

## **Updates to the Draft Code of Practice secured by the Department**

- Requirement for Authorised Persons, when extracting information for the purposes of preventing, detecting, investigating or prosecuting crime, to refer to The Criminal Procedure and Investigations Act 1996 Code of Practice for Northern Ireland (Revised) 2005 and the Public Prosecution Service Code for Prosecutors.
- Requirement for Authorised Persons to refer to The Mental Health (Northern Ireland) Order 1986 Code of Practice and any relevant codes issued under the Mental Capacity Act (Northern Ireland) 2016 for guidance on the meaning of 'harm'.
- Extension of power to the Coroner when conducting an inquest into the death of a device user under the Coroners Act (Northern Ireland) 1959 In the case of investigations into death.
- Application of the Criminal Procedure and Investigations Act 1996 Code of Practice for Northern Ireland (Revised) 2005 when identifying and relying on reasonable belief that data is relevant prior to extraction.
- Requirement for Authorised Persons to refer to the Victim Charter in Northern Ireland where a device user is considered to be 'vulnerable'.
- Amendment to guidance on substituted decision making for children to ensure representation for parents, guardians or other persons or bodies with parental responsibility for the child within the meaning of the Children (Northern Ireland) Order 1995
- Amendment to guidance on substituted decision making for children to require the word 'Guardian' in that context to be interpreted according to the Children (Northern Ireland) Order 1995.
- Assessment of the capacity of an adult device user to be made with reference to the definition of that term in the Mental Capacity Act (Northern Ireland) 2016.
- Amendment to guidance on substituted decision making for adults without capacity to require the word 'Guardian' in that context to be interpreted according to the Mental Health (Northern Ireland) Order 1986.
- Amendment to guidance on substituted decision making for adults without capacity to require the term 'social worker' to be should be interpreted within the meaning of that term as given in the Health and Personal Social Services Act (Northern Ireland) 2001.
- Amendment to guidance on substituted decision making for adults without capacity to capture the role of 'attorneys' under the Enduring Powers of Attorney (Northern Ireland) Order 1987 and, where relevant, the future relevance of lasting powers of attorney under the Mental Capacity Act (Northern Ireland) 2016.
- Amendment to guidance on substituted decision making for adults without capacity to capture, where relevant, the the future role of deputies under the Mental Capacity Act (Northern Ireland) 2016.
- Requirement for Authorised Persons, when seeking the views of adults who lack capacity, to refer to the Northern Ireland the Mental Health (NI) Order 1986 Code of Practice and the Mental Capacity Act (Northern Ireland) 2016
- Amendment to define 'protected material' as material within the meaning of Articles 12, 13(1)(a) and 16(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989.
- Amendment to guidance on substituted decision making for children to state that best practice is to wait for a parent or guardian to be available to make the decisions.
- Increased / more visible reference to the four 'principles' outlined by the Court of Appeal in *R v Carl Bater-James and Sultan Mohammed* and which should be applied in determining whether there is a need for disclosure of extracted information.

- Miscellaneous amendments to guidance on substituted decision making for children and adults without capacity to state that the best interests of the device user should be borne in mind when a third party is giving consent on their behalf.
- Miscellaneous amendments to guidance on substituted decision making for adults without capacity to state that the authorised user must where possible seek and consider the views of the device user to inform their decision making.
- Miscellaneous amendments requiring authorised persons to comply with ECHR requirements including additional guidance in necessity and proportionality in that context.
- Miscellaneous amendments to guidance relating to identification and treatment of 'vulnerable victims' generally.