



2016 CHAPTER 18

PART 15

SUPPLEMENTARY

*Codes of practice*

**Codes of practice**

**288.**—(1) The Department must prepare and issue one or more codes of practice—

- (a) for the guidance of persons assessing whether a person who is 16 or over has capacity in relation to any matter;
- (b) for the guidance of persons acting in connection with the care, treatment or personal welfare of another person who is 16 or over (or is under 16 and is detained under Part 9 or being dealt with under Part 10);
- (c) for the guidance of nominated persons;
- (d) for the guidance of independent mental capacity advocates;
- (e) for the guidance of panels constituted under Part 2;
- (f) for the guidance of persons appointed as attorneys, or as replacements for attorneys, by a lasting power of attorney or an instrument executed with a view to creating such a power;
- (g) for the guidance of deputies appointed by the court;
- (h) for the guidance of persons carrying out research in reliance on any provision made by or under this Act (and otherwise with respect to Part 8);
- (i) with respect to such other matters concerned with this Act as the Department considers appropriate.

(2) A code under subsection (1)(a) must include guidance in relation to sections 1(4) and 5 (help and support to enable a person to make a decision).

(3) A code under subsection (1)(b) may in particular include guidance—

(a) for HSC trusts, medical practitioners, staff of hospitals and care homes, approved social workers and members of other professions, in relation to—

(i) serious interventions, or serious interventions of particular descriptions, in respect of persons lacking capacity;

(ii) anything falling to be done where such an intervention is proposed;

(b) with respect to sections 65 to 67 (emergency situations).

(4) The Department may from time to time revise a code issued under this section.

(5) The Department may delegate the preparation or revision of the whole or any part of a code under this section so far as the Department considers appropriate.

(6) Before preparing or making any alteration in a code under this section, the Department must consult such bodies as appear to it to be concerned (and must in particular consult the Department of Justice if the code contains specific provision about persons detained under Part 9 or persons being dealt with under Part 10).

(7) The Department must lay before the Assembly copies of any code under this section and of any alteration in such a code; and if within the statutory period the Assembly passes a resolution requiring the code or alteration to be withdrawn the Department must withdraw the code or alteration and, where it withdraws the code, must prepare a code in substitution for the one withdrawn.

(8) The Department must publish any code prepared or revised under this section.

(9) For the purposes of this section a person is “being dealt with under Part 10” if—

(a) the person is remanded to hospital under Chapter 1 of Part 10; or

(b) a public protection order, hospital direction, interim detention order or hospital transfer direction has been made in respect of the person and remains in force.

(10) In this section—

“hospital direction”, “hospital transfer direction”, “interim detention order” and “public protection order” have the same meaning as in Part 10 (see section 253);

“serious intervention” is to be read in accordance with section 63.

**Effect of code**

**289.**—(1) A person acting in any of the ways mentioned in subsection (2) in relation to a person who is 16 or over and lacks capacity must have regard to any relevant code of practice.

(2) The ways of acting are—

- (a) in a professional capacity;
- (b) for remuneration;
- (c) as an independent mental capacity advocate;
- (d) as an attorney under a lasting power of attorney or an enduring power of attorney;
- (e) as a deputy appointed by the court;
- (f) as a person carrying out research in reliance on any provision made by or under this Act (see Part 8).

(3) If it appears to a court or tribunal conducting any criminal or civil proceedings that—

- (a) a provision of a code of practice, or
- (b) a failure to comply with a code of practice,

is relevant to a question arising in the proceedings, the provision or failure must be taken into account in deciding the question.

(4) In this section “code of practice” means a code of practice under section 288.