
STATUTORY RULES OF NORTHERN IRELAND

2019 No. 199

**The Mental Capacity (Deprivation of Liberty)
(No. 2) Regulations (Northern Ireland) 2019**

PART 3

Information, Authorisation and Extensions

CHAPTER 1

Information

Information

5.—(1) For the purposes of section 57(1)(a) as soon as practicable 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) by the managing authority where P is deprived of liberty.

(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) For the purposes of section 57(1)(a) as soon as practicable 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) by the managing authority where P is deprived of liberty.

(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.

CHAPTER 2

Trust panel authorisations

Persons who can make an application for Schedule 1 authorisation

7. For the purposes of paragraph 5(1)(a) of Schedule 1 to the Act a person can make an application under Schedule 1 to the Act if he or she is—

- (a) a suitably qualified person;
- (b) involved in the care or treatment of P;
- (c) not the person making the medical report required in paragraph 6(1)(b) of Schedule 1 to the Act; and
- (d) unconnected with P.

Form of application

8. For the purposes of paragraph 6(1)(a) and (e) of Schedule 1 to the Act an application for authorisation under Schedule 1 to the Act must be made on Form 5, include the information in Form 5 and the Forms in regulation 9.

9. 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 care plan must be made on Form 4;
- (d) the medical report must be made on Form 6; and
- (e) the statement in paragraph 6(2) of Schedule 1 to the Act must be made on Form 7.

Medical report

10. For the purposes of paragraph 7(1) and 7(1)(c) of Schedule 1 to the Act the medical report must be made on Form 6 and include the information in Form 6.

Care plan

11. For the purposes of paragraph 8 of Schedule 1 to the Act the care plan must be made on Form 4 and include the information in Form 4.

Information

12.—(1) For the purposes of paragraph 14(1)(a) of Schedule 1 to the Act when an application is received by the relevant trust, it must as soon as practicable notify P and persons in paragraph (2) with the information in paragraph (3).

(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.

(3) The information that must be provided includes—

- (a) information that an application has been received in respect of P;
- (b) the purpose of the application;

- (c) information about the HSC Trust where the decision will be taken and how to contact the HSC Trust;
- (d) information about the workings of the trust panel; and
- (e) information about P's rights under the Act.

13.—(1) For the purposes of paragraph 19(3)(b) and 20(6) of Schedule 1 to the Act as soon as practicable after granting or refusing an authorisation under paragraph 15(1) of Schedule 1 to the Act or granting an interim authorisation under paragraph 20(1) of Schedule 1 to the Act, the panel must notify P and the persons in paragraph (2) with the information in paragraph (3) and (4).

(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) The information that must be provided includes—

- (a) notification of the decision; and
- (b) contact details for the HSC Trust in which the trust panel made the decision.

(4) If an authorisation is granted under paragraph 15(1) and 20(1) of Schedule 1 to the Act, the panel must also provide information to P and the persons in paragraph (2) on—

- (a) the purpose or purposes of the deprivation of liberty;
- (b) the place or places where the deprivation of liberty will take place; and
- (c) P's rights in respect of the Review Tribunal.

(5) As soon as practicable after granting or refusing an authorisation or granting an interim authorisation under paragraph 15(1) or 20(1) 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.

(6) 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 or care

Responsible Medical Practitioner, alternative medical practitioner and medical practitioner

14.—(1) For the purposes of paragraph 1(2) of Schedule 2 to the Act a medical practitioner can only carry out the functions of the responsible medical practitioner as defined in paragraph (2) if he or she—

- (a) is a suitably qualified person; and
- (b) has 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.

(2) The functions of a responsible medical practitioner include—

- (a) examination and report in accordance with paragraph 11(2) and (4) of Schedule 2 to the Act;

- (b) examination and report in accordance with paragraph 13(2) of Schedule 2 to the Act; and
- (c) examination and report in accordance with paragraph 14(2) of Schedule 2 to the Act.

15. For the purposes of paragraphs 11(3)(b), 13(3)(b) and 14(4)(b) of Schedule 2 to the Act a medical practitioner who may make a report under paragraphs 11, 13 or 14 in Schedule 2 to the Act as another medical practitioner is a person who meets the criteria for being a responsible medical practitioner in regulation 14 but who is not in charge of P's care.

16. For the purpose of paragraph 9(2)(b) of Schedule 2 to the Act a person is a medical practitioner who can make an exception certificate if he or she—

- (a) meets the requirements of a responsible practitioner in regulation 14;
- (b) meets the requirements of an another medical practitioner in regulation 15; or
- (c) 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

17.—(1) For the purposes of paragraph 3(1)(a) of Schedule 2 to the Act 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—
 - (aa) a medical practitioner;
 - (bb) a registered nurse or midwife;
 - (cc) a social worker;
 - (dd) a registered dentist;
 - (ee) an occupational therapist;
 - (ff) a speech and language therapist; or
 - (gg) a practitioner psychologist;
 - (ii) has in the last 36 months successfully completed training approved by the Department;
 - (iii) except in the 36 month period beginning with the date the person has successfully completed the 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; and
 - (iv) has two years experience in the last 10 years in a professional role working with persons who lack capacity

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

18. For the purposes of paragraph 2(4) and 2(4)(d) of Schedule 2 to the Act a short-term detention authorisation for examination or examination followed by treatment or care must be made on Form 8 and include the information in Form 8 and the Forms in regulation 19.

19. When making a short-term detention authorisation for examination or examination followed by treatment or care 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) a medical report must be included and made on Form 6;
- (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.

20. For the purposes of paragraphs 9(3), 11(4), 13(4) and 14(5) of Schedule 2 to the Act—

- (a) a certificate for the purposes of paragraph 9(2)(b) of Schedule 2 to the Act must be made on Form 10 and include the information in Form 10;
- (b) a report for the purposes of paragraph 11(4) of Schedule 2 to the Act must be made on Form 11;
- (c) a report for the purposes of paragraph 13(4) of Schedule 2 to the Act must be made on Form 12; and
- (d) a report for the purposes of paragraph 14(5) of Schedule 2 to the Act must be made on Form 13.

Medical report

21. For the purposes of paragraph 4(1) and 4(1)(c) of Schedule 2 to the Act the medical report must be made on Form 6 and include the information in Form 6.

Information

22.—(1) For the purposes of paragraph 7(1) and 7(1)(b) of Schedule 2 to the Act 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) with the information in paragraph (3).

(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) The information that must be provided includes—

- (a) notification that P is detained in circumstances amounting to a deprivation of liberty;
- (b) the hospital where the detention is taking place;
- (c) the HSC Trust where the detention is taking place;
- (d) the date of the detention decision;
- (e) information on short-term detentions;
- (f) guidance regarding the Review Tribunal; and
- (g) a person's rights under the Act.

(4) 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.

(5) 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 report

23. For the purposes of section 39(2) and 39(2)(e) an extension report must be made on Form 14 and include the information in Form 14 and the Forms in regulation 24.

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 care plan must be made on Form 4;
- (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. For the purposes of section 42(1) of the Act a responsible person means a person who is either an approved social worker subject to the conditions in regulation 26 or another person subject to the conditions in regulation 27.

26. An approved social worker can be the responsible person if he or she—

- (a) is in charge of P's case; and
- (b) 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.

27.—(1) In all circumstances another person can be the responsible person if he or she is designated as a responsible person by—

- (a) the managing authority of a hospital or care home where P is an in-patient or resident; or
- (b) the relevant trust.

(2) A person can only be designated as a responsible person if he or she—

- (a) is a suitably qualified person; and
- (b) is unconnected with P.

Information when making an extension report

28.—(1) For the purposes of section 43(5) of the Act when an extension report is received by the relevant trust, it must as soon as practicable notify P and the persons in paragraph (2) with the information in paragraph (3).

(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) The information that must be provided includes—
- (a) notification of the decision;
 - (b) contact details for the HSC Trust in which the deprivation of liberty will take place;
 - (c) the purpose or purposes of the deprivation of liberty;
 - (d) the place or places where the deprivation of liberty will take place;
 - (e) P’s rights in respect of the Review Tribunal; and
 - (f) P’s rights under the Act.

(4) 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. For the purposes of paragraph 3(1)(a) of Schedule 3 to the Act a person can make an application for a trust panel extension of a deprivation of liberty under Schedule 3 to the Act if he or she is—

- (a) a suitably qualified person;
- (b) involved in the care or treatment of P;
- (c) not the person making the medical report required in paragraph 4(1)(c) of Schedule 3 to the Act; and
- (d) unconnected with P.

Form of application

31. For the purposes of paragraph 4(1)(a) and (f) of Schedule 3 to the Act an application for authorisation under Schedule 3 to the Act must be made on Form 16, include the information in Form 16 and include the Forms in regulation 32.

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 care plan must be made on Form 4;
- (d) the medical report must be made on Form 6;
- (e) the statement in paragraph 4(2) of Schedule 3 to the Act must be made on Form 7;
- (f) the responsible person statement must be made on Form 15.

Medical report

33. For the purposes of paragraph 5(1) and 5(1)(c) of Schedule 3 to the Act the medical report must be made on Form 6 and include the information in Form 6.

Care plan

34. For the purposes of paragraph 6 of Schedule 3 to the Act the care plan must be made on Form 4 and include the information in Form 4.

Information

35.—(1) For the purposes of paragraph 7(1)(a) of Schedule 3 to the Act when an application is received by the relevant trust, it must as soon as practicable notify P and persons in paragraph (2) with the information in paragraph (3).

(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.

(3) The information that must be provided includes—

- (a) information that an application has been received in respect of P;
- (b) the purpose of the application;
- (c) information about the HSC Trust where the decision will be taken and how to contact the HSC Trust;
- (d) information about the workings of the panel; and
- (e) information about P's rights under the Act.

36.—(1) For the purposes of paragraph 9(3)(b) of Schedule 3 to the Act 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) with the information in paragraph (3) and (4).

(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) The information that must be provided includes—

- (a) notification of the decision;
- (b) contact details for the HSC Trust in which the trust panel made the decision.

(4) 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—

- (a) the purpose or purposes of the deprivation of liberty;
- (b) the place or places where the deprivation of liberty will take place; and
- (c) P's rights in respect of the Review Tribunal.

(5) 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.

(6) 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, information and descriptions of medical practitioners

Forms

37.—(1) For the purposes of these Regulations, any application, report, 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.

(2) The forms in the Schedule can be—

- (a) in a form or format to the like effect;
- (b) presented in a fully digital format; and
- (c) amended for accessibility if so required or appropriate.

38. For the purposes of these Regulations where prescribed information in a Form in the Schedule requires a signature, an electronic signature or a typed name can be provided if the form is in itself provided in a digital form.

Ways in which information must be provided

39.—(1) In accordance with section 58(1), 58(2) and 58(3) of the Act relevant information means information that must be provided to P about a decision that relates to a deprivation of liberty to P.

(2) The information must be provided in a format that is suitable to P.

(3) Any information that includes notification that P has been detained in circumstances amounting to a deprivation of liberty or discharged from detention must be provided orally as well as in writing to P.

Descriptions of medical practitioners

40. For the purposes of section 300(2) of the Act 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.