

Section 1: Background

Update on Mental Capacity Act

The Mental Capacity Act (NI) 2016 was enacted by the Assembly in May 2016. The first Phase of the Act will come into operation in two stages - research provisions commenced on 1 October 2019 and provisions in relation to deprivation of liberty, offences and money and valuables in residential care and nursing homes will commence on 2 December 2019. This paper provides an update on the implementation of the first Phase of the Act.

The Mental Capacity Act (NI) 2016 (“the Act”) legislation that, when fully commenced, will fuse together mental capacity and mental health law for those aged 16 years old and over within a single piece of legislation, as recommended by the Bamford Review of Mental Health and Learning Disability.

The Act provides a statutory framework for people who lack capacity to make a decision for themselves and for those who now have capacity but wish to make preparations for a time in the future when they lack capacity. When the Act is fully commenced the Mental Health (Northern Ireland) Order 1986 (“the 1986 Order”) will be repealed for anyone over the age of 16.

Planning is underway to ensure requirements are in place by 2 December 2019. Key elements 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; and

- 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 Mental Capacity Act (NI) 2016 is being partially commenced and will provide a new statutory framework in relation to deprivation of liberty.

The new legislation will go live on 2 December 2019. It is important to note that not all provisions in the Act are being commenced at this time.

The Regulations associated with the Act will provide technical details in relation to the first phase commencement of the Act for the purpose of deprivation of liberty, offences, research and money and valuables. The research provisions came into operation on 1 October 2019 and the other provisions (including deprivation of liberty) will come into operation on 2 December 2019.

The deprivation of liberty Regulations will cover formal assessment of capacity, appointment of nominated persons, authorisations and extensions and trust panel operations, as well as including statutory forms for use by professionals.

The Commencement Order will detail the specific provisions of the Act which are being commenced in Phase 1.

To manage the commencement of the Act, the Mental Health (NI) Order 1986 will initially be kept for all and a dual system will operate with both the 1986 Order and the Act providing statutory frameworks for DoL.

Section 3: Work Undertaken to Date:

Arrangements to date for the implementation of Deprivation of Liberty Trust wide continues, including:

- Close partnership working with the Department of Health and Regional MCA Steering Group membership – to ensure joint decision making in relation to key implementation issues;
- A regionally agreed Revenue Business Case submitted to HSCB on 30 September 2019 and a project structure established to oversee and support the implementation of the requirements Trust wide;
- Trust Panel Authorisation to commence 02/12/2019 – Panel One is fully staffed (focus on new cases/legacy cases), Panel Two is partially staffed (focus on legacy cases);
- Trust MCA Trainers continuing to provide wide-scale training through the Clinical Education Centre for all relevant health and social care staff. The training material and courses are as follows:
 - *Level 1* – Forms Manual – this is instructional guidance on completing forms.
 - *Level 2* – E-learning (1-2 hours - online) – this online training can be completed by anyone at any time and can be accessed.
 - *Level 3* – Mental Capacity Act: Deprivation of Liberty (classroom based – ½ day)
 - *Level 4a* – Mental Capacity Act: Formal Assessment of Capacity – Theory (classroom based – ½ day)
 - *Level 4b* – Mental Capacity Act: Formal Assessment of Capacity – Practical Training (optional - classroom based – ½ day)
 - *Level 5* – Mental Capacity Act: Trust Panels (classroom based – ½ day)
 - *E-Learning Training* – for levels 3 & 4a is now available for staff unable to attend classroom MCA training.
- MCA training undertaken by Trust staff to carry out certain functions under the Act (such as carrying out a Formal Assessment of Capacity, sitting on a Trust Panel etc.) include:

MCA Training Level	Staff Numbers*	
	15/11/2019	30/11/2019
Level 1	Not recorded	Not recorded
Level 2	Not recorded	Not recorded

Level 3	875	934
Level 4a	500	553
Level 4b	476	526
Level 5	84	110
*Figures include onsite and E-Learning		

- Mock panel/completion of medical assessment/short term detention sessions ongoing with medics and other staff - to test systems and process;
- MCA Sharing Together workshops – opportunity for staff to learn, query and understand how to practically apply MCA. Further workshops will be held over the coming weeks;
- Trust Tracker System developed on SharePoint. Work continues to train key users and test the system to ensure fitness for purpose;
- MCA section on iconnect site developed. Further staff communication to be circulated, prior to 2 December commencement; and
- Engagement with Unions ongoing - including attendance at the Regional Steering Group meeting, agenda for next Joint Negotiating Forum (JNF).

Section 4: Going Forward:

Key challenges continue due to the scale of the preparatory work required within the short lead-in time. The impact on services across the Trust and on key groups of staff is significant therefore areas of focus are:

- Continue to work regionally at all levels on system wide issues which impact on ability to deliver the requirements of DOL Safeguards;
- Trust MCA Trainers continuing to provide wide-scale training - as the legislation, in relation to deprivation of liberty, will come into effect on 2 December 2019, it is very important that sufficient numbers of staff attend training at the various levels to meet the requirements of the legislation. This will assist in ensuring that local processes are implemented efficiently and in accordance with legal requirements;
- Implementation and ongoing management of effective tracking and monitoring systems;
- Continue to engage with HSCB regarding agreement with GPs - to ensure there is adequate provision in relation to medical reports for authorising deprivation of liberty; and
- Recognition of the importance for further engagement and communication with staff - to learn, query and understand how to practically apply MCA. Additional mock panels/short-term detentions sessions with medics and shared learning workshops to continue.

Trust Board For Information

- Purpose of the DOL Safeguards 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 issues and challenges of implementing the DOL Safeguards across Trust services for both short-term detentions and community panel authorisations; and
- The preparatory work undertaken/planned to ensure the Trust meets the new statutory requirements for Phase 1 of the Act.