

Mental Health Act Over-arching Policy Statement

Statement/Key Objectives:

This document provides for the Over-arching Policy Statement for the use of the Mental Health Act 1983 within Leicestershire Partnership NHS Trust.

Key Words:	Mental Health Act, Code of Practice	
Version:	Version 7.1	
Approved by:	MHA Governance Delivery Group (MHAGDG)	
Ratified by:	MHA GDG	
Date this version was ratified:	01/05/2023	
Please state if there is a reason for not publishing on the website	N/A	
Review date:	01/05/2026	
Expiry date:	31 st October 2026	
Type of Procedural document (tick appropriate box)	Clinical ☒	Non Clinical ☐

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1.0 Quick Look Summary

This policy will remain subject to version control, assurance and monitoring details as stated within its content.

The purpose of this policy and related procedural documents is to provide all permanent employees of LPT, together with those on bank, agency or honorary contracts with clear guidance in their application of '*the Act*' (Mental Health Act 1983) in order that the Board may be assured of their responsibilities in terms of compliance with the legislative requirements of the Act.

Employees as described above are expected to work within the guidance provided here and within the associated documentation.

1.1 Version Control

Version number	Date	Comments (description change and amendments)
2	October 2007	Revised following revision of Mental Health Act and associated Codes
3	September 2014	Revision following revision of Trust assurance of MH
4	April 2015	Revision following revision of Code of Practice and Guide
5	April 2016	Revision following review of Terms of Reference of the Trust MHAAC
6	April 2018	Revision following policy expiry date
7	October 2019	Changes to Governance Reporting
7.1	November 2023	Timely review

1.2 Key individuals involved in developing and consulting on the document:

- Dr Saquib Muhammad – Interim Medical Director/Chair MHAGDG
- Alison Wheelton – Senior Mental Health Act Administrator
- Members of the MHAGDG with responsibility for service distribution

1.3 Governance

Level 2 or 3 approving delivery Group - Mental Health Act GDG
Level 1 Committee to Ratify Procedure -

1.4 Equality Statement

Leicestershire Partnership NHS Trust (LPT) aims to design and implement policy documents that meet the diverse needs of our service, population, and workforce, ensuring that none are placed at a disadvantage over others.

It takes into account the provisions of the Equality Act 2010 and promotes equal opportunities for all.

This document has been assessed to ensure that no one receives less favourable treatment on the protected characteristics of their age, disability, sex (gender), gender reassignment, sexual orientation, marriage and civil partnership, race, religion or belief, pregnancy and maternity.

1.5 Due Regard

LPT will ensure the Due Regard for equality is taken and as such will undertake an analysis of equality (assessment of impact) on existing and new policies/procedures in line with the Equality Act 2010. This process will help to ensure that:

- Strategies, policies and procedures and services are free from discrimination
- LPT complies with current equality legislation
- Due regard is given to equality in decision making and subsequent processes
- Opportunities for promoting equality are identified

Please refer to due regard assessment in the appendices to this document.

1.6 Definitions that apply to this procedure

The Act	The Mental Health Act 1983 (as amended, including by the Mental Health Act 2007, the Health and Social Care Act 2012 and the Care Act 2014).
Detained patient	Unless otherwise stated, a patient who is detained in hospital under the Act, or who is liable to be detained in hospital but who is (for any reason) currently out of hospital.
Detention (and detained)	Unless otherwise stated, being held compulsorily in hospital under the Act for a period of assessment or medical treatment. Sometimes referred to colloquially as 'sectioning'.

2 Purpose and introduction

This Policy Statement sits above the series of Mental Health Act related documents, the intent being to set out the statement of intent for compliance with the legislative, statutory and good practice requirements of both the Act and associated Code of Practice 2015.

The aim of the procedural documents is to provide clear guidance to staff when undertaking their duties on behalf of the Trust as detailed in the Trust's Delegation document for use by those who have responsibility for the care and treatment of person(s) subject to the relative provision of the Mental Health Act to which this document applies.

3. Policy requirements

This procedure will remain subject to version control, assurance and monitoring details as stated in the over-arching policy.

The Mental Health Act 1983 remains primary legislation, the Code of Practice (revised in 2015) provides for the good practice by which the Act is implemented.

The Guiding Principles, set out at the front of the Code, provide for its statutory status, the following therefore provides for both primary legislation and good practice, and the local procedures that are written in accordance with them.

4. Duties within the Organisation

The Trust Board has a legal responsibility for Trust policies and for ensuring that they are carried out effectively.

Trust Board Sub-committees have the responsibility for ratifying policies and protocols. Directors and Heads of Service are responsible for:

- ensuring that comprehensive arrangements are in place regarding adherence to this policy and how this policy is applied within their own department.
- ensuring that team managers and other management staff are given clear instruction about the policy arrangements so that they in turn can instruct staff under their direction.

These arrangements will include:

- Distributing information about the policy in a timely manner throughout the Directorate/Department or Service to a distribution list which will be agreed in advance with local managers.
- Ensuring all staff has access to the up to date policy, either through the intranet, or if policy manuals are maintained that the resources are in place to ensure these are updated as required.
- Maintaining a system for recording that the policy has been distributed and received by staff within the department/service and for having these records available for inspection upon request for audit purposes.

Senior Managers, Matrons and Team leaders are responsible for:

- Providing this information to all new (applicable) staff on induction. It is the responsibility of local managers and team leaders to have in place a local induction that includes this policy.
- Ensure that their staff know how and where to access the current version of this policy; via intranet.

Consent

- Clinical staff must ensure that consent has been sought and obtained before any care, intervention or treatment is delivered. Consent can be given orally and/or in writing. Someone could also give non-verbal consent as long as they understand the treatment or care about to take place. Consent must be voluntary and informed and the person consenting must have the capacity to make the decision.
- In the event the patient's capacity to consent is in doubt, clinical staff must ensure that a mental capacity assessment is completed and recorded. Someone with an impairment or a disturbance in the functioning of the mind or brain is

thought to lack the mental capacity to give informed consent if they cannot do one of the following:

- Understand information about the decision
- Remember that information
- Use the information to make the decision
- Communicate the decision

5. Monitoring compliance and effectiveness

The MHA Code of Practice 2015 at Chapter 37 states the following:

37.11 The 'Trust' should put in place appropriate governance arrangements to monitor and review the way that functions under the Act are exercised on its behalf. Many organisations establish a Mental Health Act steering or scrutiny group especially for that task, and whilst recognising that the Act is a legal framework for the delivery of care, also monitor and review via clinically-focussed forums. Ideally, such forums should have representation from the Board or registered manager.

The MHAGDG monitors the reporting of risk through established Trust procedures i.e. the Risk Register.

The CQC will test application of the Code of Practice Trust-wide as part of their Inspection Programmes and as part of their focused MHA Reviewer visits for detained patients, which are broader than the remit of this overarching policy document.

Monitoring compliance will be recorded through the monthly MHA Census which is reported through the Service Reports to the MHAGDG.

6. Mental Health Act 1983 – The Guiding Principles

The MHA provides a legal framework within which clinicians can intervene where necessary to protect people with mental disorder themselves and, sometimes, to protect other people as well. However, with the power to intervene compulsorily comes the responsibility to do so only where it is right and to the highest possible standards.

The Trust remains responsible for the delivery of care and treatment for all patients in receipt of its services. Where those patients remain subject to the provisions of the Act, the Trust has a statutory responsibility to ensure those provisions are met.

The principles that guide the application of the Act are set out at the front of the accompanying Code of Practice. Compliance with the statutory requirements of the Act is also very much reliant on compliance with those principles and with the guidance contained in the Code itself.

As such the Trust writes all relevant policy and procedural documents in accordance with the Code (and Guiding Principles). These documents can be found as appendices to this Policy.

The Guiding Principles are as follows:

- **Least restrictive option and maximising independence**
Where it is possible to treat a patient safely and lawfully without detaining them under the Act, the patient should not be detained

- **Empowerment and involvement**
Patients should be given the opportunity to be involved in planning, developing and reviewing their own care and treatment to help ensure that it is delivered in a way that is as appropriate and effective for them as possible.
- **Respect and dignity**
Patients and carers should be treated with respect and dignity. Practitioners performing functions under the Act should respect the rights and dignity of patients, and their carers while also ensuring their safety and that of others.
- **Purpose and effectiveness**
Care, support and treatment under the Act should be given in accordance with up-to-date national guidance and/or current best practice from professional bodies where this is available.
- **Efficiency and equity**
Commissioners and providers, including their staff, should give equal priority to mental health as they do to physical conditions.

7. References & Bibliography

[Mental Health Act 1983 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1983/20)

[Code of practice: Mental Health Act 1983 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/code-of-practice-mental-health-act-1983)

[Mental Health Act 1983: reference guide - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/mental-health-act-1983-reference-guide)

Appendix 1 Training Requirements

Training Needs Analysis

Training topic:	Mental Health Act 1983
Type of training: (see study leave policy)	☐ Mandatory (must be on mandatory training register) ☒ Role specific ☐ Personal development
Directorate to which the training is applicable:	☒ Adult Mental Health ☒ Community Health Services ☐ Enabling Services ☒ Families Young People Children / Learning Disability/ Autism Services ☐ Hosted Services
Staff groups who require the training:	<i>Band 5 nurses and above</i>
Regularity of Update requirement:	Three-yearly
Who is responsible for delivery of this training?	Senior MHA Administrator Deputy to the Senior MHA Administrator
Have resources been identified?	Yes
Has a training plan been agreed?	Yes
Where will completion of this training be recorded?	☒ ULearn ☐ Other (please specify)
How is this training going to be monitored?	Through reporting to the MHA GDG

Appendix 2 The NHS Constitution

- The NHS will provide a universal service for all based on clinical need, not ability to pay.
- The NHS will provide a comprehensive range of services.

Shape its services around the needs and preferences of individual patients, their families and their carers	Y
Respond to different needs of different sectors of the population	Y
Work continuously to improve quality services and to minimise errors	Y
Support and value its staff	Y
Work together with others to ensure a seamless service for patients	Y
Help keep people healthy and work to reduce health inequalities	Y
Respect the confidentiality of individual patients and provide open access to information about services, treatment and performance	Y

Appendix 3 Due Regard Screening Template

Section 1			
Name of activity/proposal		Mental Health Act Overarching Policy Statement	
Date Screening commenced		November 2023	
Directorate / Service carrying out the assessment		Enabling Directorate	
Name and role of person undertaking this Due Regard (Equality Analysis)		Alison Wheelton Senior MHA Administrator	
Give an overview of the aims, objectives and purpose of the proposal:			
AIMS: This procedure aims to provide staff with delegated responsibility under the Mental Health Act and in accordance with the Trust Delegation Document, with the knowledge to undertake those responsibilities.			
OBJECTIVES: To ensure staff have the necessary knowledge and tools to ensure the authorisation, implementation and recording and monitoring of the Mental Health Act is done so in accordance with legislative and good practice requirements.			
Section 2			
Protected Characteristic	If the proposal/s have a positive or negative impact please give brief details		
Age	Positive impact as this procedure is supportive to staff who fall within the remit of the Equality Act 2010, ensuring consistency in approach for all staff irrespective of who they are.		
Disability	As above		
Gender reassignment	As above		
Marriage & Civil Partnership	As above		
Pregnancy & Maternity	As above		
Race	As above		
Religion and Belief	As above		
Sex	As above		
Sexual Orientation	As above		
Other equality groups?	As above		
Section 3			
Does this activity propose major changes in terms of scale or significance for LPT? For example, is there a clear indication that, although the proposal is minor it is likely to have a major affect for people from an equality group/s? Please tick appropriate box below.			
		No	
High risk: Complete a full EIA starting click here to proceed to Part B		Low risk: Go to Section 4.	
Section 4			
If this proposal is low risk please give evidence or justification for how you reached this decision:			
This procedure outlines staff responsibilities and is in accordance with legislative and statutory requirements			
Signed by reviewer/assessor	<i>Alison Wheelton</i>	Date	13/09/23
Sign off that this proposal is low risk and does not require a full Equality Analysis			
Head of Service Signed		Date	

Appendix 5 Data Privacy Impact Assessment Screening

Data Privacy impact assessment (DPIAs) are a tool which can help organisations identify the most effective way to comply with their data protection obligations and meet Individual's expectations of privacy. The following screening questions will help the Trust determine if there are any privacy issues associated with the implementation of the Policy. Answering 'yes' to any of these questions is an indication that a DPIA may be a useful exercise. An explanation for the answers will assist with the determination as to whether a full DPIA is required which will require senior management support, at this stage the Head of Data Privacy must be involved.		
Name of Document:	Mental Health Act 1983 Overarching Policy Statement	
Completed by:	Alison Wheelton	
Job title	Senior MHA Administrator	Date November 2023
Screening Questions	Yes / No	Explanatory Note
1. Will the process described in the document involve the collection of new information about individuals? This is information in excess of what is required to carry out the process described within the document.	No	
2. Will the process described in the document compel individuals to provide information about them? This is information in excess of what is required to carry out the process described within the document.	No	
3. Will information about individuals be disclosed to organisations or people who have not previously had routine access to the information as part of the process described in this document?	No	
4. Are you using information about individuals for a purpose it is not currently used for, or in a way it is not currently used?	No	
5. Does the process outlined in this document involve the use of new technology which might be perceived as being privacy intrusive? For example, the use of biometrics.	No	
6. Will the process outlined in this document result in decisions being made or action taken against individuals in ways which can have a significant impact on them?	No	
7. As part of the process outlined in this document, is the information about individuals of a kind particularly likely to raise privacy concerns or expectations? For examples, health records, criminal records or other information that people would consider to be particularly private.	No	
8. Will the process require you to contact individuals in ways which they may find intrusive?	No	
If the answer to any of these questions is 'Yes' please contact the Data Privacy Team via Lpt-dataprivacy@leicspart.secure.nhs.uk In this case, ratification of a procedural document will not take place until review by the Head of Data Privacy.		
Data Privacy approval name:		
Date of approval		

Acknowledgement: This is based on the work of Princess Alexandra Hospital NHS Trust