



## Review Sheet



Last Reviewed  
21 Sep '20



Last Amended  
21 Sep '20



Next Planned Review in 12 months, or  
sooner as required.

Business impact



Minimal action required circulate information amongst relevant parties.

Reason for this review

Scheduled review

Were changes made?

Yes

Summary:

This policy outlines the principles of the Mental Health Act where a person can be detained, also known as sectioned, under the Mental Health Act (1983) and treated without their agreement. The document provides guidance that must be followed in services where it is applicable. The policy has been updated with minor changes including in reference to new legislation that its implementation has been extended due to the coronavirus pandemic. The reference number of this policy has changed. Previously it was CR12

Relevant legislation:

- The Mental Health (Hospital, Guardianship, Community Treatment and Consent to Treatment) (Wales) Regulations 2008
- The Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008
- Criminal Justice and Courts Act 2015
- Policing and Crime Act 2017
- The Care Act 2014
- Equality Act 2010
- Human Rights Act 1998
- Mental Capacity Act 2005
- Mental Capacity Act Code of Practice
- Mental Health Act 1983
- Mental Health Act 2007

Underpinning knowledge - What have we used to ensure that the policy is current:

- Author: The Department of Health, (2017), *The Mental Health Act 1983*. [Online] Available from: <http://www.legislation.gov.uk/ukpga/1983/20/contents> [Accessed: 21/9/2020]
- Author: Department of Health, (2017), *The Mental Health Act 1983 Code of Practice in England*. [Online] Available from: <https://www.gov.uk/government/publications/code-of-practice-mental-health-act-1983> [Accessed: 21/9/2020]
- Author: Department of Health, (2015), *Reference Guide to the Mental Health Act 1983*. [Online] Available from: <https://www.gov.uk/government/publications/mental-health-act-1983-reference-guide> [Accessed: 21/9/2020]
- Author: Department of Health, (2008), *Mental Health (Hospital, Guardianship and Treatment) (England) (Amendment) Regulations 2008*. [Online] Available from: <http://www.legislation.gov.uk/uksi/2008/2560/contents/made> [Accessed: 21/9/2020]
- Author: Department of Health, (2012), *The Mental Health (Hospital, Guardianship and Treatment) (Wales) (Amendment) Regulations 2012*. [Online] Available from: <http://www.wales.nhs.uk/sites3/page.cfm?orgid=816&pid=33958> [Accessed: 21/9/2020]
- Author: Welsh Government, (2016), *Code of Practice Mental Health Act 1983 for Wales Review*. [Online] Available from: <https://gov.wales/sites/default/files/publications/2019-03/mental-health-act-1983-code-of-practice-mental-health-act-1983-for-wales-review-revised-2016.pdf> [Accessed: 21/9/2020]



Suggested action:	<ul style="list-style-type: none"><li>• Encourage sharing the policy through the use of the QCS App</li><li>• Use existing, planned methods for sharing information</li><li>• Share 'Key Facts' with relevant staff</li></ul>
Equality Impact Assessment:	QCS have undertaken an equality analysis during the review of this policy. This statement is a written record that demonstrates that we have shown due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations with respect to the characteristics protected by equality law.



## 1. Purpose

**1.1** To meet the provisions of the Mental Health Act 1983 in England and Wales, as amended by the Mental Health Act 2007 and associated secondary legislation.

**1.2** To provide an outline guide to the main provisions of the Mental Health Act 1983 as they affect people with mental disorders, who may be detained under the Act and their relatives.

**1.3** To support Inspiring Aspirations Plus Ltd T/A Inspiring Support in meeting the following Key Lines of Enquiry:

Key Question	Key Lines of Enquiry
EFFECTIVE	E2: How does the service make sure that staff have the skills, knowledge and experience to deliver effective care and support?
EFFECTIVE	E7: Is consent to care and treatment always sought in line with legislation and guidance?
SAFE	S1: How do systems, processes and practices keep people safe and safeguarded from abuse?
SAFE	S2: How are risks to people assessed and their safety monitored and managed so they are supported to stay safe and their freedom is respected?
WELL-LED	W4: How does the service continuously learn, improve, innovate and ensure sustainability?
WELL-LED	W5: How does the service work in partnership with other agencies?

**1.4** To meet the legal requirements of the regulated activities that {Inspiring Aspirations Plus Ltd T/A Inspiring Support} is registered to provide:

- | The Mental Health (Hospital, Guardianship, Community Treatment and Consent to Treatment) (Wales) Regulations 2008
- | The Mental Health (Hospital, Guardianship and Treatment)(England) Regulations 2008
- | Criminal Justice and Courts Act 2015
- | Policing and Crime Act 2017
- | The Care Act 2014
- | Equality Act 2010
- | Human Rights Act 1998
- | Mental Capacity Act 2005
- | Mental Capacity Act Code of Practice
- | Mental Health Act 1983
- | Mental Health Act 2007



## 2. Scope

**2.1** The following roles may be affected by this policy:

- | Registered Manager
- | Other management
- | Administrator
- | Nurse

**2.2** The following Service Users may be affected by this policy:

- | Service Users receiving Nursing care

**2.3** The following stakeholders may be affected by this policy:

- | Family
- | Advocates
- | External health professionals
- | Local Authority
- | NHS



## 3. Objectives

**3.1** To ensure that the admission of Service Users to hospital or subjecting Service Users to compulsion will be managed in a manner to comply with the provisions of the Mental Health Act 1983 as amended by the Mental Health Act 2007 and associated secondary legislation.

**3.2** To ensure that staff are aware of responsibilities that they may have regarding the operation and administration of the Mental Health Act 1983 and its accompanying Codes of Practice.



## 4. Policy

**4.1** Staff will be aware of the legal status of Service Users in their care, whether they are subject to the Mental Health Act 1983 or are informal patients, which means that they are in an establishment on a voluntary basis.

**4.2** Managers must understand the legal status of Inspiring Aspirations Plus Ltd T/A Inspiring Support. For the purposes of the Mental Health Act 1983, a hospital is defined as an establishment, either NHS or independent, which provides for the assessment and medical treatment of Service Users detained under the Mental Health Act 1983 and must be registered for that role by the appropriate Regulatory Authority in England or Wales.

**4.3** Staff will be aware of the status of the Mental Health Act 1983 Codes of Practice for England and Wales and their application to people with mental disorder. Staff must be aware of the statements of guiding principles which are included in the Codes and which will inform decisions made under the Act.

**4.4** Staff will be aware of the role of the Mental Health Act 1983 as the major piece of legislation in England and Wales, which enables people to be treated for a mental disorder based on an assessment for the use of compulsory powers and that there is no minimum age for its application.



## 5. Procedure

**5.1** Where the establishment may admit Service Users who are subject to the Mental Health Act 1983, or may request assessment under the Mental Health Act 1983 for Service Users under their care, staff will maintain awareness, as necessary, of the provisions of the Act. The key provisions are described below.

**5.2** The process for admission to hospital for assessment under Section 2 of the Mental Health Act involves the following:

- | Two registered Medical Practitioners must confirm that the Service User is suffering from a mental disorder of a nature or degree that warrants detention in a hospital for assessment (or assessment followed by medical treatment) for at least a limited period, and that they ought to be detained in the interests of their own health or safety, or with a view to the protection of others
- | An application for admission is made by an Approved Mental Health Professional (AMHP) or the Service User's nearest relative and the applicant must have seen the Service User within the previous 14 days
- | The maximum duration of detention is 28 days and this cannot be renewed

**5.3** The process for compulsory admission in cases of emergency, under Section 4 of the Mental Health Act, is as follows:

- | One registered Medical Practitioner must confirm that it is of 'urgent necessity' for the Service User to be admitted and detained under section 2 and that waiting for a second registered Medical Practitioner to confirm the need for an admission under section 2 would cause 'undesirable delay'
- | An application for admission is made by an Approved Mental Health Professional (AMHP) or the Service User's nearest relative. The applicant must have seen the Service User within the previous 24 hours. The Service User must be admitted within 24 hours of the medical examination or application, whichever is the earlier, or the application under section 4 is null and void
- | Duration of detention is 72 hours maximum

**5.4** The process for compulsory admission for treatment under section 3 of the Mental Health Act is as follows:

- | Two registered Medical Practitioners must confirm the following:
  - | That the Service User is suffering from a mental disorder of a nature or degree that makes it appropriate for them to receive medical treatment in a hospital
  - | That it is necessary for their own health or safety, or for the protection of others, that they receive such treatment, and that it cannot be provided unless they are detained under this section
  - | Appropriate medical treatment is available for the Service User
- | Application for admission: by nearest relative, or Approved Mental Health Professional (AMHP) in cases where the nearest relative does not object, or is displaced by County Court, or it is not 'reasonably practicable' to consult them
- | Section 3 would normally be considered where someone has been subject to Section 2 and a longer period of detention is required or where the treatment plan is already established. The duration of detention is up to six months, renewable for a further six months, then for one year at a time
- | The Service User's Responsible Clinician (RC) can renew a section 3 detention if the criteria for detention still apply

**5.5** The process for the detention of informal Service Users already in hospital for whom an application under the Act ought to be made is described in Section 5 of the Mental Health Act as follows:

- | A registered medical practitioner in charge of an informal Service User's treatment, or one other doctor designated by them, can detain a Service User for up to 72 hours by reporting to the managers of the hospital that an application for compulsory admission 'ought to be made'
- | A nurse of the prescribed class (a registered nurse whose field of practice is either mental health nursing or learning disabilities nursing) can detain an informal Service User who is receiving treatment for mental disorder for up to six hours, or until a doctor with authority to detain them arrives, whichever is earlier



**5.6** Staff will be aware that at any time during the period of detention, Service Users may be discharged from compulsory detention by any of the following:

- 1 Responsible Clinician (RC)
- 1 The managers of the hospital
- 1 The nearest relative, who must give 72 hours' notice. If the RC prevents the nearest relative discharging the Service User by making a report to the establishment managers, the nearest relative can apply to a Mental Health Tribunal (MHT) within 28 days
- 1 Mental Health Tribunal - A Service User can apply to a tribunal once during the first six months of their detention, once during the second six months and then once during each period of one year. If the Service User does not apply in the first six months of detention, their case will be automatically referred to the Mental Health Tribunal. After that, the case is automatically referred when a period of three years has passed since a tribunal last considered it (one year, if the Service User is under 16)

**5.7** Staff will be aware where someone in the care of Inspiring Aspirations Plus Ltd T/A Inspiring Support is subject to the provisions of Guardianship under the Mental Health Act 1983, the purpose of which is to enable Service Users to receive care outside hospital, which may not be achieved without the use of compulsory powers, e.g. requiring someone to reside in a particular care home. Where appropriate, staff must be aware of the process of receiving someone into Guardianship as described in sections 7 to 10 of the Mental Health Act as follows:

- 1 Duration of Guardianship Order: Up to six months, renewable for a further six months, then for one year at a time
- 1 Application for reception into Guardianship: By an AMHP or nearest relative
- 1 Procedure: Two registered medical practitioners must confirm the following:
  - 1 That the Service User is suffering from a mental disorder of a nature or degree that warrants reception into guardianship, and
  - 1 That it is necessary in the interests of the Service User's welfare or for the protection of others
- 1 The Service User must be over 16. The guardian must be a local social services authority, or person approved by the social services authority, for the area in which they (the guardian) live
- 1 The effect of Guardianship described in section 8 of the Act gives the guardian the following powers:
  - 1 To require a Service User to live at a place specified by the guardian
  - 1 To require a Service User to attend places specified by the guardian for occupation, training or medical treatment (although the guardian cannot force the Service User to undergo treatment)
  - 1 To ensure that a registered medical practitioner approved mental health professional or other person specified by the guardian can see the Service User at the place they are residing
- 1 Guardianship provides the power to take or return someone to a place where they are required to live. It does not provide a power to deprive someone of their liberty. For this to be authorised, an application for Deprivation of Liberty Safeguards authorisation would need to be made under the Mental Capacity Act 2005, for which staff can refer to CR83 - Deprivation of Liberty in Community Settings Policy and Procedure at Inspiring Aspirations Plus Ltd T/A Inspiring Support
- 1 Discharge can be sanctioned by any of the following:
  - 1 Responsible Clinician (RC)
  - 1 Local social services authority
  - 1 Nearest relative
  - 1 Mental Health Tribunal - The Service User can apply to a tribunal once during the first six months of guardianship, once during the second six months and then once during each period of one year

**5.8** Staff will be aware where someone in the care of Inspiring Aspirations Plus Ltd T/A Inspiring Support is subject to the provisions of a Community Treatment Order under the Mental Health Act 1983, which can place certain requirements on the Service User. Where appropriate, staff will be aware that Service Users liable to be detained under Section 3 of the mental health Act may be subject to a Community Treatment Order that allows for their treatment in the community rather than in hospital. The process of subjecting someone to a Community Treatment Order under section 17A to 17G of the Mental Health Act is as follows:

- 1 Certain Service Users can be discharged from detention by means of a Community Treatment



Order (CTO), whilst remaining liable to be recalled to hospital for further treatment

- | Service Users are only eligible for CTO if they are detained under section 3 (or certain sections of Part III of the Act)
- | The criteria for making a CTO are as follows:
  - | The Service User is suffering from a mental disorder of a nature or degree that makes it appropriate for them to receive medical treatment
  - | That it is necessary for their own health or safety, or for the protection of others that they receive such treatment
  - | Such treatment can be provided without the Service User continuing to be detained in hospital
  - | It is necessary that the Responsible Clinician should be able to exercise their power to recall the Service User to hospital
  - | Appropriate medical treatment is available for the Service User

**5.9** Where appropriate, staff will be aware of the law regarding consent to treatments for mental disorder under Part IV of the Mental Health Act as follows:

- | All formal Service Users, except those who are detained under sections 4, 5, 35, 135 and 136, subject to guardianship or conditionally discharged. These Service Users have the right to refuse treatment, as have informal Service Users, except in emergencies
- | Part IV clarifies which treatment for mental disorder can be imposed upon detained Service Users. This part of the Act describes categories of treatment and the legal requirements concerning each of these
- | Under section 57, the most serious treatments can only be given if:
  - | The Service User consents, and
  - | Three independent people appointed by the Care Quality Commission in England, or in Wales the Welsh Ministers, confirm that the Service User understands the treatment and has consented to it
- | **Note:** As the treatments specified in section 57 give rise to particular concern, this section applies to all formal and informal Service Users
- | Under section 58, certain treatments can only be given in either of the following cases:
  - | The Service User consents, or
  - | An independent doctor appointed by the Care Quality Commission in England or in Wales the Welsh Ministers confirms that treatment should be given. Before doing so, they must consult two people, one a nurse, and the other neither a nurse nor a doctor, who has been concerned with the Service User's treatment
- | Section 58 applies to the administration of medicine to a Service User for a period of longer than three months
- | Under section 58A, electro-convulsive therapy (ECT) may only be given if the Service User consents to the treatment
- | **Note:** under section 62, any treatment for mental disorder can be given without consent in specific emergencies, subject to restrictions when a treatment is irreversible or hazardous

**5.10** Where appropriate, staff will be aware of the rights of Service Users to representation by an Independent Mental Health Advocate (IMHA) as follows:

- | The following groups of Service Users are eligible for the help of an IMHA:
  - | Detained in hospital
  - | Conditionally discharged Service Users
  - | Subject to Guardianship
  - | Subject to an Community Treatment Order
- | IMHAs will provide help with regard to information and understanding of their rights and their treatment
- | Under the provisions of The Mental Health (Wales) Measure 2010 that group is extended to include all people admitted to psychiatric hospitals in Wales. Local authorities have a legal duty to provide an IMHA service

**5.11** Staff will be aware of the inspection role of the Care Quality Commission and Welsh Ministers. The Care Quality Commission is the regulatory authority with a duty to keep under review all aspects of the



care of formal patients in England. It can investigate complaints and authorise persons to visit and examine patients in hospitals. This regulatory function was previously carried out by the Mental Health Act Commission (MHAC). In Wales the regulatory authority with this duty are the Welsh Ministers whose functions are carried out for this purpose by the Health Inspectorate Wales.

**5.12** Staff will have access to the Mental Health Act 1983 Code of Practice which describes good practice for anybody receiving care and support for mental health problems. The Code provides statutory guidance for all those concerned with the care and treatment of people under the Act, including admission and detention of Service Users under the Act, and people who are subject to Guardianship and Supervised Community Treatment. The Mental Health Act 1983 applies to England and Wales. However, England and Wales each have their own Codes of Practice and links to these can be found at the end of this policy. There is also a Reference Guide to the Mental Health Act 1983 which provides explanation as to how the legislation will be applied and a link to this is provided at the end of the policy. There is no separate Reference Guide for Wales. Where appropriate, staff should have access to the Mental Health Act Reference Guide.

Section 118 of the Mental Health Act states that the Codes of Practice may be revised from time to time and will always include a statement of guiding principles which should inform decisions made under the Act. The principles ensure that the following matters are addressed:

- | Service User's wishes
- | Respect for diversity
- | Minimising restrictions on liberty
- | Involvement of Service Users in planning their care
- | Avoidance of unlawful discrimination
- | Effectiveness of treatment
- | Views of carers
- | Service User wellbeing and safety
- | Public safety

**5.13** Under Section 132, the managers of a hospital or registered establishment have a legal duty to give information to detained Service Users as follows:

- | The section under which they are detained
- | Their right to apply to a Mental Health Tribunal
- | Their right to be discharged by the Responsible Clinician, managers and, if applicable, their nearest relative
- | Consent to treatment rules
- | Managers must also tell the nearest relative when the Service User is due to be discharged, unless the nearest relative or Service User has instructed that this information should not be disclosed
- | Aftercare under Section 117: Health Authorities and local Social Services have a legal duty to provide aftercare for Service Users who have been on Sections 3, 37, 47, or 48, but who have left detention. They can only cease to provide this if they are satisfied that the person is no longer in need of such services. There is no power to charge for Section 117 aftercare. The Care Act 2014 defines "aftercare services" as services which (i) meet a need arising from or related to the person's mental disorder; and (ii) reduce the risk of a deterioration of the person's mental condition (and, accordingly, reducing the risk of the person requiring admission to a hospital again for treatment for the disorder). The authorities who are responsible for the provision of aftercare are the authority in which person was "ordinarily resident" immediately prior to being detained

**5.14** Staff will be aware of the police power under Section 136 to remove a person from a place other than the place where they are living to a place of safety, if the officer considers the person to be suffering from a mental disorder and is in immediate need of care and control.

**5.15** The Representation of the People Act 2000 entitles all Service Users to register to vote, whether they are detained in hospital or subject to compulsion in the community, or in hospital as an informal patient. However, those who have been detained as a consequence of criminal activity by order of a court generally cannot vote.

**5.16** The managers and staff will be aware of the duty of care owed to those in their care. Section 127 of



the Mental Health Act contains specific offences concerning ill-treatment or wilful neglect of Service Users whether they are in-patients, out-patients, or Service Users subject to Guardianship. In addition, Section 20 of the Criminal Justice and Courts Act 2015 makes it an offence for a care worker to ill-treat or wilfully neglect an individual under their care. Section 21 of this Act makes specific reference to care providers and their obligations.

**5.17** Staff will be aware of the provisions of Section 131 of the Mental Health Act which allows for someone who consents to their admission to hospital, to enter hospital for treatment for mental disorder on an informal or voluntary basis, or remain in hospital on that basis when their period of formal detention comes to an end.

**5.18** Staff will be aware of the principles and provisions of the Mental Capacity Act 2005. In certain circumstances this may offer an alternative legal framework for the care and treatment of people with mental disorder where they lack the mental capacity to make those decisions themselves. The Mental Capacity Act deprivation of liberty safeguards (DoLS), like the Mental Health Act, provide protection for the rights of people who need to be deprived of their liberty to be given the essential care or treatment they need. Both of these frameworks also provide protection from liability for staff who correctly work within their provisions, e.g. by always seeking the least restrictive option when delivering care or treatment.



## 6. Definitions

### 6.1 Mental Disorder

- | Defined for the purposes of the Act as 'any disorder or disability of the mind'. Chapter 2 of the Code of Practice provides a non-exhaustive list of recognised conditions which could fall within the definition of mental disorder
- | Dependence on alcohol or drugs is not considered to be a mental disorder for the purposes of the Act

### 6.2 Learning Disability

- | 'A state of arrested or incomplete development of mind, which includes severe or significant impairment of intelligence and social functioning' and regarded as a mental disorder because it is a disability of the mind
- | However, for the specific purpose of certain sections of the Act (notably section 3 and section 7 but there are others), a learning disability can only be regarded as a mental disorder if it is 'associated with abnormally aggressive or seriously irresponsible conduct'

### 6.3 Nearest Relative

- | The Service User's 'nearest relative' is defined in Section 26 of the Mental Health Act 1983. The nearest relative has various rights in relation to Service Users who are, or might be, subject to compulsory measures under the Act. In order of rank these are as follows:
  - | Husband or wife (or civil partner)
  - | Son or daughter
  - | Father or mother
  - | Brother or sister
  - | Grandparents
  - | Grandchild
  - | Uncle or aunt
  - | Nephew or niece
- | The relative in each category who is the elder of the two would be regarded as the nearest relative
- | The relative who provides most care for the person would be regarded as the nearest relative

### 6.4 Approved Mental Health Professional (AMHP)

- | A professional who has appropriate competence in dealing with mentally disordered people, who can be a social worker, nurse, psychologist or occupational therapist
- | An Approved Mental Health Professional can apply to have people formally detained under a section of the Mental Health Act 1983. An AMHP can make an application for admission where necessary and proper. Before doing so, the AMHP must interview the Service User and be satisfied that detention is, in all the circumstances, the most appropriate and least restrictive way of providing the care and medical treatment in order to meet the Service User's needs

### 6.5 Hospital

- | For the purposes of the Act a hospital is defined as an establishment, either NHS or independent, which provides for the assessment and medical treatment of patients detained under the Mental Health Act 1983 and must be registered for that role by the appropriate regulatory authority in England or Wales



## Key Facts - Professionals

Professionals providing this service should be aware of the following:

- | The number of people detained under the Mental Health Act between 2006 and 2016 has risen by about 40%. The proportion of people being treated in hospital as detained patients, rather than as informal or voluntary patients, is growing



## Key Facts - People affected by the service

People affected by this service should be aware of the following:

- 1 The Mental Health Act 1983 amended in 2007 includes a set of guiding of principles which promotes the independence of Service Users, and their role in making decisions about their own care and treatment. It enables Service Users, or those acting on their behalf, to challenge their detention
- 1 Service Users are entitled to the support of an Independent Mental Health Advocate if they are detained under the Mental Health Act in England. This applies to all Service Users in hospital for mental health care in Wales



## Further Reading

As well as the information in the 'underpinning knowledge' section of the review sheet we recommend that you add to your understanding in this policy area by considering the following materials:

**The Mental Capacity Act deprivation of liberty safeguards (DoLS) will be replaced by a new legal framework called the Liberty Protection Safeguards (LPS), which are brought into the Mental Capacity Act by the Mental Capacity (Amendment) Act 2019. The implementation of this new legal framework has been extended due to the coronavirus pandemic:**

<http://www.legislation.gov.uk/ukpga/2019/18/enacted>



## Outstanding Practice

To be 'outstanding' in this policy area you could provide evidence that:

- 1 The wide understanding of the policy is enabled by proactive use of the QCS App
- 1 Staff can describe the Guiding Principles of the Mental Health Act 1983
- 1 Staff know how to access the services of an Independent Mental Health Advocate



## Forms

Currently there is no form attached to this policy.