

What is an authorisation?

There are two ways of authorising a deprivation of liberty.

If a person who lacks capacity is in hospital, the authorisation is called a short term detention. Two professionals will look at the case and can authorise a deprivation of liberty for 14 days which can be extended for another 14 days.

If a deprivation of liberty happens outside hospital, a Trust Panel must authorise the deprivation. They have a maximum of 7 days to make a decision and can authorise a deprivation of liberty for up to 6 months.

A trust panel authorisation can be extended for 6 months initially and then for 12 months at a time.

How does a deprivation of liberty end?

If any of the safeguards are no longer met, then a deprivation of liberty must stop. That means it must stop if any of the following happens:

- The person regains capacity.
- It is no longer in the best interests.
- It is no longer needed to prevent serious harm.
- An authorisation is no longer valid or has lapsed.

What is the Review Tribunal?

A person deprived of their liberty has the right to appeal their detention to a Review Tribunal.

The Tribunal is an independent panel that reviews deprivations of liberty to ensure that they are lawful and that the criteria for detention have been met.

When the Tribunal has considered the case it may choose to end the detention or it may decide to take no further action.

If the detained person is unable to apply to the Tribunal they can ask their nominated person to apply to the Tribunal on their behalf.

If the detained person lacks the capacity to understand that they have a right of appeal to the Tribunal their case will automatically be referred to the Attorney General who can then ask the Tribunal to consider it.

Referrals can also be made by the Department of Health, and the Master (Care & Protection). Deprivations of liberty that have been in place for two years but have not been reviewed will also be referred to the Tribunal for consideration.

The Tribunal will also consider applications about appointing or removing a nominated person.

Useful Contacts and Information

There is more detailed information and guidance, including an easy read version, on the Mental Capacity Act and Deprivation of Liberty Safeguards website:

www.health-ni.gov.uk/mca

This information can also be obtained by contacting the Trust where a person is deprived of liberty.

Further information about the Tribunal is available from the Northern Ireland Courts and Tribunal Service.



Mental Capacity Act

(Northern Ireland) 2016

Deprivation of Liberty Safeguards



Department of
Health

An Roinn Sláinte
Máynstríe O Poustie

www.health-ni.gov.uk

What is a deprivation of liberty and the Deprivation of Liberty Safeguards?

A deprivation of liberty is when all of the following occur:

- A person is in a place where care or treatment is being provided
- A person is not free to leave
- A person is under continuous supervision and control

A person can be deprived of liberty in any place, for example, a hospital, care home, supported living accommodation or other setting.

Even if the person or others, such as a carer or a relative are happy with the care and the person or others want the person to be there, the law says that if the conditions above are met this is described as a deprivation of liberty.

The deprivation of liberty safeguards is the system to ensure that a person is only deprived of liberty when it is right to do so.

What are the rights under the Deprivation of Liberty Safeguards?

- As far as is possible the person must be supported to make any decision regarding the care and treatment (if the person can make their own decision, the person cannot be deprived of liberty).
- If the person can't make their own decision, the person must be included in discussions about the deprivation of liberty as far as that is possible so that they can give their views and opinions.

- A person has the right to make unwise decisions.
- No assumptions can be made about the person.
- The person has the right to put in place a nominated person who can advise people what they would have wanted and what would be in their best interests.
- The person has the right to be told what is happening and be given information about the Mental Capacity Act.
- The person has the right to be given all information used in making assessments.
- No one can be deprived of liberty unless all safeguards are met.
- The person has the right to challenge any authorisation by applying to the Review Tribunal.

What are the Safeguards?

If someone wants to deprive a person of liberty they must make sure the following safeguards are in place:

- They must believe that the person lacks the mental capacity to decide about the deprivation of liberty and must write this down on a statement of incapacity.
- They must believe that a deprivation of liberty is in the person's best interests and write this down.
- They must believe that a deprivation of liberty will help prevent serious harm coming to the person or serious physical harm to other people.
- They must consult a nominated person.
- They must have an authorisation for the deprivation of liberty.

Mental capacity is about whether a person can understand and appreciate the need for the care and treatment to include restrictions on the right to leave the place where they are.

Best Interests is about whether depriving a person of liberty is, on balance, the best option having taken special regard to doing what the person would want if they had the mental capacity to decide for themselves.

What does a Nominated Person do?

A nominated person is someone who can speak up for a person who lacks capacity. The nominated person cannot make any decisions, but should make sure that the person's views are heard when professionals are making a decision about their care.

They can also help to challenge a decision and can make applications to the Review Tribunal.

Who is the Nominated Person?

A person can choose anyone to be the nominated person if they have capacity to make that choice. That could be a family member, friend, or anyone else.

If no one is nominated, there is a list of people who could act as the nominated person.