

Section 1: Background

Update - Mental Capacity Act

The purpose of this paper is to outline the implications of the partial implementation of the Mental Capacity Act (NI) 2016 - Deprivation of Liberty (DOL) Safeguards for South Eastern Health and Social Care Trust, which comes into force on 1 October 2019.

Work is progressing on the first phase of commencement of the Mental Capacity Act for the purpose of deprivation of liberty. The aim of this legislation is to afford safeguards to people who are deprived of their liberty through short-term detentions (hospital admission). Additionally, the legislation will offer safeguards to people in long-term community placements and to organisations, services and staff who deprive people of their liberty through the support care or treatment they provide for them.

In order to meet the deprivation of liberty safeguards, the Trust will be required to introduce a range of safeguards and processes for all patients admitted to acute wards on a short-term basis and all community clients availing of community support services, who meet deprivation of liberty criteria. From 1 October 2019 the Trust is legally obliged to follow these processes for all new clients and patients, and additionally will have twelve months from the implementation date to implement the safeguards for all existing legacy clients.

All Health and Social Care Trusts must be prepared for the implementation of the new statutory requirements. The challenge of pace, scale and complexity of implementation are recognised by the Trust - planning is underway to ensure compliance by 1 October 2019. Key requirements for consideration include:

- Arrangements for assessments of mental capacity and best interests and arrange for medical examinations and reports.
- Operating HSC Trust multi-disciplinary panels for the approval of applications for a deprivation of liberty.

- Arrangements for short-term detentions.
- Administrative and governance infrastructure to support the operation of short-term detentions, Trust, DoL Panels; monitor forms and processes; and report on activity as required.
- Cover expenses for the provision of Medical Reports by authorised medical practitioners that are not directly employed by the HSC Trusts (generally the patients GP).
- Release key staff to complete the training required to authorise them to perform legal duties and functions (including; complete formal assessments of capacity; make Best Interests determinations; provide prescribed medical reports; make application to the Trust DoL panel; sit as a member of a Trust Panel)

Section 2: Brief Outline of Legislation

The requirements for depriving someone of their liberty have been clearly set out by the UK Supreme Court in recent years, and the result is that the only lawful means of depriving someone of their liberty at present in Northern Ireland, outside of criminal justice and children's legislation, is by use of the 1986 Order for mental health patients in hospital or by a declaratory order obtained from the High Court for any other patients or patients not in hospital.

In order to address this issue and to provide a new statutory framework in relation to deprivation of liberty the Department of Health, along with the Department of Justice, are jointly partially commencing the Mental Capacity Act (Northern Ireland) 2016 for the purpose of deprivation of liberty. The proposed date for the legislation to go live is 1 October 2019.

The legal framework provided by the Act will be supported by a Code of Practice which provides practical information for how the Act works. The Code will support Phase 1 of the implementation and commencement of the Act only. In particular, this Code focusses on how the provisions relating to Deprivation of Liberty work. The Regulations associated with the Act will also provide statutory forms for use by professionals.

Section 3: Work Undertaken to Date:

The Trust has commenced planning for the implementation of the Deprivation of Liberty requirements across all programmes of care. Work to date includes:

- Liaising closely with the Department of Health in drafting the Code of Practice which will guide the implementation of the Deprivation of Liberty Safeguards across all Trusts;
- Appointment of Lead Director for Deprivation of Liberty Safeguards, Mr Don Bradley, Interim Director of Adult Services and Prison Healthcare;
- Regional group membership - Involvement in and initiation of joint work in relation to key implementation issues on a regional group consisting of Lead Directors and other expert professionals;
- An internal scoping exercise has been undertaken by Trust Planning to quantify expected activity across both short-term detentions and Trust panel authorisations of community placements;
- A cross Directorate workshop was held on 16 August 2019 which was attended by a range of health and social care professionals and managers from across programmes of care. The purpose of the workshop was to discuss and identify appropriate systems and processes to prepare for and support the partial implementation of the legislation;
- A Revenue Business Case has been drafted by Trust Planning and Finance and will be submitted to HSCB by end August 2019.
- Establishment of a project structure and project management to oversee and support the implementation of the requirements;
- Nomination of trainers to attend the DoH Train the Trainer Course and to subsequently participate in a wide-scale training exercise planned by the DoH for all relevant health and social care staff;
- A website has been established which will provide a central point for information going forward. The address is: <https://www.health-ni.gov.uk/mca>.

Section 4: Challenges

The main challenge is the scale of the preparatory work required within an exceptionally tight timescale which has required the Trust to mobilise at pace to ensure readiness for implementation. The impact of this on services across the Trust and on key groups of staff is significant. Issues identified in cross directorate working groups at Trust DOL workshop on 16 August 2019:

- Pace, scale and spread of the task - volume of legacy cases in the community and the challenge of authorising all these cases, whilst also dealing with new referrals from 1 October 2019;
- Releasing staff from core duties to attend the required training, and backfilling them to avoid destabilisation of core services;
- Identifying appropriate and adequate staff to sit on Trust Panels, and backfilling them to avoid destabilisation of core services;
- Developing effective tracking and monitoring systems to ensure Trust is in line with requirements and not in breach of legislation;
- Ensuring a range of support including admin support is provided across programmes of care;
- The need to engage with staff to ensure the regulations are viewed in a positive light as securing important safeguards for clients and patients and protection from liability for the Trust and staff;
- The need to work closely with regional partners on system wide issues.

Section 5: Work Ahead:

In the short-term, up to partial implementation on 1 October 2019 Trust priorities are:

- Development and implementation of interim IT support system to assist with data collection, tracking and monitoring;
- Identification and prioritisation of staff for required training, for example capacity assessment training and panel training, to enable the Trust to meet requirements from 1 October 2019;
- Establishment of Trust panels to authorise all new referrals and start the work of authorising legacy cases;
- Ongoing work to engage GPs and Medics in relation to providing the required medical reports for short-term detentions and Trust panel authorisations;
- Services will scope caseloads to identify clients who meet DOL criteria, and the prioritising of these clients for panel authorisation;
- Recruitment of staff to Trust Project Management Team;
- Further development of Project Structure to ensure robust management and governance arrangements are in place;
- Trust HR Lead and HR sub-group will work locally and regionally to fully engage the

support of Trade Unions.

Longer-term the Trust has to ensure the scale and pace of the task is fully resourced:

- Continue to scope and deliver to staff training targets in respect of DOL processes;
- Ensure panels are adequately staff in line with the Code of Practice;
- Implementation and ongoing management of effective tracking and monitoring systems;
- Continue to work regionally at all levels on system wide issues which impact on ability to deliver the requirements of DOL Safeguards;
- Continue to engage with the GP Federation and medical staff to ensure there is adequate provision in relation to required medical reports for authorising deprivation of liberty.

Trust Board For Information / Noting

- Purpose of the DOL Safeguards which is to afford safeguards to people who are deprived of their liberty through short-term detentions (hospital admission). Additionally, the legislation will offer safeguards to people in long-term community placements and to organisations, services and staff who deprive people of their liberty through the support, care or treatment they provide for them;
- The work undertaken to date to plan and ensure readiness for implementation on 1st October 2019;
- The issues and challenges of implementing the DOL Safeguards across Trust services for both short-term detentions and community panel authorisations;
- The work ahead over the next 12 months to ensure the Trust meets the new statutory requirements and protects against the risk of breaching the legislation.

