

Mental Health Act 1983: Revised Code of Practice

Summary of changes from current Code

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Mental Health Act 1983: Revised Code of Practice

Summary of changes from current Code

Prepared by Department of Health, Social Care, Local Government and Care

Partnerships Directorate

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Mental Health Act 1983: Revised Code of Practice

Introduction

The Secretary of State for Health laid a revised Code of Practice to the Mental Health Act 1983 before Parliament on 7 May 2008. The revised version will come into effect on 3 November 2008.

The revised Code laid before Parliament can be downloaded from the Department of Health's website at <http://www.dh.gov.uk/publications>

Once it has completed its Parliamentary passage, it will be published in hard copy, and electronically, by The Stationery Office (TSO).

This document summarises the main differences between the revised Code and the current Code (published in March 1999). References *to chapters and paragraphs in italics* are references to *chapters and paragraphs in the current Code*.

General Points

The revised Code is for England only. A separate Code of Practice for Wales will be published by the Welsh Assembly Government.

The Code deals with the Mental Health Act 1983 ("the Act") as amended by the Mental Health Act 2007 ("the 2007 Act"). Most of those amendments – like the revised Code itself – will not come into effect until 3 November 2008. Footnotes in the Code point out those amendments which are to come into effect later.

Chapter 1 Statement of Guiding Principles

This chapter replaces *chapter 1 of the current Code*.

It contains a new set of guiding principles which replace the principles in the current Code (*paragraph 1.1 of the current Code*).

It explains how the principles are to inform decision-making under the Act.

There are various other changes from *chapter 1 of the current Code*. In particular:

- the Code no longer explains the key elements of the Care Programme Approach (see *paragraph 1.2 of the current Code*). Extensive guidance on this is available elsewhere;

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- guidance on communication with patients (*paragraphs 1.3 to 1.7 of the current Code*) has been expanded and revised and now forms part of chapter 2;
- guidance on confidentiality (*see paragraph 1.8 of the current Code*) has been expanded and now forms a chapter of its own (chapter 18);
- guidance on information for victims has been moved to new chapter 18. Since the Code was last revised, the Domestic Violence, Crime and Victims Act 2004 (“the 2004 Act”) has established rights for the victims of certain mentally disordered offenders to be given information about the discharge of those offenders, and to make representations about any conditions to be attached to their discharge. The Mental Health Act 2007 amends the 2004 Act to extend those arrangements to patients detained under Part 3 of the Act without special restrictions and places new duties on hospital managers in respect of those patients. These duties are briefly summarised in chapter 30. Fuller guidance will be made available separately;
- guidance on the information which hospital managers and others must provide to patients under the Act has been expanded and revised and now forms part of chapter 2. The Code is no longer prescriptive about how such information should be displayed and communicated (*see paragraph 1.12 of the current Code*) – that is for local decision;
- the standard ethnicity codes included in the current version of the Code (*paragraph 1.13*) are out-of-date and have been removed.

Chapter 2 Information for Patients, Nearest Relatives and Others

This chapter gives general guidance on communication with patients and on the information which hospital managers and others are required by the Act to give to patients and their nearest relatives.

It replaces guidance in *chapter 1 (paragraphs 1.3 to 1.7 and 1.10 to 1.12) and chapter 14 of the current Code*.

The guidance has been revised and expanded. Particular changes to note are:

- guidance on statutory duties to provide information now covers supervised community treatment (SCT) patients as well as detained patients (see paragraphs 2.8 to 2.26);
- paragraphs 2.13 and 2.14 now emphasise the importance of giving detained and SCT patients an explanation of the reasons why they have been detained or are on SCT;
- there is new guidance emphasising the importance of ensuring that patients remain aware of their rights. It suggests specific points at which giving a fresh explanation of rights should be considered (paragraph 2.25);
- there is new guidance on the circumstances in which, for human rights reasons, it is not appropriate to give information to nearest relatives (paragraphs 2.31 to 2.33);

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- there is new guidance specifically about consultation with people nominated by patients themselves (paragraphs 2.34 to 2.37);
- there is new guidance emphasising the importance of involving carers (paragraph 2.39 to 2.42);
- there is a new paragraph (2.43) about information for children and young people;
- the Code is no longer prescriptive about how information should be displayed and provided (see *paragraph 1.12 of the current Code*) – that is for local decision.

Chapter 3 Mental Disorder

This is a new chapter, giving guidance of the definition of mental disorder in the Act (as amended) and on:

- the exclusion of alcohol and drug dependence from the definition of mental disorder (paragraphs 3.8 to 3.12);
- the “learning disability qualification” – ie the cases in which learning disability counts as a mental disorder only when associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned (paragraphs 3.13 to 3.16). More detailed guidance on this is given in chapter 34.

Chapter 4 Applications for Detention in Hospital

This chapter replaces and revises *chapter 2 of the current Code*. It also subsumes *chapter 5 (“Section 2 or section 3?”)*. The material has been extensively restructured and reworded.

Particular changes to note are:

- paragraph 4.5 contains a revised list of general factors to be considered when deciding whether to make an application for detention under the Act, and the lists of factors to be considered specifically in relation to the patient’s own health and safety (paragraph 4.6) and the protection of other people (paragraph 4.7) have also been revised (see *paragraphs 2.5 to 2.6 of the current Code*);
- there is new guidance, in paragraphs 4.13 to 4.23, on the circumstances in which detention under the Act may not be appropriate because the Mental Capacity Act 2005 (including the new deprivation of liberty of safeguards¹) provides a satisfactory alternative. This replaces guidance on the informal admission of patients who lack capacity to consent in *paragraph 2.8 of the current Code*;
- paragraphs 4.25 to 4.27 replace *chapter 5 of the current Code (“Section 2 or Section 3?”)*. The guidance on when to use those different sections has been substantially simplified. It still makes clear that an application under section 3 can (and in some circumstances should) be used as the initial means of detaining a patient;

¹ The deprivation of liberty safeguards are expected to be in force from April 2009.

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- the chapter no longer says that an application under section 3 should be made as soon as it is thought that a patient detained under section 2 will need to be detained for more than 28 days (*see paragraph 5.3.b. of the current Code*);
- paragraph 4.33 contains a reminder of the responsibility of local social services authorities (LSSAs) to ensure that approved mental health professionals (AMHPs) are available to fulfil their functions under the Act. This includes a reminder of the new rule in the Act about which LSSA is responsible for section 3 applications in respect of patients already detained under section 2;
- the Code no longer suggests that LSSAs should have a separate policy on whether requests by nearest relatives for an AMHP to consider a patient's case may be accepted through third parties (*see paragraph 2.38.b of the current Code*). It now treats all requests by, or on behalf of, nearest relatives equally;
- paragraphs 4.37 to 4.39 emphasise the importance of ensuring, as far as possible, that assessments are carried out by the people best qualified in the circumstances;
- paragraph 4.40 acknowledges that LSSAs are free to establish arrangements under which someone other than an AMHP takes responsibility for coordinating an assessment (*see paragraph 2.11 of the current Code*);
- paragraph 4.41 now points out that the steps to be taken by AMHPs to ensure good communication with people who have impaired hearing might need to include the use of suitable equipment;
- the chapter no longer states that joint medical recommendation forms should only be used where a patient has been examined by both doctors at the same time (*see paragraph 2.27 of the current Code*);
- paragraph 4.45 now says that both doctors should, where possible, discuss the patient's case with the potential applicant (rather than it merely being desirable that they both do so) (*see paragraph 2.26 of the current Code*);
- paragraphs 4.46 and 4.47 emphasise that arrangements for seeking police assistance with assessments should be agreed with the police locally and include a joint risk assessment tool;
- there is new guidance, in paragraphs 4.59 to 4.62 on when it may not be "reasonably practicable" to inform or consult nearest relatives. This replaces the guidance in *paragraph 2.16* which has been overtaken by case-law;
- there is expanded guidance, in paragraphs 4.65 to 4.69, on the importance of (but also the limitations on) consulting other people (*see paragraphs 2.19 and 2.20 of the current Code*);
- paragraph 4.75 reminds doctors involved in assessments that they are responsible for securing a hospital bed (where required) unless it has been agreed locally that AMHPs will do that;

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- paragraph 4.77 reminds doctors that, for section 3 applications, they will now need to state in their medical recommendations the hospital(s) at which they believe appropriate medical treatment is available;
- paragraphs 4.88 and 4.89 now include a reminder of the need to take steps to ensure that proper arrangements have been made for patients' children, dependent adults, pets and property if they are to be detained;
- paragraph 4.90 emphasises the importance of hospital managers ensuring that different hospitals on the same site have clearly differentiated names, so that they can be properly described in applications under the Act;
- paragraphs 4.94 to 4.96 deal with the outline reports that AMHPs should make when detaining patients. This subject is currently dealt with in *chapter 11 of the current Code (conveyance)*. The guidance now recognises that AMHPs will not always be able to travel to the hospital (*see paragraph 11.12 of the current Code*);
- there is now a reminder in paragraph 4.97 of the need to contact the Mental Health Unit of the Ministry of Justice if a conditionally discharged restricted patient is detained by an application under Part 2 of the Act;
- there is new guidance, in paragraph 4.99, on the action to be taken if (exceptionally) a patient is conveyed to a hospital which turns out no longer to have a bed available;
- there is a new reminder, in paragraph 4.105, of the importance of involving and learning directly from people who have been assessed under the Act;
- there is new guidance, in paragraphs 4.106 to 4.110, about specific issues in relation to the assessment of people who are deaf.

Chapter 5 Emergency Applications for Detention

This chapter gives guidance on emergency applications for admission for assessment under section 4 of the Act. It replaces and expands on *chapter 6 of the current Code*.

Particular changes to note are:

- paragraph 5.7 emphasises that it is ultimately the responsibility of primary care trusts (PCTs), not hospital managers, to ensure that second doctors are available to meet the needs of their areas (*see paragraph 6.6 of the current Code*). It is only the hospital managers' responsibility if it forms part of the service which they have contracted with NHS commissioners to provide;
- paragraph 5.8 is no longer prescriptive about the steps that approved mental health professionals (AMHPs) should take if no second doctor is available to assess a patient (*see paragraph 6.5 of the current Code*);

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- paragraph 5.9 now says that it is for both hospital managers and local social services authorities (LSSAs) to monitor the use of section 4 (not just hospital managers) (see *paragraph 6.6 of the current Code*).

Chapter 6 Appropriate Medical Treatment Test

This is a new chapter, giving guidance on the application of the appropriate medical treatment test included by the 2007 Act in the criteria for detention for medical treatment and supervised community treatment.

Chapter 7 Conflicts of Interest

This is a new chapter, giving guidance on the new Conflict of Interest Regulations made under section 12A of the Act, which set out when doctors and AMHPs are deemed to have a potential conflict of interest which precludes them from making applications or giving medical recommendations under Part 2 of the Act. It also covers conflicts of interest more generally.

It supersedes the material in *chapter 4 of the current Code* on private practice and the provision of medical recommendations.

Chapter 8 The Nearest Relative

This is a new chapter, giving guidance on the delegation by nearest relatives of their functions under the Act and on applications to the county court for the appointment of an acting nearest relative (and the displacement of an existing nearest relative).

It reflects the changes to sections 29 to 31 of the Act made by the 2007 Act, including the possibility of patients (and others) applying to the court for the displacement of a nearest relative they consider unsuitable.

In particular, it gives new guidance on the circumstances in which AMHPs should consider applying to the county court and advises LSSAs to ensure that practical guidance and legal assistance is available to AMHPs (paragraphs 8.16 and 8.19).

The chapter subsumes specific guidance previously given in:

- *paragraph 2.17* of the current Code on the delegation of nearest relatives' functions;
- *paragraph 2.18* on the steps to be taken if a nearest relative objects to an application for detention under section 3 or a guardianship application;
- *paragraph 5.5* about applications to the county court where a nearest relative unreasonably objects to an application for detention under section 3).

Chapter 9 Attorneys and Deputies

This is a new chapter, giving guidance on how the powers of attorneys and deputies appointed under the Mental Capacity Act 2005 (MCA) are affected by the Mental Health Act 1983.

It mirrors material in chapter 13 of the MCA Code of Practice.

Chapter 10 Police Powers and Places Of Safety

This chapter replaces *chapter 10 of the current Code* (on section 136 of the Act).

Particular points to note are:

- paragraphs 10.2 to 10.11 provide more extensive guidance on the powers in section 135 of the Act for the police to enter premises on the basis of a magistrates' warrant (*see paragraph 10.19 of the current Code*);
- paragraphs 10.16 to 10.18 now states that agreed local policies should now cover both section 135 and 136 (*see paragraphs 10.2 to 10.4*). This includes (in paragraph 10.17) an expanded list of matters that should be dealt with in locally agree policies;
- paragraphs 10.20 to 10.24 give expanded guidance on the choice of places of safety (*see paragraph 10.5 of the current Code*) and re-emphasises that the use of police stations should be the exception;
- paragraph 10.25 makes clear that where a patient is detained in a hospital as a place of safety it is for local decision whether they should be formally admitted on arrival or only after they have been interviewed and examined. The Code no longer states that the former is preferable (*see paragraph 10.8.b of the current Code*);
- paragraph 10.26 emphasises that the same care should be taken over assessments in places of safety as any other assessments. Paragraph 10.30 emphasises the importance of the involvement of professionals with specific expertise in CAMHS where applicable;
- paragraphs 10.34 to 10.39 give guidance on the new power to transfer people between places of safety;
- paragraph 10.42 has been revised to emphasise that monitoring should cover both sections 135 and 136 and that monitoring their use involves monitoring the outcome of their use (*see paragraph 10.4 of the current Code*);
- paragraph 10.43 now says that local policies should set target times for the start of assessments in places of safety;
- paragraph 10.48 now emphasises that all people detained in places of safety should be told that the maximum period of detention is 72 hours;

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- paragraph 10.52 states that an emergency application (under section 4) is now unlikely to be justified in the case of a patient detained in a place of safety, because of the new power to transfer patients between places of safety (*see paragraph 10.18.c of the current Code*).

Chapter 11 Conveyance of Patients

This chapter replaces *chapter 11 of the current Code* and gives general guidance on the compulsory conveyance of patients under the Act. It has been revised to cover conveyance in all circumstances under the Act, not just on admission to hospital under Part 2.

Particular changes to note are:

- there is an expanded and revised list of factors in paragraph 11.4 to be considered when deciding on the most appropriate form of transport (*see paragraph 11.3 of the current Code*);
- paragraph 11.5 now emphasises that healthcare professionals accompanying patients who have been sedated must not only be knowledgeable about their care, but also have access to the necessary emergency equipment (*see paragraph 11.14 of the current Code*);
- paragraph 11.6 emphasises that PCTs are responsible for commissioning the transport arrangements required for NHS patients under the Act;
- paragraph 11.10 expands on the matters which ought to be covered in locally agreed policies and procedures for conveyance of patients under the Act (*see paragraph 11.2 of the current Code*). Paragraph 11.12 states that these should be consistent with policies for the use of sections 135 and 136 (see chapter 10);
- paragraph 11.15 revises the current guidance on cases where applications for detention are made by nearest relatives, to emphasise that while professionals involved in the assessment should normally assist with transport arrangements, they should not do so if they believe the detention is inappropriate (*see paragraph 11.9 of the current Code*);
- paragraph 11.19 emphasises the importance of there being locally agreed arrangements with the police setting out what assistance the police will provide to AMHPs and health services in transporting patients and what support ambulance and other health services will provide in exceptional cases where police vehicles are used;
- paragraph 11.20 notes that, in exceptional circumstances where it is necessary to transport patients to hospital in a police vehicle, it may be necessary for the patient to be accompanied by a member of an ambulance crew (*see paragraph 11.7 of the current Code*);
- paragraph 11.22 notes that people authorised by AMHPs (or nearest relatives) to convey patients to hospital act in their own right, not as agents of the AMHP or nearest

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relative. But AMHPs, as applicants, retain a professional responsibility to ensure that patients are conveyed properly (*see paragraph 11.4 of the current Code*);

- guidance on the outline report which AMHPs should provide is now to be found in chapter 4 (*see paragraph 11.13 of the current Code*);
- paragraphs 11.27 to 11.29 give new guidance on transport of patients who have absconded, emphasising that responsibility for making the necessary arrangements lies with the hospital from which the patient is absent;
- paragraphs 11.30 to 11.32 give guidance on conveying SCT patients if they are recalled to hospital.

Chapter 12 Holding Powers

This chapter replaces *chapter 8 and chapter 9 of the current Code* on the use of doctors' and nurses' holding powers under sections 5(2) and 5(4) of the Act respectively.

The guidance has been revised to reflect changes to the Act which mean that the power in section 5(2) may now be used by (non-medical) approved clinicians in charge of patients' care as well as by doctors.

In addition, the following points should be noted:

- paragraph 12.5 now reflects the revised regulations which say that a report under section 5(2) may be "furnished" to the hospital managers by being placed in their internal mail system. For the same reason, the chapter no longer advises that hospital managers must ensure that sufficient staff are authorised to receive reports at any time of day (*see paragraph 8.11 of current Code*);
- paragraph 12.13 emphasises that doctors should only be appointed as nominated deputies if they are competent to perform the role, but no longer states that it is the personal responsibility of the nominating doctor to ensure that each individual junior doctor has received sufficient guidance and training (*see paragraphs 8.14.a & 8.15 of the current Code*);
- the chapter no longer states that only consultant psychiatrists should nominate deputies (*see paragraph 8.14.c of the current Code*);
- there is a new paragraph (12.19) on when detention under section 5(2) should be ended;
- the list in paragraph 12.28 of key factors that nurses need to consider when deciding whether to use section 5(4) has been revised and expanded to include any recent formal risk assessments and whether the date is of special significance for the patient (*see paragraph 9.2 of the current Code*);

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- the guidance paragraph 12.30 has been revised to make clear that nurses must always carry out some form of assessment of the patient's situation before using the power – but acknowledging that there are situations in which by necessity it will have to be only a brief assessment (*see paragraph 9.3 of the current Code*);
- the chapter no longer states that a report under section 5(4) should be accompanied by a local incident report form (*see paragraph 9.4.b of the current Code*). That is for local decision;
- paragraphs 12.32 to 12.34 states that the relevant doctor or approved clinician should arrive as soon as possible after the use of section 5(4) and that a failure to arrive within the maximum six hour period of detention should be considered and investigated as a serious failing. But the chapter is longer prescriptive about the steps that should be taken after four and six hours (*see paragraph 9.7 of the current Code*);
- the chapter no longer refers to nurses recording the end of detention under section 5(4) on Form 16 (which is to be abolished) (*see paragraph 9.5 of the current Code*), but instead emphasises the importance of recording the end of detention under both section 5(2) and 5(4), along with the reasons and what happened to the patient. Paragraph 12.35 encourages hospital managers to have a standardised system by which this can be done;
- the chapter now emphasises, in paragraph 12.37, the importance of hospital managers monitoring the use of section 5(4) as well as section 5(2) (*see paragraph 8.1.c of the current Code*).

Chapter 13 Receipt and Scrutiny of Documents

This chapter replaces *chapter 12 of the current Code*.

It has also been expanded to give brief guidance on checking documentation relating to guardianship (paragraph 13.14, 13.17 and 13.18) and SCT (13.15 and 13.16).

Changes to note in particular are:

- the chapter no longer states that the only nurses to be given responsibility for receiving admission documents should be nurses in charge of a ward, nor that more junior nurses should seek the advice of a first level nurse (*see paragraph 12.3.a of the current Code*);
- paragraph 13.12 now says that the adequacy of reasons given in medical recommendations should be scrutinised by someone with appropriate clinical expertise – in other words it need not invariably be done by a doctor (*see paragraph 12.4.b of the current Code*);
- the advice that clinical descriptions of patients' mental disorders should include a description of their symptoms and behaviour, not just a diagnostic classification, is now to be found in chapter 4 (paragraph 4.75) (*see paragraph 12.4.b of the current Code*);

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- paragraph 13.19 emphasises that hospital managers (and now LSSAs as well) must have arrangements in place to audit the effectiveness of their systems for receipt and scrutiny of documents. But it no longer states that details of defective admission documents and action taken on them must be regularly reported to the hospital managers (*see paragraph 12.5.c of the current Code*).

Chapter 14 Allocating or Changing a Responsible Clinician

This is a new chapter, giving guidance on the allocation of responsible clinicians to patients. It reflects the changes made by the 2007 Act, which mean that most detained (and all SCT) patients must now have a responsible clinician in overall charge of their case, who must be an approved clinician (but need not be a doctor).

The chapter states that hospital managers should have local protocols in place for allocating responsible clinicians.

Chapter 15 Safe and Therapeutic Responses to Disturbed Behaviour

This chapter replaces and revises *chapter 19 of the current Code* (“*Patients presenting particular management problems*”) and gives guidance on:

- the need for hospital managers to have overall policies for the management of disturbed behaviour in their hospitals, which emphasise de-escalation as the first response (paragraphs 15.6 and 15.7);
- interventions where de-escalation techniques by themselves are insufficient, in particular:
 - physical restraint (paragraphs 15.21 to 15.30)
 - mechanical restraint (paragraph 15.31)
 - seclusion (paragraph 15.43 to 15.62)
 - longer term segregation (paragraphs 15.63 to 15.66).

It also includes brief guidance on: observation of patients (paragraph 15.40); restraint to administer medication (paragraphs 15.32 and 15.33); and deprivation of day-time clothing (paragraph 15.67).

Particular changes to note are:

- lack of access to personal space, frustration at being restricted, difficulties in communication, emotional distress and physical illness have been added to the reminder (in paragraph 15.5) of factors which can give rise to challenging behaviour (*see paragraph 19.3 of the current Code*);
- paragraph 15.11 now encourages advance statements of preferences by patients as a way of helping to deal with episodes of particularly disturbed behaviour;
- the guidance in paragraph 15.15 on use of medication to control disturbed behaviour has been reworded (*see paragraph 19.15 of the current Code*) and there is now some

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brief guidance on the use of restraint to administer medication in non-emergency situations (paragraphs 15.32 and 15.33);

- a number of revisions have been made to the list (in paragraph 15.16) of general measures which may help to minimise challenging behaviour (*see paragraph 19.5 of the current Code*);
- much of the specific guidance on how staff should restrain patients has been removed (*see paragraph 19.12 of the current Code*) as fuller guidance on restraint techniques is now available elsewhere. But paragraph 15.22 now makes clear that techniques should not depend on deliberate infliction of pain;
- paragraph 15.29 expands on the current guidance about the need for post-incident support and review (*see the end of paragraph 19.12 of the current Code*). But the Code is no longer prescriptive about the support that should be provided to patients involved through visits by a senior officer (*see paragraph 19.13 of the current Code*) nor about the type of support to be provided to staff (*see paragraph 19.34 of the current Code*);
- paragraph 15.31 states that the use of mechanical restraint should be exceptional. If it is employed, there should be a clear policy for its use;
- paragraph 15.35 notes that the physical restraint of a patient who is being kept in hospital on the basis an authorisation under the new deprivation of liberty safeguards in the MCA (which are expected to come into effect in April 2009) may indicate that the patient is objecting to being in the hospital. That in turn may raise questions about whether it is possible to continue to rely on the authorisation under the MCA;
- the guidance on training in physical restraint (at paragraphs 15.36 to 15.39) has been revised (*see paragraph 19.9 of the current Code*);
- paragraph 15.41 now states that hospitals should have clear written policies on the use of observation, but the chapter no longer includes clinical guidance on what should be observed (*see paragraph 19.31 of the current Code*). The guidance stating that patients should be assessed on admission for immediate and potential risks (*paragraph 19.30 of the current Code*) has been moved to the beginning of the chapter (paragraph 15.3);
- the definition of seclusion in paragraph 15.43 has been reworded for greater clarity (*see paragraph 19.16 of the current Code*). Paragraph 15.44 emphasises that all activities which meet the definition are to be treated as seclusion, whatever label is applied to them locally;
- the guidance on review of seclusion (in paragraphs 15.50 to 15.59) has been revised to include greater flexibility to respond to the individual circumstances of each case (*see paragraph 19.21 of the current Code*);
- paragraph 15.59 says that local policies should set out arrangements for disagreements about the continuation of seclusion to be referred to a senior manager or clinician (*see the end of paragraph 19.21 of the current Code which refers only to a senior manager*);

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- the guidance on record-keeping in relation to seclusion (in paragraph 15.62) no longer states that records made by the person in charge of the ward should be countersigned by a doctor and a senior nurse (see *paragraph 19.23 of the current Code*). Instead, it says that local policies should require records of each episode of seclusion to be reviewed by a more senior practitioner;
- the chapter now distinguishes between seclusion and longer-term segregation that may be appropriate for a small number of patients who could be described as “long term dangerous”. Guidance on the latter is given in paragraphs 15.63 to 15.66;
- guidance on locking doors on open wards has been subsumed in the new chapter 16 (Privacy and safety).

Chapter 16 Privacy and Safety

This is a new chapter, giving advice on various issues relating to the privacy and security of patients detained in hospital under the Act.

In doing so, it replaces and revises material from *chapter 19 (“Patients presenting particular management problems”)* and *chapter 25 (“Personal searches”)* of the current Code, as follows:

- paragraphs 16.10 to 16.27 replace and expand on the guidance on searching detained patients and their visitors in *chapter 25*;
- paragraphs 16.28 to 16.33 (Accommodation offering conditions of enhanced security) replace (with minor revisions) the section on “Locked wards and secure areas” in *chapter 19* (see *paragraphs 19.28 and 19.29 of the current Code*);
- paragraphs 16.32 to 16.28 (Physical security in other accommodation) replace the section in *chapter 19 of the current Code* on “Locking ward doors on open wards”. It takes a very different approach. Rather than setting out specific steps to be taken when ward doors are to be locked, it says that there should be specific local policies for each ward on how entry to and exit from wards is to be managed.

Other points to note are:

- there is new guidance on patients’ access to telephones. Amongst other things it says that hospital managers should have a local policy on the possession and use of mobile telephones by detained patients, and on their use of hospital IT to access e-mails and the internet (paragraphs 16.3 to 16.7);
- the chapter now gives brief guidance on the storage of patients’ personal property (paragraph 16.8);
- paragraph 16.9 reminds hospital managers of the importance of having separate facilities for men and women;
- the chapter expands on the principles on which policies on searching should be based (paragraph 16.11). It also now emphasises the importance of informing patients and

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visitors of the policy (paragraph 16.11), post incident review and support (paragraphs 16.24 and 16.25), and auditing the operation of the policy (paragraph 16.27);

- the guidance on searching detained patients without their consent (in paragraph 16.21) now acknowledges that there are urgent situations in which it would not be practicable to delay a search until the patient's responsible clinician can be consulted (see *paragraph 25.5 of the current Code*);
- the chapter no longer says that disputes between clinical and security staff about the appropriateness of searching a patient should be referred to the hospital's medical director (see *paragraph 25.6 of the current Code*). Instead, it says that the procedures for such cases should be set out in the local policy (paragraph 16.23).

Chapter 17 Wishes Expressed in Advance

This is a new chapter, giving guidance on:

- how advance decisions to refuse treatment (made in accordance with the Mental Capacity Act 2005) relate to decisions made under the Mental Health Act; and
- the importance of advance statements made by patients subject to the Act about their wishes and preferences, how they should be recorded and what effect they have.

The guidance on advance decisions to refuse treatment supersedes the brief guidance on that subject given in *paragraph 15.11 of the current Code* which has been out of date since the implementation of the Mental Capacity Act.

Chapter 18 Confidentiality and Information Sharing

This is a new chapter, which in particular:

- gives an overview of the key points of the law on patient confidentiality;
- sets out the importance of sharing information to help manage risks posed by mental disorder and support patients' treatment and care;
- sets out the circumstances in which the Act permits (or requires) confidential patient information to be shared without consent;
- emphasises the importance of proper records of decisions to disclose information;
- emphasises the importance of professionals encouraging mentally disordered offender patients to agree to information being shared with victims.

The chapter supersedes the brief guidance on confidentiality given in *paragraphs 1.8 and 1.9 of the current Code*.

Chapter 19 Visiting Detained Patients in Hospital

This chapter replaces and revises *chapter 26 of the current Code*.

Particular changes to note are:

- the chapter now reminds hospital managers that certain people have a legal right under the Act to visit patients and of the importance of patients being able to communicate in private with their legal representatives (paragraphs 19.5 to 19.8);
- the chapter now states, in paragraph 19.9, that hospitals should have a policy on the clinical and security grounds on which visitors may be excluded, to which both staff and patients may refer;
- guidance on restriction on clinical grounds, in paragraph 19.12, now reminds clinicians that making special arrangements for visits, or imposing conditions on visitors, may be alternatives to excluding visitors entirely (*see paragraph 26.2.a of the current Code*);
- the chapter now notes, in paragraph 19.16, that restricting visitors to informal patients who lack capacity to decide whether to stay in hospital could amount, or contribute to, a deprivation of their liberty;
- the chapter says, in paragraph 19.17, that local policies on visits to patients by children and young people should cover visits to children and young people who are themselves patients as well (*see paragraph 26.3 of the current Code*). It also now says that Local Safeguarding Children Boards should be consulted on those policies (as well as local social services authorities);
- the chapter also now reminds professionals that, like adults patients, children and young people who are detained should be consulted about who they wish to visit them (paragraph 19.20).

Chapter 20 Independent Mental Health Advocates

This is a new chapter, which gives guidance on the role of independent mental health advocates (IMHAs) under the Act, and on their rights to visit patients and see their records.

The chapter gives guidance is for people who have to work with IMHAs, not for IMHAs themselves. Separate guidance on the operation of IMHA services will be issued in due course.

IMHA services are expected to be introduced in April 2009.

Chapter 21 Leave of Absence

This chapter replaces and revises *chapter 20 of the current Code*.

Particular changes to note are:

- there is new guidance (in paragraph 21.5) on what constitutes a hospital for the purposes of leave;
- there is now a summary list of factors to be considered before leave is granted in paragraph 21.8. Note in particular the addition of a reminder to be aware of child protection and child welfare issues and of the importance of ensuring patients know what to do if they think they need to return early to hospital;
- there is a reminder in paragraphs 21.9 and 21.10 that before granting leave for more than seven consecutive days, responsible clinicians must now consider SCT as an alternative (in relevant cases);
- paragraph 21.6 reminds responsible clinicians that they may not delegate the decision to grant leave. If they are absent for any reason, the decision can only be taken by the approved clinician who is temporarily the patient's responsible clinician;
- there is now a reminder in paragraph 21.12 that before granting leave on condition that the patient resides in particular accommodation, or receives particular services, responsible clinicians should ensure that the accommodation or services in question are available;
- the guidance on short-term leave in paragraphs 21.16 and 21.17 now emphasises that responsible clinicians must clearly set out the parameters within which ward staff can manage such leave (*see paragraph 20.4 of the current Code*);
- paragraph 21.21 now states that, in case they go missing, an up-to-date description of patients given leave of absence should be available in their notes;
- paragraph 21.22 says that the outcome of leave should be recorded (as well as its authorisation);
- paragraph 21.27 now encourages caution in asking friends or family to take act as patients' legal escorts when on escorted leave;
- paragraph 21.28 notes that escorted leave to Scotland and other jurisdictions is only possible where local legislation allows;
- paragraphs 21.30 gives guidance on who should be the responsible clinician and the approved clinician in charge of a particular aspects of patients' treatment when they are on leave to another hospital;
- there is now a reminder, in paragraph 21.36, that patients who are not legally detained have the right to leave at any time.

Chapter 22 Absence Without Leave

This chapter replaces and revises *chapter 21 of the current Code*.

Particular changes to note are:

- the chapter now expressly covers SCT patients who go absent without leave (AWOL) when recalled to hospitals;
- paragraph 22.11 gives revised and expanded guidance on matters to be dealt with in hospital managers' local policies (*see paragraph 21.6 of the current Code*);
- paragraph 22.13 now states that where the police are asked to assist in returning a patient whose location is known, the role of the police should, wherever possible, only be to assist a mental health professional;
- paragraph 22.16 emphasises that where the police have been informed of a patient's absence, they must also be informed when the patient is found;
- paragraph 22.18 now says that nearest relatives should normally be informed if a patient goes AWOL for more than a few hours (rather than immediately in all cases) (*see paragraph 21.6.e of the current Code*);
- paragraph 22.19 states that it is good practice to examine patients on their return from any substantial period of absence to ensure the criteria for their continued detention (or SCT) are still met. It also reminds responsible clinicians of the requirements of section 21B of the Act;
- paragraphs 22.20 and 22.21 now states that incidents in which patients go missing should be recorded, reviewed and analysed to learn lessons for the future.

Chapter 23 Medical Treatment under the Act

This chapter replaces *chapter 15* and parts of *chapter 16 of the current Code*. The material has been extensively revised and restructured, as well as incorporating new material on the treatment of SCT patients.

Particular changes to note are:

- the chapter now includes guidance on the new Part 4A of the Act, which deals with the medical treatment for mental disorder of SCT patients who have not been recalled to hospital (paragraphs 23.11 to 23.25);
- the general material on capacity and consent, in paragraphs 23.27 to 23.30 and 23.31 to 23.36 respectively, has been rewritten and updated (*see paragraphs 15.8 to 15.25 of the current Code*);
- there is now a reminder of the implications of the European Convention on Human Rights (ECHR) for treatment given without consent (paragraphs 23.39 to 23.41);

Summary of changes from current Code

- there is revised guidance on treatment plans in paragraphs 23.42 to 23.51 (see *paragraphs 15.5 to 15.7 of the current Code*). There is no longer a separate chapter on psychological therapies (*chapter 18 of the current Code*), but the importance of psychological therapies as a routine treatment option is emphasised in paragraphs 23.45 and 23.46;
- guidance on advance decisions to refuse treatment is now in chapter 9 (see *paragraph 15.11 of the current Code*);
- there is a new reminder, in paragraph 23.49, that treatment plans should not make untested assumptions about carers' ability and willingness to provide care;
- there is a new summary of exceptions to the normal rules about treatment in the Mental Capacity Act 2005 which apply when patients are subject to the Mental Health Act (paragraph 23.52);
- there is a new summary at the end of the chapter of when medical treatment for mental disorder may be given under the Act.

Chapter 24 Treatments Subject to Special Rules and Procedures

This chapter replaces most of *chapter 16 of the current Code*. It primarily gives guidance on the rules in the Act on when treatments may only be given once a certificate has been issued, on the process for obtaining certificates, and on the exceptions to those rules.

The chapter now includes guidance on the new section 58A of the Act (electro-convulsive therapy) (and the consequential changes to section 58) and on Part 4A certificates for SCT patients. Material from the current Code has been extensively revised and restructured.

Particular changes to note are:

- there is a summary, in paragraphs 24.3 to 24.5, of when the Act now requires an approved clinician to be in charge of a particular aspect of a patient's treatment;
- the material on section 58 has been extensively revised, not least because section 58 no longer deals with electro-convulsive therapy (ECT) (paragraphs 24.10 to 24.17);
- paragraph 24.16 now clarifies that certificates issued by approved clinicians should not be relied on as only record of the reasons for the clinician's belief that the patient has capacity to consent to the treatment and has done so;
- guidance on ECT and the new section 58A is in paragraphs 24.18 to 24.24;
- guidance on Part 4A certificates is in paragraphs 24.25 to 24.27;
- guidance on the application of Part 4 to SCT patients recalled to hospital (including the special exceptions that apply) is in paragraphs 24.28 to 24.31;

Summary of changes from current Code

- there is new guidance on exceptions from certificate requirements in urgent cases (which covers both Part 4 and Part 4A of the Act) in paragraphs 24.32 to 24.37. This continues to state that hospital managers should monitor the use of exceptions for urgent cases;
- paragraph 21.43 makes clear that it is for second opinion doctors (SOADs) to decide whether anyone else is present when they examine patients (*see paragraph 16.32.b of the current Code*);
- paragraph 24.47 emphasises the importance of drawing SOADs' attention to any recent medication review. It also suggests that approved clinicians should consider a review by a specialist mental health pharmacists in certain cases before seeking a SOAD certificate;
- the Code no longer says that discussions between SOADs and approved clinicians should only exceptionally be by telephone (*see paragraph 16.32.c of the current Code*);
- there is new guidance, in paragraphs 24.59 to 24.62, on how SOADs can give reasons for their decisions and how those reasons should be communicated to patients, revised in light of recent case-law (*see paragraph 16.33 of the current Code*);
- there is a new reminder in paragraphs 24.68 to 24.70 that a SOAD certificate is not a direction to administer treatment and does not necessarily make treatment either appropriate or lawful;
- there is a new summary of the circumstances in which certificates cease to be effective (paragraph 24.79);
- paragraph 24.82 reminds hospital managers that they need to have arrangements in place to ensure that all certificates which are no longer valid are clearly marked as such, not just those certificates issued by approved clinicians themselves (*see paragraph 16.13 of the current Code*).

Chapter 25 Supervised Community Treatment

This is a new chapter, giving guidance on the operation of supervised community treatment (SCT).

Chapter 28 of the current Code ("After-care under supervision") has been deleted, because after-care under supervision (ACUS) is to be ended when SCT comes into operation. Separate guidance is being issued on the transitional arrangements for existing patients on ACUS.

Chapter 26 Guardianship

This chapter replaces and revises *chapter 13 of the current Code*.

Summary of changes from current Code

Particular changes to note are:

- paragraph 26.8 now summarises the cases in which guardianship is most likely to be appropriate;
- paragraphs 26.10 to 26.13 give guidance on when guardianship might be used instead of, or in addition to, the Mental Capacity Act 2005 (MCA), including the new deprivation of liberty safeguards due to come into force from April 2009;
- paragraphs 26.17 and 26.18 remind local social services authorities of their power to discharge guardianship patients, when they must consider using that power, and the restrictions on how it may be delegated;
- paragraphs 26.26 to 26.30 give guidance on the guardian's power to decide where a patient is to live (and the associated power to convey). The guidance emphasises that the powers may not be used to deprive a patient of liberty (unless, where applicable, that is authorised under the MCA).

Chapter 27 After-care

This chapter replaces and revises *chapter 27 of the current Code*.

Particular changes to note are:

- the chapter no longer includes a description of the key points of the Care Programme Approach (CPA) as the CPA is now well established and guidance on its implementation is available elsewhere (*see paragraph 27.2 of the current Code*);
- there is a reminder in paragraph 27.9 that PCTs and LSSAs have the power to make preparatory arrangements for after-care even before patients are discharged and guidance on when they should consider using those powers;
- paragraph 27.13 contains an expanded and revised list of factors that need to be considered as part of assessments of needs for after-care (*see paragraph 27.10 of the current Code*);
- there is new guidance on ending after-care in paragraphs 27.19 to 27.22.

Chapter 28 Guardianship, Leave or SCT ?

This is a new chapter which gives guidance on deciding between:

- supervised community treatment (SCT) and longer term leave of absence; and
- SCT and guardianship.

Summary of changes from current Code

It also gives brief guidance on the role of the new deprivation of liberty safeguards in the Mental Capacity Act 2005 in respect of patients who are on leave of absence or SCT, or who are subject to guardianship. Those safeguards are expected to come into effect from April 2009.

Chapter 29 Detention and Supervised Community Treatment: Renewal, Extension and Discharge

This is a new chapter, giving guidance on the renewal of detention and the extension of supervised community treatment (SCT) by responsible clinicians. In particular it gives guidance on

- the new requirement for renewal of detention to be approved by a “second professional” (paragraphs 29.2 to 29.9); and
- the role of approved mental health professionals (AMHPs) in approving the extension of supervised community treatment (paragraphs 29.10 to 29.14).

In addition, the chapter reminds responsible clinicians of their power to discharge patients from detention and SCT, and the responsibility which flows from it to keep the possibility of discharging patients under review (paragraphs 29.15 to 29.17).

The chapter also reminds hospital managers of the right of nearest relatives to discharge patients from detention and SCT and of their role in assisting nearest relatives to do so (paragraphs 29.18 to 29.23). This includes an illustration of the kind of standard letter that hospital managers might provide nearest relatives (the optional statutory form for this purpose is to be abolished).

Chapter 30 Functions of the Hospital Managers

This chapter replaces and revises *chapter 22 of the current Code*.

Particular changes to note are:

- the chapter is no longer prescriptive about the arrangements that NHS bodies should set up to monitor their compliance with the Act (paragraph 30.10). Specifically, it no longer says they should establish a committee or sub-committee which reports to the board at least once a year (*see paragraph 22.4 of the current Code*);
- there is expanded guidance, in paragraphs 30.13 to 30.27, about transfers of patients between hospitals, emphasising the importance of having good reasons for any transfer, and responding properly to requests by patients for transfers (*see paragraph 22.9 of the current Code*);
- there is a reminder, in paragraphs 30.29 to 30.31, of hospital managers’ new duties under the Domestic Violence, Crime and Victims Act 2004 to victims of mentally disordered offenders who are unrestricted Part 3 patients. Detailed guidance will be issued separately;

Summary of changes from current Code

- there is revised and expanded guidance, in paragraphs 30.34 to 30.37, on hospital managers' duty to refer patients' cases to the Tribunal, which reflects the amendments to section 68 of the Act (*see paragraph 22.16 of the current Code*). Paragraph 30.38 says that managers should audit the timeliness with which they comply with these duties;
- there is new guidance, in paragraphs 30.39 to 30.41, on when hospital managers should ask the Secretary of State for Health to refer patients' cases to the Tribunal;
- guidance on hospital managers' duties in relation to the Tribunal generally is now in chapter 32 (The Tribunal) (*see paragraph 22.17 and 22.18 of the current Code*);
- paragraph 30.42 reminds hospital managers of their new duty (expected to be in force from April 2010) to ensure age appropriate accommodation for children and young people who are in-patients in their hospitals. Further guidance on this is in chapter 36 (Children and young people under the age of 18);
- for clarity, this chapter (and the following chapter) now uses the term "managers' panel" for panels which take discharge decisions on behalf of hospital managers.

There is no longer a chapter on complaints (*see chapter 24 of the current Code*).

Chapter 31 Hospital Managers' Discharge Power

This chapter replaces and revises *chapter 23 of the current Code*, amongst other things to include guidance on discharge of SCT patients.

Particular changes to note are:

- like chapter 31, this chapter uses the term "managers' panel" for panels which take discharge decisions on behalf of hospital managers;
- the chapter no longer advises that managers' panels should include a non-executive member of the relevant body (*see paragraph 23.3 of the current Code*);
- there is firmer guidance, in paragraph 31.7, that managers' panels in independent hospitals should not include people on the staff of the hospital or with a financial interest in it (*see paragraph 23.4 of the current Code*);
- paragraph 31.8 expands on the guidance about the importance of training for members of managers' panels (*see paragraph 23.3 of the current Code*). In particular, it states that training should include training about risk assessment;
- paragraph 31.12 states that, when deciding whether to review cases which do not have automatically to be reviewed, managers' panels are entitled to take into account any recent or planned Tribunal hearing. But the chapter no longer advises that they should not hold a hearing if there is to be a Tribunal hearing within 28 days, or if there has been one in the past 28 days (and there has been no change of circumstances) (*see paragraph 23.9 of the current Code*);

Summary of changes from current Code

- the questions to be asked by managers' panels in section 2 and section 3 cases have been separated out in paragraphs 31.15 and 31.16 respectively (*see paragraph 23.11 of the current Code*);
- there are a new set of questions to be asked in SCT cases (in paragraph 31.17);
- there is now a reminder of managers' panels residual discretion in paragraphs 31.21 and 31.22;
- paragraph 31.33 points out that a hospital may not be the right place for a hearing for SCT patients and that hospital managers should consider alternative venues;
- there is expanded guidance, in paragraph 31.38, on the options which are (and are not) available to managers' panels where discharge depends on after-care arrangements first being put in place (*see paragraph 23.18 of the current Code*);
- paragraphs 31.39 to 31.42 say that uncontested renewals may be dealt with by a different process, but no longer recommends that they should be (*see paragraphs 23.10 and 23.20 of the current Code*);
- there is revised guidance, in paragraphs 31.45 to 31.48, for NHS bodies which contract with independent hospitals on their power to discharge NHS patients and on its implications (*see paragraph 23.5 of the current Code*).

Chapter 32 The Tribunal

This is a new chapter, giving a brief overview of the purpose of the Tribunal and reminding hospital managers and local social services authorities (LSSAs) of their various responsibilities in relation to it.

In particular, it gives guidance to hospital managers and LSSAs on:

- their duties to give patients and their nearest relatives information about their rights to apply to the Tribunal and to assist them in obtaining legal representation and making applications;
- their obligations to ensure that proper reports are submitted to the Tribunal in good time;
- their responsibility to ensure that professionals attending hearings are properly prepared, and on the role of responsible clinicians at hearings;
- their responsibilities to provide appropriate accommodation for hearings.

Chapter 33 Patients Concerned with Criminal Proceedings

This chapter replaces and revises *chapter 3, chapter 7, chapter 17 and chapter 29 of the current Code*.

Particular changes to note are:

- there is a new reminder in paragraph 33.3 of the importance of assessing the mental health needs of people who come into contact with the criminal courts as early as possible in the process if they may have a mental disorder;
- paragraph 33.6 reminds primary care trusts (PCTs) of their new duty to respond to requests from courts for information specifically on the availability of hospital places for children and young people, and of their duties as NHS commissioners, to ensure that prompt medical assessment is available for people who require it;
- there is new guidance in paragraphs 33.31 to 33.33 about the importance of considering transfers from prison to hospital under the Act and on the steps to be taken before patients are returned from hospital to prison;
- the chapter no longer gives specific guidance on the recall of conditionally discharged restricted patients (*see paragraphs 29.2 to 29.5 of the current Code*). Specific guidance is available from the Mental Health Unit of the Ministry of Justice.

Chapter 34 People with Learning Disabilities or Autistic Spectrum Disorders

This chapter replaces and revises *chapter 30 of the current Code* and expands it to give guidance on particular issues in respect of people with learning disabilities or autistic spectrum disorders or both.

Particular changes to note are:

- there is revised guidance, in paragraphs 34.6 to 34.10, on the factors to consider in deciding whether a learning disability is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned (*see paragraph 30.5 of the current Code*);
- paragraphs 34.11 to 34.17 contain expanded guidance on particular practice considerations which may arise in connection with patients with learning disabilities;
- there is new guidance, in paragraphs 34.18 to 34.27, on particular practice considerations in connection with patients with autistic spectrum disorders.

Chapter 35 People with Personality Disorders

This is a new chapter, giving brief guidance on particular issues of relevance to patients with personality disorders.

Chapter 36 Children and Young People Under the Age Of 18

This chapter replaces and comprehensively revises *chapter 31 of the current Code*.

Particular points to note are:

- paragraphs 36.9 to 36.15 introduce and explain the concept of the Zone of Parental Control which is important when deciding whether it is appropriate to rely on consent given for a child or young person by a person with parental responsibility for them;
- there is much expanded guidance, in paragraphs 36.19 to 36.51, on the circumstances in which informal admission and/or treatment of children and young people may (and may not) be appropriate, and on the alternatives where informal admission or treatment is not appropriate (*see paragraphs 31.6 to 31.17 of the current Code*);
- there is brief guidance in paragraphs 36.64 to 36.65 on the role of parents in supervised community treatment for children and young people;
- paragraphs 36.67 to 36.74 give guidance on the new duty on hospital managers – expected to be in force from April 2010 – to ensure age appropriate accommodation for children and young people who are inpatients in their hospitals (*see paragraph 31.22 of the current Code*);
- there is a further reminder in paragraph 36.75 that the care and treatment of children and young people should, wherever possible, be in the hands of specialists in child or adolescent mental health services;
- paragraph 36.77 reminds hospital managers and others of the importance of continued access to education;
- there is brief additional guidance, in paragraphs 36.78 and 36.79 on issues about confidentiality in relation to children and young people (*see paragraph 31.21 of the current Code*);
- there is expanded guidance, in paragraphs 36.80 to 36.82, of local social services authorities' duties towards children and young people in hospital (*see paragraph 31.24 of the current Code*).