



## THE SCOTTISH OFFICE

### National Health Service in Scotland Management Executive

NHS  
MEL(1992)43

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Dear Colleague

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#### CODE OF PRACTICE: MENTAL HEALTH (SCOTLAND) ACT 1984

##### Summary

1. In its Annual Report, which was tabled in Parliament recently, the Mental Welfare Commission stated that the Code of Practice: Mental Health (Scotland) Act 1984 did not always appear to be available to all who might be required to be aware of it, particularly at Ward and Departmental level. The Commission's Report also noted that implementation of the Code of Practice was far from universal.

The Code of Practice was circulated in March 1990 to Health Board General Managers; the General Manager, CSA; Regional and Islands Councils, Chief Executives and Directors of Social Work.

In view of the Commission's report, this Circular, and attached Annex, serve to remind addressees of their responsibility for ensuring that the Code of Practice is available to those who need it and that the Code's provisions are implemented.

##### Action

2. Addressees are requested to ensure that the Code of Practice: Mental Health (Scotland) Act 1984 is available to all those who need to have access to it and that its provisions are implemented.
3. Further supplies of the Code may be obtained from HMSO.

Yours sincerely

DAVID R STEEL  
Director of Administration

17 August 1992

##### Addressees

For action:  
General Managers,  
Health Boards

For information:  
General Manager,  
Common Services Agency

General Manager, State  
Hospital

General Manager,  
Health Education Board  
for Scotland

Chief Executives, and  
Chief Executive  
Designate, NHS Trusts

Directors of Social  
Work, Regional and  
Islands Councils

To be copied to Unit  
General Managers for  
action

##### Enquiries to:

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**CODE OF PRACTICE: MENTAL HEALTH (SCOTLAND) ACT 1984**

1. The arrangements for the preparation of the Code are set out in Section 119 of the 1984 Act, subsection (1) of which provides that:-

"The Secretary of State shall prepare, and from time to time revise, a code of practice -

a. for the guidance of medical practitioners, managers and staff of hospitals and mental health officers in relation to the detention and discharge of patients in and from hospitals under this Act: and

b. for the guidance of medical practitioners and members of other professions in relation to the medical treatment of patients suffering from mental disorder."

2. A draft of the Code was prepared initially by a Working Group of Scottish Office and outside interests representing the medical, nursing, social work and legal professions. The Code as prepared by the Working Group was subject to a consultation exercise in terms of Section 119(2) of the 1984 Act and was revised in the light of comments received.

3. As also required by Section 119, the Code was laid before both Houses of Parliament where, within a period of 40 days, it was open to either House to pass a resolution requiring the Code to be withdrawn. The Code was laid on 16 November 1989 and no such resolution was passed during the 40 days thus paving the way for issue of the Code.

4. The opportunity is also being taken to comment on a number of matters which were raised during preparation of the Code of Practice but which it was not felt appropriate to include in the Code itself. Given the importance of these matters this circular has been reproduced within the cover of the Code although it is not strictly part of the Code itself.

**GUARDIANSHIP**

5. As explained in paragraph 6 of the Introduction to the Code, no mention of guardianship is made in either section 119(1) (a) or (b) of the 1984 Act and the procedures for receiving patients into guardianship contained in the Act do not result in the compulsory detention of patients in hospital nor are they specifically concerned with medical treatment. For these reasons the Code does not provide any guidance on guardianship. The use by local authorities of the aforesaid provisions of the 1984 Act during the past 5 years is a subject of current centrally funded research, the findings from which may be relevant both to the future use of these provisions in their present form and the possibility of central guidance.

**CHILDREN**

6. Suggestions have also been made that the Code of Practice should make specific reference to the needs of children. The 1984 Act itself makes no distinction between adults and children in relation to detention in hospital in order to receive medical treatment. Child and family

psychiatry is becoming increasingly a community-based service and the number of children admitted to hospital, even on an informal basis, has become very small. Although no specific mention of children is made in the Code, the generality of its guidance will apply to children as it applies to adults but, within the statutory requirements, doctors, nurses, social workers and other professionals may be expected to take the age of the patient into account in following the guidance in the Code.

#### **PROVISION OF SOCIAL CIRCUMSTANCES REPORTS TO THE COURTS**

7. Although there is no statutory requirement for a court to have a social circumstances report on an accused person before deciding whether he should be made the subject of a hospital order under Section 175 or 376 of the Criminal Procedure (Scotland) Act 1975, it is open to the court to ask the local authority to provide such a report. A social circumstances report will be of benefit also to the doctor reporting on the accused person's mental state, and he may ask the court to order that such a report should be provided if it is not already available. Similarly, when an accused person is committed to hospital by a court while awaiting trial, or under an interim hospital order under Section 174A or 375A or the 1975 Act, his responsible medical officer should make it a practice to ask the court for a social circumstances report to be provided; although there are no statutory provisions to this effect. This may be done in a variety of ways; for example, the responsible medical officer may approach a mental health officer or a social worker with a request for a report; or he may discuss with the Procurator Fiscal whether the court should be asked to order that a report should be provided; or the hospital in which the accused person has been committed may ask the local authority to provide a report. Whichever approach is adopted, the request for a social circumstances report should be made promptly so that it can be prepared timeously and thus be of maximum benefit both to the court and to the responsible medical officer. In order to facilitate the preparation of reports where there is no statutory requirement on the local authority to produce them, responsible medical officers should agree with their respective social work department how such reports are to be provided when it is considered that they would be of value to all those concerned with a particular case.

8. The report will provide information about the social circumstances of the accused person and in particular on his character and antecedents. This will enable the court to decide whether there are any alternative methods of dealing with him apart from imposing a hospital order. The issues that will be dealt with in such reports provided in accordance with the relevant provisions of Part V of the 1984 Act; although fresh reports should be prepared on each different occasion.

#### **OBTAINING CONSENT OF MENTAL HEALTH OFFICERS OR RELATIVES TO RECOMMENDATION FOR EMERGENCY DETENTION**

9. Concern has been expressed from time to time on the number of emergency detentions under the 1984 Act where the consent of a Mental Health Officer or relative has not been obtained by a medical practitioner. Evidence based on cases examined by the Mental Welfare Commission in 1988 showed that in more than half of those cases where the doctor did not obtain consent there was no indication of the efforts made to contact the Mental Health Officer. While the Code deals with this matter in Chapter 1.5, the opportunity is taken in this circular to stress the importance of medical practitioners making all reasonable efforts to obtain

the consent either of a relative or a Mental Health Officer before making a recommendation. Where it has not been possible to contact either person, the Act requires the medical practitioner to attach to the recommendation a statement of the reason for the failure to obtain consent.

10. While medical practitioners will as a matter of good practice seek, as far as may be practicable, to make their approaches for MHO consent within normal working hours, local authorities should ensure that there are adequate arrangements at other times to ensure that a response to any urgent requests of this kind can be made either by the responsible Mental Health Officer or a colleague who is reasonably well placed to deal with the matter in his place. Authorities should ensure that appropriate contact points within their departments are indicated to the Health Board under existing arrangements.

11. As indicated in Paragraph 2 above, the Secretary of State is under a statutory obligation to revise the Code of Practice from time to time and the Act requires that all the procedures in Section 119 followed in regard to the preparation of this first edition of the Code should be observed in respect of any revision of the Code or amendment thereto. In view of the Secretary of State's duty to revise the Code, the Scottish Home and Health Department will take note of any suggestions made in the light of operation of the Code against a future revision of it.

12. Any enquiries about the Code should be made to Dr D Bruce, SWSG, Room 429, 43 Jeffrey Street, Edinburgh EH1 1DN (Tel No: 031-244 5488) or Mr H M MacKenzie, SOHHD, Room 54K, St Andrew's House, Edinburgh EH1 3DE (Tel No: 031-244 2543).