

2019 No. 164

MENTAL CAPACITY

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

Made - - - - - *29th August 2019*

Laid before Assembly *30th August 2019*

Coming into operation in accordance with regulation 1.

The Department of Health(a), in exercise of the powers conferred by sections 14(4), 39, 42, 43, 50, 57, 58, 61(1), 79(4), 132, 276, 297 and 300 and paragraphs 5, 6, 7, 8, 14 and 19 of Schedule 1, paragraphs 1, 2, 3, 4, 7, 9, 11, 13 and 14 of Schedule 2 and paragraphs 3, 4, 5, 6, 7, and 9 of Schedule 3 to the Mental Capacity Act (Northern Ireland) 2016(b), makes the following Regulations:

PART 1

Citation, commencement and interpretation

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Mental Capacity (Deprivation of Liberty) Regulations (Northern Ireland) 2019 and shall come into operation in 1st October 2019.

(2) In these Regulations—

“the Act” means the Mental Capacity Act (Northern Ireland) 2016;

“approved social worker” has the same meaning as in section 280 of the Act;

“care or treatment” has the same meaning as the Act;

“Code of Practice” means one or more codes of practice made under section 288 of the Act;

“the Department” means the Department of Health;

“deprivation of liberty” has the same meaning as the Act;

“HSC trust” has the same meaning as the Act;

“interim period” means the period in Schedule 1 to the Act paragraph 20(5)(a);

“managing authority” has the same meaning as the Act and any limitations imposed in regulations under section 306(6);

“medical practitioner” means a fully registered person within the meaning of the Medical Act 1983(c);

(a) 2016 c. 5, s. 1(5)

(b) 2016 c. 18 (NI)

(c) 1983 c. 54

“nominated person” has the same meaning as in Part 3 of the Act;

“occupational therapist” means a person entitled to use the title and currently registered with the Health and Care Professions Council under the Health and Social Work Professions Order 2001(a);

“practitioner psychologist” means a person entitled to use the title and currently registered with the Health and Care Professions Council under the Health and Social Work Professions Order 2001;

“registered” in relation to nurses and midwives, means registered in the register maintained under Article 5 of the Nursing and Midwifery Order 2001(b) by virtue of qualifications in nursing or midwifery as the case may be;

“registered dentist” has the same meaning as in the Dentists Act 1984(c);

“relevant trust” is the HSC trust in which the deprivation of liberty of taking place or is proposed to take place;

“RQIA” means the Health and Social Care Regulation and Quality Improvement Authority;

“social worker” means a person registered as a social worker with the Northern Ireland Social Care Council in accordance with the Health and Personal Social Services Act (Northern Ireland) 2001(d);

“speech and language therapist” means a person entitled to use the title and currently registered with the Health and Care Professions Council under the Health and Social Work Professions Order 2001;

“suitably qualified” means a person who is suitably qualified to make formal assessments of capacity and meets the requirements to be suitably qualified as defined in regulation 2;

“unconnected with” has the same meaning as in section 304 of the Act; and

“X” means a person making an appointment, revocation or declaration mentioned in section 79(1) of the Act.

PART 2

Formal Assessment of Capacity and Nominated Person

Persons suitably qualified to make formal capacity assessments

2.—(1) A person is suitably qualified to make a formal capacity assessment and provide a statement of incapacity if paragraph (2) and (3) are met.

(2) The person must be one of the following—

- (a) a medical practitioner;
- (b) a social worker;
- (c) a registered nurse or midwife;
- (d) a registered dentist;
- (e) an occupational therapist;
- (f) a speech and language therapist; or
- (g) a practitioner psychologist.

(3) The person must—

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

(a) S.I. 2002/254
(b) S.I. 2002/253
(c) 1984 c. 24
(d) 2001 c. 3 (NI)

- (b) except in the 36 month period beginning with the date the person has successfully completed the training referred to in sub-paragraph (b), in the 36 months prior to the formal capacity assessment, have completed further training relevant to their role as a suitably qualified person to make a formal capacity assessment;
- (c) have two years experience in a professional role, within the previous ten years, working with persons who lack capacity;
- (d) be appointed by his or her employer as a person suitably qualified to make formal assessments of capacity; and
- (e) have the skills necessary to obtain, evaluate and analyse complex evidence and differing views and to weigh them appropriately in decision making.

Witnesses and persons unable to sign

3. A person can only be a witness in relation to the formalities under section 79 of the Act if he or she—

- (a) is ordinarily resident in Northern Ireland;
- (b) is unconnected with X; and
- (c) is not X’s nominated person.

4. If X has capacity to make an appointment, revocation or declaration under section 79 but is physically unable to make a signature, section 79(2)(a) is replaced by—

“(a) an addition sheet is added to the document containing the appointment, revocation or declaration and the addition sheet must include—

- (i) a signature in his or her own name by a person who is unconnected with X;
- (ii) a statement by that person that the signature on the addition sheet is on behalf of X and that in his or her opinion X has capacity to make an appointment, revocation or declaration; and
- (iii) a signed statement by one witness, in addition to the witness in paragraph (b), who must be unconnected with X stating that in their opinion X—
 - (aa) understands the effect of the appointment, revocation or declaration; and
 - (bb) has not been subject to any undue pressure in relation to the appointment, declaration or revocation.”.

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 authorising 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.

PART 4

Trust Panels

Panel membership

42.—(1) A panel must:

- (a) have three members, all of whom must be appointed by the relevant trust; and
 - (b) consist of—
 - (i) one medical practitioner who is suitably qualified;
 - (ii) one approved social worker; and
 - (iii) one suitably qualified person.
- (2) The panel members must—
- (a) be unconnected with P;
 - (b) not be involved in the care and treatment of P; and
 - (c) have completed training approved by the Department regarding the Act within 12 months of their first occurrence as a member of a panel.
- (3) The relevant trust must appoint one of the members as a chair of the panel.

Remuneration or allowances of auditor panel members

43. The relevant trust may pay members of the panel such remuneration or allowances as the trust may determine necessary to facilitate the member's participation on the panel.

Duty to record and retain information and records

44. All information and records received by, and produced by, the panel must be retained by the relevant trust for as long as is relevant, but no shorter period than 1 year after the authorisation comes to an end.

Assessment of the best interests

45.—(1) When determining if a deprivation of liberty would be in P's best interests, panel members must be satisfied that—

- (a) the determination is not based merely on P's age, appearance, or any other characteristic of P that would lead to unjustified assumptions being made regarding P's best interests;
- (b) all relevant circumstances have been considered;
- (c) waiting for a time in the future when P may regain capacity, if at all possible, to make the decision for themselves would not be in P's best interests;
- (d) as far as practicable, P has been encouraged and supported to participate in the best interest determination;
- (e) P's past and present wishes and feelings, beliefs and values and any other factors or written statements have been given special regard when reaching the determination;
- (f) relevant people have been consulted, so far as practicable, and that the views of those people have been taken into account;
- (g) the proposed deprivation of liberty is the least restrictive appropriate option; and
- (h) regard has been given to whether failure to do the act is likely to result in harm to other persons with resulting harm to P.

(2) Panel members may base their assessment of the requirements set out in paragraph (1) solely on the information provided within the application.

Decisions of the panel

46.—(1) Where a decision by the panel is not unanimous, an authorisation can be granted with the approval of a majority.

(2) The panel is not required to provide formal justification of its decision.

(3) The decision of the panel is to be based solely on the contents of the application Form and annexes to the application.

Definition for the purpose of Part 4

47. In this Part—

“P” means the person who is the subject of the application to the panel requesting authorisation for a deprivation of liberty;

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

“permitted period” has the same meaning as in paragraph 19 of Schedule 1 or paragraph 9 of Schedule 3 to the Act;

PART 5

Transitional Arrangements When a Deprivation of Liberty is Proposed Before a Person is 16

Transitional arrangements

48. Subject to paragraph 2 and regulation 50, Part 2 of the Act applies to a person who is within one month of reaching the age of 16 as it would to a person who is over 16 if a deprivation of liberty is proposed to be done in respect of a person after that person has reached the age of 16.

49. For the avoidance of doubt, regulation 50 applies in particular to—

- (a) a formal assessment of capacity under section 13 of the Act;
- (b) the requirement to ensure a nominated person is in place under section 15 of the Act; and
- (c) the requirements for a deprivation of liberty under section 24 of the Act subject to regulation 50.

50. A report under paragraph 2 of Schedule 2 to the Act (report authorising detention in hospital for examination etc.) cannot be made before the person has reached the age of 16.

51. For the avoidance of doubt, the protection from liability under section 9 of the Act does not apply to any act done on behalf of a person who has not reached the age of 16.

PART 6

Money and Valuables and Research

Money and valuables

52. If it appears to a relevant authority that a person who is an in-patient or resident in the hospital or care home lacks capacity in relation to managing their property or affairs, the relevant authority may receive and hold money and valuables on behalf of that person.

53.—(1) The relevant authority must not receive or hold on behalf of any one person money or valuables exceeding the amount in section 276(3)(a) of the Act without the consent of RQIA.

(2) If the total combined value of money or valuables in relation to one person exceeds the value in paragraph (1), the RQIA must consent to the relevant authority receiving or holding the money or valuables.

(3) When RQIA is considering whether consent under paragraph (2) should be provided, RQIA must have consideration to whether the money and valuables can be stored safely in the hospital or care home.

54. A receipt or discharge given by a relevant authority for such money or valuables should be treated as a valid receipt or discharge given by P.

55.—(1) Where a relevant authority holds money or valuables it may expend that money or dispose of those valuables for the benefit of P subject to paragraph (2).

(2) When a relevant authority expends money or disposes of valuables for the benefit of P the relevant authority must—

- (a) have regard to the sentimental value any article may have for P, if P had capacity;
- (b) consult P's nominated person (if one is appointed and if it is reasonable and practicable to do so) regarding the expenditure or disposal;
- (c) ensure that the expenditure or disposal is not of such nature that P's future options will be limited, unless necessary due to a contractual commitment or to ensure P's best interests; and

- (d) not use the money and valuables to pay for such things which would normally be included in the fees for the place of residence or to pay for such fees.

56.—(1) A relevant authority must hold the money and valuables in a safe and secure manner.

(2) Any loss of money and valuables, where the money is not expended or valuables disposed of under these Regulations and is not returned to P (if P has regained capacity) or a relevant person, is the responsibility of the relevant authority who has the obligation to replace lost money at full value and lost valuables at full monetary value.

57.—(1) A relevant authority must keep records of money and valuables kept for P.

(2) The records must include—

- (a) who the money or valuables are kept for;
- (b) the value of the money or description of valuables;
- (c) where the money or valuables are kept;
- (d) date and time the money or valuables were received, or if new money or valuables are received when they were received;
- (e) who received the money and valuables;
- (f) date and time money is expended or valuables disposed of;
- (g) the value of money or description, including value and monetary equivalent received, of valuables, expended or disposed of;
- (h) the reason for expenditure of money or disposal of valuables;
- (i) how the conditions in regulation 55(1) have been met;
- (j) who expended money or disposed of valuables;
- (k) signature of person doing anything in sub-paragraph (a) to (j); and
- (l) countersignature of another person witnessing the signature in sub-paragraph (k).

58. A relevant authority must, upon request from the RQIA, furnish annual returns to the RQIA containing such information in relation to this Part as the RQIA may request.

59. For the avoidance of doubt, any decision to expend money or dispose of valuables under these Regulations—

- (a) cannot be contrary to a relevant decision; and
- (b) must—
 - (i) not be made if P has capacity to make the decision;
 - (ii) be in the best interest of P; and
 - (iii) not be contrary to any aspect of Part 1 of the Act.

Research

60. An appropriate body is a person or a body designated as an appropriate body by an HSC trust or a university.

Definitions for the purpose of Part 6

61. In this Part—

- “P” has the same meaning as in section 276(1) of the Act;
- “property or affairs” also means property and affairs;
- “relevant authority” means the managing authority of the hospital or care home where the person is but does not include a hospital or accommodation that falls under Article 116 of the Mental Health (Northern Ireland) Order 1986;
- “relevant decision” has the same meaning as in section 276(6) of the Act; and

“relevant person” means a person who is not P but is authorised under the Act, or under any other lawful measure, to hold and manage the money or valuables for P.

Sealed with the Official Seal of the Department of Health on 29th August 2019.



Mark Lee
A senior officer of the Department of Health.

SCHEDULE
Statutory Forms

Regulation 37

Index of Forms

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Form 10	Short-term detention admission exception certificate
Form 11	Short-term detention admission report
Form 12	Short-term detention further admission report
Form 13	Short-term detention further report
Form 14	Extension authorisation (extension by report)
Form 15	Responsible person statement
Form 16	Application for trust panel extension authorisation
Form 17	Notification of application for trust panel authorisation and trust panel extension authorisation
Form 18	Notification of trust panel decision
Form 19	Notification of short-term detention
Form 20	Notification of an extension
Form 21	Discharge from detention

Form 1 – Statement of incapacity

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

A statement of incapacity can only be carried out by a medical practitioner, a nurse, a midwife, a social worker, a dentist, an occupational therapist, a speech and language therapist or a practitioner psychologist who has received specific training in the 36 months prior to making the statement and has 2 years' experience in the last 10 in working with persons who lack capacity.

The decision maker must ensure that the reasons for making a statement of incapacity are recorded on this form. The supporting evidence can be provided in the person's care plan or notes in line with professional or agency requirement. It is not necessary to duplicate the supporting evidence on this form but a note should be made of where it can be found.

1. The person's details (a label can also be affixed here)

Name:
Address:

Date of Birth:
HSC number (if known):

2. The assessors details

Name:
Work address:

Phone number:
Job title, team and staff number:

3. Date of formal assessment of capacity

Date the assessment was carried out:

4. Support to the person

Before deciding that someone lacks capacity, all practical help and support must be provided to enable the person to make a decision by themselves. This includes considering the environment and timing of the decision, ensuring that appropriate communication support is provided to the person and involving all relevant people who might help the person make the decision.

Has the environment for the decision been considered? (delete as appropriate)
Yes / No

Has the timing for the decision been considered? **Yes / No**

Has all practical help and support, including communication support, been given? **Yes / No**

Have all relevant people who may help the person make a capacitous decision been included? **Yes / No**

Has the information relevant to the decision been provided and/or explained in a way which is appropriate? For example, in simple language? **Yes / No**

Provide details.

Further sheets can be added if required.

5. Three Elements Test of Mental Capacity

Functional test

In relation to the detention amounting to deprivation of liberty, the person in section 1 is unable to (delete as appropriate)

- understand the information relevant to the care arrangements amounting to a deprivation of liberty.
- retain that information long enough to make the a decision accepting or refusing the care arrangements deprivation of liberty.
- appreciate and use and weigh that information.
- communicate his/her decision (whether by talking or any other means).

Provide details on how the person is unable to do the above and how this has been determined.

Further sheets can be added if required.

Impairment or disturbance test

There is no need for a formal diagnosis, it is sufficient to have reasonable belief that there is an impairment of, or disturbance in the functioning of, the mind or brain.

Provide details on the impairment of, or disturbance in the functioning of, the mind or brain.

Further sheets can be added if required.

Causal link

For a statement of incapacity to be provided there must be a causal link between the inability to make a decision in relation to the detention amounting to a deprivation of liberty and the impairment of, or the disturbance in the functioning of, the mind or brain. If there is no causal link the person does not lack capacity in the meaning of the Mental Capacity Act.

Provide details on the causal link.

Further sheets can be added if required.

6. Decision

If a person is unable to make a decision because they have an impairment of, or disturbance in the function of, the mind or brain a statement of incapacity can be made.

Statement of Incapacity

I certify that _____ (name) lacks capacity within the meaning of the Mental Capacity Act (Northern Ireland) 2016 in relation to the care arrangements which amount to a deprivation of his/her liberty and that I am suitably qualified to make a statement of incapacity.

Signature:

Date:

Form 2 – Best interests determination statement

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

A decision to deprive a person of liberty must be made in the person's best interests.

The decision maker should ensure that the reasons for this determination are recorded on this form. The supporting evidence can be provided in the person's care plan or notes in line with professional or agency requirements. It is not necessary to duplicate the supporting evidence on this form but a note should be made of where it can be found.

1. The person's details (a label can also be affixed here)

Name:

Address:

Date of Birth:

HSC number (if available):

2. The assessors details

Name:

Work address:

Phone number:

Job title, team and staff number:

Professional relationship to person:

3. Checklist

Have you ensured you have not made assumptions based on the person's age, appearance, condition or behaviour?

Yes No

Have you considered all the relevant circumstances?

Yes No

Have you tried whatever is reasonable and practicable to permit and encourage the person to take part, or to improve their ability to take part, in determining what is the best interests?

Yes No

You must have special regard to past and present wishes and feelings and beliefs and values.

Have you had **special regard** to the person's past and present wishes and feelings (expressed verbally, in writing or through behaviour or habits)?

Yes No

Have you had **special regard** to any beliefs and values (religious, cultural or moral) and any other factors which would be likely to influence the decision?

Yes No

Have you considered the human rights of the person?

Yes No

Have you considered other options that may be less restrictive of the person's rights?

Yes No

Have you consulted all relevant people as far as it is practical and appropriate to do so, including any person named by the person, anyone engaged in caring for the person or interested in the person's welfare?

Yes No

Have you consulted any nominated person?

Yes No

Have you considered the risk of harm to others which may result in harm to the person?

Yes No

4. Consideration

Outline factors which suggest that deprivation of liberty may not be in the person's best interests.

Outline whether it is likely that the person will have capacity at some point, and if so, whether or not it is appropriate to delay the deprivation of liberty until the person can make a decision.

Outline the reasoning why the deprivation of liberty is in the best interests of the person. This should include what other options have been considered, who has been involved in the decision and how the person's past and present wishes, feelings, beliefs, values and any other factors that the person would have included if he or she had capacity have been considered. It must also include consideration of harm, including how the prevention of serious harm condition is met.

Further sheets can be added if required.

5. Statement

Best interests should be determined on the grounds of reasonable belief and must include special regard to the person's past and present wishes, feelings, beliefs, values and any other factors the person would have considered if he or she had capacity.

Best interests determination statement

It is my opinion that it is in the best interests of _____ (name) to be deprived of his/her liberty.

Signature:

Date:

Form 3 – Consultation with nominated person

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

When consulting the nominated person it is not the opinions of the nominated person that are being sought, but specifically his or her view on what would be in the person's best interests, and in particular, their understanding of the person's own views and factors which would have influenced him or her if able to make a decision..

1. The person's details (a label can also be affixed here)

Name:
Address:

Date of Birth:
HSC number (if known):

2. The nominated person's details

Name:
Address:

Phone number:
The nominated person has been **appointed by the person / selected from the default list**. (Delete as appropriate.)

3. Views of the nominated person

Provide details of the consultation with the nominated person, including how the nominated person has been consulted, the views of the nominated person what P would have wanted and how any disagreements have been dealt with.

Further sheets can be added if required.

Form 5 – Application for trust panel authorisation

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

If more space is required additional sheets or information may be attached to this form. Information may also be copied from other sources, such as medical notes, and reference may be made to them without such document's inclusion.

1. The person's details (a label can also be affixed here)

Name:
Address:

Date of Birth:
HSC number (if known):

2. Person who is making the application

Name:
Work address:

Phone number:
Job title, team and staff number:
Professional relationship to person:

3. Person or body in charge of P's care or treatment (if same as applicant, leave blank)

Name:
Work address:

Phone number:
Job title, team and staff number:
Professional relationship to person:

4. Length of deprivation of liberty

For how long authorisation is being sought? (maximum 6 months)

5. Details about the deprivation of liberty

What is the place or places of the deprivation of liberty, including address and which trust it is in?
A deprivation of liberty authorisation must specify the place of the deprivation. The authorisation can cover deprivation of liberty in more than one place, for example in the place of residence of the person and in the day care centre, or the ordinary place of residence of the person and in a named place of respite.

Further sheets can be added if required.

6. Capacity whether to apply to the Review Tribunal

In your opinion, if the intervention was to be authorised, does the person lack (or probably lack) capacity to decide whether an application to the Review Tribunal should be made? **Yes / No** (delete as appropriate)

A person does not need to have the ability to make an application to the Review Tribunal. The determination of capacity only relates to the decision on whether an application should be made or not.

The distinction is important. This assessment relates to the capacity to decide whether an application should be made or not. Even if the person does not have ability to understand what the Tribunal process is or how an application should be made or be able to make an application, the person may still have capacity to decide whether or not an application should be made for an independent check on care arrangements that amount to a deprivation of liberty.

If the person is able to understand

- a. that the care arrangements mean that someone will always be checking on him or her;*
- b. that he or she cannot leave when he or she wishes to leave; and*
- c. that a meeting can take place to decide whether or not that should be allowed*

then it is likely that the person has the capacity whether to apply to the Review Tribunal.

If yes a Form 7 has to be included in the application.

If no a Form 7 does not have to be included in the application.

7. Annexes that must be attached to the Application

Annex A – statement of incapacity on **Form 1**.

Annex B – best interests determination statement on **Form 2**.

Annex C – consultation with the nominated person on **Form 3**.

Annex D – medical report on **Form 6**.

Annex E – statement on capacity to apply to the Review Tribunal on **Form 7** (if required).

Annex F – care plan.

A copy of P's care plan must be attached to the application.

8. Declaration

Declaration

I confirm I am eligible to make this application.

To the best of my knowledge all information in this application is correct and all required information is included.

Signature:

Date:

Form 6 – Medical report

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

A medical report must be attached to a Form 5, application for trust panel authorisation, Form 8, short-term detention authorisation and Form 16, application for trust panel extension authorisation.

The medical report must be done by a medical practitioner who is suitably qualified and who is unconnected to the person.

1. The person's details (a label can also be affixed here)

Name:
Address:

Date of Birth:
HSC number (if known):

2. Medical practitioner who is making the report

Name:
Work address:

Phone number:
Job title, team and staff number:
Professional relationship to person:

3. Criteria for authorisation – care and treatment

Is care and treatment available in the place where the person will be deprived of liberty?
Yes / No (delete as appropriate)

Provide details on the care and treatment.

Further sheets can be added if required.

4. Criteria for authorisation – lack of capacity

Have you personally completed a Form 1 – statement of incapacity? **Yes / No** (delete as appropriate)
If yes, continue to section 5.
If no, fill out the rest of section 4.

Provide details of how the person lacks capacity to make the decision, including how the statement of incapacity has been considered.

References can be made to Form 1 – formal assessment of capacity.

Further sheets can be added if required.

5. Criteria for authorisation – best interests

Have you personally completed a Form 2 – best interests determination statement? **Yes / No** (delete as appropriate)
If yes, continue to section 6.
If no, fill out the rest of section 5.

Provide details of how the intervention is in the person's best interests, including how the best interests determination statement has been considered.
References can be made to Form 2 – best interests statement.

Further sheets can be added if required.

6. Criteria for authorisation - prevention of serious harm condition

Would failing to detain the person in circumstances amounting to a deprivation of liberty create a risk of serious harm to the person or of serious physical harm to other persons? **Yes / No** (delete as appropriate)
Is the detention proportionate to the likelihood of harm concerned? **Yes / No** (delete as appropriate)
Is the detention proportionate to the seriousness of the harm concerned? **Yes / No** (delete as appropriate)
If no to any of the questions the prevention of serious harm condition is not met.

Provide details of how the prevention of serious harm condition is met.

Further sheets can be added if required

7. Criteria for authorisation – illness / suspected illness (short-term detention only)

Does the person have an illness or a suspected illness? **Yes / No** (delete as appropriate)
If there is no illness or suspected illness a short-term detention authorisation cannot be made.

Provide details of the illness or suspected illness.

Further sheets can be added if required

8. Statement

Statement

I am unconnected with the person in section 1 and I am suitably qualified to make a medical report under the Mental Capacity Act (Northern Ireland) 2019.

In my opinion the criteria for authorisation are met and I have examined the person in section 1 no more than two days before the date on which this report was signed.

Signature:

Date:

Form 7 – Statement that the person lacks capacity whether an application should be made to the Review Tribunal

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

Is the referral safeguard necessary for this person?

If the person lacks or probably lacks the capacity to decide whether or not to apply to the Review Tribunal (if the deprivation of liberty is authorised) then the referral safeguard applies.

The level of decision making ability required in relation to a Tribunal application is in most cases likely to be less than that needed to make a decision about the care arrangements which are being authorised.

A person does not need to have the ability to make an application to the Review Tribunal. The determination of capacity only relates to the decision on whether an application should be made or not.

The distinction is important. This assessment relates to the capacity to decide whether an application should be made or not. Even if the person does not have ability to understand what the Tribunal process is or how an application should be made or be able to make an application, the person may still have capacity to decide whether or not an application should be made for an independent check on care arrangements that amount to a deprivation of liberty.

If the person is able to understand

- a. that the care arrangements mean that someone will always be checking on him or her;*
- b. that he or she cannot leave when he or she wishes to leave; and*
- c. that a meeting can take place to decide whether or not that should be allowed*

then it is likely that the person has the capacity whether to apply to the Review Tribunal.

1. The person's details (a label can also be affixed here)

Name:

Date of Birth:

HSC number (if known):

2. Details of capacity assessment

Provide details on the capacity assessment and why the person lack (or probably lacks) capacity whether an application should be made to the Review Tribunal if the intervention is authorised.

Further sheets can be added if required.

3. Views of the person

Are you aware of the person expressing any wishes or feelings, in the past or present, on whether an application should be made to the Review Tribunal? **Yes / No** (delete as appropriate)

If yes, provide details:

Further sheets can be added if required

4. Statement

Statement

In my opinion the person in section 1 lacks (or probably lacks) capacity to decide whether an application to the Review Tribunal in relation to a trust panel authorisation or extension by extension report or trust panel extension authorisation should be made.

Signature:

Date:

The completed Form 7, together with all other forms completed for the application for trust panel authorisation, authorisation for short-term detention, extension authorisation or application for trust panel extension authorisation must be sent to the Attorney General:

- by the trust immediately after the trust panel has provided an authorisation as a result of an application for trust panel authorisation or trust panel extension authorisation; or
- by the person completing an extension report immediately after signing that report.

**Form 8 – Short-term detention authorisation for examination
or examination followed by treatment or care**

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

1. The person's details (a label can also be affixed here)

Name:
Address:

Date of Birth:
HSC number (if known):

2. Person who is making the authorisation report

It is intended that where possible an ASW should make the report authorising the short term detention.

Name:
Work address:

Phone number:
Job title, team and staff number:

Professional role (delete as appropriate):
Approved Social Worker
Healthcare Professional (designated by the hospital to make authorisation reports)

3. Responsible medical practitioner (if same as person making the authorisation, leave blank)

Name:
Work address:

Phone number:
Job title, team and staff number:
Professional relationship to person:

4. Hospital of detention

In what hospital, including ward and address, is the person being detained?

5. Examination or examination followed by treatment

Provide details of the examination, and if followed by treatment, details of the treatment (if known):

Further sheets can be added if required.

6. Capacity whether to apply to the Review Tribunal

In your opinion, does the person lack (or probably lack) capacity to decide whether an application to the Review Tribunal should be made? **Yes / No** (delete as appropriate)

A person does not need to have the ability to make an application to the Review Tribunal. The determination of capacity only relates to the decision on whether an application should be made or not.

The distinction is important. This assessment relates to the capacity to decide whether an application should be made or not. Even if the person does not have ability to understand what the Tribunal process is or how an application should be made or be able to make an application, the person may still have capacity to decide whether or not an application should be made for an independent check on care arrangements that amount to a deprivation of liberty.

If the person is able to understand

- a. that the care arrangements mean that someone will always be checking on him or her;*
- b. that he or she cannot leave when he or she wishes to leave; and*
- c. that a meeting can take place to decide whether or not that should be allowed*

then it is likely that the person has the capacity whether to apply to the Review Tribunal.

If yes a Form 7 has to be attached to the authorisation.

7. Objection from the nominated person

Is the nominated person providing a reasonable objection to the short-term detention for examination or examination followed by treatment or care? **Yes / No** (delete as appropriate)

If yes a Form 9 has to be attached to the authorisation.

8. Annexes that must be attached to the authorisation

Annex A – statement of incapacity on **Form 1**.

Annex B – best interests determination statement on **Form 2**.

Annex C – consultation with the nominated person on **Form 3**.

Annex D – medical report on **Form 6**.

Annex E – statement on capacity to apply to the Review Tribunal on **Form 7** (if required).

Annex F – approved social worker report on **Form 9** (if required).

9. Declaration

Declaration

I have seen the person in section 1 personally no more than two days before the date below and in my opinion, based on the content of this authorisation and attachments, the criteria for detention are met.

This report authorises the detention in circumstances amounting to a deprivation of liberty in the hospital noted at section 4 for the purpose of examination or examination followed by treatment or care as outlined in section 5.

Signature:

Date:

Form 9 – Consultation with approved social worker
The Mental Capacity (Deprivation of Liberty) Regulations (Northern Ireland) 2019

Form 9 is only required if the nominated person provides a reasonable objection to the short-term detention for examination or examination followed by treatment or care.

1. The person's details (a label can also be affixed here)

Name:
Address:

Date of Birth:
HSC number (if known):

2. Approved social worker consulted with

Name:
Work address:

Phone number:
Job title, team and staff number:
Professional relationship to person:

3. Person completing Form 9 (if same as person completing Form 8, leave blank)

Name:
Work address:

Phone number:
Job title, team and staff number:
Professional relationship to person:

4. Consultation with approved social worker

Provide details on how an approved social worker has been consulted in relation to the short-term detention for examination or examination followed by treatment or care, including the views of the approved social worker and the approved social worker's opinion on whether the short-term detention is in the person's best interests. Also provide details on the reasonable objection from of the nominated person and the views of the approved social worker on the objection.

Further sheets can be added if required.

Form 10 – Short-term detention admission exception certificate

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

If the person is not admitted to hospital within 2 days of the completion of a medical report a new medical report and a new short-term detention authorisation report have to be made unless an exception certificate has been completed.

By signing the short-term detention admission exception certificate the admission to hospital can be delayed by up to 12 days to the 14th day after the completion of the medical report. If the person is not admitted within the period certified on the exception certificate a new medical report and a new short-term detention authorisation report have to be made.

1. The person's details (a label can also be affixed here)

Name:

Address:

Date of Birth:

HSC number (if known):

2. Person who is making the certificate

Name:

Work address:

Phone number:

Job title, team and staff number:

Professional role (delete as appropriate):

responsible medical practitioner

alternative medical practitioner

3. Responsible medical practitioner (if same as person making the certificate, leave blank)

Name:

Work address:

Phone number:

Job title, team and staff number:

4. Length of delay

When was the medical report completed?

How long can the admission to hospital be delayed? (the delay can be no longer than 14 days beginning with the day the medical report was completed)

5. Reason for delay

What are the exceptional circumstances for the delay and why is it necessary to delay the admission?

Further sheets can be added if required.

6. Declaration

Certification

I am certifying that it is necessary because of exceptional circumstances to delay the admission for the period noted in step 4.

Signature:

Date:

Form 11 – Short-term detention admission report
The Mental Capacity (Deprivation of Liberty) Regulations (Northern Ireland) 2019

If more space is required additional sheets or information may be attached to this form.

1. The person's details (a label can also be affixed here)

Name:
Address:

Date of Birth:
HSC number (if known):

2. Person who is making the report

Name:
Work address:

Phone number:
Job title, team and staff number:

Professional role (delete as appropriate):
responsible medical practitioner
alternative medical practitioner
medical practitioner (member of staff)

3. Responsible medical practitioner (if same as person making the report, leave blank)

Name:
Work address:

Phone number:
Job title, team and staff number:

4. Examination or care

What examination or care will be provided to the person?

Further sheets can be added if required.

5. Harm

How would failure to detain the person, for the purposes of examination or care as outlined in section 4, create a risk of serious harm to the person or serious risk of physical harm to others?

Further sheets can be added if required.

6. Proportionality

Explain the likelihood of harm to the person or physical harm to others, the seriousness of the harm and how the detention is proportionate to the harm.

Further sheets can be added if required.

7. Capacity

Does the person lack capacity in relation to the short-term detention? **Yes / No** (delete as appropriate)

Explain how the person lacks capacity and which part of the functional test the person is unable to do.

Further sheets can be added if required.

8. Best interests

Is the short-term detention in person's best interests? **Yes / No** (delete as appropriate)

Explain the best interests determination.

Further sheets can be added if required.

9. Nominated person

Has the nominated person been consulted? **Yes / No** (delete as appropriate)

Has the nominated person provided any further/new information since the creation of the short-term detention authorisation report? **Yes / No** (delete as appropriate)

If yes, complete a Form 3 and attach to the report.

10. Declaration

Declaration

In my opinion (delete as appropriate):

- a) the conditions for detention are not met and the authorisation is terminated.
- b) the conditions for detention are met and the authorisation can continue.

Signature:

Date:

If the person signing the declaration is not a responsible medical practitioner or another medical practitioner a further admission report must be made within 48 hours of this report being signed.

Form 12 – Short-term detention further admission report
The Mental Capacity (Deprivation of Liberty) Regulations (Northern Ireland) 2019

If more space is required additional sheets or information may be attached to this form.

1. The person's details (a label can also be affixed here)

Name:
Address:

Date of Birth:
HSC number (if known):

2. Person who is making the report

Name:
Work address:

Phone number:
Job title, team and staff number:

Professional role (delete as appropriate):
responsible medical practitioner
alternative medical practitioner

3. Responsible medical practitioner (if same as person making the report, leave blank)

Name:
Work address:

Phone number:
Job title, team and staff number:

4. Examination or care

What examination or care will be provided to the person?

Further sheets can be added if required.

5. Harm

How would failure to detain the person, for the purposes of examination or care as outlined in section 4, create a risk of serious harm to the person or risk of serious physical harm to others?

Further sheets can be added if required.

6. Proportionality

Explain the likelihood of harm to the person or physical harm to others, the seriousness of the harm and how the detention is proportionate to the harm.

Further sheets can be added if required.

7. Capacity

Does the person lack capacity in relation to the short-term detention? **Yes / No** (delete as appropriate)

Explain how the person lacks capacity and which part of the functional test the person is unable to do.

Further sheets can be added if required.

8. Best interests

Is the short-term detention in person's best interests? **Yes / No** (delete as appropriate)

Explain the best interests determination.

Further sheets can be added if required.

9. Nominated person

Has the nominated person been consulted? **Yes / No** (delete as appropriate)

Has the nominated person provided any further/new information since the creation of the short-term detention authorisation report? **Yes / No** (delete as appropriate)

If yes, complete a Form 3 and attach to the report.

10. Declaration

Declaration

In my opinion (delete as appropriate):

- a) the conditions for detention are not met and the authorisation is terminated.
- b) the conditions for detention are met and the authorisation can continue.

Signature:

Date:

Form 13 – Short-term detention further report
The Mental Capacity (Deprivation of Liberty) Regulations (Northern Ireland) 2019

If more space is required additional sheets or information may be attached to this form.

1. The person's details (a label can also be affixed here)

Name:
Address:

Date of Birth:
HSC number (if known):

2. Person who is making the report

Name:
Work address:

Phone number:
Job title, team and staff number:

Professional role (delete as appropriate):
responsible medical practitioner
alternative medical practitioner

3. Responsible medical practitioner (if same as person making the report, leave blank)

Name:
Work address:

Phone number:
Job title, team and staff number:

4. Examination or care

What examination or care will be provided to the person?

Further sheets can be added if required.

5. Harm

How would failure to detain the person, for the purposes of examination or care as outlined in section 4, create a risk of serious harm to the person or risk of serious physical harm to others?

Further sheets can be added if required.

6. Proportionality

Explain the likelihood of harm to the person or physical harm to others, the seriousness of the harm and how the detention is proportionate to the harm.

Further sheets can be added if required.

7. Capacity

Does the person lack capacity in relation to the short-term detention? **Yes / No** (delete as appropriate)

Explain how the person lacks capacity and which part of the functional test the person is unable to do.

Further sheets can be added if required.

8. Best interests

Is the short-term detention in person's best interests? **Yes / No** (delete as appropriate)

Explain the best interests determination.

Further sheets can be added if required.

9. Nominated person

Has the nominated person been consulted? **Yes / No** (delete as appropriate)

Has the nominated person provided any further/new information since the creation of the short-term detention authorisation report? **Yes / No** (delete as appropriate)

If yes, complete a Form 3 and attach to the report.

10. Declaration

Declaration

In my opinion (delete as appropriate):

- a) the conditions for detention are not met and the authorisation is terminated.
- b) the conditions for detention are met and the authorisation can continue.

Signature:

Date:

Form 14 – Extension authorisation (extension by report)

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

If more space is required additional sheets or information may be attached to this form. Information may also be copied from other sources, such as medical notes, and reference may be made to them without such document's inclusion.

1. The person's details (a label can also be affixed here)

Name:

Address:

Date of Birth:

HSC number (if known):

2. Medical practitioner who is making the authorisation

Name:

Work address:

Phone number:

Job title, team and staff number:

When was the person examined?

3. Person or body in charge of the person's care (if same as person making the extension authorisation, leave blank)

Name:

Work address:

Phone number:

Job title, team and staff number:

4. Extension being authorised

Is the report a first or subsequent extension? **First / Subsequent** (delete as appropriate)

How long is the extension for? (delete as appropriate)

6 months (maximum for first extension)

12 months (maximum for subsequent extension)

other – please specify:

5. Details about the deprivation of liberty

What is the place or places of the deprivation of liberty, including address and which trust it is in?

A deprivation of liberty authorisation must specify the place of the deprivation. The authorisation can cover deprivation of liberty in more than one place, for example in the place of residence of the person and in the day care centre, or the ordinary place of residence of the person and in a named place of respite.

Further sheets can be added if required.

6. Criteria for continuation – care and treatment

Is care and treatment available in the place where the person will be deprived of liberty?
Yes / No (delete as appropriate)

Provide details on the care and treatment.

Further sheets can be added if required.

7. Criteria for continuation – lack of capacity

Have you personally completed a Form 1 – statement of incapacity? **Yes / No** (delete as appropriate)
If yes, continue to section 8.
If no, fill out the rest of section 7.

Provide details of how the person lacks capacity to make the decision, including how the statement of incapacity has been considered.

Further sheets can be added if required.

8. Criteria for continuation – best interests

Have you personally completed a Form 2 – best interests determination statement? **Yes / No** (delete as appropriate)
If yes, continue to section 9.
If no, fill out the rest of section 8.

Provide details of how the intervention is in the person's best interests, including how the best interests determination statement has been considered.

Further sheets can be added if required.

9. Criteria for continuation - prevention of serious harm condition

Would failing to detain the person in circumstances amounting to a deprivation of liberty create a risk of serious harm to the person or of serious physical harm to other persons? **Yes / No** (delete as appropriate)

Is the detention proportionate to the likelihood of harm concerned? **Yes / No** (delete as appropriate)

Is the detention proportionate to the seriousness of the harm concerned? **Yes / No** (delete as appropriate)

If no to any of the questions the prevention of serious harm condition is not met.

Provide details of how the prevention of serious harm condition is met.

Further sheets can be added if required

10. Opinion of the responsible person

Has the responsible person provided a statement on Form 15 that in his or her opinion the criteria for continuation are met for each of the interventions in section 4? **Yes / No** (delete as appropriate)

If yes, Form 15 must be attached to the report.

If no, the authorisation cannot be extended by the making of a report. An application has to be made to the trust panel on Form 16.

11. Capacity whether to apply to the Review Tribunal

In your opinion, does the person lack (or probably lack) capacity to decide whether an application to the Review Tribunal should be made? **Yes / No** (delete as appropriate)

A person does not need to have the ability to make an application to the Review Tribunal. The determination of capacity only relates to the decision on whether an application should be made or not.

The distinction is important. This assessment relates to the capacity to decide whether an application should be made or not. Even if the person does not have ability to understand what the Tribunal process is or how an application should be made or be able to make an application, the person may still have capacity to decide whether or not an application should be made for an independent check on care arrangements that amount to a deprivation of liberty.

If the person is able to understand

- a. that the care arrangements mean that someone will always be checking on him or her;*
- b. that he or she cannot leave when he or she wishes to leave; and*
- c. that a meeting can take place to decide whether or not that should be allowed*

then it is likely that the person has the capacity whether to apply to the Review Tribunal.

If yes a Form 7 has to be included in the application.

If no a Form 7 does not have to be included in the application.

12. Annexes that must be attached to the authorisation

Annex A – statement of incapacity on **Form 1**.

Annex B – best interests determination statement on **Form 2**.

Annex C – consultation with the nominated person on **Form 3**.

Annex D – statement on capacity to apply to the Review Tribunal on **Form 7** (if required).

Annex E – responsible person statement on **Form 15**.

Annex F – care plan.

A copy of P's care plan must be attached to the application.

13. Declaration

Declaration

I confirm I am eligible to make this extension report.

In my opinion the criteria for continuation are met in respect of the deprivation of liberty and the authorisation is extended for the period mentioned in section 4.

Signature:

Date:

Form 15 – Responsible person statement

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

If more space is required additional sheets or information may be attached to this form.

1. The person's details (a label can also be affixed here)

Name:
Address:

Date of Birth:
HSC number (if known):

2. The responsible person

Name:
Work address:

Phone number:
Job title, team and staff number (if applicable):

3. The responsible person criteria

Have you completed the statement of incapacity? **Yes / No** (delete as appropriate)

If yes, you cannot complete the responsible person statement as the person making the report and the person who completes the statement of incapacity must be different.

Are you unconnected with the person in section 1? **Yes / No** (delete as appropriate)

If no, you cannot complete the responsible person statement as the person making the report must be unconnected with the person.

Role that qualifies as a responsible person (delete as appropriate):
an approved social worker who is involved in relevant care or treatment of the person.
a person designated by the managing authority in the hospital or care home where the person is an in-patient or resident.

4. Criteria for continuation – care and treatment

Is care and treatment available in the place where the person will be deprived of liberty? **Yes / No** (delete as appropriate)

Provide details on the care and treatment.

Further sheets can be added if required.

5. Criteria for authorisation – lack of capacity

Have you personally completed a Form 1 – statement of incapacity? **Yes / No** (delete as appropriate)

If yes, continue to section 6.

If no, fill out the rest of section 5.

Provide details of how the person lacks capacity to make the decision, including how the statement of incapacity has been considered.

References can be made to Form 1 – formal assessment of capacity.

Further sheets can be added if required.

6. Criteria for authorisation – best interests

Have you personally completed a Form 2 – best interests determination statement? **Yes / No** (delete as appropriate)

If yes, continue to section 7.

If no, fill out the rest of section 6.

Provide details of how the intervention is in the person's best interests, including how the best interests determination statement has been considered.

References can be made to Form 2 – best interests statement.

Further sheets can be added if required.

7. Criteria for authorisation - prevention of serious harm condition

Would failing to detain the person in circumstances amounting to a deprivation of liberty create a risk of serious harm to the person or of serious physical harm to other persons? **Yes / No** (delete as appropriate)

Is the detention proportionate to the likelihood of harm concerned? **Yes / No** (delete as appropriate)

Is the detention proportionate to the seriousness of the harm concerned? **Yes / No** (delete as appropriate)

If no to any of the questions the prevention of serious harm condition is not met.

Provide details of how the prevention of serious harm condition is met.

Further sheets can be added if required

8. Statement

Statement

In my opinion the criteria for continuation for deprivation of liberty are (delete as appropriate):

a) met.

b) not met.

If you do not believe the criteria has been met the deprivation of liberty cannot be extended using an extension authorisation (extension report) !

Signature:

Date:

Form 16 – Application for trust panel extension authorisation

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

If more space is required additional sheets or information may be attached to this form. Information may also be copied from other sources, such as medical notes, and reference may be made to them without such document's inclusion.

More than one intervention can be applied for in one application. If required more than one form can be used for one application.

1. The person's details (a label can also be affixed here)

Name:
Address:

Date of Birth:
HSC number (if known):

2. Person who is making the application

Name:
Work address:

Phone number:
Job title, team and staff number:
Professional relationship to person:

3. Person on body in charge of P's care or treatment (if same as applicant, leave blank)

Name:
Work address:

Phone number:
Job title, team and staff number:
Professional relationship to person:

4. Extension(s) being applied for and length of authorisation

Is the report a first or subsequent extension? **First / Subsequent** (delete as appropriate)

How long is the extension for? (delete as appropriate)

- 6 months (maximum for first extension)
- 12 months (maximum for subsequent extension)
- other – please specify:

5. Details about the deprivation of liberty

What is the place or places of the deprivation of liberty, including address and which trust it is in?

A deprivation of liberty authorisation must specify the place of the deprivation. The authorisation can cover deprivation of liberty in more than one place, for example in the place of residence of the person and in the day care centre, or the ordinary place of residence of the person and in a named place of respite.

6. Capacity whether to apply to the Review Tribunal

In your opinion, if the extension was to be authorised, does the person lack (or probably lack) capacity to decide whether an application to the Review Tribunal should be made? **Yes / No** (delete as appropriate)

A person does not need to have the ability to make an application to the Review Tribunal. The determination of capacity only relates to the decision on whether an application should be made or not.

The distinction is important. This assessment relates to the capacity to decide whether an application should be made or not. Even if the person does not have ability to understand what the Tribunal process is or how an application should be made or be able to make an application, the person may still have capacity to decide whether or not an application should be made for an independent check on care arrangements that amount to a deprivation of liberty.

If the person is able to understand

- a. that the care arrangements mean that someone will always be checking on him or her;*
- b. that he or she cannot leave when he or she wishes to leave; and*
- c. that a meeting can take place to decide whether or not that should be allowed*

then it is likely that the person has the capacity whether to apply to the Review Tribunal.

If yes a Form 7 has to be included in the application.

If no a Form 7 does not have to be included in the application.

7. Annexes that must be attached to the Application

Annex A – statement of incapacity on **Form 1**.

Annex B – best interests determination statement on **Form 2**.

Annex C – consultation with the nominated person on **Form 3**.

Annex D – medical report on **Form 6**.

Annex E – statement on capacity to apply to the Review Tribunal on **Form 7** (if required).

Annex F – responsible person statement on **Form 15**.

Annex G – care plan.

A copy of P's care plan must be attached to the application.

8. Declaration

Declaration

I confirm I am eligible to make this application.

To the best of my knowledge all information in this application is correct and all required information is included.

Signature:

Date:

Form 17 – Notification of application for trust panel authorisation and trust panel extension authorisation

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

To:
Name:
Address:

This is to notify you that the _____ (trust name) has on _____ (date) received an application under the Mental Capacity Act (Northern Ireland) 2016 in respect of

Name:
Address:

for a trust panel to (delete as appropriate):
authorise a deprivation of liberty.
extend an authorisation for a deprivation of liberty.

The trust has constituted a panel to consider the application. The panel has 7 working days to make a decision from when the trust received application. The panel can authorise the intervention, refuse to grant an authorisation or provide an interim authorisation for a maximum of 21 days.

If you like more information about the reasons for the application you can contact the trust directly.

Enclosed with this letter is a leaflet providing information on the trust panel and a person's rights under the Mental Capacity Act.

Trust details

Trust:
Address:

Reference number:
Contact person:
Phone number:
Email:

Form 18 – Notification of trust panel decision
The Mental Capacity (Deprivation of Liberty) Regulations (Northern Ireland) 2019

To:
Name:
Address:

This is to notify you that a trust panel constituted under the Mental Capacity Act (Northern Ireland) 2016 in the _____ (trust name) has on _____ (date) made a decision respect of
Name:
Address:

The trust panel has **granted / extended / refused / granted an interim** (delete as appropriate) authorisation for a deprivation of liberty.

The purpose or purposes of the deprivation of liberty is/are:

The place or places where the deprivation of liberty will take place is/are:
(the authorisation may authorise a deprivation of liberty in one place for one purpose and another place for another purpose)

If you like more information about the reasons for the decision you can contact the trust directly.

A decision by the trust panel to grant, extend or grant an interim authorisation can be considered by the Review Tribunal.

Enclosed with this letter is a leaflet providing information on the trust panel, the Review Tribunal and a person's rights under the Mental Capacity Act.

Trust details

Trust:
Address:

Reference number:
Contact person:
Phone number:
Email:

Form 19 – Notification of short-term detention
The Mental Capacity (Deprivation of Liberty) Regulations (Northern Ireland) 2019

To:
Name:
Address:

This is to notify you that a short-term detention for examination or examination followed by treatment or care under the Mental Capacity Act (Northern Ireland) 2016 at _____ (name of hospital) in the _____ (trust name) has on _____ (date) been authorised in respect of

Name:
Address:

If you like more information about the reasons for the decision you can contact the trust directly.

The decision to authorise a short-term detention for examination or examination followed by treatment or care can be considered by the Review Tribunal.

Enclosed with this letter is a leaflet providing information on short-term detentions, the Review Tribunal and a person's rights under the Mental Capacity Act.

Trust details

Trust:
Address:

Reference number:
Contact person:
Phone number:
Email:

Form 20 – Notification of an extension

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

To:
Name:
Address:

This is to notify you that an authorisation under the Mental Capacity Act (Northern Ireland) 2016 in the _____ (trust name) has on _____ (date) been extended

in respect of
Name:
Address:

The extension relates to an authorisation for a deprivation of liberty.

The purpose or purposes of the deprivation of liberty is/are:

The place or places where the deprivation of liberty will take place is/are:

(the authorisation may authorise a deprivation of liberty in one place for one purpose and another place for another purpose)

If you like more information about the reasons for the decision to extend the authorisation you can contact the trust directly.

The decision to extend the authorisation can be considered by the Review Tribunal.

Enclosed with this letter is a leaflet providing information on the extension process, the Review Tribunal and a person's rights under the Mental Capacity Act.

Trust details

Trust:
Address:

Reference number:
Contact person:
Phone number:
Email:

Form 21 – Discharge from detention

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

When a person is discharged from detention under the Mental Capacity Act (Northern Ireland) 2016 this Form must be provided to the person being discharged and to any other person the person being discharged has asked to be notified.

To:
Name:
Address:

This is to notify you that:

Name:
Address:

has on _____ (date) been discharged from detention amounting to deprivation of liberty by virtue of the Mental Capacity Act (Northern Ireland) 2016.

The effect of the discharge from detention is that a previous authorisation (authorising the detention amounting to a deprivation of liberty by virtue of a short-term detention in hospital, trust panel authorisation, trust panel extension authorisation or an extension report) under the Mental Capacity Act (Northern Ireland) 2016 is revoked. That authorisation cannot be used again as an additional safeguard and if a new detention amounting to a deprivation of liberty is necessary a new authorisation is required.

Enclosed with this letter is a leaflet providing information on deprivations of liberty under the Mental Capacity Act and the effect of the discharge from detention.

Trust details

Trust:
Address:

Reference number:
Contact person:
Phone number:
Email:

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide technical details for the Mental Capacity Act (Northern Ireland) 2016 and come into effect on 1st October 2019.

Part 1 provides definitions relevant to all the Regulations.

Part 2 provides details on the definition for the requirements of suitably qualified persons and notes that this can be a number of health and social care professions, with relevant experience and training approved by the Department. The Part also provides provisions for changes to the Act in situations where a person who has capacity is making a declaration, revocation or appointment of a nominated person but is physically unable to sign personally.

Part 3 provides details on information that is required during a detention amounting to a deprivation of liberty, authorisations and extensions of authorisations.

As required in section 57(4) Part 3 prescribes that P, the nominated person and any persons P has asked to be notified as soon as a detention occurs and that information about the detention, including under what provisions, the rights of P under the Act and how the Review Tribunal operates is provided. Part 3 also prescribes that P and any person P has asked to be notified is notified when P is discharged from detention. As allowed in section 58 Part 3 prescribes that this information must be made in writing and must be approved by the Department.

Part 3 also prescribes details about applications for trust panel authorisations, reports in respect of short-term detentions and extensions, including who can apply or make the reports and information that must be included in the application, care plan and medical report.

Part 3 also prescribes the Forms which must be used in respect of authorisations and the Forms can be found in the Schedule to the Regulations.

Part 4 provides the details on trust panels. It is prescribed in Part 4 the requirements on a person who is on a trust panel, how the panel operates and how the panel makes decisions.

Part 5 provides transitional arrangements for a person who is not 16 but where a detention amounting to a deprivation of liberty is proposed after the person's birthday. This will allow a seamless transition into the statutory framework of the Act by allowing safeguards and additional safeguards to be done in the month leading up to the 16th birthday. However, as it is noted in Part 5, allowing the safeguards to be put in place before a person is 16 does not allow a detention amounting to a deprivation of liberty by virtue of the Act before the person is 16.

Part 6 makes provisions for the managing authority of residential care and nursing homes to hold and manage money and valuables of a person who lacks capacity. Part 6 prescribes details on considerations that must be had and the formalities when holding money and valuables. Part 6 also provides who the appropriate body for approving research is.

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