrating physical healthcare and mental healthcare.

### Assurance and oversight. New paragraphs xxi – xxiii

**3.1** CQC's Annual Reports have shown that some commissioners of services, local authorities and health and care professionals have not always taken their responsibilities in relation to patients detained under the Act or subject to a CTO sufficiently seriously.<sup>12</sup> There is evidence that some individuals continue to be detained who could live in other less restrictive settings. At Winterbourne View and other places, professionals appear to have ignored, or not known what action they could take to remedy the poor care that individuals received.<sup>13</sup> Changes have been made throughout the Code, in particular in the Introduction, to make the roles of different people and organisations clearer and clarify the roles of everyone in the health and care system to ensure good quality care at all times.

### Role of commissioners, local authorities and other health professionals. New paragraphs xvi – xvii, xxi – xxiii

**3.2** New sections xvi – xvii, xxi – xxiii in the Introduction to the Code sets out the responsibilities of commissioners, regulators, local authorities and others in ensuring that individuals subject to the Act receive high quality care. There are also further references throughout the Code to roles of commissioners, regulators, local authorities and other health and care professionals. We would like to hear your views on what information it would be helpful to include in this section.

**Question 1:** In your opinion do you believe that the additions to the Code provide sufficient assurance that all commissioners, local authorities and health and care professionals will understand what is expected of them? If not, what more should be included in the Code?

**Question 2:** Should the proposed Code provide more guidance about appropriate governance arrangements for monitoring duties and powers under the Act? If so, what guidance should be included?

## Care Quality Commission's (CQC) Regulatory Model

- 3.3** CQC is responsible for reviewing and where appropriate, investigating and enforcing the exercise of powers and discharge of duties in relation to the Act. The CQC is also responsible for the regulation of all registered health providers under the Health and Social Care Act 2008. CQC is committed to integrating its monitoring of the exercise of powers under the Act in its wider inspections of mental health services. Full roll out of the new regulatory model is planned from October 2014. CQC is consulting on this separately during summer 2014.
- 3.4** The Code currently informs CQC's monitoring of the Act and inspections. The planned changes to the CQC's monitoring regime include a new four point ratings system (inadequate/requires improvement/good/outstanding). The new Code, which is planned to come into force April 2015, will be the starting point from which the CQC will apply the rating system and identify what 'good' looks like in the care and treatment of people subject to the Act. The integrated model of inspection will mean that a provider's use of the Act informs the final rating provided by CQC following an inspection. It will also mean that where the principles and guidance of the Code are not implemented the CQC will consider using its powers to facilitate change and improvement in services.
- 3.5** The new introduction to the Code sets out how CQC will use the Code in its monitoring of service providers under the Act. Other changes throughout the Code seek to clarify the role of CQC and what they will be expecting from providers. For example paragraphs xvi – xviii set out the types of documents CQC may ask to see during inspections.
- 3.6** It is crucial, however, that providers and professionals do not use the Code in isolation. There will be developments in professional practice, and guidelines that individuals and organisations will need to consider to ensure that they are delivering the highest standards of care and professional practice. The Code gives some examples of this 'related material' but this should not be considered an exhaustive list. The new Introduction and guiding principles on 'purpose and effectiveness' and 'efficiency and equity', seek to encourage a holistic, whole person approach to care that is reflective of clinical best practice and quality. CQC in its monitoring of services will seek to ensure that this takes place.

**Question 3:** In your opinion should any parts of the Code be more specific to determine what ‘good’ service looks like? If so, please indicate which parts should be more specific and how.

Please note: CQC has separately consulted on changes to its proposed regulatory model. Please visit <http://www.cqc.org.uk/public/get-involved/consultations/consultation-how-we-regulate-inspect-and-rate-services>. This consultation closed on 4 June 2014.

### 3.7 What if things go wrong? Paragraphs xxi – xxiii, 4.23 – 4.24

Winterbourne View clearly illustrated that it was difficult to complain and when concerns were raised these were not listened to. The Introduction (paragraphs xxi – xxiii) to the revised Code makes it clearer what options are available if things do not go as planned.

**3.8** It is always best that any issues are resolved locally and are not escalated, but if this is not possible, there are a number of options available. This new section provides information on what to do if the Code is not being applied appropriately or you have concerns about someone’s care and treatment. Further information is provided at other paragraphs (eg 4.23 – 4.24). We welcome your thoughts on whether any further information is required to do this.

**Question 4:** In your opinion does the proposed Code provide adequate guidance on local complaints and resolution procedures, specific to the Act? If it does not, please indicate any additional guidance that should be provided.

<sup>12</sup> Care Quality Commission. Monitoring the Mental Health Act in 2012/13. 2014. <http://www.cqc.org.uk/content/mental-health-act-annual-report-201213>

<sup>13</sup> South Gloucestershire Safeguarding Adults Board. Winterbourne View Hospital: a Serious Case Review. 2012. <http://hosted.southglos.gov.uk/ww/report.pdf>

Care Quality Commission. Review of Compliance: Castlebeck Care Ltd. 2011 [http://www.cqc.org.uk/sites/default/files/documents/1-116865865\\_castlebeck\\_care\\_teesdale\\_ltd\\_1-138702193\\_winterbourne\\_view\\_roc\\_20110517\\_201107183026.pdf](http://www.cqc.org.uk/sites/default/files/documents/1-116865865_castlebeck_care_teesdale_ltd_1-138702193_winterbourne_view_roc_20110517_201107183026.pdf)

Transforming Care: a national response to Winterbourne View Hospital Department of Health Review: Final Report. December 2012. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/213215/final-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213215/final-report.pdf)

# 4 Using the Act

**Chapter 1** Guiding principles

**Chapter 2** Mental disorder definition

**Chapter 3** Equality and human rights

This first group of chapters sets out the underlying principles for care, treatment and support under the Act. It sets out five new guiding principles and a new chapter emphasising some of the main points in relation to ensuring equality and human rights, whilst caring for patients subject to the Act. This group particularly aims to support delivery of *Closing the Gap* action 1 emphasising recovery, action 13 on integrating physical and mental healthcare and action 25 on removing discrimination.

## The guiding principles

### Chapter 1

- 4.1** The new guiding principles set the basis for the revisions to the Code and the principles and standards by which all care, support or treatment provided for under the Act must be provided. The principles also highlight the need for holistic approaches to care, the integration of physical and mental health and the need to address discrimination around mental health. The five proposed guiding principles are:
- empowerment and participation – ensuring that patients, their families and carers are fully involved in decisions about care, support and treatment
  - least restrictive option and maximising independence – all care, support and treatment should wherever possible be as least restrictive as possible, ensuring the autonomy of the patient
  - respect and dignity – ensuring that patients, their families and carers are listened to by professionals and included in decisions about care and treatment
  - purpose and effectiveness – decisions about care and treatment must be appropriate to the patient, must be performed to national guidelines and standards and must be expected to work, and
  - efficiency and equity – the quality of commissioning and provision of care services should ensure that all professionals involved in a patient's care are involved and that physical, mental health and social care needs are equally considered.

**Question 5:** To what extent do the proposed guiding principles set the correct framework for care, support and treatment under the Act? Are there any additional principles which may be beneficial?

## Equality and human rights

### New Chapter 3

- 4.2** To support these overarching principles, we propose incorporating a new chapter on equality, human rights and health inequalities. This will build on, and reinforce, information provided in other chapters or sections about equality and or human rights for specific patients or in specific situations.
- 4.3** People with mental health problems can be particularly vulnerable to abuse of their human rights and discrimination in service provision and professional practice. For example, we know that people from black and minority ethnic communities are over-represented within the numbers of patients detained under the Act. Applying a human rights and equalities-based approach in the care and treatment commissioned from and provided by health and social care services to people with mental health problems will contribute to greater equality in people's access to treatment and their outcomes. Consideration of equality and human rights underpins all of the chapters and this specific chapter reinforces this and highlights particular issues that have been identified in the use of the Act in respect of equality and human rights. Through the consultation process and specific engagement activity, we aim to identify positive action to support an equality and human rights-based approach.

**Question 6:** In your opinion does the proposed Code of Practice ensure that equality and human rights are adequately protected in the use of the Act? Do you have suggestions on where and how the Code could be further strengthened in this regard? Can you provide evidence or examples of the equality impact of the Act?

# 5 Protecting patients' rights and autonomy

**Chapter 4** Information for patients, nearest relatives, carers and others

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**Chapter 5** The nearest relative

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**Chapter 6** Independent mental health advocates

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**Chapter 7** Attorneys and deputies

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**Chapter 8** Privacy, dignity and safety

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**Chapter 9** Wishes expressed in advance

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**Chapter 10** Confidentiality and information sharing

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**Chapter 11** Visiting patients in hospital

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**Chapter 12** The Tribunal

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This group brings together those chapters that are expected to be of most interest or relevance to patients, their families and carers. We have not made substantial changes to the individual chapters. However, grouping them together, combined with the additional clarity around the role of Care Quality Commission (CQC), will provide additional safeguards and ensure that patients subject to the Act know their rights and what they can expect. The CQC's annual report and evidence from Winterbourne View has indicated that this does not always happen for all patients.<sup>14</sup> These changes support *Closing the Gap* action 12 on supporting carers and action 25 on reducing discrimination.

## Enabling people to have a say in their own care

### Chapter 4

- 5.1** Empowerment and participation is one of the five proposed guiding principles of the new Code. This means that individuals who are subject to the Act should be given the opportunity to be involved in the planning, development and review of their treatment. This principle also applies to family members, carers, and other people with an interest in the welfare of the person. This principle was included in the previous Code but we have further strengthened it.<sup>15</sup>

**Question 7:** In what ways could the Code say more to ensure that people have a say in their own care and that their wishes and feelings are taken into account?

## Improving advocacy services

### Chapter 6

- 5.2** The Act makes provision for independent mental health advocates (IMHAs) to be available to help support particular ('qualifying') patients. The IMHA's role includes helping patients to understand their rights and helping patients to exercise their

rights, which can include representing them and speaking on their behalf. Section 130C of the Act sets out who is eligible for an IMHA. A variety of evidence has highlighted that sometimes IMHA services are not always available or appropriate to the patient, in particular for a patient with a learning disability, autism or with other cultural communication difficulties or considerations.<sup>16</sup>

- 5.3** Responsibility for commissioning IMHA services which meet the diverse needs of patients, rests with local authorities. Local authorities need to ensure that they commission an adequate number of IMHAs, including IMHAs for individuals with additional needs, such as language or communications difficulties and IMHAs that can respond to the diversity of detained patients<sup>17</sup>. In particular, a new change has been made to introduce paragraph 6.12 to reinforce that if a patient lacks capacity to decide whether to seek help from an IMHA, an IMHA should be introduced to the patient so that the IMHA can explain what help they can offer. This will help to support people lacking capacity.

**Question 8:** What additional information in relation to the provision of independent mental health advocates would it be helpful to include?

## Right to privacy and family and care contact

### Chapters 8 and 11

- 5.4** Individuals have the right to meet with or speak privately on the telephone with anyone they wish to, subject to any minimum restrictions that are necessary, for example, on clinical, or security grounds, or to protect others' human rights. At Winterbourne View patients, their families and carers indicated that family and friends were not able to visit their bedrooms or speak privately on the telephone or online.
- 5.5** These rights already exist. Whilst we have not made significant changes, we have strengthened and clarified the wording in paragraphs 8.2 to 8.7, especially on access and use of electronic communication. Combined with the additional information about the roles of families and carers and how CQC will inspect against the Code, we consider that this will ensure that providers put these rights into practice.

**Question 9:** How should the Code be updated to reflect the use of electronic media in a patient's correspondence and communications under section 134?

**Question 10:** How can the Code be more specific about aspects relating to the right to have visitors and access to family and friends?

## Removing blanket restrictions

### Chapter 8

- 5.6** We hear too often about people being rewarded or punished through allowing or forbidding access to telephones, water and other drinks, outside space, external visits, use of internet and mobile telephones. The CQC report on the Act 2013/13 reported that during a focussed review of some wards they found blanket restrictions (applying to all patients in a particular ward or hospital) being applied in 74% of cases. In 65% of cases where blanket restrictions were employed the ward were unable to give adequate reasons for their use.<sup>18</sup>
- 5.7** Paragraphs 8.37– 8.48 include new guidance in relation to the avoidance of blanket restrictions or ‘house rules’ that are applied to all patients regardless of their individual needs. Any restrictions should be least restrictive and on the basis of understanding an individual’s needs.

**Question 11:** Is any further guidance required to ensure the avoidance of blanket restrictions? If so what guidance is needed?

## The role of families and carers

- 5.8** Family members and carers have told us that they were not aware of the Code, and their rights under the Act. The Code, building on the requirements set out in the Care Act 2014, establishes that their involvement must be taken seriously when making decisions for individuals, and in developing and reviewing care plans. With respect to the Act, the patient’s ‘nearest relative’ has additional rights, such as applying for a person’s detention, seeing written information given to the patient, and a power of discharge under Part 2 of the Act. A number of changes have been proposed throughout the Code to strengthen, clarify and confirm the rights and role of carers and other family members, in particular in chapters 4 and 5.

**Question 12:** In your opinion what additional guidance is required in relation to the rights and roles of families and carers?

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- <sup>14</sup> South Gloucestershire Safeguarding Adults Board. Winterbourne View Hospital: a Serious Case Review. 2012 <http://hosted.southglos.gov.uk/ww/report.pdf>
- Care Quality Commission. Review of Compliance: Castlebeck Care Ltd. 2011. [http://www.cqc.org.uk/sites/default/files/documents/1-116865865\\_castlebeck\\_care\\_teesdale\\_ltd\\_1-138702193\\_winterbourne\\_view\\_roc\\_20110517\\_201107183026.pdf](http://www.cqc.org.uk/sites/default/files/documents/1-116865865_castlebeck_care_teesdale_ltd_1-138702193_winterbourne_view_roc_20110517_201107183026.pdf)
- Transforming Care: a national response to Winterbourne View Hospital Department of Health Review: Final Report. December 2012. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/213215/final-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213215/final-report.pdf)
- Care Quality Commission. Monitoring the Mental Health Act in 2012/13. 2014. <http://www.cqc.org.uk/content/mental-health-act-annual-report-201213>
- <sup>16</sup> University of Central Lancashire. The Right to be Heard: review of independent mental health advocate (IMHA) services in England. 2012. [http://www.uclan.ac.uk/research/environment/projects/the\\_right\\_to\\_be\\_heard.php](http://www.uclan.ac.uk/research/environment/projects/the_right_to_be_heard.php)
- Care Quality Commission. Monitoring the Mental Health Act in 2012/13. 2014. <http://www.cqc.org.uk/content/mental-health-act-annual-report-201213>
- South Gloucestershire Safeguarding Adults Board, Winterbourne View Hospital: a Serious Case Review. 2012. <http://hosted.southglos.gov.uk/ww/report.pdf>
- Care Quality Commission. Review of Compliance: Castlebeck Care Ltd. 2011. [http://www.cqc.org.uk/sites/default/files/documents/1-116865865\\_castlebeck\\_care\\_teesdale\\_ltd\\_1-138702193\\_winterbourne\\_view\\_roc\\_20110517\\_201107183026.pdf](http://www.cqc.org.uk/sites/default/files/documents/1-116865865_castlebeck_care_teesdale_ltd_1-138702193_winterbourne_view_roc_20110517_201107183026.pdf)
- <sup>17</sup> University of Central Lancashire. The Right to be Heard: review of independent mental health advocate (IMHA) services in England. 2012. [http://www.uclan.ac.uk/research/environment/projects/the\\_right\\_to\\_be\\_heard.php](http://www.uclan.ac.uk/research/environment/projects/the_right_to_be_heard.php)
- <sup>18</sup> Care Quality Commission. Monitoring the Mental Health Act in 2012/13. 2014. <http://www.cqc.org.uk/content/mental-health-act-annual-report-201213>

# 6 Assessment, transport and admission to hospital

**Chapter 13** Mental capacity and deprivation of liberty

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**Chapter 14** Applications for detention in hospital

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**Chapter 15** Emergency applications for detention

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**Chapter 16** Police powers and places of safety

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**Chapter 17** Transport of patients

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**Chapter 18** Holding powers

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This group includes those chapters related to when a person may first enter hospital or is being considered for the use of the Act. The changes proposed relate to police powers, possible changes to encourage people to be located in hospitals close to their home, use of sections 2 and 3 and a new chapter clarifying whether the Act or the Mental Capacity Act should be used.

## Mental capacity and deprivation of liberty

### New chapter 13

- 6.1** The Code was last updated in 2008, before the beginning of the Deprivation of Liberty Safeguards (DoLS), which were inserted by the Mental Health Act 2007 into the Mental Capacity Act 2005 (MCA). They came fully into force on 1 April 2009. The revision of the Code provides a welcome opportunity to update and refine guidance on the importance of considering the MCA where it applies to patients who lack capacity, and to clarify the interface between the Act and the MCA DoLS. Whilst both regimes provide lawful authorisation to deprive an individual of their liberty, the qualifying criteria for such authorisation differs. The new draft code therefore proposes a new chapter 13 to provide greater clarity on which legislation applies, when and how.
- 6.2** Chapter 13 has three main objectives. First, it explains the key principles of the MCA and makes clear the relevance of these principles to those working with the Act. Second, it provides guidance (including a flowchart) that enables professionals to determine whether an individual should be subject to the Act or DoLS. Third, a case study illustrates how professionals might determine in practice between the different regimes.
- 6.3** Both the MCA and DoLS have their own separate code of practice which professionals should be aware of. Therefore, the chapter does not aim to provide exhaustive guidance but highlights key issues. We would be interested in hearing views as to whether this chapter will prove useful to professionals, for example, in providing clarity over the application of the Act or the DoLS in a hospital setting.

**Question 13:** Is there any other guidance on the interface that you think would be helpful and if so, what? Do you think that this is sufficiently user friendly to help your professional practice?

## **Use of sections 2 and 3 Paragraphs 14.23 –14.25**

**6.4** Paragraphs 14.23 –14.25 provide information on whether a patient should be admitted under section 2 or section 3 powers. The Act allows professionals discretion as to which power they use to detain patients, although the choice is guided by the least restriction principle. Increasingly professionals appear to view section 2 as the appropriate initial power of detention, but there is also a view that section 2 may be used without sufficient reflection of the individual patient's circumstances and history.

**Question 14:** What further guidance could the Code give professionals to support their decision making between the choice of adopting section 2 or section 3 for individual patients?

## **Promoting recovery: caring for people closer to home Paragraphs 1.2**

**6.5** Chapter 14 includes information in relation to the detention of patients. It is widely recognised that maintaining regular and close contact with family, friends and local community can be a key enabler in facilitating a patient's recovery. To support this it is therefore crucial that individuals are not placed for long periods of time in hospitals many miles from their family and friends. We are keen to identify ways of addressing this within the existing legislative framework. Possible options include the following.

- Ensuring that NHS commissioners, section 12 doctors and approved mental health professionals (AMHPs) should make all reasonable efforts to place individuals, especially children and young people and/or individuals with a learning disability, as close to home and/or family as possible.
- The commissioner should ensure that the family and main carer (if not a family member) are involved in the decision about where to locate an individual, are informed of the reasons for the decision taken and given the opportunity to challenge a decision they disagree with.
- It is good practice for the commissioner to review its decision when requested by the a family member and/or a carer.

- Hospital managers should inform an appropriate family member and/or a main carer that the commissioner should have involved them in the decision about where to locate the individual and should have been given reasons for the decision and informed that they can ask the commissioner to review the decision.
- Developing (and subject to a separate consultation) specific guidance for NHS commissioners on commissioning placements for in-patient mental health services.
- If, in order to meet the patient's care needs satisfactorily eg due to a need for specialist treatment or high secure detention, it is not possible for the commissioner to locate a patient in a hospital that is also convenient for family and friends to access then the commissioner should consider whether they can provide any additional assistance as part of the care package to support the family to visit and/or encouraging the carer to have a carer's assessment.

**6.6** We would appreciate your views on these possible options to assist us in developing policy in this area and to draft additional wording to be included with the Code. In principle, the options are not mutually exclusive and where possible, may be applied collectively. It is important that these proposals can work within the existing legislative framework and are therefore within the scope of this consultation. The Code draft being consulted on does not include a proposed approach at this stage or suggested wording on this. We will also hold an online discussion forum as part of the consultation exercise to work through these options and to develop our thinking in this area.

**Question 15:** Considering the options above, what further guidance should be included in relation to where individuals should be geographically located, when detained, within the remit of the current legislative framework?

## Applications for detention

**6.7** Paragraphs 14.45 –14.67 set out what an AMHP should do to admit a person through an application for detention. We know that there are occasions when patients do not receive care quickly enough because AMHPs cannot locate an appropriate bed. It would be helpful to understand what further guidance we could include in chapter 14 to support AHMPs and ensure that they are not put in this position.

**Question 16:** What guidance could the Code give to local governance systems to ensure that AHMPs are not put in this position?

## Police powers and places of safety

### New chapter 16

- 6.8** The police have the power, under section 136 (s136) of the Act, to remove a person who the police finds in a public place to a place of safety if it appears to the police officer that the person is suffering from mental disorder and appears to be in immediate need of care and control if the constable thinks it is necessary to do so in the interests of that person or for the protection of other persons. Section 135 (s135) provides an additional power of entry for the police. The person may be detained in a place of safety for a maximum period of 72 hours for the purpose of assessment by a registered medical practitioner and interview by an AMHP and for making necessary arrangements for treatment/care. The Code recommends that places of safety be located in hospitals or other health settings. Police cells may be used, but as the Code states, ‘only on an exceptional basis’.
- 6.9** The report *A Criminal Use of Police Cells* noted that police cells appear to be used routinely and not ‘on an exceptional basis’.<sup>19</sup> The report also recommended that the amount of time that a person can be detained in police custody under s136 should be reduced to a maximum of 24 hours. The person would have to be assessed by a doctor and AMHP within this period, or transferred to a more suitable place of safety. To make this change mandatory would require amending primary legislation, so we propose at paragraph 16.40 that the Code of Practice makes it clear that a person should spend no longer than necessary in police custody and that good practice sets an upper limit of 24 hours.

**Question 17:** To what extent do the changes to Chapter 16 on police powers, address concerns around the use of sections 135 and 136? What further changes are required?

Please note:

The Government (Department of Health and Home Office) has recently reviewed the operation of sections 135 and 136 of the Act in England and Wales, to make sure that the legislative framework supports getting the right support for people at the right time. This consultation closed on 3 June 2014.

That review examined the evidence to determine whether or not changes to the primary legislation would improve outcomes for people experiencing a mental health crisis. Further information is available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/301724/ReviewOperationS135S136.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/301724/ReviewOperationS135S136.pdf)

<sup>19</sup> Her Majesty's Inspectorate of Constabulary, Care Quality Commission, et al. *A criminal use of police cells?* 2013. <http://www.hmic.gov.uk/media/a-criminal-use-of-police-cells-20130620.pdf>

# 7 Additional considerations for specific patients subject to the Act

**Chapter 19** Children and young people under the age of 18

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**Chapter 20** People with learning disabilities or autistic spectrum disorders

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**Chapter 21** People with personality disorders

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**Chapter 22** Patients concerned with criminal proceedings

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Chapters 19-22 contain additional considerations relevant to particular groups of patients, including children and young people under the age of 18, and individuals with learning disabilities, autistic spectrum conditions or personality disorders. There are also chapters on patients concerned with criminal proceedings, including those who are subject to Secretary of State Restrictions (usually referred to as restricted patients).

## Children and young people under the age of 18

### New chapter 19

**7.1** Chapter 19 of the Code provides guidance to mental health professionals and other practitioners working with children and young people under 18 years on the legal framework for the admission and treatment of children and young people in need of psychiatric inpatient care. This is a complex area and therefore clear guidance is required. Chapter 19 has been revised to address areas that have caused confusion in practice, clarify the law, improve links with other parts of the Code, and provide additional guidance.

**7.2** The changes fall into the following four broad categories:

**Clarifying existing guidance:** For example, the revised chapter covers the following areas:

- **Assessing competence and capacity:** Further guidance is provided on assessing competence (in the case of a child under 16) and capacity (in the case of a young person aged 16 or 17).
- **Deprivation of liberty:** The guidance, including the flow charts at the end of the chapter, has been revised to make clear that those with parental responsibility cannot authorise their child's deprivation of liberty.
- **The 'zone of parental control':** We are aware that this term (introduced by the 2008 Code) and accompanying guidance in the Code, has been criticised as being vague and unhelpful. Nonetheless, the principle upon which the 'zone of parental control' is based, is of fundamental importance, namely that there are limits to the kind of decisions that parents can make in relation to their child (for example, as noted above, parental consent cannot authorise a deprivation of liberty). The guidance has been revised to clarify this underlying principle and to help practitioners determine whether, in the particular case in question, the child or young person's admission and/or treatment can be authorised by parental consent.

**7.3 Links with other parts of the Code for children and young people:** the cross-references between chapter 19 and the rest of the Code have been increased. For example, the new chapter 19 on the Mental Capacity Act 2005 (MCA) and Deprivation of Liberty Safeguards (DoLS) identifies how the provisions under the MCA differ between adults and young people aged 16 and 17. The need for practitioners to consider the specific issues relating to children and young people is highlighted throughout Code. For example, in paragraphs 19.25 –19.32 specific reference to the importance of ensuring that children and young people understand matters relating to their admission and treatment, including their rights, has been included.

**7.4 Restructuring of the Code:** The new chapter 19 addresses the key areas in the following order:

- general matters (such as parental responsibility, confidentiality)
- admission to hospital for assessment and/or treatment for mental disorder - specific issues for children/young people
- care and treatment of children and young people in hospital (such as the right to an independent mental health advocate (IMHA), the age appropriate environment duty and special safeguards for ECT)
- discharge - additional guidance has been added regarding the Tribunal)
- after-care (including supervised community treatment and guardianship)
- duties of local authorities in relation to children and young people in hospital.

**7.5 Inclusion of additional guidance:** The following areas are also included in the revised Code:

- children and young people involved in the youth justice system
- ensuring children and young people are made aware of the role of IHMAs and their right to seek help from IMHAs
- use of section 135 and 136 of the Act and under 18s
- after-care and children and young people, and
- transition out of child and adolescent mental health services (CAMHS).

**Question 18:** In relation to the ‘zone of parental control’, do you think that this is a helpful term? If not, do you have any suggestions for an alternative term or is it sufficient to explain that there are limits to decisions that parents can take for their children?

**Question 19:** Further guidance has been provided on when a young person who has capacity might not be able to consent, but the term ‘overwhelmed’ has been removed as this was thought to be confusing. Are the relevant sections clearer?

## People with learning disabilities or autistic spectrum disorders

**7.6** Chapter 20 has been updated to reflect new legislation, in particular the need to provide care which complies with the MCA and to consider reasonable adjustments under the Equality Act 2010. The chapter has been updated to promote equality and inclusion and the new guiding principles, including referring to conditions rather than disorder. It reflects recent evidence that people with a learning disability may suffer disproportionate use of restraint, violence and/or discrimination and that this needs to be addressed, evidenced most cogently by the experiences at Winterbourne View.<sup>20</sup>

## People with personality disorders

**7.7** Chapter 21 has been updated to take account of the development of services, in particular the transition from the Dangerous and Severe Personality Disorder (DSPD) programme to the Offender Personality Disorder strategy agreed with Department of Health and Ministry of Justice Ministers in 2011, and a restatement that people with personality disorder should be treated the same way under the Act as people with other mental disorders.

**Question 20:** Does the Code provide sufficient information in relation to individuals where additional safeguards or considerations may be required, eg due to age, or disability? Please note any instances where information is not sufficient.

## Patients concerned with criminal proceedings

### Chapter 22

- 7.8** Where a court gives a hospital order with restrictions under section 37 and 41 of the Act, the Secretary of State for Justice has certain obligations with regard to the management of these patients, who are commonly referred to as ‘restricted patients’. The restrictions placed on these patients are for the protection of the public from serious harm. The expectation of the Secretary of State is that these patients will be securely managed through treatment and rehabilitation, whilst also ensuring the safety of the patient and others. It is therefore essential that all those involved in the treatment and care of restricted patients understand their respective roles and responsibilities and the points at which Secretary of State consent is required.
- 7.9.** The 2008 version of the Code included information on ‘restricted patients’ in several chapters. This can make it difficult to find the right information easily. The intention is to improve the identification of relevant advice on the management of restricted patients throughout the revised Code by making better cross references. For example, how to obtain leave of absence under section 17 of the Act (paragraphs 27.5 to 27.7),<sup>21</sup> the process for transferring patients between hospitals under section 19 (paragraph 17.30) and transferring prisoners to hospital under sections 47 and 48 (paragraphs 22.55 to 22.59).

**Question 21:** What are your views on how the process for transferring restricted patients under Section 19 of the Act 1983, between secure hospitals could be improved?

- 7.10.** Detailed guidance on the transfer of prisoners from prison to mental health hospitals under sections 47 and 48 is being developed by the Ministry of Justice and NHS England.

<sup>20</sup> South Gloucestershire Safeguarding Adults Board. Winterbourne View Hospital: a Serious Case Review. 2012. <http://hosted.southglos.gov.uk/ww/report.pdf>

Care Quality Commission. Review of Compliance: Castlebeck Care Ltd. 2011. [http://www.cqc.org.uk/sites/default/files/documents/1-116865865\\_castlebeck\\_care\\_teesdale\\_ltd\\_1-138702193\\_winterbourne\\_view\\_roc\\_20110517\\_201107183026.pdf](http://www.cqc.org.uk/sites/default/files/documents/1-116865865_castlebeck_care_teesdale_ltd_1-138702193_winterbourne_view_roc_20110517_201107183026.pdf)

<sup>21</sup> Section 17 MHA with the modifications stated in paragraph 3 of part II of schedule 1 to the Act.

# 8 Care, support and treatment in hospital

**Chapter 23** The appropriate medical treatment test

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**Chapter 24** Medical treatment under the Act

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**Chapter 25** Treatments subject to special rules and procedures

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**Chapter 26** Safe and therapeutic responses to disturbed behaviour

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This group of chapters provides guidance in relation to the care, support and treatment of patients in hospital. The main changes are in new chapter 26, on the use of restraint, seclusion and segregation. These changes are designed to support *Closing the Gap* action 9 on reducing the use of restraint and action 11 on taking action to improve care and where necessary protect patients.

## Supporting people who present with disturbed behaviour and the safe use of restrictive interventions

### Chapter 26

- 8.1** Evidence from investigations by the Care Quality Commission (CQC) has shown that restrictive interventions (physical restraint, medication, rapid-tranquillisation, mechanical restraint and seclusion) are used too much and not only as a last resort and often to humiliate, punish or inflict pain.<sup>22</sup> Chapter 26 attempts to clarify when use of restrictive interventions is permissible, who can apply them and the necessary training, how use should be reported, recorded and reviewed.<sup>23</sup>
- 8.2** The Government has published new guidance, *Positive and Proactive Care: reducing the need for physical interventions*.<sup>24</sup> NHS Protect have also issued guidance to support staff deal with challenging behaviour and there is an on-going update and expansion of NICE guidance concerning the short-term management of violence and aggression. The Department of Health have launched a new two-year programme, Positive and Safe, to enable this. Chapter 26 in the Code complements these other publications, providing additional information for patients subject to the Act and to support delivery of action 9 in *Closing the Gap*.
- 8.3** Chapter 26 establishes clear standards to ensure when restrictive interventions are used that:
- there must be an absolute necessity to act in order to avoid harm to a person and/or to others
  - the nature of restrictive interventions must be proportionate to the potential harm to the person and/or to others
  - the practice must be the least restrictive option that will meet the need
  - any restriction should be imposed for no longer than absolutely necessary

- what is done, why and with what consequences must be recorded in an open and transparent manner
- lessons must be learned in order to avoid minimise the likelihood of restrictive interventions being used again in future, and
- no restrictive intervention should be used unless it is medically necessary to do so in all the circumstances of the case. Action that is not medically necessary may well breach a patient's rights under article 3 of the European Convention on Human Rights, which prohibits inhuman or degrading treatment.

#### 8.4 Chapter 26

- provides definitions of varying types of restrictive intervention in line with *Positive and Proactive Care*, including the difference between seclusion and long term segregation
- requires that patients, their carers and advocates are engaged as partners in all aspects of their care including planning for and reviewing the use of restrictive interventions
- clarifies a care pathway framework which includes detailed assessment and delivers behaviour support plans (BSPs) that include bespoke preventative strategies, approaches to de-escalation and arrangements for safe application on restrictive interventions
- includes organisational requirements for transparent restrictive intervention reduction programmes which are reviewed at executive board level
- outlines enhanced local policy requirements relating to restrictive intervention reduction, positive behavioural support and the safe use of restrictive interventions, as well as provisions for transparent monitoring and reporting
- provides guidance on the safe and ethical use of physical restraint, mechanical restraint, restraint to administer medication, seclusion, enhanced observation and longer term segregation
- confirms that seclusion and segregation are not to be used outside of the Act and only then with safeguards
- requires that training for staff who use restrictive interventions includes the promotion of attitudinal change, skills in crisis management and the implementation of new models of care, and
- requires complaints procedures to be accessible to patients and their carers and advocates who can support them in raising any concerns.

**8.5** It states a number of standards including that:

- there can be no recurrent use of restrictive interventions outside of BSPs which should also include wide-ranging, individualised, preventative strategies
- deliberate use of prone (face down) restraint and other risky positions that restrict the airway, breathing and circulation should not be used
- physical restraint and/or breakaway techniques must not include the deliberate applications of pain by staff or as a result of holds used, and
- the use of restrictive interventions cannot be a substitute for adequate staffing and care plans to ensure that people's needs are met.

**8.6** Chapter 26 requires that local policies establish effective governance strategies, reporting and lines of accountability, underpinned by transparent reporting requirements and accessible means by which patients can raise concerns.

**Question 22:** In your opinion does the Code adequately address the issues surrounding restrictive practices to ensure their minimisation and safe application? If not, what further guidance do you recommend?

**Question 23:** In your opinion do the proposed review requirements relating to mechanical restraint, seclusion and long term segregation adequately help safeguard patients? If not, what further guidance do you recommend?

<sup>22</sup> Care Quality Commission. Monitoring the Mental Health Act in 2012/13. 2014. <http://www.cqc.org.uk/content/mental-health-act-annual-report-201213>  
South Gloucestershire Safeguarding Adults Board. Winterbourne View Hospital: a Serious Case Review. 2012. <http://hosted.southglos.gov.uk/ww/report.pdf>

Care Quality Commission. Review of Compliance: Castlebeck Care Ltd. 2011. [http://www.cqc.org.uk/sites/default/files/documents/1-116865865\\_castlebeck\\_care\\_teesdale\\_ltd\\_1-138702193\\_winterbourne\\_view\\_roc\\_20110517\\_201107183026.pdf](http://www.cqc.org.uk/sites/default/files/documents/1-116865865_castlebeck_care_teesdale_ltd_1-138702193_winterbourne_view_roc_20110517_201107183026.pdf)

<sup>24</sup> Department of Health. Positive and Proactive Care: reducing the need for restrictive interventions. 2014. <https://www.gov.uk/government/publications/positive-and-proactive-care-reducing-restrictive-interventions>

# 9 Leaving hospital

**Chapter 27** Leave of absence

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**Chapter 28** Absence without leave

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**Chapter 29** Community treatment orders (CTO)

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**Chapter 30** Guardianship

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**Chapter 31** Guardianship, leave of absence or CTO

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**Chapter 32** Detention and CTO: renewal, extension and discharge

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**Chapter 33** After-care

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**Chapter 34** Care programme approach

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This group of chapters provides information for patients being treated in the community or being considered for discharge. These changes support promotion of the least restrictive option and autonomy principle and action 1 in *Closing the Gap* about high quality mental health services focused on recovery.

## Renewal, extension and discharge: Increasing transparency and accountability in discharge decisions

### Chapter 32

**9.1** Chapter 32 provides information in relation to the renewal of detention, extension or discharge. A person should only continue to be detained when the criteria in the Act are met. The responsible clinician is required to discharge any patient who no longer fits the criteria and, in particular, to examine each patient and determine whether detention should continue within the period of two months before the expiry of detention. Evidence from Winterbourne View and Care Quality Commission (CQC) inspections suggests that a proper renewal of detention has not always taken place and some patients remained in hospital in circumstances that appear to have amounted to a deprivation of liberty, but without any safeguards under the Act or the Mental Capacity Act 2005 (MCA). Whilst patients can stay in hospital as informal patients after detention, their consent is required, or if it is established that they lack capacity a best interest decision is required and the circumstances must not amount to a deprivation of liberty. Concerns have also been raised about section 17 leave being used excessively or inappropriately, when discharge or a CTO is more appropriate.

**Question 24:** Should the Mental Health (Conflicts of Interest) (England) Regulations (2008) be amended so that where a patient is to be admitted and the doctor providing one of the medical recommendations is on the staff of that hospital, the other medical recommendation must be given by a doctor who is not on the staff of that hospital, regardless of whether the hospital is an independent hospital or an NHS hospital?

- 9.2** Chapter 32 gives guidance on renewal of detention and discharge (which includes a responsible clinician's power of discharge, the nearest relative's power of discharge) and involving a member of another profession, whilst chapter 38 gives guidance on hospital managers' discharge powers. A number of concerns have been raised, including by professionals and the Law Society, that the responsible clinician makes the decision to renew detention with limited input from other professionals and there may not be sufficient safeguards or checks at this point. We are keen to provide additional information in the Code that ensures that high quality and consistent professional practice is undertaken at all times and reduces the potential for possible conflicts of interest or decisions not being made in the best interests of the patient.
- 9.3** We have not drafted these changes in the proposed draft Code document but have identified possible options that we could include within the Code, or in one case changing secondary legislation. The relevant paragraphs on renewal and discharge are in the draft Code at paragraphs 32.2 to 32.9 and 32.15 to 32.23 respectively. This information would be in addition to that in chapter 39 about financial conflicts of interest. We will hold an online discussion forum as part of the consultation exercise to work through these options and to develop our thinking in this area.
- 9.4** Possible options for improving the transparency and accountability in relation to reviews and decisions about discharge and/or decisions to extend section 17 leave include:
- enhancing the role of the patient, independent mental health advocate (IMHA), nearest relative, family and carers to ensure that they are included in all decisions about discharge and review (similar to guidance given in relation to reviews concerning renewal of detention or CTOs to disputed panels already included at paragraph 37.29)
  - introducing new guidance on the role of hospital managers for uncontested cases. This could be similar to paragraphs 38.24 to 38.38 on what hospital managers should already do when renewal of detention is contested. (You may also wish to refer to paragraphs 12.9 and 38.1 to 38.45 of this document in relation to other proposed changes to clarify the role of hospital managers)
  - strengthening the role of hospital manager panels (paragraphs 38.1 to 38.45) to provide further scrutiny
  - make amendments to the forms set out in the Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008<sup>25</sup> in respect of review and discharge decisions so that the responsible clinician needs to document the reasons for their decision and there is greater transparency and accountability for their decisions
  - in relation to section 17 leave only, providing additional guidance following paragraph 27.10 and in chapter 31 about whether it is appropriate and when not to grant or extend section 17 leave for more than seven consecutive days.

**Question 25:** What are your views on the options proposed as a means of increasing and improving the transparency of decision-making for discharge and reviews?

## Community treatment orders

- 9.5** The chapter on community treatment orders (CTOs) has been revised to take account of experience of, and research into, the use of CTOs since their introduction in 2008. It emphasises the need for the responsible clinician to consider carefully the appropriateness of a CTO for the individual, clear communication with the patient and their family and carers about the purpose of the CTO is supporting their recovery and the need for clear decisions and communication about when the CTO will end, so that the time for which the person remains subject to the Act is only of the necessary length and no longer.

**Question 26:** Does the revised chapter provide as much guidance as possible, within the current legislative framework, to ensure that CTOs are used effectively and appropriately to support patients to maintain stable mental health outside hospital and to promote recovery, in line with the principle of least restrictive option and autonomy? If not, what further guidance do you suggest?

## Care planning and after-care

### Chapters 33 and 34

- 9.6** The amendments made to after-care by the Care Act are reflected in the revised chapter 33 and an additional new chapter 34 on care programme approach planning. In particular, a definition of after-care is inserted into the Act. The Act also includes a new regulation-making power which will allow the Secretary of State to provide that where a local authority is providing accommodation as part of the after-care arrangements and a person expresses a preference for a particular accommodation then that must be provided or arranged subject to any conditions set out in the regulations (including about any extra costs incurred). It makes amendments regarding direct payments for after-care.
- 9.7** Stakeholders have indicated that it would be helpful to include information in the Code on care planning and the care programme approach, and how these link to CTOs and after-care, in one chapter. A new chapter 34 on care planning has been included which combines the previous information on care planning, the most recent guidance and also provides information about Welsh patients receiving care in England.

## Care planning for Welsh patients

### New paragraphs 34.22 – 34.25

**9.8** The new chapter 34 on care planning provides information on the Mental Health (Wales) Measure 2010 (the Measure) (paragraphs 34.22 – 34.25). A Welsh patient subject to the Act having been placed in a hospital in England, or an English patient being treated in a Welsh hospital, regardless of whether the hospital is NHS or independent is also likely to be subject to the Measure. The Measure came into effect on a phased basis in 2012. This legislation is similar to primary legislation in England. Whilst there is a separate Code of Practice relating to the application of the Mental Health Act 1983 in Wales<sup>26</sup>, it is important that Welsh patients who have been placed in England to receive secondary mental health services are subject to the Code of Practice relating to the Mental Health Act 1983 in Wales. Their professionals, practitioners and representatives should understand that there is this additional legislation. There are specific requirements for care co-ordination and care and treatment planning relating to Welsh patients, including those receiving care and treatment under the Act. There is also a separate Code of Practice relating to the application of the Mental Health Act 1983 in Wales.<sup>26</sup> This section is therefore particularly important for those hospitals located in English/Welsh border areas and high secure or other specialist services.

**Question 27:** What further information in relation to the care programme approach (CPA) in chapter 34 would be helpful to include in the Code?

**Question 28:** How clear is the drafting on how the provisions of the Measure apply to individuals receiving services across the English/Welsh Border? What further guidance would be helpful and why?

Please note: The Welsh Code is also due to be revised later this year.

<sup>25</sup> Mental Health (Conflict of Interest) (England) Regulations 2008/1205. <http://www.legislation.gov.uk/ukSI/2008/1205/contents/made>

<sup>26</sup> <http://www.wales.nhs.uk/sites3/Documents/816/Mental%20Health%20Act%201983%20Code%20of%20Practice%20for%20Wales.pdf>

# 10 Professional responsibilities

**Chapter 35** Receipt and scrutiny of documents

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**Chapter 36** Allocating or changing a responsible clinician

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**Chapter 37** Functions of hospital managers

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**Chapter 38** Hospital managers' discharge power

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**Chapter 39** Conflicts of interest

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**Chapter 40** Support for victims

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This group of chapters provides additional information for professionals who have specific responsibilities under the Act.

## **Hospital managers: functions of hospital managers and discharge powers**

### **Chapters 37 and 38**

**10.1** Chapters 37 and 38 of the Code provide information about the roles and responsibilities of hospital managers under the Act. Hospital managers have an important role in ensuring decisions are subject to proper accountability and that good governance, and are made in the best interests of the individual rather than the provider organisation. Feedback suggests that these chapters need updating to reflect the role that hospital managers undertake, clarification around appropriate governance procedures and enabling hospital managers to sufficiently challenge clinicians about issues to do with discharge, review and documentation, including where possible, to reflect electronic communication methods, which are increasingly used.

**Question 29:** What additional guidance on the role of hospital managers should be included to assist them fulfil their role under the Act?

## **Support for victims**

### **Chapter 40**

**10.2** The Government is committed to ensuring that victims are treated respectfully and sensitively and supported as fully as possible with appropriate information on mentally disordered offenders.

**10.3** The Domestic Violence, Crime and Victims Act 2004 extended statutory rights to information to victims of mentally disordered offenders who had committed violent

or sexual offences and had received a restricted hospital order (restricted patients).<sup>27</sup> The Mental Health Act 2007 extended these provisions to victims of offenders subject to unrestricted hospital orders (unrestricted patients). These changes enable victims of serious violent and sexual offences to engage in a Victim Contact Scheme to enable them to be informed of key developments and to make representations about conditions that should be in place on discharge. This applies to both restricted and non-restricted patients. New chapter 40 provides references to the separate Victims' Code<sup>28</sup> and requirements in relation to the information, support and services victims of crime can expect to receive from criminal justice agencies in England and Wales at every stage of the process.

**Question 30:** What are your views on how to ensure victims do not miss out on their entitlements to receive statutory victim contact, particularly where the responsibility for this lies with hospitals, and that victims' concerns and views are given appropriate weight and consideration when managing patients subject to a hospital order?

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<sup>27</sup> <http://www.legislation.gov.uk/ukpga/2004/28/contents>

<sup>28</sup> Ministry of Justice. The code of practice for victims of crime and supporting public information materials. 2013 <https://www.gov.uk/government/publications/the-code-of-practice-for-victims-of-crime>

# 11 General changes

This consultation document sets out the main proposed changes to the Code. In addition there are other smaller changes to reflect changes in terminology, policy, case law and professional practice. We welcome your thoughts on these further changes or anything additional you think it would be helpful to include, in particular supporting the delivery of commitments in *Closing the Gap*.

**Question 31:** What specific issues would you like to see addressed within the Code, which are not covered in the proposed draft? What are your views on the new chapters that are proposed in this revision of the Code?

**11.1** *Transforming Care: A national response to Winterbourne View Hospital*<sup>29</sup> identified a number of areas where the principles and safeguards within the Act were not properly applied. The consultation document proposes a number of changes designed to address the major concerns raised at Winterbourne where 70% of patients were at some point detained or treated under the Act. Overall, and within the Act legislation, we believe that we have proposed the required changes to the Code. We appreciate your thoughts on anything further that should be included.

**Question 32:** Do you believe that the proposed changes to the Code address the concerns about access to safeguards, raised at Winterbourne View and other places? Is there any other guidance, within the parameters of the Act, you think the Code should include? If so, please give details.

## 11.2 Making the Code more accessible

Both the Code and the accompanying reference guide<sup>30</sup> should be helpful to patients and families/carers. The reference guide explains the legal requirements in the Act and the Code give guidance on how the legal requirements should be met and what patients and families can expect. The reference guide is intended to explain the legislation in a clear and easy to understand manner. We intend updating the reference guide and publishing it alongside the revised Code in spring 2015. However we are *not* consulting on a draft version of the reference guide in this consultation. We would however welcome your views on how the 2008 reference guide could be updated and effectively support and complement the Code.

**11.3** Feedback from a range of stakeholders has indicated that many people do not find the Code or the reference guide easy to navigate or to use. This draft version covers the same information as the previous version but has been re-ordered and complex provisions have been made easier to understand eg in chapter 19 on children and young people. Where possible the Code has been written in clearer English. This reflects positive feedback about the Welsh Code of Practice.<sup>31</sup> The intention is also to improve the index, key terms and reference sections to support people to identify key material more easily. This will be undertaken after the main Code has been agreed. The Department of Health is also exploring the possibility of having an electronic version of the Code and improving the search-ability of an online version.

**11.4** In addition, and to complement and reinforce the update of the Code and reference guide, the Government, its partners and a number of patients and carers are undertaking an accessibility project to make the Code more accessible to patients, their families, carers as well as professionals. The project has explored the availability of information on specific rights, safeguards and entitlements for patients, their families and carers, in accessible forms. Resources could be made available, for example, in easy read, large print, e-text, Braille or Moon, SpeakEasy and video or audio clips. The provision of translators or interpreters for speakers of other languages or British Sign Language (BSL) or who may have difficulties communication, for example due to a hearing impairment or a learning disability is required in the Code and online or telephone-based services offer an alternative to provision in person where this is not practicable. The intention is to explore further the most effective ways of reaching patients, their families, carers and non-mental health professionals, in formats they can use and understand.

**Question 33:** How far does the proposed structure and order help you navigate the proposed Code? Do you have any suggestions on how the grouping or ordering of chapters could be improved?

**Question 34:** Are there any ways in which, the flowcharts or case study examples used in the proposed Code can be further improved? Are there additional places where they would help?

## Impact assessment

**11.5** A consultation stage impact assessment accompanies this consultation document and the draft Code of Practice. This is not the full assessment but the Department of Health's first attempt at quantifying the costs and benefits of the changes proposed in the revised Code. The Department will be publishing a full impact assessment alongside the revised Code and reference guide. It would be helpful for you to provide information and evidence to help us in quantifying the scale and extent of the impact. Please provide further information and evidence to enable the full impact to be adequately and appropriately assessed.

**Question 35:** How far does the consultation stage impact assessment reflect the potential impact of the changes that will be introduced as a result of the proposed changes to the Code?

Please note: The impact assessment and chapter 14 of this consultation document both include a summary of the main proposed changes. You may wish to refer to these documents in considering your response to this question.

**Question 36:** Are there any further impacts that you feel should be considered? Please provide evidence to help us assess and quantify this impact.

<sup>29</sup> Transforming Care: a national response to Winterbourne View Hospital Department of Health Review: Final Report. December 2012. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/213215/final-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/213215/final-report.pdf)

<sup>30</sup> Department of Health. Reference Guide to the Mental Health Act 1983. 2008. [http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/prod\\_consum\\_dh/groups/dh\\_digitalassets/@dh/@en/documents/digitalasset/dh\\_088163.pdf](http://webarchive.nationalarchives.gov.uk/20130107105354/http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_088163.pdf)  
The Department is not consulting on a revised Reference Guide in this consultation but welcomes your views on how this could be updated.

<sup>31</sup> <http://www.wales.nhs.uk/sites3/documents/816/mental%20health%20act%201983%20code%20of%20practice%20for%20wales.pdf><sup>3</sup>

# 12 Getting involved: how to respond to the consultation

This consultation will run from 7 July to 12 September 2014.

To find out more: <https://www.gov.uk/government/publications>

You can respond to the consultation in the following ways:

By e-mail to: [mentalhealthcode@dh.gsi.gov.uk](mailto:mentalhealthcode@dh.gsi.gov.uk)

Online at: <http://consultations.dh.gov.uk/>

In writing to: Consultations Co-ordinator  
MHA Code Review Consultation  
Department of Health  
313A Richmond House  
79 Whitehall  
London SW1A 2NS

You can contact us via:

Email: [mentalhealthcode@dh.gsi.gov.uk](mailto:mentalhealthcode@dh.gsi.gov.uk)

Twitter: @MHCodeDH

Telephone: 0207 210 5420

To obtain a copy of the consultation in a different format, including in easy read, please contact us via email [mentalhealthcode@dh.gsi.gov.uk](mailto:mentalhealthcode@dh.gsi.gov.uk) or by phone 0207 210 5420.

## Comments on the consultation process itself

If you have concerns or comments which you would like to make relating specifically to the consultation process itself please contact:

Consultations Co-ordinator  
Department of Health  
2E08, Quarry House  
Leeds LS2 7UE  
E-mail: [consultations.co-ordinator@dh.gsi.gov.uk](mailto:consultations.co-ordinator@dh.gsi.gov.uk)

Please do not send consultation responses to this address.

## Confidentiality of information

The Department will manage the information you provide in response to this consultation in accordance with the Department of Health's Information Charter.<sup>32</sup>

Information the Department receives, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If the Department receives a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the Data Protection Act and in most circumstances this will mean that your personal data will not be disclosed to third parties.

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<sup>32</sup> <https://www.gov.uk/government/organisations/department-of-health/about/personal-information-charter>

# 13 Consultation questions

**Question 1:** In your opinion do the additions to the Code provide sufficient assurances that all commissioners, local authorities, service providers and health and care professionals will understand what is expected of them? If not, what more should be included in the Code?

**Question 2:** Should the proposed Code provide more guidance about appropriate governance arrangements for monitoring duties and powers under the Act? If so, what guidance should be included?

**Question 3:** In your opinion should any parts of the Code be more specific to determine what 'good' service looks like? If so, please indicate which parts should be more specific and how.

**Question 4:** In your opinion, does the proposed Code provide adequate guidance on local complaints and resolution procedures, specific to the Act? If it does not, please indicate any additional guidance that should be provided.

**Question 5:** To what extent do the proposed guiding principles set the correct framework for care, support and treatment under the Act? Are there any additional principles which may be beneficial?

**Question 6:** In your opinion, does the proposed Code ensure that equality and human rights are adequately protected in the use of the Act? Do you have suggestions on where and how the Code could be further strengthened in this regard? Can you provide evidence or examples of the equality impact of the Act?

**Question 7:** In what ways could the Code say more to ensure that people have a say in their own care and that their wishes and feelings are taken into account?

**Question 8:** What additional information in relation to the provision of independent mental health advocates would it be helpful to include?

**Question 9:** How should the Code be updated to reflect the use of electronic media in a patient's correspondence and communications under section 134?

**Question 10:** How can the Code be more specific about aspects relating to the right to have visitors and access to family and friends?

**Question 11:** Is any further guidance required to ensure the avoidance of blanket restrictions? If so what guidance is needed?

**Question 12:** In your opinion what additional guidance is required in relation to the rights and roles of families and carers?

**Question 13:** Is there any other guidance on the interface that you think would be helpful and if so, what? Do you think that this is sufficiently user friendly to help your professional practice?

**Question 14:** What further guidance could the Code give professionals to support their decision making between the choice of adopting section 2 or section 3 for individual patients?

**Question 15:** Considering the options above, what further guidance should be included in relation to where individuals should be geographically located, when detained, within the remit of the current legislative framework?

**Question 16:** What guidance could the Code give to local governance systems to ensure that AHMPs are not put in this position?

**Question 17:** To what extent do the changes to Chapter 16 on police powers, address concerns around the use of sections 135 and 136? What further changes are required?

**Question 18:** In relation to the ‘zone of parental control’, do you think that this is a helpful term? If not, do you have any suggestions for an alternative term or is it sufficient to explain that there are limits to decisions that parents can take for their children?

**Question 19:** Further guidance has been provided on when a young person who has capacity might not be able to consent, but the term ‘overwhelmed’ has been removed as this was thought to be confusing. Are the relevant sections clearer?

**Question 20:** Does the Code provide sufficient information in relation to individuals where additional safeguards or considerations may be required, eg due to age, or disability? Please note any instances where information is not sufficient.

**Question 21:** What are your views on how the process for transferring restricted patients under Section 19 of the Act 1983, between secure hospitals be improved?

**Question 22:** In your opinion does the Code adequately address the issues surrounding restrictive practices to ensure their minimisation and safe application? If not, what further guidance do you recommend?

**Question 23:** In your opinion do the proposed review requirements relating to mechanical restraint, seclusion and long term segregation adequately help safeguard patients? If not, what further guidance do you recommend?

**Question 24:** Should the Mental Health (Conflicts of Interest) (England) Regulations (2008) be amended so that where a patient is to be admitted and the doctor providing one of the medical recommendations is on the staff of that hospital, the other medical recommendation must be given by a doctor who is not on the staff of that hospital, regardless of whether the hospital is an independent hospital or an NHS hospital?

**Question 25:** What are your views on the options proposed as a means of increasing and improving the transparency of decision-making for discharge and reviews?

**Question 26:** Does the revised chapter provide as much guidance as possible, within the current legislative framework, to ensure that CTOs are used effectively and appropriately to support patients to maintain stable mental health outside hospital and to promote recovery, in line with the principle of least restrictive option and autonomy? If not, what further guidance do you suggest?

**Question 27:** What further information in relation to the care programme approach (CPA) in chapter 34 would be helpful to include in the Code?

**Question 28:** How clear is the drafting on how the provisions of the Measure apply to individuals receiving services across the English/Welsh Border? What further guidance would be helpful and why?

**Question 29:** What additional guidance on the role of hospital managers should be included to assist them fulfil their role under the Act?

**Question 30:** What are your views on how to ensure victims do not miss out on their entitlements to receive statutory victim contact, particularly where the responsibility for this lies with hospitals, and that victims' concerns and views are given appropriate weight and consideration when managing patients subject to a hospital order?

**Question 31:** What specific issues would you like to see addressed within the Code, which are not covered in the proposed draft? What are your views on the new chapters that are proposed in this revision of the Code?

**Question 32:** Do you believe that the proposed changes to the Code address the concerns about access to safeguards, raised at Winterbourne View and other places? Is there any other guidance, within the parameters of the Act, you think the Code should include? If so, please give details.

**Question 33:** How far does the proposed structure and order help you navigate the proposed Code? Do you have any suggestions on how the grouping or ordering of chapters could be improved?

**Question 34:** Are there any ways in which, the flowcharts or case study examples used in the proposed Code can be further improved? Are there additional places where they would help?

**Question 35:** How far does the consultation stage impact assessment reflect the potential impact of the changes that will be introduced as a result of the proposed changes to the Code?

**Question 36:** Are there any further impacts that you feel should be considered? Please provide evidence to help us assess and quantify this impact.

# 14 Summary of main Code changes

Consultation document references	Code of Practice published 2008 reference	Draft Code being consulted upon reference	Issue	Significant changes proposed in the draft Code of Practice
3.3 - 3.6	N/A new section	Introduction xvi-xviii	Introduction: CQC's regulatory model	CQC's new model of regulatory inspection in relation to the Act and the new ratings system will be based on 'what good looks like' in the Code.
3.7 - 3.8	N/A new section	Introduction xxi-xxiii and 4.50 - 4.54	Introduction: If things go wrong	This section provides information on recourse when there is poor quality care, or when the safeguards of the Act are not applied. This should help ensure poor care does not continue for as long as it did after issues such as those at Winterbourne View Hospital were first raised.
4.1	Chapter 1	Chapter 1	Using the Act: New guiding principles	The draft Code proposed five new guiding principles that focus on an individual patient's recovery, better reflect the current and future health and care system, and which clarify the roles of all professionals in ensuring high quality and safe care for individuals subject to the Act.
4.2 - 4.3	N/A new chapter	Chapter 3	Using the Act: Equality and human rights	Building on information already in the Code, this new chapter supports the new, overarching principles and equality and human rights issues throughout the new Code. We will use the consultation exercise to gain additional evidence on the potential equality issues and wider impact.
5.1 - 5.2	Chapter 20 IMHA and chapter 17 Wishes Expressed in Advance	Throughout the Code especially chapter 6 IMHAs and 9 Wishes Expressed in Advance and Chapter 34 Care Programme Approach	Protecting patients' rights and autonomy: Enabling people to have a greater say in their own care	The current Code includes guidance that patients should have a say in their own care and treatment. We understand from CQC Annual Reports and the investigations into Winterbourne View Hospital that this does not always happen. We have strengthened wording in the revised Code so that providers ensure that this happens, eg involving patients in care planning and by using different formats (eg easy-read documents), and involving carers/advocates.

Consultation document references	Code of Practice published 2008 reference	Draft Code being consulted upon reference	Issue	Significant changes proposed in the draft Code of Practice
5.3 - 5.4	Chapter 16 especially 16.2 -16.7 and Chapter 19	Chapter 8 especially 8.2 - 8.7 and Chapter 11	Protecting patients' rights and autonomy: Right to privacy and family and carer contact	The current Code provides guidance on this, but needs strengthening to address concerns raised by CQC and Winterbourne View. Providers have not always ensured that families and carers can visit and maintain contact with patients, including via electronic communication. The revised Code emphasises the need for privacy for visits and phone calls.
5.5 - 5.6	Chapter 16	Chapter 8 especially 8.3 - 8.7 and 8.43 - 8.48	Protecting patients' rights and autonomy: Removing blanket restrictions	This chapter aims to ensure that providers avoid the use of blanket restrictions which apply indiscriminately to all patients on a ward or in a hospital, eg restricting access to outside areas or the internet. These blanket restrictions have been raised as a major concern by CQC.
5.7	Throughout the Code especially 2.39 - 2.42 and Chapter 8	Throughout the Code especially 4.40 - 4.43	Protecting patients' rights and autonomy: Involving families, carers and nearest relative	Throughout the Code, we make it clearer that families, carers and 'nearest relatives' (who have specific powers under the Act with regard to the care of the patient) should be involved in decisions about care and treatment. Although the current Code already states this, it frequently does not happen, so we have strengthened references to the role of families, carers and other supporters throughout.
6.2 - 6.3	N/A	N/A	Assessment, transport and admission: Caring for people close to home	The consultation document proposes a number of options to encourage placements that are closer to a patient's home or family, including ensuring that commissioners factor in the need for a family life and the impact this can have on recovery. The new text is not yet drafted in the draft Code.
6.4	4.75	14.71	Assessment, transport and admission: what if no bed is available	The consultation document includes a question asking what additional information can be provided if an AHMP is unable to find an appropriate placement quickly.

Consultation document references	Code of Practice published 2008 reference	Draft Code being consulted upon reference	Issue	Significant changes proposed in the draft Code of Practice
6.5 - 6.6	Chapter 10	Chapter 16	Assessment, transport and admission: Police powers (s135 and s136)	Drafted with the Home Office, and building on the Crisis Care Concordat, this chapter provides greater focus on identifying a place of safety before executing a s.135(1) warrant, ensuring an AMHP contributes to the assessment, and reducing the use of police stations as places of safety. The children and young people chapter provides additional information on this.
6.7 - 6.9	N/A new chapter	Chapter 13	Assessment, transport and admission: Relationship with the MCA and DoLS	This new chapter is intended to provide greater information and clarity on the interface between the Act and MCA (including the DoLS).
7.1 - 7.5	Chapter 36	Chapter 19	Additional considerations for specific patients: Children and young people under the age of 18	This chapter has been significantly updated to provide greater clarity for professionals and address some of the particularly complex issues such as 'zone of parental control', interface with the Children Acts, MCA and DoLS (for young people), and assessing competence and capacity.
7.6	Chapter 34	Chapter 20	Additional considerations for specific patients: People with learning disabilities or autistic spectrum disorders	This chapter has been updated to reflect current terminology and practice, and address some major concerns raised at Winterbourne View.
7.7	Chapter 35	Chapter 21	Additional considerations for specific patients: People with personality disorders	This chapter has been updated to reflect the development of services which can provide appropriate treatment for these disorders.

Consultation document references	Code of Practice published 2008 reference	Draft Code being consulted upon reference	Issue	Significant changes proposed in the draft Code of Practice
7.8 - 7.9	Chapter 33	Chapter 22	Additional considerations for specific patients: Patients within the criminal justice system	This chapter has been updated by Ministry of Justice to reflect developments since the last Code.
8.1 - 8.6	Chapter 15	Chapter 26	Care, support and treatment: Supporting people who present with behavioural disturbance and the safe use of restrictive interventions	This chapter reinforces and complements the new DH guidance <i>Positive and Proactive Care: reducing the need for restrictive interventions</i> (published April 2014). It provides additional information on the use of restrictive interventions for patients receiving treatment for a mental disorder in a hospital and who are liable to present with behavioural disturbances, regardless of their age and whether or not they are detained under the Act. It provides further guidance on the use of seclusion (which should only be used for patients detained under the Act) and segregation.
9.1	Chapter 25	Chapter 29	Leaving hospital: Community treatment orders	This chapter updates guidance on when patients should be placed on and discharged from CTOs.
9.2 - 9.3	Chapter 27	Chapters 33 and 34	Leaving hospital: Care planning and after-care	This new chapter updates the Code to reflect the changes in the Care Act 2014 and stakeholder views about better care planning and after-care. It brings together information about care planning previously in separate chapters.
9.4	N/A new section	34.22 - 34.25	Leaving hospital: Care planning for Welsh patients	This section drafted by the Welsh Government provides information about the Welsh Measure 2010 and what this means for providers in England treating Welsh patients, for Welsh commissioners commissioning services in England and for English patients being treated in Wales.

Consultation document references	Code of Practice published 2008 reference	Draft Code being consulted upon reference	Issue	Significant changes proposed in the draft Code of Practice
9.5 - 9.8	N/A	N/A	Leaving hospital: Improving transparency and accountability in discharge decisions	The consultation document proposes a number of options around ensuring greater transparency and accountability in decisions about discharging a patient from hospital. Text for the revised Code will be drafted in the light of the response to these during the consultation.
10.1	Chapters 30 and 31	Chapters 37 and 38, particularly 37.21	Professional responsibilities: Hospital Managers	New guidance is provided about what hospital managers are required to consider when considering transfers to high secure hospitals.
10.2 - 10.3	18.18 -18.20	10.18 - 10.20 and Chapter 40	Professional responsibilities: Supporting victims	This is a new chapter drafted by Ministry of Justice to give guidance on the statutory rights of victims of offenders with mental disorder, the Victims' Code and the Victim Contact Scheme.
11.1 - 11.4	N/A	Throughout the Code	Overall changes: Making the Code more accessible	The intention is to make the Code easier to read and navigate, including using plainer English, a better glossary of terms, index and grouping chapters on related issues, so the Code follows an individual's journey of care. Some of these changes will be made after the consultation.  In addition, we are undertaking an accessibility project to produce other materials or documents designed to make it easier for patients, and their families and carers to better understand and use the Code.





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