

2019 No. xxxx

MENTAL CAPACITY

**The Mental Capacity (Deprivation of Liberty) Regulations
(Northern Ireland) 2019**

Made

xx June 2019

Coming into operation in accordance with regulation 1.

The Department of Health^(a), in exercise of the powers conferred by sections 14(4), 39, 42, 43, 50, 57, 58, 61(1), 79(4), 276 and 297 and paragraphs 5, 6, 7, 8, 14 and 19 of Schedule 1, paragraphs 1, 2, 3, 4, 7, 9, 11, 13 and 14 of Schedule 2 and paragraphs 3, 4, 5, 6, 7, and 9 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) Regulations (Northern Ireland) 2019 and shall come into operation on 1 October 2019.

(2) In these Regulations—

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

“approved social worker” has the same meaning as in section 280 of the Act;

“care or treatment” has the same meaning as the Act;

“Code of Practice” means one or more codes of practice made under section 288 of the Act;

“the Department” means the Department of Health;

“deprivation of liberty” has the same meaning as the Act;

“HSC trust” has the same meaning as the Act;

“interim period” means the period in Schedule 1 paragraph 20(5)(a);

“managing authority” has the same meaning as the Act and any limitations imposed in regulations under section 306(6);

“medical practitioner” means a fully registered person within the meaning of the Medical Act 1983^(c) who holds a licence to practice under that Act;

“nominated person” has the same meaning as in Part 3 of the Act;

(a) 2016 c. 5, s. 1(5)

(b) 2016 c. 18

(c) 1983 c. 54

“occupational therapist” means a person entitled to use the title and currently registered with Health and Care Professions Council under the Health and Social Work Professions Order 2001(d);

“practitioner psychologist” means a person entitled to use the title and currently registered with Health and Care Professions Council under the Health and Social Work Professions Order 2001(e);

“registered” in relation to nurses and midwives, means registered in the register maintained under article 5 of the Nursing and Midwifery Order 2001(f) 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(g);

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

“RQIA” means the Health and Social Care Regulation and Quality Improvement Authority;

“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(h);

“speech and language therapist” means a person entitled to use the title and currently registered with Health and Care Professions Council under the Health and Social Work Professions Order 2001(i);

“suitably qualified person” means a person who is suitably qualified to make formal assessments of capacity and meets the requirements to be suitably qualified as defined in regulation 2;

“unconnected with” has the same meaning as section 304 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

Persons suitably qualified to make formal capacity assessments

2.—(1) A person is suitably qualified 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—

(d) S.I. 2002/254

(e) S.I. 2002/254

(f) S.I. 2002/253

(g) 1984 c. 24

(h) 2001 c. 3

(i) S.I. 2002/254

- (a) have knowledge of the Act and related Code of Practice;
- (b) have successfully completed training that has been approved by the Department of Health;
- (c) except in the 36 month period beginning with the date the person has successfully completed the training referred to in sub-paragraph (b), 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;
- (d) have three years' experience in a professional role, within the previous ten years, working with persons who lack capacity;
- (e) be appointed by his or her employer as a person suitably qualified to make formal assessments of capacity; and
- (f) have the skills necessary to obtain, evaluate and analyse complex evidence and differing views and to weigh them appropriately in decision making.

Witnesses and persons unable to sign

3. A person can only be a witness in relation to the formalities under section 79 of the Act if he or she—

- (a) is ordinarily resident in Northern Ireland;
- (b) is unconnected with X; and
- (c) is not X's nominated person.

4. If X has capacity to make an appointment, revocation or declaration under section 79 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, declaration or revocation; 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) Immediately when P is detained in circumstances amounting to deprived of liberty by virtue of the Act the persons in paragraph (2) must be given the information in paragraph (3).

(2) The persons that must be notified are—

- (a) P;
- (b) the NP; and

(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) Immediately when P is discharged from detention amounting to deprivation of liberty by virtue of the Act the persons in paragraph (2) must be give the information in paragraph (3).

(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.

7.—(1) Information provided under regulations 5 must be provided in writing and must be approved by the Department.

(2) Information provided under regulation 6 must be on Form 21.

CHAPTER 2

Schedule 1 authorisations

Persons who can make a Schedule 1 application

8. A person can make an application under Schedule 1 to the Act if he or she is—

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

Form of application

9. An application for authorisation under Schedule 1 to the Act must be made on Form 5.

10. When making an application under Schedule 1—

- (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 consultation with the nominated person must be made on Form 3; and
- (d) the statement in paragraph 6(2) of Schedule 1 to the Act must be made on Form 7.

Medical report

11.—(1) The medical report must be made on Form 6.

(2) For the avoidance of doubt, when a medical practitioner makes the statement in paragraph 7(2) of Schedule 1 to the Act or paragraph 5(1)(b) of Schedule 3 to the Act (the statement that in that person's opinion the criteria for authorisation are met in relation to the deprivation of liberty for which the application requests authorisation), the medical practitioner can rely on information provided by others when forming an opinion.

(3) If the information relied upon is information required to be provided in the application, it is sufficient to make reference to where that information is available (to avoid unnecessary duplication).

Care plan

12. The care plan must include—

- (a) name and address of P and P's current location;
- (b) how P's care or treatment is to be managed during the duration of the authorisation period;
- (c) what actions are to be done to ensure the deprivation of liberty can be ended as soon as practicable; and
- (d) provisions for review of the deprivation of liberty.

Information

13.—(1) When an application is received by the relevant trust, it must as soon as practicable notify P and persons in paragraph (2) on Form 17 and include information about a person's rights under the Act.

(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.

14.—(1) As soon as practicable after granting or refusing an authorisation under paragraph 15 of Schedule 1 to the Act, the panel must notify P and the persons in paragraph (2) on Form 18 and provide the persons with information on a person's rights under the Act.

(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) If an authorisation is granted under paragraph 15 of Schedule 1 of the Act, the panel must also provide information to P and the persons in paragraph (2) on P's rights in respect of the Review Tribunal.

(4) As soon as practicable after granting or refusing an authorisation under paragraph 15 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.

(5) 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 must be sent to the Attorney General.

CHAPTER 3

Schedule 2 authorisations

Responsible Medical Practitioner, alternative medical practitioner and medical practitioner

15. A medical practitioner can only carry out the functions of the responsible medical practitioner if he or she is—

- (a) suitably qualified; and
- (b) have membership of a relevant Royal college and holds a full-time or part-time appointment at a Consultant, Specialty or Associate Specialist level.

16. An alternative medical practitioner who may make a report under paragraphs 11, 13 or 14 in Schedule 2 to the Act is a person who meets the criteria for being a responsible medical practitioner but who is not in charge of P's care.

17. A person is a medical practitioner who can make an exception certificate if he or she meets the requirements of a responsible medical practitioner in regulation 15 or that of alternative medical practitioner in regulation 16 or if he or she 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

18.—(1) 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 a healthcare professional;
 - (ii) has successfully completed relevant training within the last 36 months;
 - (iii) except in the 36 month period beginning with the date the person has successfully completed the relevant 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;
 - (iv) has three years' experience in the last 10 years in a professional role working with persons who lack capacity; and
 - (v) has the skills necessary to obtain, evaluate and analyse complex evidence and differing views and to weigh them appropriately in decision making;

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

19. A short-term detention authorisation for examination or examination followed by treatment must be made on Form 8.

20. When making a short-term detention authorisation under Schedule 2—

- (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 consultation with the nominated person must be made on Form 3;
- (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.

Medical report

21.—(1) The medical report must be made on Form 6.

(2) For the avoidance of doubt, when a medical practitioner makes the medical report the medical practitioner can rely on information provided by others when forming an opinion, including information required for the report as found in paragraph 2(4) of Schedule 2 to the Act.

(3) If the information relied upon is information required to be provided in the authorisation, it is sufficient to make reference where that information is available (to avoid unnecessary duplication).

Information

22.—(1) 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) on Form 19 and provide information on—

- (a) short-term detentions;
- (b) the Review Tribunal; and
- (c) a person's rights under the Act.

(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) 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.

(4) 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 authorisation

23. An extension authorisation must be made on Form 14.

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 consultation with the nominated person must be made on Form 3;
- (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. If a social worker who is in charge of P's case 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 the social worker can be the responsible person, subject to the conditions in regulation 27.

26. The managing authority in a hospital or care home where P is an in-patient or resident may designate anyone who is involved in the care or treatment of P as the responsible person, subject to the conditions in regulation 27.

27. To be a responsible person the person must—

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

Information when making an extension report

28.—(1) When an extension report is received by the relevant trust, it must as soon as practicable notify P and the persons in paragraph (2) on Form 20 and provide information on—

- (a) the extension provisions;
 - (b) the Review Tribunal; and
 - (c) a person's rights under the Act.
- (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) As soon as practicable after making the extension report, the person making the report must inform the managing authority where the detention in circumstances amounting to a 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 Schedule 3 authorisation

Schedule 3 application

30. A person can make an application for an extension of a deprivation of liberty under Schedule 3 to the Act if he or she meets the criteria in regulation 8.

Form of application

31. An application for authorisation under Schedule 3 to the Act must be made on Form 16.
32. When making an application under Schedule 3—
- (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 consultation with the nominated person must be made on Form 3;
 - (d) the statement in paragraph 4(2) of Schedule 3 to the Act must be made on Form 7.
 - (e) the responsible person statement must be made on Form 15.

Medical report

33. The medical report must be the same as in regulation 11.

Care plan

34. The care plan must include the same information as in regulation 12.

Information

35.—(1) When an application is received by the relevant trust, it must as soon as practicable notify P and persons in paragraph (2) on Form 17 and include information about a person's rights under the Act.

- (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.

36.—(1) 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) on Form 18 and provide the persons with information on a person’s rights under the Act.

(2) The persons who must be notified are—

- (a) the nominated person; and
- (b) any person P has asked the information to be given to.

(3) If an authorisation is granted under paragraph 8 of Schedule 3 of the Act, the panel must also provide information to P and the persons in paragraph (2) on P’s rights in respect of the Review Tribunal.

(4) As soon as practicable after granting or refusing an authorisation under paragraph 8 of Schedule 3 to the Act, the panel must notify—

- (a) the person who made the application; and
- (b) the managing authority where the deprivation of liberty will take place

and furnish such information to those persons to facilitate the deprivation of liberty as authorised or not.

(5) 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 and definitions

Forms

37. Any application, report, consultation, 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.

38. Where a Form in Schedule 1 to the Act requires a signature, an electronic signature with same effect can be provided if the form is in itself provided in a digital form.

39. For the avoidance of doubt—

- (a) the Forms can be—
 - (i) in a form or format to the like effect;
 - (ii) presented in a fully digital format; and
 - (iii) amended for accessibility if so is required or appropriate; and
- (b) HSC Trusts can add additional information to the forms as long as it is clear that this additional information does not form part of the prescribed form.

Definitions for the purpose of Part 3

40. In this Part—

- “admission report” has the same meaning as in paragraph 11 of Schedule 2 to the Act;
- “application” means an application under Schedule 1 or 3 to the Act as appropriate;
- “exception certificate” has the same meaning as in paragraph 9 of Schedule 2 to the Act;
- “extension authorisation” means a report under section 37 or 38 of the Act;
- “Form” has the meaning as in regulation 37;
- “further admission report” has the same meaning as in paragraph 13 of Schedule 2 to the Act;
- “further report” has the same meaning as in paragraph 14 of Schedule 2 to the Act;

“healthcare professional” means a medical practitioner, nurse or midwife, social worker, dentist, occupational therapist, speech and language therapist or practitioner psychologist;

“hospital” has the same meaning as in the Act;

“P” means a person who lacks capacity and for whom a deprivation of liberty is proposed;

“relevant training” means training in relation to making a short-term detention authorisation that has been approved by the Department;

“responsible medical practitioner” has the same meaning as in paragraph 1 of Schedule 2 to the Act subject to the conditions in regulation 15;

“responsible person” has the same meaning as in section 42 of the Act;

“short-term detention authorisation” means a report made under paragraph 2 of Schedule 2 to the Act;

“the Tribunal” means the Review Tribunal constituted under Article 70 of the Mental Health (Northern Ireland) Order 1986; and

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

PART 4

Trust Panels

Panel membership

41.—(1) 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 suitably qualified;
 - (ii) one approved social worker; and
 - (iii) one suitably qualified person.

(2) The panel members must—

- (a) be unconnected with P; and
- (b) have completed training approved by the Department regarding the Act within 12 months of their first occurrence as a member of a panel.

(3) The relevant trust must appoint one of the members as chair of the panel.

Remuneration or allowances of auditor panel members

42. The relevant trust may pay members of the panel such remuneration or allowances as the trust may determine necessary to facilitate the member’s participation on the panel.

Opportunity to make representations to the panel

43.—(1) The panel must give the following people the opportunity to make representations in writing to the panel where practicable—

- (a) P;
- (b) the person who made the application;
- (c) the nominated person; and
- (d) any other person P wants to make representation on his or her behalf.

(2) Information about the opportunity to make representation must be provided as part of the information under paragraph 14(1)(a) of Schedule 1 or paragraph 7(1)(a) of Schedule 3 to the Act as appropriate.

(3) The panel may, in exceptional circumstances, allow representation to be made in other forms than in writing.

(4) The panel may make arrangements as appropriate to accommodate representations being made including, but not limited to, visiting those who may make representations.

Power to call for evidence

44.—(1) The panel may request anyone it considers relevant to provide information in writing to the panel or attend before the panel to give oral evidence in relation to an application being considered.

(2) Information or oral evidence must be provided to the panel within the permitted period or interim period as relevant to the application.

Duty to record and retain information and records

45. 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

46.—(1) 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 a 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

47. Where a decision by the panel is not unanimous, an authorisation can be granted with the approval of a majority.

Definition for the purpose of Part 4

48. In this Part—

“P” means the person who is the subject of the application to the Panel requesting authorisation for a deprivation of liberty;

“panel” means a panel constituted under Schedule 1 or Schedule 3 to the Act; and
“permitted period” has the same meaning as paragraph 19 of Schedule 1 or paragraph 9 of Schedule 3 to the Act.

PART 5

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

49. Subject to paragraph 2 and regulation 51, 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.

50. For the avoidance of doubt, regulation 49 applies in particular to—

- (a) a formal assessment of capacity under section 13 of the Act;
- (b) the requirement to ensure a nominated person is in place under section 15 of the Act; and
- (c) the requirements for a deprivation of liberty under section 24 of the Act subject to regulation 51.

51. 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.

52. For the avoidance of doubt, the protection from liability under section 9 of the Act does not apply to any act done on behalf of a person who has not reached the age of 16.

PART 6

Money and Valuables

Money and valuables

53. If it appears to a relevant authority that a person who is an in-patient or resident in the hospital or care home lacks capacity in relation to managing their property or affairs, the relevant authority may receive and hold money and valuables on behalf of that person.

54.—(1) The relevant authority must not receive or hold on behalf of any one person money or valuables exceeding the amount in section 276(3)(a) of the Act without the consent of RQIA.

(2) If the total combined value of money or valuables in relation to one person exceeds the value in paragraph (1), the RQIA must consent to the relevant authority receiving or holding the money or valuables.

(3) When RQIA is considering whether consent under paragraph (2) should be provided, RQIA must have consideration to whether the money and valuables can be stored safely in the hospital or care home.

55. A receipt or discharge given by a relevant authority for such money or valuables should be treated as a valid receipt or discharge given by P.

56.—(1) Where a relevant authority holds money or valuables it may expend that money or dispose of those valuables for the benefit of P subject to paragraph (2).

(2) When a relevant authority expends money or disposes of valuables for the benefit of P the relevant authority must—

- (a) have regard to the sentimental value any article may have for P, if P had capacity;
- (b) consult P’s nominated person (if one is appointed and if it reasonable and practicable to do so) regarding the expenditure or disposal;

- (c) ensure that the expenditure or disposal is not of such nature that P's future options will be limited, unless necessary due to a contractual commitment or to ensure P's best interests; and
- (d) not use the money and valuables to pay for such things which would normally be included in the fees for the place of residence or to pay for such fees.

57.—(1) A relevant authority must hold the money and valuables in a safe and secure manner.

(2) Any loss of money and valuables, where the money is not expended or valuables disposed of under these Regulations and is not returned to P (if P has regained capacity) or a relevant person, is the responsibility of the relevant authority who has the obligation to replace lost money at full value and lost valuables at full monetary value.

58.—(1) A relevant authority must keep records of money and valuables kept for P.

(2) The records must include—

- (a) who the money or valuables are kept for;
- (b) the value of money or description of valuables;
- (c) where the money or valuables are kept;
- (d) date and time the money or valuables were received, or if new money or valuables are received when they were received;
- (e) who received the money and valuables;
- (f) date and time money is expended or valuables disposed of;
- (g) the value of money or description, including value and monetary equivalent received, of valuables, expended or disposed of;
- (h) the reason for expenditure of money or disposal of valuables;
- (i) how the conditions in regulation 56(1) have been met;
- (j) who expended money or disposed of valuables;
- (k) signature of person doing anything in sub-paragraph (a) to (j); and
- (l) countersignature of another person witnessing the signature in sub-paragraph (k).

59. A relevant authority must, upon request from the RQIA, furnish annual returns to the RQIA containing such information in relation to this Part as the RQIA may request.

60. For the avoidance of doubt, any decision to expend money or dispose of valuables under these Regulations—

- (a) cannot be contrary to a relevant decision; and
- (b) must—
 - (i) not be made if P has capacity to make the decision;
 - (ii) be in the best interest of P; and
 - (iii) not be contrary to any aspect of Part 1 of the Act.

Definitions for the purpose of Part 6

61. In this Part—

“P” has the same meaning as in section 276(1) of the Act;

“property or affairs” also means property and affairs;

“relevant authority” has the same meaning as in section 276(6) of the Act;

“relevant decision” has the same meaning as in section 276(6) of the Act; and

“relevant person” means a person who is not P but is authorised under the Act, or under any other lawful measure, to hold and manage the money or valuables for P.

Sealed with the Official Seal of the Department of Health *** on ***

Name
A senior officer of the
Department of Health



SCHEDULE 1

Regulation 37

Statutory Forms

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Form 14	Extension authorisation (extension by report)
Form 15	Responsible person statement
Form 16	Application for trust panel extension authorisation
Form 17	Notification of application for trust panel authorisation and trust panel extension authorisation
Form 18	Notification of trust panel decision
Form 19	Notification of short-term detention
Form 20	Notification of an extension
Form 21	Discharge from detention

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide technical details for the Mental Capacity Act (Northern Ireland) 2016 and comes into effect 1 October 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 of Health. 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 is 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 of 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 16th 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. However, as it noted in Part 5, allowing the safeguards to be put in place before a person is 16 does not allow a detention amounting to a deprivation of liberty by virtue of the Act before the person is 16.

Part 6 makes provisions for the managing authority of residential care and nursing homes to hold and manage money and valuables on behalf of a person who lacks capacity. Part 6 prescribes details on considerations that must be had and the formalities when holding money and valuables.