

2019 No. 199

MENTAL CAPACITY

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

Made - - - - *7th November 2019*

Coming into operation - *2nd December 2019*

The Department of Health^(a), in exercise of the powers conferred by sections 14(4), 39(2), 39(2)(e), 42(1), 43(5), 57(1)(a), 58(1), 58(3), 61(1), 79(2)(b), 79(4), 297(3), 300(2) and 307(4) paragraphs 5(1)(a), 6(1)(a), 6(1)(e), 7(1), 7(1)(c), 8, 14(1)(a), 19(3)(b) and 20(6) of Schedule 1, paragraphs 1(2), 2(4), 2(4)(d), 3(1)(b), 4(1), 4(1)(c), 7(1), 7(1)(b), 9(2)(b), 9(3) 11(3)(b), 11(4), 13(3)(b), 13(4), 14(4)(b) and 14(5) of Schedule 2 and paragraphs 3(1)(a), 4(1)(a), 4(1)(f), 5(1), 5(1)(c), 6, 7(1)(a) and 9(3)(b) 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) (No. 2) Regulations (Northern Ireland) 2019 and shall come into operation on 2nd December 2019.

(2) In these Regulations—

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

“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;

“P” means a person who is 16 or over who lacks capacity in relation to the deprivation of liberty;

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

“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^(c);

(a) 2016 c. 5 (NI), s1(5)
(b) 2016 c. 18 (NI)
(c) S.I. 2002/254

“registered” in relation to nurses and midwives, means registered in the register maintained under Article 5 of the Nursing and Midwifery Order 2001^(a) 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^(b);

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

“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^(c);

“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 person” means a person who is suitably qualified to make formal assessments of capacity in accordance with section 14(4) 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

Suitably qualified person to make formal capacity assessments

2.—(1) For the purposes of section 14(4) of the Act a person is a suitably qualified person 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;
- (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 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; and
- (d) be appointed by his or her employer as a suitably qualified person to make formal capacity assessments.

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

Witnesses and persons unable to sign

3. For the purposes of section 79(2)(b) of the Act a person can only be a witness in relation to the formalities under section 79 of the Act if he or she—

- (a) is unconnected with X; and
- (b) is not X's nominated person.

4. For the purposes of section 79(4) of the Act if X has capacity to make an appointment, revocation or declaration mentioned in section 79(1) of the Act 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) 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 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.
- (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.

PART 4

Trust Panels

Panel membership

41.—(1) For the purposes of section 297(3) of the Act 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 a suitably qualified person;
 - (ii) one approved social worker; and
 - (iii) one suitably qualified person.

(2) In addition 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 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.

Duty to record and retain information and records

42. For the purposes of section 297(3) of the Act 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

43.—(1) For the purposes of section 297(3) of the Act 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

44.—(1) For the purposes of section 297(3) of the Act 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.

PART 5

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

Arrangements

45.—(1) For the purposes of section 61(1) of the Act 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.

(2) 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.

PART 6

Transitional Arrangements Relating to the Mental Health (Northern Ireland) Order 1986

Limitations to commencement of the Mental Capacity Act

46. For the purposes of section 307(4) of the Act until the coming into force of paragraphs 6 and 10 of Schedule 8 to the Act the provisions of the Act that are included in the Schedule to the Mental Capacity (2016 Act) (Commencement No. 1) Order (Northern Ireland) 2019^(a) and which

(a) S.R. 2019/163 (C. 5)

are commenced by Article 2 of that Order do not apply in any circumstances in which a deprivation of liberty may instead be authorised by virtue of the provisions contained in Part 2 or Part 3 of the Mental Health (Northern Ireland) Order 1986()(a).

Sealed with the Official Seal of the Department of Health on 7th November 2019.



Mark Lee
A senior officer of the Department of Health.

(a) 1986 No. 595 (NI 4)

SCHEDULE
Statutory Forms

Regulation 37

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Form 1 – Statement of incapacity

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

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. **Nominated person**

The nominated person's details:

Name:

Address:

Phone number:

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

The nominated person must be consulted with during the best interests determination, if it is practicable and appropriate to do so. If it is not practicable and appropriate provide details.

Provide details of the consultation with the nominated person, including how the consultation took place and the views of the nominated person on P's wishes, feelings, beliefs and values. If Form 3 has been used to provide details of the consultation with the nominated person, note that below and attach Form 3 to the best interests statement.

5. **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.

6. **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 4 – Care plan

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

Name:
Address:

Date of Birth:
HSC number (if known):

2. Treatment during deprivation of liberty

Outline the treatment P is receiving during the deprivation of liberty, if P is receiving treatment.

3. Actions to be taken to ensure the deprivation of liberty can be ended as soon as possible

Outline actions that are to be taken to end the deprivation of liberty as soon as possible.

4. Care and / or treatment during deprivation of liberty

Provide details on the care and / or treatment amounting to, and relevant to, deprivation of liberty and how it is being managed.

Care and/or treatment	Objectives	Action needed to meet objective	Who is responsible	Time of action (hourly / daily / etc)

Further sheets can be added if required.

Form 5 – Application for trust panel authorisation

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. 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.

5. 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.

6. Annexes that must be attached to the Application

The annexes form part of the application and must be included (if required).

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

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

Annex C – care plan on **Form 4**.

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

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

It is the responsibility of the person signing the declaration to determine if Form 7 should be included in the application.

7. 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

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.

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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.

The nominated person must be consulted with during the best interests determination, **if it is practicable and appropriate to do so**. If it is not practicable and appropriate provide details.

The nominated person's details:

Name:

Address:

Phone number:

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

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. (Only for short-term detention) criteria for authorisation – illness / suspected illness

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

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**

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

The annexes form part of the authorisation and must be included (if required).

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

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

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

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

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

9. Further information / comments

Further information or comments by the authoriser. This can include other evidence or observations not captured anywhere else in the authorisation. There are no requirements to add any further information.

10. 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:

11. Decision not to proceed with authorisation

If the authoriser decided not to authorise the short-term detention this can be recorded below. The declaration above should not be signed if the authorisation is not proceeded with. There are no requirements to use this form if an authorisation is not proceeded with.

Form 9 – Consultation with approved social worker

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.

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Further sheets can be added if required.

Form 10 – Short-term detention admission exception certificate

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

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 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)

*The nominated person must be consulted with **if practical and 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, provide details:

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

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)

*The nominated person must be consulted with **if practical and 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, provide details:

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

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)

*The nominated person must be consulted with **if practical and 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, provide details:

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)

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)

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.

*The nominated person must be consulted with during the best interests determination, **if it is practicable and appropriate to do so.** If it is not practicable and appropriate provide details.*

The nominated person's details:

Name:

Address:

Phone number:

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

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.

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

The annexes are part of the extension and must be included (if required).

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

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

Annex C – care plan on **Form 4**.

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

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

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

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

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)

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

The annexes form part of the application and must be included (if required).

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

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

Annex C – care plan on **Form 4**.

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

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

It is the responsibility of the person making the application to determine if a Form 7 should be included in the application.

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

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:

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 2nd December 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.

Part 6 provides a transitional arrangement noting that if a person can be detained under the Mental Health (Northern Ireland) Order 1986, the Mental Capacity Act (Northern Ireland) 2016 cannot be used.

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