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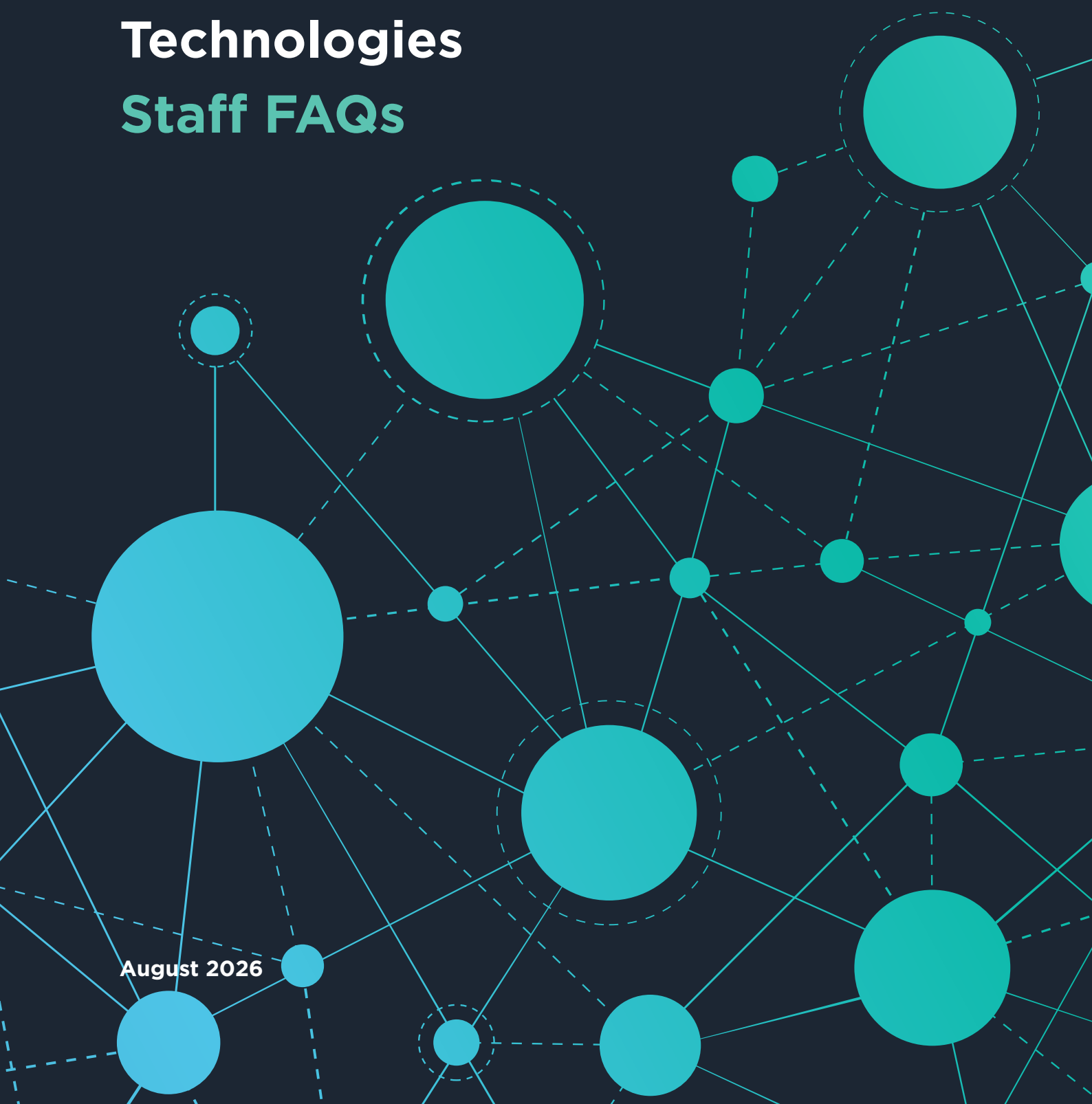
Code of Practice on the Use of Digital Monitoring Technologies

Staff FAQs



August 2026

Code of Practice on the Use of Digital Monitoring Technologies

Staff FAQs

When will the Code of Practice come into operation?

The Code will come into operation on the 1 January 2027. From this date, the Inspector of Mental Health Services (MHC) will assess centres compliance with the Code of Practice. We are publishing the Code in advance so that services and staff can understand what is required and prepare accordingly. Services may need time to carry out digital monitoring technology impact assessments, update or develop internal policies and procedures, and provide staff training.

Why does the Code of Practice not use the term "surveillance"?

Whilst digital monitoring technologies are sometimes referred to as surveillance technologies, following feedback from the public consultation, the MHC considers it more appropriate to use the term digital monitoring technologies as the term "surveillance" has negative connotations and may be distressing for certain people receiving care and treatment.

What type of digital monitoring technologies are in scope?

The Code defines digital monitoring technologies as "technology used by staff in an approved centre to observe or monitor a person to inform their care and treatment and ensure their health, safety and welfare". It will be up to the approved centre to determine if the technology being used or being considered for use falls under this definition. Examples of digital monitoring technologies include, but are not limited to, CCTV, body worn cameras, infrared cameras, sensors and GPS tracking devices. Certain uses of technology are excluded from the scope of the Code, see section 2 of the Code.

Is artificial intelligence covered by the Code of Practice?

Artificial Intelligence is regulated by the EU Artificial Intelligence Act and approved centres may have distinct requirements they need to adhere to under that legislation. The Code outlines that where digital monitoring technologies incorporate artificial intelligence, the digital monitoring technology impact assessment should include a clear statement confirming whether a Fundamental Rights Impact Assessment ("FRIA") was carried out under Article 27 of the EU Artificial Intelligence Act. This should contain the outcome of the FRIA where one was conducted, or, where applicable, the reasons the approved centre considers that a FRIA was not required. Artificial intelligence technology used to streamline administrative tasks undertaken within approved centres such as patient scheduling, notetaking, and updates to a person's records are outside the scope of the Code. For more information, see the preamble and sections 2 and 3 of the Code.

Who can use digital monitoring technologies in an approved centre?

Only relevant health professionals who are suitably trained in the use of digital monitoring technologies can use them in approved centres. Each approved centre that uses digital monitoring technologies should implement a policy and have procedures in place to ensure staff involved in the use of digital monitoring technologies are suitably trained. Policies and procedures are to outline who can view specific digital monitoring technologies and have access to information. Security staff should not have access to or view digital monitoring technologies within the parameters of the approved centre. They are permitted to view data from external perimeters of the approved centre for security purposes and crime prevention as this is outside the scope of the Code.

How should I address data protection and data security when using digital monitoring technologies?

Section 5 of the Code outlines data protection and data security provisions under the Code. Approved centres need to have arrangements in place for data protection and data security and ensure they are compliant with the GDPR and Data Protection Act 2018 and all other relevant international and national legislation and regulations. The Code does not replace the approved centre's legal responsibilities under the GDPR and the Data Protection Act 2018. For example, any notifications concerning personal data breaches where digital monitoring technology is used should be submitted to the Data Protection Commission, where required, not to the Mental Health Commission.

The MHC encourages staff working in approved centres to review the Data Protection Commission's Guidance on the Use of CCTV in Residential Care Settings for further guidance.

Is recording permitted under the Code of Practice?

Regulation 25 of the Mental Health Act 2001 (Approved Centres) Regulations 2006 provides that CCTV and other monitoring devices shall be incapable of recording or storing a resident's image. This remains the case when this Code commences, as the Code does not replace the approved centre's obligations under regulation 25. Instead, it should be read in conjunction with regulation 25. In section 9 where digital monitoring technology is used in bedrooms and/or bathrooms, the Code specifies that it should not be capable of recording and any images captured should be pixelated or blurred.

What is a digital monitoring technology impact assessment and what should it include?

A digital monitoring impact assessment is a structured process used to evaluate the purpose, evidence base and potential effects of digital monitoring technology before it is implemented or to determine whether it should continue to be used where it is already in place.

The impact assessment is to include the following components:

I. Purpose
II. Evidence-base
III. Locations
IV. Consultation
V. Impact on therapeutic relationships and environment
VI. Human rights
VII. Alternatives
VIII. Risk and safety
IX. Data Protection – clear statement whether a DPIA carried out under Art 35 of GDPR
X. Artificial Intelligence – clear statement whether a FRIA carried out under Art 27 of EU AI Act.

When is a digital monitoring technology impact assessment required?

The Code specifies that approved centres should carry out digital monitoring technology impact assessments before the digital monitoring technology is implemented in the service or to determine whether it should continue to be used where it is already in place.

Where digital monitoring technology is already in use before the Code comes into operation, for example, CCTV, the approved centre should carry out an impact assessment to determine whether it should continue to be used. This impact assessment should be in place as soon as possible and no later than one month from the date of the commencement of the Code and should be made available to the Mental Health Commission on request.

If an approved centre intends to introduce a new form of digital monitoring technology after the Code comes into operation, for example, infrared cameras, it should carry out the impact assessment before deploying the new technology.

When should the digital monitoring technology impact assessment be reviewed?

An approved centre should have a process in place to review and evaluate its use of digital monitoring technologies on an ongoing basis to

assess whether its use is still appropriate. This review should involve consultation with persons receiving care and treatment. For example, if a digital monitoring technology device is not operating as it should or has resulted in a poor outcome for people using the service then the impact assessment should be reviewed to assess if its use should continue or whether any adjustments are required. In any case, the impact assessment should be reviewed at least every five years. If there are changes in circumstances or new legislation or policy, approved centres may need to review their policies and procedures earlier than 5 years.

Can a person receiving care and treatment object to the use of digital monitoring technologies in communal areas?

Consent is not required to use digital monitoring technologies in communal areas. However, the Code outlines that people receiving care and treatment should be fully informed and involved in all decisions about their care and treatment including the use of digital monitoring technologies, and the approved centre should have regard to any views and/or concerns raised. If a person and/or their supporter raise any concerns about the use of digital monitoring technologies in communal areas their concerns and any actions taken to address them should be documented in the person's individual care plan. For example, if a person raises a concern about the use of CCTV in the dining room area and you address their concerns by outlining the purpose for the CCTV and provide assurances that the CCTV is not recording them, then you should document this in the person's individual care plan. People receiving care and treatment should also be consulted as part of the digital technology impact assessment and any subsequent reviews.

The Code permits the use of digital monitoring technologies in bedrooms and/or bathrooms in rare and exceptional circumstances where it is necessary and proportionate to prevent serious harm to the person or others. What situations meet this threshold?

The staff working in the approved centre should use their clinical judgement to determine what situations meet this threshold having due regard to the human rights implications and the need to take a trauma-informed approach. Whilst the MHC does not endorse the use of digital monitoring technologies in bedrooms and/or bathrooms, we recognise there may be certain limited circumstances where it is warranted. Section 9 outlines strict safeguards to guide approved centres on how to proceed where it is necessary.

Is consent a requirement to use digital monitoring technologies in bedrooms and/or bathrooms?

Yes, consent is to be obtained from the person receiving care and treatment and/or their supporters if a decision support arrangement is in place. In the case of a child, consent is to be obtained from their parent or guardian. It cannot be used where the person has capacity to consent and refuses consent and refusal to consent should be documented. Consent should be fully informed and clear and accessible information should be provided on the purpose, nature and extent of the use of the digital monitoring technology in the bedroom and/or bathroom.

What is the process where a person receiving care and treatment does not have capacity to consent?

If a person lacks capacity to consent, staff should seek consent from their decision-making representative, or designated healthcare representative, if available. Alternatively, they should refer to any advanced healthcare directive that may be in place to determine if there are provisions related to the use of digital monitoring technology. Where these arrangements are in place, and consent is not provided, digital monitoring technology cannot be used, and this should be documented.

What if there are no arrangements under the Assisted-Decision Making (Capacity) Act 2015?

If there are no arrangements under the Assisted Decision-Making (Capacity) Act 2015 then an independent consultant psychiatrist may approve or refuse an order to use digital monitoring technology proposed by the consultant psychiatrist involved in the persons care and treatment, having regard to the criteria outlined in section 9.

Can consent be withdrawn?

Yes, consent can be withdrawn at any time, verbally or in writing, and the withdrawal of consent should be documented. When consent has been withdrawn any digital monitoring technologies being used in the bedroom and/or bathroom are to be turned off or removed immediately.

Is consent under section 9 a legal basis for processing and storing information captured by digital monitoring technologies under GDPR and Data Protection Act 2018 legislation?

No, consent referred to in section 9 of the Code is not a legal basis for processing under data protection legislation and the GDPR. Consent for medical treatment is different to using consent as the legal basis for processing personal and special category data. Consent is generally not used as a legal basis for processing personal or special category data in healthcare.

How long can an order permitting the use of digital monitoring technology in a bedroom and/or bathroom last?

The use of digital monitoring technology in a bedroom and/or bathroom should not be for an indefinite or prolonged period of time. The duration of its use should be considered by the consultant psychiatrist in consultation with members of the person's multi-disciplinary team having due regard for its impact on the person receiving care and treatment. For example it may be decided that it is sufficient to use digital monitoring technologies at nighttime only rather than on a 24/7 basis.

The order should state the time period (e.g. 24/7 or nighttime only) and the duration (e.g. number of days of the order) and in what circumstances it may be discounted before this date. The order permitted the use of digital monitoring technology in a bedroom and/or bathroom and the basis for consent should be reviewed by the consultant psychiatrist, in consultation with members of the person's multidisciplinary team and where possible, the person, at each care planning meeting.

Is there a clinical practice form?

Where digital monitoring technology is used in a bedroom and/or bathroom, a clinical practice form should be completed and signed by the consultant psychiatrist who ordered its use as soon as practicable or in any event within 24 hours of it being ordered. The clinical practice form can be found in Appendix Two of the Code.

How do I notify the MHC when digital monitoring technology is used in a bedroom and/or bathroom?

The MHC will update its Guidance on Quality and Safety Notifications in due course and develop CIS instructions. Services will be notified before the Code comes into effect.

How do I manage complaints concerning the use of digital monitoring technologies?

The person receiving care and treatment and/or their supporter should be provided with a point of contact with whom they can raise concerns or queries.

Complaints should be investigated and managed in line with the approved centre's complaints policies and procedures as required under regulation 31. Approved centres are not required to have a separate complaint system to investigate complaints regarding the use of digital monitoring technologies.

Is there an e-learning training module available on HSELAnD?

The MHC did not produce an e-learning module covering the use of digital monitoring technologies as this is an emerging area and covers a wide range of different types of digital monitoring technologies. The MHC considers that services are better placed to arrange appropriate training which targets the specific technologies used in the service and covers the areas outlined in section 8 of the Code.

Who should I contact if I am unsure how to interpret a section of the Code or this FAQ document?

If you have any queries regarding the Code or the questions in this document you can contact a member of the Standards team in the Mental Health Commission by emailing standards@mhcirl.ie.

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