

Mental Capacity Act Code of Practice

Consultation Paper

Code Number CP 05/06

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This consultation will end on 02/06/2006

A consultation produced by the Department for Constitutional Affairs.

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Foreword by Baroness Ashton



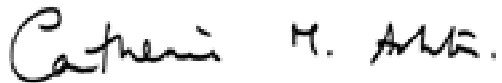
The Mental Capacity Act 2005 represents an important opportunity for us to make a real difference to the lives of people who lack mental capacity. Many individuals and organisations in the charity, voluntary, health, social care and finance sectors, and in Parliament, have worked hard for this legislation over the last fifteen years.

The Act covers an extensive range of different decisions, people and circumstances and establishes a framework for dealing with issues of capacity, which is intended to stand for many years. However, we have always recognised that as a framework, the Act needs to be supported with practical guidance illustrating how it will work in practice.

A key element of this guidance will be the Code of Practice. We want the Code to be used not just by those who have a duty to do so, but also by those involved in less formal ways with people who lack capacity. I want to make sure that the people who will be affected by this Act are properly supported with a user friendly, detailed and accurate Code of Practice.

I am grateful to those of you who have already provided comments on the draft Code that we published to assist Parliament with the passage of the Mental Capacity Bill. I am particularly pleased that we have held informal workshops in advance of this consultation, which have helped us to further shape the Code with views from stakeholders. I am very grateful to all those who gave their time and expertise at the workshops.

It is vital that we get your views if we are to deliver the benefits that we all want the legislation to produce and to enable us to publish a Code that is helpful and user-friendly. I would encourage everyone to help us achieve this by responding to this consultation.

A handwritten signature in black ink that reads "Catherine M. Ashford". The signature is written in a cursive style.

Baroness Ashton of Upholland

Parliamentary Under Secretary of State, Department of Constitutional Affairs

Executive summary

The Mental Capacity Act 2005 (the Act) provides a statutory framework for acting and making decisions on behalf of individuals who lack the mental capacity to do so for themselves. The Act specifies the principles that must be applied by everyone who is working with or caring for adults who lack capacity. It also provides options for those who may choose to plan and make provision for a future time when they may lack capacity.

Whilst the Act sets out the legal framework, the Code of Practice (the Code) provides guidance and information for those acting under its terms and applying its provisions on a daily basis. As there are many situations that can arise when caring or working with those who may lack capacity, the Code incorporates good practice along with the flexibility to apply the principles to the particular circumstances of the situation.

Certain categories of people have a legal duty to have regard to the Code, and we would encourage everyone to follow its guidance. This consultation aims to ensure that the Code is user friendly, detailed and accurate, through the collection, review and inclusion of the views of stakeholders and those who will apply the Code in practice.

The draft Code accompanies this consultation, and is a lengthy document. In order to assist those who wish to review it, the consultation paper briefly sets out the scope of the draft Code and outlines how it has been developed. It also provides information on the supplemental information that will also be available to assist the understanding of the Act.

The consultation paper invites comments on style and content from all interested parties. It provides questions on each of the 15 chapters so that responses may be tailored to areas of interest, as well as an overall question that provides for more general comments. The draft Code and consultation paper is available in Welsh and as an Easy Read summary and audio version.

Introduction

This paper sets out the consultation on the Code of Practice for the Mental Capacity Act 2005. The consultation is aimed at anyone who has direct experience of people who lack capacity their carers (including family carers) and the professionals who work with them in England and Wales.

This consultation is being conducted in line with the Code of Practice on Consultation issued by the Cabinet Office and falls within the scope of the Code. The Consultation Criteria, which are set out on page 27, have been followed.

A partial Regulatory Impact Assessment is not attached to this consultation paper. The Code will be issued in accordance with the provisions of the Mental Capacity Act 2005 (the Act), and provides guidance on the contents of the Act. It does not add any new legal requirements but provides guidance on the legal framework set out in the Act.

A full and final Regulatory Impact Assessment (RIA) has been carried out on the Mental Capacity Bill (now the Mental Capacity Act 2005) and this is available on the DCA web site at <http://www.dca.gov.uk/risk/mcbria.pdf>. The Bill RIA does not specifically mention the Code, which is the subject of this consultation, but does assess the impact of the legal and good practice framework that the Act establishes.

As the preparation and issuing of a Code of Practice is a statutory requirement of the Act, this consultation is concerned with improving the quality and content of the Code rather than exploring alternatives. Therefore, we are not consulting about whether a code should be introduced but how the Code has been drafted to ensure that it meets the needs of those who will implement it in practical situations.

We believe that the Bill RIA does adequately cover the costs and impacts of complying with the Act and subsequently the Code. If you disagree with this, please provide comments with your response to the consultation.

We are sending the consultation to over 1,100 organisations and individuals. A sample list is provided below:

Professional organisations or associations

Association of Directors of Social Services

All Welsh Local Health Boards

All Community Health Councils (Wales)

Association for Residential Care

Association of Authority Public Receivers

Association of Black Social Workers and Allied Professionals

Association of Contentious Trust and Probate Specialist (ACTAPS)

Association of Healthcare Communicators

Association of Learned Societies in the Social Services

BILD (British Institute for Learning Difficulties)

Ceratas (Formally British Association of Domiciliary Care)

British Bankers Association

British Institute of Learning Difficulties

British Medical Association

British Society of Rehabilitation Medicine

Care Services Improvement Partnership (CSIP)

Care Standards Inspectorate Wales

Central Office for Research Ethics Committees (COREC)

Citizens Advice Bureaux

Commission for Social Care Inspection

Consumers in Health and Social Care Research

Council of Circuit Judges

Disability Law Service

English Community Care Association

General Medical Council

General Social Care Council

Healthcare Commission

Healthcare Inspectorate Wales

Independent Healthcare Forum

Institute for Health Research

Institute of Chartered Accountants

Law Centres Federation

Law Society of England and Wales

Local Government Association

Medical Protection Society

Medical Research Council

Mental Health Act Commission

Mental Health Lawyers Association

National Care Forum

NHS Confederation

NHS Litigation Authority

Nuffield Foundation

Rowntree Foundation

Royal Colleges of Anaesthetists; General Practitioners; Nursing; Psychiatrists;
Surgeons

Social Care Institute for Excellence (SCIE)

Social Services Inspectorate Wales

Strategic Health Authorities

The Princess Royal Trust for Carers

UK Clinical Research Collaboration

UK Home Care Association

Wellcome

Welsh Local Government Association

Charities and interest groups

Action for Advocacy

Action on Elder Abuse

Advice UK

Association for Real Change (ARC)

Association of Medical Research Charities

Black Mental Health Resource Centre

British Institute of Learning Difficulties

British Sikh Federation

CARE

Carers Wales

Caring Matters

Change

Chinese In Britain Forum

Chinese Mental Health Association

Citizen Advocacy Information and Training (CAIT)

Commission for Racial Equality

Council of Ethnic Minority Voluntary Sector Organisations

Counsel and Care

Crossroads-Caring for Carers

Cypriot Elderly & Disability Group

Dementia Care Trust

Disability Awareness in Action (DAA)

Disability Rights Commission (DRC)

Disabled Parents Network

English Community Care Association

Family Welfare Association

Hafal

Hindu Council

Islamic Medical Association UK

Jewish Care (including Ravenswood)

Learning Disabilities Advisory Group (LDAG)

Making Decisions Alliance (including all member organisations)

Mental Health Alliance (including all member organisations)

National Care Association (Formerly National Care Homes Association)

National Centre for Independent Living

National Council for Palliative Care

National Forum for People with Learning Disabilities

National Institute for Mental Health in England (NIMHE)

National Palliative Care Nurse Consultant Group

People First

Practitioner Alliance Against Abuse of Vulnerable Adults

RESCARE

Social Care Association

Social Perspectives Network (SPN)

Social Services Research Group

Solicitors for the Elderly

Stroke Association

The Institute of Mental Health Law

However, this list is not meant to be exhaustive or exclusive and responses are welcomed from anyone with an interest in or views on the subject covered by this paper.

The proposals

The purpose of the following section is to outline the scope of the draft Code, the development process, and the anticipated supplemental material that will be available to support the Code.

We hope that this information will help you to respond more effectively and we would therefore encourage everyone to consider the following sections before responding.

1. How the draft Code has been developed for consultation

The Code was always intended to be integral to the Act, and a draft was prepared to assist Parliament during the passage of the then Mental Capacity Bill in response to a recommendation by the Pre-Legislative Scrutiny Committee. This original published draft incorporated comments made by stakeholders and was well received by members of both Houses of Parliament. Therefore we have used that original draft of the Code as the basis for development and updated it to incorporate the following changes:

- Legislative changes that were made to the Bill (now the Act) during its passage
- Parliamentary commitments
- Ongoing policy developments for example, the design and set up of the Court of Protection and the Office of the Public Guardian

It is important that the Code should assist those who care for people who lack capacity to apply the legal framework in a practical way. Consequently, as the first stage of consultation, the Departments for Constitutional Affairs and Health held informal workshops to discuss the draft Code with those who had direct experience of dealing with issues of capacity. The discussions and subsequent written responses helped shape the draft Code issued as part of this consultation. The Department for Constitutional Affairs, the Department for Health and the National Assembly for Wales have all contributed to the review and updating of the Code.

2. The scope of the draft Code

The preparation and issue of a Code of Practice is a statutory requirement. It must reflect the provisions of the Act and cannot endorse actions that are not in

accordance with the provisions of the Act or conversely deny opportunities where the Act makes provision for them.

Moreover, there is a wide spectrum of situations that can arise when dealing with issues of capacity from the day to day (such as what to wear), to complex and life changing events (such as health and finance decisions). Where a formal procedure might be appropriate in one circumstance, it may not suit many others and may even hinder day-to-day decisions. The need for the Code to contain good practice but to be flexible enough to enable application to individual circumstances was emphasised during the workshops and has been used to guide the Code's development.

The draft Code provides the position as it currently stands rather than anticipating any future changes in legislation or procedure. For example, it does not incorporate the implications of the European Court decision of *HL v UK*, (commonly known as the 'Bournemouth' case), concerning the deprivation of liberty, nor the proposed Mental Health Bill, both of which have an impact for the Act and Code. This is because the full implications of any changes cannot be assessed at this stage. However, any significant changes required to the Code that arise as a result of any such developments, will be consulted upon in due course.

The Code will not re-produce the Court of Protection Rules, the Public Guardian Regulations, the Independent Mental Capacity Advocate (IMCA) Service Regulations in England and Wales or the Research Regulations. The draft Code does include some general references where we know there will be a link, but further detail will not be available until the respective Rules and Regulations are drafted. Separate consultations on these provisions have been or will be held and should it be required, the Code will be updated accordingly to reflect the new position, without the need for further consultation.

If you wish to comment on the scope of the Code as outlined above, please do so as part of your response to this consultation.

3. Further material available to support the Code

The primary audience for the Code are those who are under a duty to have regard to its provisions, (as set out in Chapter 1 of the draft Code), namely

- People working in a professional capacity (for example, a doctor who is assessing a person's capacity to make a particular decision or a social worker

who is arranging for a person lacking capacity to move into a supported living arrangement)

- People who are receiving payment for work in acting in relation to the person without capacity (for example, a care assistant working in a residential care home for people with learning disabilities)
- Anyone who is an attorney of a Lasting Power of Attorney (see Chapter 6)
- Anyone who is a deputy appointed by the Court of Protection (see Chapter 7)
- Anyone acting as an Independent Mental Capacity Advocate (see Chapter 11)
- Anyone carrying out research approved in accordance with the Act (see Chapter 10)

If anyone under this duty fails to comply with the Code that failure, if relevant, must be taken into account in proceedings in any court or tribunal.

Other people, who are not placed under this legal duty, will still be encouraged to follow the Code, as it expands on the principles set out in the Act, and provides many examples of good practice. The Act applies to everyone who cares for someone who lacks capacity, including carers and family members, and the Code will help them to understand the Act and apply it.

We anticipate that organisations that provide professional or paid care and support will supply further material to supplement the Code, focusing on both professional standards and on detailed information relevant to their members. The Code makes appropriate signposts where known, but these and any links that are provided to other materials do not form part of the Code and have no legal status. The Department for Constitutional Affairs does not endorse such external guidance unless otherwise expressly stated.

We also recognise that any member of the public may need to look at and consider the Code. During the informal Code consultation workshops, many stakeholders commented upon the usefulness of additional general public information such as the Making Decisions leaflets issued by the Department for Constitutional Affairs. Whilst we have aimed to make the Code as accessible as possible, we believe that other types of supplemental information will be required. We will ensure that further public material is available to support the Act and Code in time for implementation in 2007.

And that is not the end of the story: the Code will be a living document and will be regularly reviewed and revised to ensure it continues to reflect best practice and new case law.

4. Code Chapters

The Code is divided into 15 chapters that cover a wide range of information from how to reach a decision for someone who lacks capacity, to the scope of the powers of an attorney under a Lasting Power of Attorney. Each chapter commences with an introduction and outline of the content.

We recognise that the draft Code is a lengthy document, so to help your review, we have asked questions in respect of each of the 15 chapters. The questions are there to assist your response but you do not need to respond to all questions.

We are aiming to produce a Code that meets the needs of a diverse range of people facing a wide range of practical situations. We would ask you to consider the practical situations you face, or will face in the future, when you review the Code. There are three main areas we seek your views on, namely the:

- Overall content of each chapter
- Scenarios or case examples used to illustrate the text
- Examples of good practice

The scenarios included within the draft Code are found within boxes contained within most chapters and provide examples, using imaginary characters and situations. The examples do not provide templates for all decisions that need to be made in similar situations and have no legal status. They are only intended to help illustrate what is meant in the main text of the chapter. We would like to know if the scenarios provide assistance and offer examples of realistic situations.

The Act is based upon many principles that have been developed by the courts and much of the draft Code is based upon examples of good practice. We would like to know whether the good practice we have included is correct and whether it meets your needs.

5. Consultation Questions

Please use the following questions to help guide your response. If you have any general comments on the consultation paper itself, please include them in answer to question 16. Please remember that you do not have to answer all questions.

Chapter 1 provides the scope of the Code, its status, role and purpose.

Q.1 - Does the content of Chapter 1 meet the aims set out in its introduction? If it does not suit your needs, please explain why.

Chapter 2 provides a general introduction to the Act, with an overview of the statutory principles that apply for the purposes of the Act.

Q.2 (a) - Having particular regard to the practical situations in which you may apply it, please consider if Chapter 2 meets the aims set out in its introduction. If it does not suit your needs, please explain why.

Q.2 (b) - How helpful and realistic are the scenarios contained within Chapter 2? If they are not helpful or realistic, please tell us how they can be improved.

Chapter 3 explains the concept of capacity and what it means to lack capacity to make a decision. It also describes the two-stage test of capacity set out in the Act. It suggests a range of practical steps that can be taken to help individuals to make decisions or improve their ability to participate as fully as possible in decisions affecting them. The processes involved in assessing capacity and the circumstances when professionals should be involved are set out.

Q.3 (a) - Having particular regard to the practical situations in which you may apply it, please consider if Chapter 3 meets the aims set out in its introduction. If it does not suit your needs, please explain why.

Q.3 (b) - How helpful and realistic are the scenarios contained within Chapter 3? If they are not helpful or realistic, please tell us how they can be improved.

Chapter 4 explains the concept of best interests, when the best interests principle must be applied, the factors which must be considered when trying to decide what

is in someone's best interests and explains how determinations on best interests may be made. Some problems that may arise when determining the best interests of a person who lacks capacity so the key steps involved in determining best interests are set out.

Q.4 (a) - Having particular regard to the practical situations in which you may apply it, please consider if Chapter 4 meets the aims set out in its introduction. If it does not suit your needs, please explain why.

Q.4 (b) - How helpful and realistic are the scenarios contained within Chapter 4? If they are not helpful or realistic, please tell us how they can be improved.

Chapter 5 describes how carers, health and social care professionals can carry out certain acts in connection with the personal care, healthcare or treatment of a person lacking capacity to consent to those acts. It outlines the legal backing, in the form of protection from liability, for actions taken in the best interests of someone who lacks capacity. It describes how this operates in practice, together with the restrictions and limitations on the protection from liability. It also explains the circumstances in which a person acting without formal authority (such as a carer without formal powers), can buy goods or organise necessary services for a person lacking capacity, and arrange for these to be paid for out of the person's money.

Q5 (a) - Having particular regard to the practical situations in which you may apply it, please consider if Chapter 5 meets the aims set out in its introduction. If it does not suit your needs, please explain why.

Q5 (b) - How helpful and realistic are the scenarios contained within Chapter 5? If they are not helpful or realistic, please tell us how they can be improved.

Chapter 6 explains what is meant by a Lasting Power of Attorney (LPA), describes the powers that donors can give to their attorneys and sets out the circumstances in which an LPA can and cannot be used. Information is provided about the duties and responsibilities of attorneys, the standards of conduct expected and the actions that can be taken where an attorney does not comply with their duties or fails to meet appropriate standards. Transitional arrangements for Enduring Powers of Attorney are also covered.

Q.6 (a) - Having particular regard to the practical situations in which you may apply it, please consider if Chapter 6 meets the aims set out in its introduction. If it does not suit your needs, please explain why.

Q.6 (b) - How helpful and realistic are the scenarios contained within Chapter 6? If they are not helpful or realistic, please tell us how they can be improved.

Chapter 7 gives guidance about the role of the court and when it may be necessary to apply. It considers the role, duties, responsibilities and standards of conduct for deputies appointed by the court to act and make decisions on behalf of people lacking capacity.

Q.7 (a) - Having particular regard to the practical situations in which you may apply it, please consider if Chapter 7 meets the aims set out in its introduction. If it does not suit your needs, please explain why.

Q.7 (b) - How helpful and realistic are the scenarios contained within Chapter 7? If they are not helpful or realistic, please tell us how they can be improved.

Chapter 8 describes the provisions in the Act relating to advance decisions to refuse medical treatment and provides basic guidance on the practical implications of an advance decision to refuse treatment. It explains the Act's definition of an advance decision to refuse treatment and sets out guidance on making, updating and withdrawing advance decisions, and in particular, the formalities required for advance decisions concerning life-sustaining treatment. The safeguards in the Act aimed at ensuring that an advance decision exists and is both valid and applicable are explained, together with the effect of advance decisions and implications for the duties and responsibilities of healthcare professionals.

Q.8 (a) - Having particular regard to the practical situations in which you may apply it, please consider if Chapter 8 meets the aims set out in its introduction, If it does not suit your needs, please explain why.

Q.8 (b) - How helpful and realistic are the scenarios contained within Chapter 8? If they are not helpful or realistic, please tell us how they can be improved.

Chapter 9 describes the role and function of the 'Independent Mental Capacity Advocate' (IMCA), the particular situations which will require the appointment of an IMCA and the categories of vulnerable people to whom the safeguard will apply. The obligations placed on public authorities relating to the requirement to consult with IMCAs and take account of their advice is also described.

Q.9 (a) - Having particular regard to the practical situations in which you may apply it, please consider if Chapter 9 meets the aims set out in its introduction. If it does not suit your needs, please explain why.

Q.9 (b) - How helpful and realistic are the scenarios contained within Chapter 9? If they are not helpful or realistic, please tell us how they can be improved.

Chapter 10 sets out what is meant by research under the Act and describes when it applies and those who must be involved before a person lacking capacity can participate in research. It sets out the requirements for approval, the responsibilities for researchers and additional safeguards in the Act. Transitional arrangements for research already in progress when the Act comes into force are outlined.

Q.10 (a) - Having particular regard to the practical situations in which you may apply it, please consider if Chapter 10 meets the aims set out in its introduction. If it does not suit your needs, please explain why.

Q.10 (b) - How helpful and realistic are the scenarios contained within Chapter 10? If they are not helpful or realistic, please tell us how they can be improved.

Chapter 11 explains the overlap between the Act and the care and welfare of children and young people under the Children Act 1989. It looks at the Act's provisions in relation to children under 16 years and explains the position of young people aged 16 and 17 years where there are overlapping laws that may affect them.

Q.11 (a) - Having particular regard to the practical situations in which you may apply it, please consider if Chapter 11 meets the aims set out in its introduction. If it does not suit your needs, please explain why.

Q.11 (b) - How helpful and realistic are the scenarios contained within Chapter 11?

If they are not helpful or realistic, please tell us how they can be improved.

Chapter 12 gives guidance on the interface and overlap between the Act and the Mental Health Act 1983 in relation to the provision of treatment for mental disorder for adults who lack capacity to make decisions relating to the proposed treatment. The main provisions relating to treatment for mental disorder and the powers of detention and treatment under the Mental Health Act 1983 are summarised.

Q.12 (a) - Having particular regard to the practical situations in which you may apply it, please consider if Chapter 12 meets the aims set out in its introduction. If it does not suit your needs, please explain why.

Q.12 (b) - How helpful and realistic are the scenarios contained within Chapter 12? If they are not helpful or realistic, please tell us how they can be improved.

Chapter 13 explains how professionals and people acting with formal powers under the Act (i.e. attorneys and deputies) are expected to interact with the relevant agencies responsible for the protection of adults lacking capacity. It provides general information on the protection of adults. An overview of the supervisory functions of the Office of the Public Guardian (OPG) is provided with brief details of the new criminal offence of ill treatment or wilful neglect.

Q.13 (a) - Having particular regard to the practical situations in which you may apply it, please consider if Chapter 13 meets the aims set out in its introduction. If it does not suit your needs, please explain why.

Q.13 (b) - How helpful and realistic are the scenarios contained within Chapter 13? If they are not helpful or realistic, please tell us how they can be improved.

Chapter 14 provides information about the various avenues available to resolve disagreements, including complaints procedures and alternatives to court proceedings and suggests what might be the appropriate or most desirable route to take in certain situations. It provides suggestions on how to try to avoid escalation of issues as well as outlining the existing complaint and dispute resolution mechanisms. It describes when it may be necessary to consider applying to the Court of Protection and provides information about access to legal funding.

Q.14 (a) - Having particular regard to the practical situations in which you may apply it, please consider if Chapter 14 meets the aims set out in its introduction. If it does not suit your needs, please explain why.

Q.14 (b) - How helpful and realistic are the scenarios contained within Chapter 14? If they are not helpful or realistic, please tell us how they can be improved.

Chapter 15 gives guidance as to what information people caring for persons lacking capacity can expect to have disclosed to them, and what they can do if they think they need access to information. It also outlines how they should protect information they possess about the person lacking capacity.

Q.15 (a) - Having particular regard to the practical situations in which you may apply it, please consider if Chapter 15 meets the aims set out in its introduction. If it does not suit your needs, please explain why.

Q.15 (b) - How helpful and realistic is the scenario contained within Chapter 15? If it is not helpful or realistic, please tell us how it can be improved.

The Code is primarily aimed at those who are under a duty to have regard to it, but it should also be accessible to informal carers and the public. Stakeholders have commented on the need for an effective index for ease of reference and for signposts to further information. In light of this and the further material that we have indicated will be available, please consider the following:

Q.16 (a) – How effective is the overall style and format of the Code, (including the contents page, references and annex)? Will it suit your needs and if not, please explain why?

Q.(b) – If you have any final general comments, including comments upon the issues raised within the consultation paper, please include them here.

Questionnaire

We would welcome responses to the following questions on the Code:

Q.1 - Does the content of Chapter 1 meet the aims set out in its introduction? If it does not suit your needs, please explain why.

Q.2 (a) – Having particular regard to the practical situations in which you may apply it, please consider if Chapter 2 meets the aims set out in its introduction. If it does not suit your needs, please explain why.

Q.2 (b) - How helpful and realistic are the scenarios contained within Chapter 2? If they are not helpful or realistic, please tell us how they can be improved.

Q.3 (a) – Having particular regard to the practical situations in which you may apply it, please consider if Chapter 3 meets the aims set out in its introduction. If it does not suit your needs, please explain why.

Q.3 (b) - How helpful and realistic are the scenarios contained within Chapter 3? If they are not helpful or realistic, please tell us how they can be improved.

Q.4 (a) – Having particular regard to the practical situations in which you may apply it, please consider if Chapter 4 meets the aims set out in its introduction. If it does not suit your needs, please explain why.

Q.4 (b) - How helpful and realistic are the scenarios contained within Chapter 4? If they are not helpful or realistic, please tell us how they can be improved.

Q.5 (a) – Having particular regard to the practical situations in which you may apply it, please consider if Chapter 5 meets the aims set out in its introduction. If it does not suit your needs, please explain why.

Q.5 (b) - How helpful and realistic are the scenarios contained within Chapter 5? If they are not helpful or realistic, please tell us how they can be improved.

Q.6 (a) – Having particular regard to the practical situations in which you may apply it, please consider if Chapter 6 meets the aims set out in its introduction. If it does not suit your needs, please explain why.

Q.6 (b) - How helpful and realistic are the scenarios contained within Chapter 6? If they are not helpful or realistic, please tell us how they can be improved.

Q.7 (a) – Having particular regard to the practical situations in which you may apply it, please consider if Chapter 7 meets the aims set out in its introduction. If it does not suit your needs, please explain why.

Q.7 (b) - How helpful and realistic are the scenarios contained within Chapter 7? If they are not helpful or realistic, please tell us how they can be improved.

Q.8 (a) – Having particular regard to the practical situations in which you may apply it, please consider if Chapter 8 meets the aims set out in its introduction. If it does not suit your needs, please explain why.

Q.8 (b) - How helpful and realistic are the scenarios contained within Chapter 8? If they are not helpful or realistic, please tell us how they can be improved.

Q.9 (a) – Having particular regard to the practical situations in which you may apply it, please consider if Chapter 9 meets the aims set out in its introduction. If it does not suit your needs, please explain why.

Q.9 (b) - How helpful and realistic are the scenarios contained within Chapter 9? If they are not helpful or realistic, please tell us how they can be improved.

Q.10 (a) – Having particular regard to the practical situations in which you may apply it, please consider if Chapter 10 meets the aims set out in its introduction. If it does not suit your needs, please explain why.

Q.10 (b) - How helpful and realistic are the scenarios contained within Chapter 10? If they are not helpful or realistic, please tell us how they can be improved.

Q.11 (a) - Having particular regard to the practical situations in which you may apply it, please consider if Chapter 11 meets the aims set out in its introduction. If it does not suit your needs, please explain why.

Q.11 (b) - How helpful and realistic are the scenarios contained within Chapter 11? If they are not helpful or realistic, please tell us how they can be improved.

Q.12 (a) - Having particular regard to the practical situations in which you may apply it, please consider if Chapter 12 meets the aims set out in its introduction. If it does not suit your needs, please explain why.

Q.12 (b) - How helpful and realistic are the scenarios contained within Chapter 12? If they are not helpful or realistic, please tell us how they can be improved.

Q.13 (a) - Having particular regard to the practical situations in which you may apply it, please consider if Chapter 13 meets the aims set out in its introduction. If it does not suit your needs, please explain why.

Q.13 (b) - How helpful and realistic are the scenarios contained within Chapter 13? If they are not helpful or realistic, please tell us how they can be improved.

Q.14 (a) - Having particular regard to the practical situations in which you may apply it, please consider if Chapter 14 meets the aims set out in its introduction. If it does not suit your needs, please explain why.

Q.14 (b) - How helpful and realistic are the scenarios contained within Chapter 14? If they are not helpful or realistic, please tell us how they can be improved.

Q.15 (a) - Having particular regard to the practical situations in which you may apply it, please consider if Chapter 15 meets the aims set out in its introduction. If it does not suit your needs, please explain why.

Q.15 (b) - How helpful and realistic is the scenario contained within Chapter 15? If it is not helpful or realistic, please tell us how it can be improved.

Q.16 (a) – How effective is the overall style and format of the Code, (including the contents page, references and annex)? Will it suit your needs and if not, please explain why?

Q.16 (b) – If you have any final general comments, including comments upon the issues raised within the consultation paper, please include them here.

Thank you for participating in this consultation exercise

About you

Please use this section to tell us about yourself

Full name	
Job title or capacity in which you are responding to this consultation exercise (eg. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	<input type="checkbox"/> (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

How to respond

Please send your response by 2 June 2006 to:

**Communications Team
Mental Capacity Implementation Programme
Department for Constitutional Affairs
5th Floor
Steel House
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SW1H 9LH
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Fax: 020 7210 0007
Email: makingdecisions@dca.gsi.gov.uk**

Extra copies

Further paper copies of this consultation can be obtained from this address and it is also available on-line at <http://www.dca.gov.uk/index.htm>

We would appreciate receiving responses by e-mail if possible.

Publication of response

A paper summarising the responses to this consultation will be published within 3 months of the closing of this consultation. The response paper will be available on-line at <http://www.dca.gov.uk/index.htm>

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

The Consultation Criteria

The six consultation criteria are as follows:

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the time scale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

These criteria must be reproduced within all consultation documents.

Consultation Co-ordinator contact details

If you have any complaints or comments about the consultation **process** rather than about the topic covered by this paper, you should contact the Department for Constitutional Affairs Consultation Co-ordinator, Laurence Fiddler, on 020 7210 2622, or email him at consultation@dca.gsi.gov.uk

Alternatively, you may wish to write to the address below:

**Laurence Fiddler
Consultation Co-ordinator
Department for Constitutional Affairs
5th Floor Selborne House
54-60 Victoria Street
London
SW1E 6QW**

If your complaints or comments refer to the topic covered by this paper rather than the consultation process, please direct them to the contact given under the **How to respond** section of this paper at page 25.

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