



# Mental Capacity Act Newsletter

Welcome to the fourth edition of the Mental Capacity Act Newsletter. This newsletter is being issued by the Department of Health to provide stakeholders with a brief update on the current work being undertaken by the Department to progress implementation of the Act.

## Deprivation of Liberty Safeguards (DoLs) Commencement

As many of you will be aware, there has been an emerging issue with regards to deprivations of liberty for some time. 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 is by use of the Mental Health (NI) Order 1986 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.

The number of detentions under the Mental Health Order, and the very small number of cases taken before the courts, has highlighted a significant issue whereby there are large numbers of individuals who are currently not lawfully detained, mostly in hospital settings when a person is treated for a physical issue and lack capacity and in social care settings, such as residential care homes, nursing homes and day care centres.

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**.

Whilst the first phase of commencement is limited to deprivation of liberty (and some additional provisions), this is a significant step towards achieving one of the key aspects of the Bamford vision; fused legislation where capacity is the key driver for decision making and mental and physical health are equal.

Commencement of such a large piece of legislation is not an easy task and we would therefore ask for your full help and support in ensuring that commencement is as smooth as possible. This will ensure that health and social care professionals are as prepared as possible for the commence-

### Special points of interest:

- > DoLs Commencement
- > DoLs CoP & Regs
- > Next Steps
- > The Implementation Team—DoH

## DoLs Code of Practice & Draft Regulations

In line with the phased commencement, the Department of Health has drafted a DoLs version of the Code of Practice (CoP) and draft regulations. We are very grateful for all the input received to date, and in particular for your comments on the third draft of the CoP and other documentation that was issued at the end of last year. The latest CoP has been drafted from the material you have previously been provided. The content is largely the same but has been restructured and updated to reflect that commencement will relate to DoLs only.

In light of the proposed date for commencement, there is a short window for further consultation with the Reference Group. We therefore attach a draft of the DoLs CoP, DoLs Regulations and draft Forms for your comment and feedback. All comments must be returned to the Department by **close of play 24 May 2019**. We appreciate that this is a short 4 week window, however, the requirements to lay the CoP and Regulations before the Assembly dictate that this must be completed before the end of June in order to meet the proposed commencement date. This will allow the development and delivery of training to be based on finalized documentation and guidance.

## Scenario Booklet

Many thanks to those of you who have submitted scenarios and helped to build the current booklet to date. As this is a living document that can be updated regularly, we welcome any further examples that are of particular relevance to deprivations of liberty. The scenario booklet is not subject to the same formal requirements as the CoP and Regulations therefore we welcome continued input on this document going forward.

Scenarios should: provide background detail to the situation and be one to three pages long.

Scenarios based on real life case examples are excellent as they often cover complex situations that are relevant to normal working practices. However, if you are providing us with real life examples please make sure any persons in them cannot be identified.

## Offences & other provisions

It is worth noting that whilst the first phase of commencement will primarily focus on DoLs, this is an opportunity to also commence a few additional provisions to help improve the lives of people who lack capacity. We are therefore proposing to also commence:

- The offences of Ill-treatment or neglect (section 267), Forgery (section 268), Unlawful detention (section 268), Assisting persons to absent themselves (section 270), Obstruction (section 272) and offences by bodies corporate (section 273);
- Warrants (section 292);
- Direct Payments (section 282); and
- Money & Valuables (section 276).

We are also exploring the possibility of commencing provisions in relation to inpatient duties with regards to children.

## Next Steps

As we move towards the commencement date the team will be undertaking significant work to finalise required documentation, seek necessary approvals (such as required legal advice) and work on the development of training packages and material to inform the training delivery plans.

Work will also commence on the development of information and guidance for P, carers, and others, as well as awareness raising programmes, in time for commencement of these provisions.

We will be seeking your help and assistance with these workstreams in due course.

As always the Department is very grateful for your comments and input to date. As noted previously, particular focus is currently on the new draft DoLs Code of Practice, regulations and forms.

If you wish to meet with the DoH Implementation Team or if you have any queries, please don't hesitate to contact us using email or phone.

If you believe that you have received this newsletter by mistake, please let us know and we will remove you from our email lists. Similarly if you think someone else would benefit from being on the Mental Capacity Act virtual reference group please let us know.

## Mental Health (NI) Order 1986

As this is the first phase of commencement, the existing Mental Health (NI) Order 1986 will be retained and will operate alongside the newly commenced DoLs provisions of the Act.

Repeal of the MHO remains a key milestone in the implementation of the Act and this will form part of the subsequent commencement plans.

## The Implementation Team - DoH

As Reference Group members you will receive regular emails from members of the DoH Implementation Team. There have been some further changes to the Implementation Team. The team members are as follows:

**Tomas Adell (Head of Mental Health & Capacity Unit)**

**Allan Chapman (Mental Health & Capacity Unit)**

**Kevin Myles (Mental Health & Capacity Unit)**

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