
STATUTORY RULES OF NORTHERN IRELAND

2019 No. 164

**The Mental Capacity (Deprivation of
Liberty) Regulations (Northern Ireland) 2019**

PART 3

Information, Authorisation and Extensions

CHAPTER 1

Information

Information

5.—(1) Immediately when P is detained in circumstances amounting to a deprivation of liberty by virtue of the Act the persons in paragraph (2) must be given the information in paragraph (3).

(2) The persons that must be notified are—

- (a) P;
- (b) the nominated person;
- (c) any person P has asked the information to be given to.

(3) The information that must be provided includes—

- (a) under what provisions of the Act is P detained in circumstances amounting to a deprivation of liberty;
- (b) P's rights under the Act; and
- (c) information about the Review Tribunal.

6.—(1) Immediately when P is discharged from detention amounting to deprivation of liberty by virtue of the Act the persons in paragraph (2) must be given the information in paragraph (3).

(2) The persons that must be notified are—

- (a) P; and
- (b) any person P has asked the information to be given to.

(3) The information that must be provided includes—

- (a) that the person has been discharged from detention under the Act; and
- (b) the effect of the discharge.

7.—(1) Information provided under regulation 5 must be provided in writing and must be approved by the Department.

(2) Information provided under regulation 6 must be on Form 21.

CHAPTER 2

Trust panel authorisations

Persons who can make a Schedule 1 authorisation

8. A person can make an application under Schedule 1 to the Act if he or she is—
- (a) suitably qualified;
 - (b) involved in the care or treatment of P; and
 - (c) not the person making the medical report required in paragraph 6(1)(b) of Schedule 1 to the Act.

Form of application

9. An application for authorisation under Schedule 1 to the Act must be made on Form 5.
10. When making an application under Schedule 1 to the Act—
- (a) the statement of incapacity must be included and made on Form 1;
 - (b) a statement of best interests must be included and made on Form 2;
 - (c) the consultation with the nominated person must be made on Form 3; and
 - (d) the statement in paragraph 6(2) of Schedule 1 to the Act must be made on Form 7.

Medical report

- 11.—(1) The medical report must be made on Form 6.

(2) For the avoidance of doubt, when a medical practitioner makes the statement in paragraph 7(2) of Schedule 1 to the Act or paragraph 5(1)(b) of Schedule 3 to the Act (the statement that in that person's opinion the criteria for authorisation are met in relation to the deprivation of liberty for which the application requests authorisation), the medical practitioner can rely on information provided by others when forming an opinion.

(3) If the information relied upon is information required to be provided in the application, it is sufficient to make reference to where that information is available (to avoid unnecessary duplication).

Care plan

12. The care plan must include—
- (a) name and address of P and P's current location;
 - (b) how P's care or treatment is to be managed during the duration of the authorisation period;
- (2) what actions are to be done to ensure the deprivation of liberty can be ended as soon as practicable; and
- (a) provisions for review of the deprivation of liberty.

Information

13.—(1) When an application is received by the relevant trust, it must as soon as practicable notify P and persons in paragraph (2) on Form 17 and include information about a person's rights under the Act.

- (2) The persons that must be notified (in addition to P) are—
- (a) the nominated person;

(b) any person P has asked the information to be given to.

14.—(1) As soon as practicable after granting or refusing an authorisation under paragraph 15 of Schedule 1 to the Act, the panel must notify P and the persons in paragraph (2) on Form 18 and provide the persons with information on a person’s rights under the Act.

(2) The persons who must be notified (in addition to P) are—

(a) the nominated person; and

(b) any person P has asked the information to be given to.

(3) If an authorisation is granted under paragraph 15 of Schedule 1 to the Act, the panel must also provide information to P and the persons in paragraph (2) on P’s rights in respect of the Review Tribunal.

(4) As soon as practicable after granting or refusing an authorisation under paragraph 15 of Schedule 1 to the Act the panel must notify—

(a) the person who made the application; and

(b) the managing authority where the deprivation of liberty will take place

and furnish such information to those persons to facilitate the deprivation of liberty as authorised or not.

(5) If the application contains a statement mentioned in paragraph 6(2) of Schedule 1 to the Act (statement that P lacks, or probably lacks, capacity in relation to making an application to the Tribunal), the Attorney General must be notified and all information used by the trust panel, and the decision made by the panel, must be sent to the Attorney General.

CHAPTER 3

Short-term detentions in hospital for examination or examination followed by treatment

Responsible Medical Practitioner, alternative medical practitioner and medical practitioner

15. A medical practitioner can only carry out the functions of the responsible medical practitioner if he or she is—

(a) suitably qualified; and

(b) have membership of a relevant Royal college and holds a full-time or part-time appointment at a Consultant level, Speciality Doctor level, Associate Specialist level or Post Membership Trainee level.

16. An alternative medical practitioner who may make a report under paragraphs 11, 13 or 14 in Schedule 2 to the Act is a person who meets the criteria for being a responsible medical practitioner but who is not in charge of P’s care.

17. A person is a medical practitioner who can make an exception certificate if he or she meets the requirements of a responsible practitioner in regulation 15 or that of alternative medical practitioner in regulation 16 or if he or she is the medical practitioner who made the initial medical report under paragraph 4 of Schedule 2 to the Act.

Persons who can make a report

18.—(1) A person is an appropriate healthcare professional for the purpose of making a report under paragraph 2 of Schedule 2 to the Act if he or she is—

(a) an approved social worker; or

(b) a person who—

- (i) is a healthcare professional;
 - (ii) has successfully completed relevant training within the last 36 months;
 - (iii) except in the 36 month period beginning with the date the person has successfully completed the relevant training referred to in head (ii), has, in the 36 months prior to the completion of the short-term detention authorisation, completed further training approved by the Department;
 - (iv) has two years experience in the last 10 years in a professional role working with persons who lack capacity; and
 - (v) has the skills necessary to obtain, evaluate and analyse complex evidence and differing views and to weigh them appropriately in decision making;
- and who is designated by the managing authority of the hospital specified in the report under paragraph 2 of Schedule 2 to the Act as a person who may make reports under that paragraph.

(2) A person cannot be an appropriate healthcare professional under paragraph (1) if he or she is the person who made the statement of incapacity relevant to the short-term detention authorisation.

Form of Schedule 2 reports and certificate

19. A short-term detention authorisation for examination or examination followed by treatment must be made on Form 8.

20. When making a short-term detention authorisation under Schedule 2 to the Act—

- (a) the statement of incapacity must be included and made on Form 1;
- (b) a statement of best interests must be included and made on Form 2;
- (c) the consultation with the nominated person must be made on Form 3;
- (d) the statement in paragraph 2(5) of Schedule 2 to the Act must be made on Form 7; and
- (e) the report of the approved social worker must be made on Form 9.

Medical report

21.—(1) The medical report must be made on Form 6.

(2) For the avoidance of doubt, when a medical practitioner makes the medical report the medical practitioner can rely on information provided by others when forming an opinion, including information required for the report as found in paragraph 2(4) of Schedule 2 to the Act.

(3) If the information relied upon is information required to be provided in the authorisation, it is sufficient to make reference where that information is available (to avoid unnecessary duplication).

Information

22.—(1) When a short-term detention authorisation is made, the person making the short-term detention authorisation must as soon as practicable notify the persons in paragraph (2) on Form 19 and provide information on—

- (a) short-term detentions;
- (b) the Review Tribunal; and
- (c) a person's rights under that act.

(2) The persons that must be notified are—

- (a) P;

- (b) the nominated person; and
- (c) any person P has asked the information to be given to.

(3) As soon as practicable after making the short-term detention authorisation, the person making the report must inform the managing authority of the hospital where P is to be detained and furnish such information as required for the detention to take place.

(4) If the report contains a statement mentioned in paragraph 2(5) of Schedule 2 to the Act (statement that P lacks, or probably lacks, capacity in relation to making an application to the Tribunal), the Attorney General must be notified and the short-term detention authorisation, including all annexes and information referred to, must be sent to the Attorney General.

CHAPTER 4

Extension by report

Extension authorisation

- 23.** An extension authorisation must be made on Form 14.
- 24.** When making an extension authorisation—
- (a) the statement of incapacity must be included and made on Form 1;
 - (b) a statement of best interests must be included and made on Form 2;
 - (c) the consultation with the nominated person must be made on Form 3;
 - (d) the statement in section 39(3) of the Act must be made on Form 7; and
 - (e) the responsible person statement must be made on Form 15.

Meaning of responsible person

25. If an approved social worker who is in charge of P's case is involved in the care or treatment of P and the deprivation of liberty for which the extension report is sought is relevant to that care or treatment the approved social worker can be the responsible person, subject to the conditions in regulation 27.

- 26.** A person can be designated as the responsible officer by—
- (a) the managing authority of a hospital or care home where P is an in-patient or resident; or
 - (b) the relevant trust

subject to the conditions in regulation 27.

- 27.** To be a responsible person the person must—
- (a) be suitably qualified; and
 - (b) be unconnected with P.

Information when making an extension report

28.—(1) When an extension report is received by the relevant trust, it must as soon as practicable notify P and the persons in paragraph (2) on Form 20 and provide information on—

- (a) the extension provisions;
 - (b) the Review Tribunal; and
 - (c) a person's rights under the Act.
- (2) The persons who must be notified (in addition to P) are—
- (a) the nominated person; and

(b) any person P has asked the information to be given to.

(3) As soon as reasonably practicable after making the extension report, the person making the report must inform the managing authority where the detention in circumstances amounting to deprivation of liberty will continue and furnish such information as required for the detention to continue.

29. If the extension report includes a statement under section 39(3) of the Act (a statement that in the opinion of the appropriate medical practitioner P lacks (or probably lacks) the capacity whether an application to the Tribunal should be made in respect of the authorisation), the Attorney General must be notified and the report, including all annexes and information referred to, must be sent to the Attorney General.

CHAPTER 5

Extension by trust panel authorisation

Schedule 3 application

30. A person can make an application for an extension of a deprivation of liberty under Schedule 3 to the Act if he or she meets the criteria in regulation 8.

Form of application

31. An application for authorisation under Schedule 3 to the Act must be made on Form 16.

32. When making an application under Schedule 3 to the Act—

- (a) the statement of incapacity must be included and made on Form 1;
- (b) a statement of best interests must be included and made on Form 2;
- (c) the consultation with the nominated person must be made on Form 3;
- (d) the statement in paragraph 4(2) of Schedule 3 to the Act must be made on Form 7;
- (e) the responsible person statement must be made on Form 15.

Medical report

33. The medical report must be the same as in regulation 11.

Care plan

34. The care plan must include the same information as in regulation 12.

35.—(1) When an application is received by the relevant trust, it must as soon as practicable notify P and persons in paragraph (2) on Form 17 and include information about a person's rights under the Act.

(2) The persons that must be notified (in addition to P) are—

- (a) the nominated person; and
- (b) any person P has asked the information to be given to.

36.—(1) As soon as practicable after granting or refusing an authorisation under paragraph 8 of Schedule 3 to the Act, the panel must notify P and the persons in paragraph (2) on Form 18 and provide the persons with information on a person's rights under the Act.

(2) The persons who must be notified are—

- (a) the nominated person; and

(b) any person P has asked the information to be given to.

(3) If an authorisation is granted under paragraph 8 of Schedule 3 to the Act, the panel must also provide information to P and the persons in paragraph (2) on P's rights in respect of the review Tribunal.

(4) As soon as practicable after granting or refusing an authorisation under paragraph 8 of Schedule 3 to the Act, the panel must notify—

(a) the person who made the application; and

(b) the managing authority where the deprivation of liberty will take place

and furnish such information to those persons to facilitate the deprivation of liberty as authorised or not.

(5) If the application contains a statement mentioned in paragraph 4(2) of Schedule 3 to the Act (statement that P lacks, or probably lacks, capacity in relation to making an application to the Tribunal), the Attorney General must be notified and all information used by the trust panel must be sent to the Attorney General.

CHAPTER 6

Forms and definitions

Forms

37. Any application, report, consultation, certificate, authorisation or statement, the form of which is required to be prescribed under the Act, or prescribed as required information under these Regulations, shall be in accordance with whichever one of the forms in the Schedule is appropriate.

38. Where a Form in the Schedule requires a signature, an electronic signature with same effect can be provided if the form is in itself provided in a digital form.

39. For the avoidance of doubt—

(a) the Forms can be—

(i) in a form or format to the like effect;

(ii) presented in a fully digital format; and

(iii) amended for accessibility if so is required or appropriate; and

(b) HSC trusts can add additional information to the forms as long as it is clear that this additional information does not form part of the prescribed form.

Descriptions of medical practitioners

40. A medical practitioner making a report listed in section 300(1)(a) and (c) to (e) of the Act must—

(a) have successfully completed training that has been approved by the Department;

(b) except in the 36 month period beginning with the date the person has successfully completed the training referred to in sub-paragraph (a), in the 36 months prior to the report, have completed further training relevant to their role as a medical practitioner making a report; and

(c) have two years experience in a medical profession, pre-qualification or post-qualification.

Definitions for the purpose of Part 3

41. In this Part—

“admission report” has the same meaning as in paragraph 11 of Schedule 2 to the Act;

“application” means an application under Schedule 1 or 3 to the Act as appropriate;

“exception certificate” has the same meaning as in paragraph 9 of Schedule 2 to the Act;

“extension authorisation” means a report under section 37 or 38 of the Act;

“Form” has the meaning as in regulation 37;

“further admission report” has the same meaning as in paragraph 13 of Schedule 2 to the Act;

“further report” has the same meaning as in paragraph 14 of Schedule 2 to the Act;

“healthcare professional” means a medical practitioner, nurse or midwife, social worker, dentist, occupational therapist, speech and language therapist or practitioner psychologist;

“hospital” has the same meaning as in the Act;

“P” means a person who lacks capacity and for whom a deprivation of liberty is proposed;

“relevant training” means training in relation to making a short-term detention authorisation that has been approved by the Department;

“responsible medical practitioner” has the same meaning as in paragraph 1 of Schedule 2 to the Act subject to the conditions in Regulation 15;

“responsible person” has the same meaning as in section 42 of the Act;

“short-term detention authorisation” means a report made under paragraph 2 of Schedule 2 to the Act;

“the Tribunal” means the Review Tribunal constituted under Article 70 of the Mental Health (Northern Ireland) Order 1986; and

“trust panel” means a panel constituted under Schedule 1 or 3 to the Act in accordance with section 297 of the Act.