

# **NMC response to Mental Health Units (Use of Force) Act 2018: statutory guidance for NHS organisations in England and police forces in England and Wales – draft for consultation**

**Published 25 May 2021**

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## **Consultation description:**

The use of force includes:

- physical, mechanical or chemical restraint of a patient
- the isolation of a patient, including seclusion and segregation

The Mental Health Units (Use of Force) Act became law in November 2018. The aim of the Act and the statutory guidance is to:

- clearly set out the measures that are needed to both prevent the inappropriate use of force
- ensure accountability and transparency about the use of force in mental health units

The statutory guidance, which will be issued by the Department of Health and Social Care, is intended for use by NHS hospitals and independent hospitals (providing NHS-funded care) in England providing care and treatment to patients with a mental disorder. It will provide the information they need about how they should meet the legal obligations placed on them by the Act, in addition to best practice advice.

The guidance also covers the obligations on police officers when in mental health units in England.

Consultation link:

<https://www.gov.uk/government/consultations/mental-health-units-use-of-force-act-2018-statutory-guidance/mental-health-units-use-of-force-act-2018-statutory-guidance-for-nhs-organisations-in-england-and-police-forces-in-england-and-wales-draft-for-co#section-10>

## Section 1: key definitions

The statutory guidance sets out some of the key terms used in the Act and explains that the Act applies to mental health units, including both NHS and independent hospitals providing NHS funded care.

The terms in the Act which are defined in the guidance include:

- a) 'Mental Disorder',
- b) 'Mental Health Unit',
- c) 'Use of force',
- d) 'Physical restraint',
- e) 'Mechanical restraint',
- f) 'Chemical restraint',
- g) 'Seclusion',
- h) '(Long-term) segregation'.

### Question 1a

Is the guidance clear on what is meant by each of the terms?

- Yes
- No
- Not sure

Please give your reasons.

YES

The definitions are helpful and also encourage greater consistency across services in England.

### Question 1b

Is the guidance clear about what settings the Act applies to?

- Yes
- No
- Not sure

Please give your reasons.

NOT SURE

The guidance notes that section 135 and 136 suites are considered to be outside the definition of a mental health unit and therefore are not covered by the requirements of the Act. We think the reasons for this could be outlined in the guidance so it is clear to the reader why they are not covered by the Act and are therefore not within scope of the guidance. We also note that police custody suites are not explicitly covered in the guidance.

## Section 2: mental health units to have a responsible person

The Act states a health organisation operating a mental health unit must appoint a “responsible person” to ensure that the organisation complies with the requirements of the Act.

The statutory guidance specifies that:

- This must be a member of staff at an appropriate level of seniority.
- The responsible person should attend appropriate training in the use of force.
- Where the health organisation or trust operates more than one mental health unit, the same responsible person must be appointed in relation to all of the mental health units.

### **Question 2a**

Is it clear what the role of the ‘responsible person’ is?

- Yes
- No
- Not sure

Please give your reasons.

YES

It’s clear what the role of the responsible person is and any registered nurse acting as one will already be aware that they need to practise at all time in line with the law and national or local policies.

We strongly agree the responsible person should attend appropriate training in the use of force. Completing the necessary training before carrying out a new role is not only a requirement of our Code, it is important to strengthening public confidence that staff have been appropriately trained in the use of force.

Our Code can be accessed on our website at:

[www.nmc.org.uk/globalassets/sitedocuments/nmc-publications/nmc-code.pdf](http://www.nmc.org.uk/globalassets/sitedocuments/nmc-publications/nmc-code.pdf)

### **Question 2b**

Is it clear the level of seniority the ‘responsible person’ must have?

- Yes
- No
- Not sure

Please give your reasons.

YES

We note the responsible person may delegate some of their functions under the Act to other suitably qualified members of staff within organisations. Our Code (standard 11) is clear that tasks and duties must only be delegated if they are within the other person’s scope of competence, making sure that they fully understand the instructions given. Registered nurses are responsible for their decision to delegate and they must confirm that the outcome of the delegated task meets the required standard. We can investigate if a concern is raised that an individual on our register doesn’t meet our standards.

There is a link between this guidance and the standards set by regulators. We think this relationship could be made stronger in the guidance so that it is clear what is expected of registered health and social care professionals working in mental health units.

### **Section 3: policy on use of force**

The statutory guidance sets out that the responsible person must publish and keep under review a policy regarding the use of force on patients by staff who work in the mental health units run by that organisation. The guidance specifies what the policy should include (as a minimum) and the considerations to be taken into account when drafting and publishing the policy, including the importance of consultation with people with lived experience.

#### **Question 3**

Does the guidance clearly explain what a policy on use of force should include?

- Yes
- No
- Not sure

If no, what else should be included in the policy on use force section of the guidance?

NO

The guidance gives a clear outline of what is required in policy; however, we think the guidance around what negligible use force is (and what is it not) could be strengthened.

In our view, the guidance on negligible force is potentially open to interpretation by users and a consequence of this may be inconsistency in the how the guidance is applied. It would be helpful if this could be strengthened and made clearer, possibly through more examples, to reduce the risk of an inconsistent approach.

### **Section 4: information about use of force**

The statutory guidance sets out the statutory duty to publish and provide patients, and other people considered appropriate, with information about the use of force and the patient's rights in relation to the use of force which may be used by staff in a mental health unit. This section of the guidance sets out what this information is expected to include (as a minimum), who should be consulted in its development and how it should be disseminated. This includes the expectation for responsible persons to take whatever steps are reasonably practicable to make sure patients are aware of the information and understand it.

#### **Question 4**

Does the guidance clearly explain what information should be given to patients on the use of force?

- Yes
- No
- Not sure

If no, what other information should be included in the information on the use of force section of the guidance?

YES

We are pleased to see in the guidance recognition of the value of involving patients, their families and carers and other key stakeholders in the development of information on the use of force. Co-production can help ensure that information provided reflects the needs and perspective of everyone involved.

### **Section 5: training in appropriate use of force**

The responsible person must arrange for training to be provided to staff about the use of force by staff who work in the mental health unit. For each of the topic areas which must be included in staff training the statutory guidance sets out examples of what should be covered in each of those topic areas (as a minimum). The guidance also sets out training requirements for new members of staff and refresher training requirements.

#### **Question 5**

Does the guidance clearly explain the requirements for training on the use of force?

- Yes
- No
- Not sure

If no, what else should be included in the training in the appropriate use of force section?

YES

Appropriate education and training is vital for nursing professionals' continued ability to practise safely and effectively, as well as being a requirement of our regulatory standards. Employers are the key source of access to education and training for the people they employ and we would expect them to support registered nurses with their training needs.

We welcome the emphasis on involving patients and people with lived experiences in the development of training materials and delivery of training.

### **Section 6: recording of use of force**

The statutory guidance sets out the requirements for the responsible person to keep a record of any use of force on a patient by staff who work in the mental health unit. The requirements are set out in detail in the Act and cover the information which must be recorded locally (as a minimum).

The duty to keep a record does not apply if the use of force is negligible. The statutory guidance sets out the very small set of circumstances in which the negligible use of force would apply.

#### **Question 6a**

Does the guidance clearly explain what information should be recorded when force is used on a patient?

- Yes
- No
- Not sure

Please give your reasons.

## NOT SURE

Any nurse acting as the responsible person will be aware that the need to practise at all times in line with the law and national or local policy covering record management.

In line with our previous comments, the guidance on negligible force is open to differing interpretations and this could therefore lead to variation in what information is recorded when force is used on a patient. We would suggest using case studies and more examples may be a helpful addition to the guidance here.

### Question 6b

The statutory guidance sets out that the use of force can never be considered as negligible in certain circumstances.

1. Any form of chemical or mechanical restraint is used;
2. The patient verbally or physically resists the contact of a member of staff;
3. A patient complains about the use of force either during or following the use of force;
4. Someone else complains about the use of force;
5. The use of force causes an injury to the patient or a member of staff;
6. More than one member of staff carried out the use of force.

Do you agree or disagree with this list?

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Not sure

## AGREE

### Question 6c

Is there anything else that should be added to the list?

- Yes
- No
- Not sure

Please give your reasons.

## NO

### Question 6d

Do you agree or disagree that the duty to keep a record should not apply if the use of force is negligible, as defined in the guidance?

- Strongly agree

- Agree
- Disagree
- Strongly disagree
- Not sure

Please give your reasons.

## NOT SURE.

We welcome the intent of the guidance to reduce the use of force and ensure accountability and transparency about the use of force in mental health units. We see the guidance as a helpful and supportive resource when we investigate concerns about nurses, midwives and nursing associates – something that affects less than one percent of professionals each year.

Whilst we do not issue guidance on record keeping, our Code (standard 10) expects registered nursing professionals to keep clear and accurate records and to adhere to other national guidelines and legislation covering record management.

We are concerned that if an event is not recorded in writing it could be inferred that it did not happen. Record keeping is an integral part of professional practice and it is important that records demonstrate clearly and accurately how care has been assessed and planned, and how it has been acted upon. Records are also an important tool for documenting how service users have been consulted and how their individual needs, views and preferences have been taken into consideration.

## Section 9: investigation of deaths or serious injuries

The statutory guidance sets out that (where appropriate) deaths and serious injuries which occur in a mental health unit, are investigated thoroughly with the involvement of the family in a transparent manner (regardless of there being any use of force or not). Investigations should be independent of those involved in the incident, timely and of good quality and ensure that lessons are learned to drive improvements in patient safety and prevent such incidents from happening again.

The responsible person must have regard to existing relevant guidance on what should happen when a patient dies or suffers a serious injury in a mental health unit that is published by the following organisations:

- Care Quality Commission;
- Monitor;
- NHS Commissioning Board;
- NHS Trust Development Authority;
- A person prescribed by regulations made by the Secretary of State.

### Question 9

Does the guidance clearly explain what should happen following a serious injury or death in a mental health unit?

- Yes
- No

- Not sure

Please give your reasons.

YES

We agree the guidance is clear and we are supportive of patients, their family and carers being communicated with in an open, honest, kind and compassionate manner when a patient dies or suffers a serious injury in a mental health unit. It's also crucial that when something goes wrong it is reported at an early stage so that lessons can be learnt quickly and people can be protected from harm in the future.

## **Section 10: delegation of responsible person's functions**

### **Summary questions**

Please state how far you agree with the following statements.

The guidance clearly sets out the requirements of the Act for mental health units.

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Not sure

Please give your reasons.

AGREE

The guidance seeks to reduce and minimise the use of force in mental health units.

Strongly agree

- Agree
- Disagree
- Strongly disagree
- Not sure

Please give your reasons.

AGREE

We support the aim to reduce and minimise the use of force in mental health units.

The guidance makes it clear that force should only be used proportionately as a last resort.

Strongly agree

- Agree
- Disagree
- Strongly disagree
- Not sure

Please give your reasons.

AGREE

The guidance appropriately explains the different approaches required when caring for children and young people and adults.

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Not sure

Please give your reasons.

AGREE.

We agree care and support needs to be tailored so it takes into account individuals' needs and preferences across the life course so their specific needs can be met.

The guidance clearly outlines the need to consider those with protected characteristics under the Equality Act 2010 when fulfilling the requirements of the Act.

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Not sure

Please give your reasons.

AGREE

We are pleased to see the emphasis on considering the needs of all people and in particular people who share protected characteristics under the Equality Act 2010. This aligns with the expectations of the Code and our standards, which highlight the importance of care that aims to eliminate discrimination, advances equality and fosters good relations, focusing on the needs, views and preferences of individuals.

The guidance emphasises the importance of involving patients, their families and carers in decisions about their own care.

- Strongly agree
- Agree
- Disagree
- Strongly disagree
- Not sure

Please give your reasons.

AGREE

We welcome the commitment to ensuring people using services are at the centre of their care. This aligns with the expectations of our Code and our standards, which highlight that up-to-date evidence-based and person-centred care are essential for safe and effective services. Our Code and standards reflect what we expect registered professionals to understand and be able to do provide kind, safe and proficient across their careers, as well as the importance of professionals working in partnership to make shared decisions with people who use services.

