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Consultation Document

Consultation on the Revision of the Mental Health Act 1983 Code of Practice for Wales

Date of issue: **04 September 2015**

Action required: Responses by **27 November 2015**

Overview

The Welsh Ministers are required to prepare, publish and, from time to time, review their extant Codes of Practice, by virtue of section 118 of the Mental Health Act. In doing so they are required to consult such bodies as appear to them to be concerned. This consultation is part of that process. It seeks your response to some specific questions to help inform the drafting of a revised Mental Health Act Code of Practice for Wales.

How to respond

We welcome any comments on the Code of Practice. You can respond by completing the consultation response form (some or all of the questions), online, by e-mail or by post.

You can email your response to us at:
mentalhealthandvulnerablegroups@wales.gsi.gov.uk

Or by post to:
Legislation Manager
Mental Health and Vulnerable Groups Division
Health and Social Services Group
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Contact details

For further information contact the Mental Health and Vulnerable Groups mailbox -
mentalhealthandvulnerablegroups@wales.gsi.gov.uk

Data protection

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations. The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

Background

Background to and status of the Code of Practice

The Mental Health Act 1983 (the Act) sets out the legal framework underpinning the detention and treatment of patients under compulsion. The Code of Practice (the Code) provides guidance about how the Act should be applied and the principles which should inform decisions.

The Welsh Ministers are required to prepare publish and, from time to time, review their current Codes of Practice, by virtue of section 118 of the Act. In doing so, they are required to consult such bodies as appear to them to be concerned.

Since the creation of the distinct Code of Practice for Wales in 2008, there have been changes and updates in legislation, policy, case law, and professional practice which are not reflected in the current Code. In particular, the relationship to the Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards, the Mental Health (Wales) Measure 2010, and the Social Services and Wellbeing Act 2014. Updating and revising the Code is an important part of ensuring detained patients' rights are protected.

The Code provides guidance to particular individuals, including registered medical practitioners ('doctors'), approved clinicians, managers and staff of hospitals, independent hospitals and care homes, independent mental health advocates and approved mental health professionals on how they should proceed when undertaking functions and duties under the Act. It also gives guidance to doctors and other professionals about certain aspects of medical treatment for mental disorder more generally.

Any departure from the Code may give rise to legal challenge and should therefore be recorded with reasons. A court will scrutinise the reasons for the departure to ensure there is a sufficiently convincing justification. It is expected that any such reasons are appropriately evidenced.

Statement of principles

The Mental Health Act 2007 amended section 118 of the 1983 Act. This requires the Welsh Ministers to set out a statement of principles in the Code, which should inform decisions under the Act. In preparing the statement of principles, Welsh Ministers are required to ensure that each of the following matters is addressed:

- respect for patients' past and present wishes and feelings
- respect for diversity generally, including, in particular, diversity of religion, culture and sexual orientation (within the meaning of section 35 of the Equality Act 2006)
- minimising restrictions on liberty
- involvement of patients in planning, developing and delivering care and treatment appropriate to them

- avoidance of unlawful discrimination
- effectiveness of treatment
- views of carers and other interested parties
- patient wellbeing and safety, and
- public safety.

Development of the revised Code of Practice for consultation

The draft Code was prepared in collaboration with members of the Welsh Government's Mental Health Act 1983 Code of Practice Steering Group. The group represented mental health stakeholders in Wales, and included service users, carers, third sector organisations and mental health professionals.

In addition, Welsh Government hosted a number of workshops with specific groups. Workshops were held with Independent Mental Health Advocates, Mental Health Act Managers and Administrators, Approved Mental Health Professionals, other Mental Health Professionals including Approved Clinicians and Mental Health Nurses. Informal meetings were also held on in-patients wards for; children and young people, adults, older persons, those with a learning disability and forensic patients.

Meetings were also held with the Welsh Language Commissioner and the offices of the Children's Commissioner and the Older Person's Commissioner.

Drafting the revised Code has taken account of the changes to relevant legislation since the previous Code was written. In particular:

- the requirements in the Mental Health (Wales) Measure 2010 with regards to care and treatment planning and the expanded provision of independent mental health advocacy, and
- the relationship between the Act, the Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards.

Within the draft Code there is strengthened emphasis on:

- the involvement of patients and, where appropriate, their families and carers in all aspects of assessment and treatment
- understanding the principles of the Mental Capacity Act 2005 and how these should apply to all care and treatment
- the involvement of Independent Mental Health Advocates, and
- the use of appropriate transport for patient subject to the Act to ensure their dignity and safety as far as is practicable.

There are two other matters of proposed guidance in the draft Code that are not in the existing code:

Firstly, the existing Code makes no provision in relation to the timing of mental health assessments for persons detained by the police under section 136 of the Act. It confirms that the Act provides a limit of 72 hours for detention under section 136 and that assessments should only take place in a police station in exceptional circumstances. The draft Code proposes reiterating that a police station should never be used as a place of safety except in

exceptional circumstances. However in relation to the timing of assessments both at the police station and elsewhere the draft Code proposes that they should be undertaken within 3 hours. Furthermore, the draft Code proposes that detention in a police station should not exceed a maximum of 12 hours.

Secondly, the draft Code proposes that a statutory care and treatment plan, if needed, will be started no longer than 72 hours after admission. This is in line with the assessment period that is frequently cited in the Act, for example, when a patient is subject to a community treatment order is recalled to hospital, the responsible clinician has 72 hours to assess the patient and decide whether to discharge the patient or revoke the community treatment order.

The draft Code has been reordered and new Chapters included, which have built upon the content of the existing Code.

Mental Health Act Code of Practice Chapters	
Chapter 1	Sets out the guiding principles, which should always be considered when making decisions about a course of action under the Act
Chapter 2	Provides a definition of mental disorder.
Chapter 3	Deals with the need to consider relevant legislation and international conventions when making decisions.
Chapter 4	Provides guidance on the information which must be given to and explained to patients and their nearest relatives, and communicating with patients, their families, carers and other people.
Chapter 5	Provides guidance on the identification and role of the nearest relative.
Chapter 6	Provides guidance on the role of Independent Mental Health Advocates (IMHAs) and other people's responsibilities in making a patient aware of the help an IMHA provides.
Chapter 7	Provides guidance on the effect of the Act on the power of donees of lasting power of attorney and court appointed deputies under the Mental Capacity Act 2005.
Chapter 8	Provides guidance on therapeutic environments ensuring privacy, dignity and safety for patients and services adopting a zero tolerance approach to physical or verbal abuse.
Chapter 9	Provides guidance on views expressed by patients about their preferences for what they would, or would not, like to happen if particular situations arise.

Chapter 10	Provides guidance on confidentiality, information sharing arising in connection with the Act and the sharing of information by professionals and agencies.
Chapter 11	Provides guidance on enabling patients to be visited in hospital and maintaining links with family, friends and community networks.
Chapter 12	Outlines the purpose of the Mental Health Tribunal for Wales and provides guidance to all those involved in making applications, preparing reports and attending hearings.
Chapter 13	Provides guidance on the relationship between the Mental Health Act 1983, the Mental Capacity Act 2005 and the Deprivation of Liberty Safeguards.
Chapter 14	Provides guidance on the criteria and considerations when making an application for detention in hospital under section 2 or section 3 of the Act.
Chapter 15	Provides guidance on emergency applications for detention for assessment under section 4 of the Act.
Chapter 16	Provides guidance on police powers to remove a person to a place of safety under the provisions of the Act, the assessment of a person removed to a place of safety and any later transfer to another place of safety.
Chapter 17	Provides guidance on the transport of patients from one place to another under the provisions of the Act.
Chapter 18	Provides guidance on the use of holding powers available to doctors, approved clinicians and nurses, and how they should be exercised.
Chapter 19	Deals with the guiding principles which should inform decision making for all children, whether or not they are subject to compulsion, which may include their detention under the Act. It also provides guidance on assessing, caring for and treating children subject to compulsion, guidance on choosing between the Mental Health Act 1983 and the Children Act 1989 and guidance on consent to treatment, including issues of competence and capacity.
Chapter 20	Provides guidance on the application of the Act to people with a learning disability or an autistic spectrum disorder.
Chapter 21	Provides guidance to professionals and practitioners working with people with personality disorders.

Chapter 22	Provides guidance on the use of the Act for the assessment and treatment for mentally disordered people who come before the criminal justice system. It provides guidance on admission and discharge.
Chapter 23	Provides guidance on what constitutes medical treatment for a mental disorder, and what constitutes appropriate medical treatment under the Act.
Chapter 24	Provides guidance on medical treatment for mental disorder under the Act and what treatment can be given without patients' consent. It also gives guidance on promoting good physical healthcare for patients subject of the Act.
Chapter 25	Provides guidance on the special rules and procedures in the Act for certain types of medical treatment for mental disorder, particularly medication and electroconvulsive therapy, but other less commonly used treatments are also covered. It provides guidance on which treatments require consent and/or a second opinion.
Chapter 26	Provides guidance on the provision of the safe, supportive and therapeutic management of patients whose behaviour presents a risk to themselves or others.
Chapter 27	Provides guidance on who has the power to grant leave of absence, short and long-term leave, escorted leave, leave to reside in other hospitals and recall from leave.
Chapter 28	Provides guidance on the powers under section 18 of the Act to return a patient who is absent without leave and on the policies, which should be in place, outlining actions necessary in such situations.
Chapter 29	Provides guidance on the purpose of a community treatment order (CTO) including the process for assessing the suitability of the use of a CTO and on the duties of the practitioners and agencies involved in the management of patients subject to a CTO.
Chapter 30	Provides guidance on the purpose of guardianship, assessing a patient for guardianship, the responsibilities of local authorities and the components of guardianship.
Chapter 31	Provides guidance on deciding between the three options (leave of absence, a CTO or guardianship) for patients subject to the powers of the Act.
Chapter 32	Provides guidance on how the procedures in the Act for renewing detention and extending a CTO should be applied. It

	also provides guidance on the roles and responsibilities of the responsible clinician, the role of the patient's nearest relative and the nearest relative's power of discharge.
Chapter 33	Provides guidance on the duty of local health boards and local authorities to provide after-care for certain patients under section 117 of the Act.
Chapter 34	Provides guidance on care and treatment planning for patients detained under the Act and relevant informal patients. It includes patients subject to a CTO, received into guardianship as well as those receiving services provided under section 117.
Chapter 35	Provides guidance on the receipt and scrutiny of documents under the Act.
Chapter 36	Provides guidance on the identification of Responsible Clinicians for patients being assessed and treated under the Act, including a change of Responsible Clinician.
Chapter 37	Provides guidance on the responsibilities of hospital managers under the Act, including the identification of hospital managers, the exercise of their functions and their specific powers and duties.
Chapter 38	Provides guidance on the hospital managers' power under section 23 of the Act to discharge most detained patients, all patients subject a CTO and, with the consent of the Secretary of State for Justice, those subject to an interim hospital order under section 38 or restricted patients. They may not discharge those patents held under section 5 holding powers or those detained in a place of safety under sections 135 or 136 of the Act.
Chapter 39	Provides guidance on conflicts of interest that may arise, which prevent an Approved Mental Health Professional from making the application for a patient's detention or guardianship, and a doctor from making a recommendation supporting the application.
Chapter 40	Provides guidance about the rights of victims of serious, violent and sexual offences committed by certain persons detained under Part 3 of the Act. It includes the information to be provided and the obligations placed on the Secretaries of State for Justice and Health, as well as professionals, with regard to victims.

Consultation process and questionnaire

The consultation commences on 4 September 2015 and will run until 27 November 2015.

Following consultation, Welsh Government officials will compile a report on the comments received, and published all comment received, unless authors have asked for them to be treated as confidential (subject to the issues set out in the data protection section on page 2). The report will indicate the changes made to the Code as a result of comments received.

A revised version of the Code, including the comments made, will then be laid before the National Assembly for Wales in accordance with procedures as required under the Government of Wales Act 2006 and the Mental Health Act 1983.

A consultation response for can be found below. Details of how to respond can be found in the overview on page 1.

Consultation response form

Your name:			
If representing an organisation, please state which:			
I am replying as: (please tick one box only)	NHS staff (please specify)	<input type="checkbox"/>	
	AMHP	<input type="checkbox"/>	
	Social worker	<input type="checkbox"/>	
	Advocate	<input type="checkbox"/>	
	Professional body (please specify)	<input type="checkbox"/>	
	Other professional (please specify)	<input type="checkbox"/>	
	Legal organisation	<input type="checkbox"/>	
	Third sector organisation	<input type="checkbox"/>	
	Patient or former patient	<input type="checkbox"/>	
	Family member or carer	<input type="checkbox"/>	
	Member of the public	<input type="checkbox"/>	
	Other	<input type="checkbox"/>	
Your e-mail:			
Your address:			
<p>Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick the box. Please also read the section on data protection on page 2.</p>			
			<input type="checkbox"/>

This paper invites comments from a wide range of stakeholders and any other interested parties. It asks some specific questions about the Code, and given the Welsh Ministers' duty to promote equality, it asks what impact the Code may have on different groups within society. The final question asks for your general comments or any issues which we have not specifically covered.

When giving your comments, please tell us the relevant chapter and paragraph number in the draft Code of Practice to which they refer.

Revision to the Mental Health Act 1983 Code of Practice for Wales

Question 1

Does the Code, as drafted, clearly explain that patients are to be treated with dignity and respect and their views listened to, valued and taken into account?

Yes	<input type="checkbox"/>	
Partly	<input type="checkbox"/>	
No	<input type="checkbox"/>	

If you have answered Partly or No, and have any amendments or comments, can you please give these in the box below

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Question 2

Does the Code, as drafted, clearly explain that patients' families and/or carers are to be treated with dignity and respect and their views listened to, valued and taken into account, for example, in the care and treatment plan?

Yes	<input type="checkbox"/>	
Partly	<input type="checkbox"/>	
No	<input type="checkbox"/>	

If you have answered Partly or No, and have any amendments or comments, can you please give these in the box below

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Question 3

Does the Code, as drafted, clearly explain that patients are to be treated in a safe and supportive environment, and one that is appropriate for their specific needs?

Yes	<input type="checkbox"/>	
Partly	<input type="checkbox"/>	
No	<input type="checkbox"/>	

If you have answered Partly or No, and have any amendments or comments, can you please give these in the box below

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Question 4

Does the Code, as drafted, clearly explain that patients are to be transported to and from hospital by the safest and most appropriate means to meet their needs?

Yes	<input type="checkbox"/>	
Partly	<input type="checkbox"/>	
No	<input type="checkbox"/>	

If you have answered Partly or No, and have any amendments or comments, can you please give these in the box below

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Question 5

Does the Code, as drafted, clearly explain that patients, their families and carers are to be given the information that meets their needs and are informed of their rights?

Yes	<input type="checkbox"/>	
Partly	<input type="checkbox"/>	
No	<input type="checkbox"/>	

If you have answered Partly or No, and have any amendments or comments, can you please give these in the box below

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Question 6

Does the Code, as drafted, clearly explain that patients, their families and carers are to be communicated with in a way that best meets their needs?

Yes	<input type="checkbox"/>	
Partly	<input type="checkbox"/>	
No	<input type="checkbox"/>	

If you have answered Partly or No, and have any amendments or comments, can you please give these in the box below

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Question 7

Does the Code, as drafted, clearly explain that patients are to be treated fairly and equally?

Yes	<input type="checkbox"/>	
Partly	<input type="checkbox"/>	
No	<input type="checkbox"/>	

If you have answered Partly or No, and have any amendments or comments, can you please give these in the box below

Question 8

Does the Code, as drafted, clearly explain that patients in hospital are able to have access to family and friends, can communicate with them in private, and where appropriate, contact the people they choose through various means, without detriment to the privacy, safety and dignity of themselves and others?

Yes	<input type="checkbox"/>	
Partly	<input type="checkbox"/>	
No	<input type="checkbox"/>	

If you have answered Partly or No, and have any amendments or comments, can you please give these in the box below

Question 9

Does the Code, as drafted, clearly explain that staff are to have the relevant training to undertake their role?

Yes	<input type="checkbox"/>	
Partly	<input type="checkbox"/>	
No	<input type="checkbox"/>	

If you have answered Partly or No, and have any amendments or comments, can you please give these in the box below

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Question 10

Does the Code, as drafted, clearly explain that patients are enabled, as far as practicable, to contribute fully to their Care and Treatment Plan, and make as many decisions as possible for themselves?

Yes	<input type="checkbox"/>	
Partly	<input type="checkbox"/>	
No	<input type="checkbox"/>	

If you have answered Partly or No, and have any amendments or comments, can you please give these in the box below

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Question 11

Does the Code, as drafted, clearly explain that patients without capacity to make specific decisions are to be involved, as much as possible, in their care and treatment?

Yes	<input type="checkbox"/>	
Partly	<input type="checkbox"/>	
No	<input type="checkbox"/>	

If you have answered Partly or No, and have any amendments or comments, can you please give these in the box below

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Question 12

Does the Code, as drafted, clearly explain that when decisions in the care and treatment plan are contrary to the wishes of the patient or others, the reasons are explained to them and recorded?

Yes	<input type="checkbox"/>	
Partly	<input type="checkbox"/>	
No	<input type="checkbox"/>	

If you have answered Partly or No, and have any amendments or comments, can you please give these in the box below

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Question 13

Does the Code, as drafted, clearly explain that patients, their families and carers are to be informed of their rights and patients have access to an Independent Mental Health Advocate (IMHA)?

Yes	<input type="checkbox"/>	
Partly	<input type="checkbox"/>	
No	<input type="checkbox"/>	

If you have answered Partly or No, and have any amendments or comments, can you please give these in the box below

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Question 14

Does the Code, as drafted, clearly explain how patients, their families, carers and others are to be kept as safe as possible?

Yes	<input type="checkbox"/>	
Partly	<input type="checkbox"/>	
No	<input type="checkbox"/>	

If you have answered Partly or No, and have any amendments or comments, can you please give these in the box below

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Question 15

Does the Code, as drafted, clearly explain how people in mental health crisis, in public places, are to be supported and also kept safe in the most appropriate place of safety for the least amount of time needed?

Yes	<input type="checkbox"/>	
Partly	<input type="checkbox"/>	
No	<input type="checkbox"/>	

If you have answered Partly or No, and have any amendments or comments, can you please give these in the box below

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Question 16

Does the Code, as drafted, clearly explain that patients, and if appropriate , their families and carers, are to be given the information they require to ensure they understand why they are in hospital and the treatment they are being offered or must have?

Yes	<input type="checkbox"/>	
Partly	<input type="checkbox"/>	
No	<input type="checkbox"/>	

If you have answered Partly or No, and have any amendments or comments, can you please give these in the box below

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Question 19

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them, or attach further comments: