Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Mental Capacity (Deprivation of Liberty) (No. 2) Regulations (Northern Ireland) 2019. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY RULES OF NORTHERN IRELAND

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 [F1], 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 [F2], makes the following Regulations:

F1 2016 c. 5 (NI), **s1(5)**
F2 2016 c. 18 (NI)

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 [F3];

"registered" in relation to nurses and midwives, means registered in the register maintained under Article 5 of the Nursing and Midwifery Order 2001 [F4] 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 [F5];

"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 [F6];

"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 section79(1) of the Act.

F3 S.I. 2002/254
F4 S.I. 2002/253
F5 1984 c. 24
F6 2001 c. 3 (NI)

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.

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