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STATUTORY RULES OF NORTHERN IRELAND

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**2020 No. 57**

**MENTAL CAPACITY**

**The Mental Capacity (Deprivation of Liberty)  
(Amendment) Regulations (Northern Ireland) 2020**

*Made* - - - - *31st March 2020*  
*Coming into operation* *2nd April 2020*

The Department of Health<sup>(1)</sup>, in exercise of the powers conferred by sections 14(4), 297(3) and 302(4) and paragraphs 5(1)(a) of Schedule 1, paragraphs 1(2) and 3(1)(a) of Schedule 2 and paragraphs 3(1)(a) of Schedule 3 to the Mental Capacity Act (Northern Ireland) 2016<sup>(2)</sup>, makes the following Regulations:

**Citation, commencement and interpretation**

- 1.—(1) These Regulations may be cited as the Mental Capacity (Deprivation of Liberty) (Amendment) Regulations (Northern Ireland) 2020 and shall come into operation on 2nd April 2020.
- (2) In these Regulations—
- “emergency period” means the period during which section 10(4) of and paragraphs 3, 4, 5, 6, 7, 8, 9 and 10 of Schedule 11 to the Coronavirus Act 2020<sup>(3)</sup> are in force; and
- “the principal Regulations” means the Mental Capacity (Deprivation of Liberty) (No. 2) Regulations (Northern Ireland) 2019<sup>(4)</sup>.

**Amendments to the principal Regulations**

2. During the emergency period the principal Regulations shall have effect as if—
- (a) in regulation 1(2) in the appropriate place there were inserted—
- ““emergency” period means the period during which section 10(4) of and paragraphs 3, 4, 5, 6, 7, 8, 9 and 10 of Schedule 11 to the Coronavirus Act 2020 are in force;”;
- (b) in regulation 2(1) for the word “For” there were substituted “Subject to regulation 2A, for”;
- (c) after regulation 2 there were inserted—

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(1) 2016 c. 5 (NI), s1(5)  
(2) 2016 c. 18 (NI)  
(3) 2020 c. 7  
(4) S.R. 2019 No. 199

**“2A.—(1)** In an emergency period the requirements in regulation 2(3) do not need to be met.

(2) If a person is acting as a suitably qualified person in reliance on this regulation, he or she must notify P and the nominated person that he or she is so acting.”

- (d) in regulation 7 for the word “For” there were substituted “Subject to regulation 7A, for”;
- (e) after regulation 7 there were inserted—

**“7A.** In an emergency period the requirements in regulation 7(b) and (c) do not need to be met.”

- (f) in regulation 14(1) for the word “For” there were substituted “Subject to regulation 14A, for”;
- (g) after regulation 14 there were inserted—

**“14A.—(1)** In an emergency period the requirement in regulation 14(1)(b) does not need to be met.

(2) If a person is acting as the responsible medical practitioner in reliance on this regulation, he or she must notify P and the nominated person that he or she is so acting.”

- (h) in regulation 17(1) for the word “For” there were substituted “Subject to regulation 17A, for”;
- (i) after regulation 17 there were inserted—

**“17A.—(1)** In an emergency period the requirements in regulation 17(1)(b)(iv) and (2) do not need to be met.

(2) If a person is making a report in reliance on this regulation, he or she must notify P and the nominated person that he or she is so acting.”

- (j) in regulation 30 for the word “For” there were substituted “Subject to regulation 30A, for”;
- (k) after regulation 30 there were inserted—

**“30A.** In an emergency period the requirements in regulation 30(b) and (c) do not need to be met.”

- (l) in regulation 41—

(i) in paragraph (1) for the word “For” there were substituted “Subject to paragraph (1A), for”;

- (ii) after paragraph (1) there were inserted—

**“(1A)** In an emergency period the panel may consist of three suitably qualified persons.”

Sealed with the Official Seal of the Department of Health on 31st March 2020.

(L.S.)

*Mark Lee*  
A senior officer of the Department of Health.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations provide amendments to the Mental Capacity (Deprivation of Liberty) (No. 2) Regulations (Northern Ireland) 2019 (the principal Regulations) during an emergency period where significant proportion of the workforce is unavailable to carry out the statutory functions.

The Regulations define the emergency period as the period during which section 10(4) of and paragraphs 3, 4, 5, 6, 7, 8, 9 and 10 of Schedule 11 to the Coronavirus Act 2020 are in force. This definition is also inserted in the principal Regulations. It is intended that the Regulations will be revoked when the emergency no longer affects the health and social care workforce.

The Regulations amends regulation 2 of the principal Regulations. Regulation 2 of the principal Regulations provides the requirements to be suitably qualified. The modifications provide that a person does not need to have training, experience working with people who lack capacity and do not have to be appointed as a suitably qualified person to act as a suitably qualified person. The amendments also provides that if a person acts as a suitably qualified person in reliance on the emergency modifications, P and the nominated person must be notified of this.

The Regulations amends regulation 7 of the principal Regulations. Regulation 7 of the principal Regulations specifies who can make applications for trust panel authorisation. The modifications remove the requirement that the person must be involved in the care or treatment of P and that the person is not the person making the medical report included in the application. There is no requirement to inform P and the nominated person as the additional safeguard of the trust panel still applies.

The Regulations amends regulation 14 of the principal Regulations. Regulation 14 of the principal Regulations specifies who can act as the responsible medical practitioner for the purpose of short-term detention authorisations. The modifications remove the requirement to have a membership of a Royal College. If a person is acting as a responsible medical practitioner (or alternative medical practitioner) without meeting this requirement, P and the nominated person must be notified.

The Regulations amends regulation 17 of the principal Regulations. Regulation 17 of the principal Regulations specifies who can make a report authorising a short-term detention. The modifications remove the requirement to have two years' experience in the last 10 years in a professional role and the requirement that the person cannot be the same person who made the statement of incapacity. If a person is making a report in reliance on the emergency modifications, P and the nominated person must be notified of this.

The Regulations amends regulation 30 of the principal Regulations. Regulation 30 of the principal Regulations specifies who can make applications for trust panel extension authorisations. The modifications remove the requirement that the person must be involved in the care or treatment of P and that the person is not the person making the medical report included in the application. There is no requirement to inform P and the nominated person as the additional safeguard of the trust panel still applies.

The Regulations amends regulation 41 of the principal Regulations. Regulation 41 of the principal Regulations provides the details of trust panel membership. The modifications allow trust panels to operate with three suitably qualified persons only, instead of requiring one medical practitioner, one approved social worker and one suitably qualified person.

**Status:** *This is the original version (as it was originally made).*