

EXPLANATORY MEMORANDUM TO

**THE OLIVER MCGOWAN DRAFT CODE OF PRACTICE ON STATUTORY
LEARNING DISABILITY AND AUTISM TRAINING**

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care and is laid before Parliament by Command of His Majesty.

2. Declaration

- 2.1 Stephen Kinnock, Minister of State for Care at the Department of Health and Social Care confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Simone Bayes, Deputy Director for Neurodiversity, Disability and Learning Disability at the Department of Health and Social Care confirms that this Explanatory Memorandum meets the required standard.

3. Contact

- 3.1 Zohal Shafiq at the Department of Health and Social Care, Telephone: 02079725615 or email: ndld.consultation@dhsc.gov.uk, can be contacted with any queries regarding the Code.

Part One: Explanation, and context, of the Code

4. Overview of the Code

What does the legislation do?

- 4.1 [Section 181 of the Health and Care Act 2022](#) (2022 Act) introduces a requirement into [section 20 of the Health and Social Care Act 2008](#) (the 2008 Act) and [regulation 18 of the Health and Social Care Act 2008 \(Regulated Activities\) Regulations 2014](#) (the 2014 Regulations) that, from 1 July 2022, service providers registered with the Care Quality Commission (CQC) must ensure their staff receive training on learning disability and autism appropriate to their role.
- 4.2 [Section 21A of the 2008 Act](#), as inserted by the 2022 Act, places a duty on the Secretary of State for Health and Social Care to issue a code of practice about compliance with the requirement for staff of registered providers to receive training on learning disability and autism. While following the code is not mandatory, if a provider has not followed the relevant guidance contained in the code, then they will be expected to give good reasons why they have departed from it and be able to demonstrate that it meets the requirement in a different way.

Where does the legislation extend to, and apply?

- 4.3 The extent of this code is England.
- 4.4 The territorial application of this code is England.

5. Policy Context

What is being done and why?

- 5.1 Since July 2022, there is a legal requirement introduced by the [2022 Act](#) that CQC-registered service providers are required to ensure their staff receive training on learning disability and autism, appropriate to their role. This requirement was the result of an amendment to the 2008 Act. Under the same Act, the Secretary of State for Health and Social Care is required to consult on and issue a Code of Practice and make specific provisions on training content and delivery.
- 5.2 The aim of the Code is to explain how CQC-registered providers can meet the legislative requirement. The Code does this by setting out four standards for training and guidance on how to meet those standards, as well as what happens if providers fail to comply with the Code. The Code includes information on the Oliver McGowan Mandatory Training on Learning Disability and Autism, which is the government's preferred and recommended package to support registered providers to meet the new legal requirement.
- 5.3 People with a learning disability and autistic people continue to experience disparities in the quality of care that they receive. Publication of this code of practice seeks to improve the care and treatment of people with a learning disability and autistic people, by ensuring that health and adult social care staff have the right knowledge and skills to provide compassionate, informed care.
- 5.4 An impact assessment is being published alongside the Code which sets out the rationale, costs and expected benefits of this policy in more detail.

What was the previous policy, how is this different?

- 5.5 The CQC regulates health and social care providers and services registered with CQC on an overarching training requirement, under the requirements of the Health and Social Care Act 2008 (Regulated Activities Regulations) 2014 [Regulation 18 Staffing](#). This requires registered providers to ensure staff receive such appropriate support, training, professional development, supervision, and appraisal as is necessary to enable them to carry out the duties they are employed to perform. The new requirement on learning disability and autism training for staff, appropriate to their role, expands on existing requirements which have always expected compliance with Regulation 18.

6. Legislative and Legal Context

How has the law changed?

- 6.1 The Code will not change the law. It fulfils the statutory duty under the 2022 Act for the Secretary of State for Health and Social Care to issue a Code of Practice.

Why was this approach taken to change the law?

- 6.2 The statutory duty under the 2022 Act to issue a Code of Practice was necessary in order to provide guidance for CQC-registered providers on meeting the training requirement.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 As required under the 2022 Act, the Department of Health and Social Care engaged in consultation on a draft Code.

- 7.2 The consultation was launched in June 2023 and closed in September 2023. An easy read consultation closed in October 2023. The consultation received 461 overall responses, including email and postal submissions. A range of organisations, health and care professionals and people with lived experience were consulted as part of this.
- 7.3 Overall, there was broad support for the Code. The majority of responses across all groups were supportive of the purpose and content of the Code. 81% of respondents agreed that the overall purpose of the Code was clear. There was positive feedback and strong recognition that co-production and co-delivery of training with people with a learning disability and autistic people positively differentiates Oliver's Training from other training packages. Those who used free-text responses were more likely to raise practical questions on how training should be delivered and how the Code should be implemented. This included wanting further guidance on which tier of training is appropriate for staff to complete. To address this, we have added two new illustrative examples to Annex A of the Code to help employers understand which tier of training their staff may need.
- 7.4 A response to the consultation on the draft Code has been published alongside the Code which sets out responses in further detail and how feedback has been considered.

8. Applicable Guidance

- 8.1 There is no specific guidance for this Code of Practice.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment has been published alongside the Code.

Impact on businesses, charities and voluntary bodies

- 9.2 The impact on business, charities or voluntary bodies is that, under the new legislation, all staff working in CQC-registered settings must complete mandatory training on learning disability and autism appropriate to their roles. This requirement is independent of business size and therefore applies to all small and micro businesses that perform CQC-regulated activities. Across the adult social care sector in England, approximately 90% of domiciliary care providers and 78% of residential care providers are small or micro businesses.
- 9.3 The legislation does impact small or micro businesses. Overall, as small and micro businesses comprise most of the markets, we would expect to lose a sufficiently large part of desired benefits if they were made fully or partially exempt from this policy and therefore this has not been pursued. We do not anticipate that there will be disproportionate burdens on small or micro businesses as a result of this policy.
- 9.4 The impact on the public sector is limited to local authorities that directly employ staff that work in CQC-registered settings. The Department of Health and Social Care have worked with the Ministry of Housing, Communities and Local Government on a new burdens assessment to consider any new additional burdens that are imposed on local authorities as a result of this policy, and this will be revisited if evidence of new additional costs arise.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 The Secretary of State for Health and Social Care has a duty to review the Code and lay before Parliament a report setting out the findings of the review at least once every 5 years.
- 10.2 This review may include findings from the ongoing monitoring and evaluation of the government's recommended package for meeting the legislative requirement, The Oliver McGowan Mandatory Training on Learning Disability and Autism.
- 10.3 A statutory review clause is included in Section 21A(4) of the 2008 Act.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None

12. European Convention on Human Rights

12.1 The Minister of State for Care has made the following statement regarding Human Rights:

“In my view the provisions of the Oliver McGowan Code of Practice on statutory learning disability and autism training are compatible with the Convention rights.”

13. The Relevant European Union Acts

13.1 This Code is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).