



## **Reply to questionnaire for the country reports – Northern Ireland**

Dr. Gavin Davidson, Queen's University of Belfast, Northern Ireland

### **1. What legislation is relevant for the protection of adults?**

There are three main relevant areas of law:

The Mental Health (Northern Ireland) Order 1986 allows compulsory intervention on the grounds of mental disorder and risk. This includes a form of Guardianship but this is very limited (requires the person to reside in a certain place; attend certain places; and allow access) and, in practice, requires the cooperation of the person.

The common law allows intervention based on 'a reasonable assumption that the person is unable to make the relevant decision' and the proposed intervention is thought to be in their 'best interests'.

There is also an area of law which relates to adult safeguarding – there is no specific adult safeguarding law but the current framework is made up of: the Safeguarding Vulnerable Groups (Northern Ireland) Order 2007; the Criminal Evidence (NI) Order 1999; the Protocol for Joint Investigation of Alleged and Suspected Cases of Abuse of Vulnerable Adults 2009; and the relevant policy which is Adult Safeguarding: Prevention and Protection in Partnership 2015.

### **2. What are the types of formal measures that exist to support people with disabilities in exercising their legal capacity? (Especially private mandates or legal representatives appointed by a court/authority)**

Currently the legal framework focuses on financial decision making so there is an Enduring Power of Attorney and an Office of Care and Protection (part of the Court Service) but any other decisions (including health and welfare decisions) are made under the common law principles and considered by the High Court if need be. Advance Decisions are also possible under common law but are rarely used.

### **3. Who decides on the appointment of a supporter/legal representative and what are the requirements for the respective measures?**

The person can make an enduring power of attorney. The criteria for a 'controller' to be appointed by the Office of Care and Protection are set out in the Mental Health (Northern Ireland) Order 1986 Article 97(1) "The functions of the High Court...shall be exercisable where, after considering medical evidence, the court is satisfied that a person is incapable, by reason of mental disorder, of managing and administering his property and affairs".

### **4. Who is involved in the procedure of determining the need for support in legal affairs and in what capacity?**

Currently, for financial decision making, it is based on medical evidence as specified above but otherwise it is the common law so, in effect, anyone. In practice it will often be the relevant lawyer, police officer and/or health/social care worker.

## **5. How significant is the legal capacity of the adult concerned and is there a constitutive ascertainment of (lack of/limited) legal capacity?**

The formal powers are currently restricted to financial decision making and are not global.

## **6. What are the responsibilities of a supporter /representative and what are the obligations and principles he/she must comply with?**

Under the Mental Health (Northern Ireland) Order 1986 it's specified under Article 98 that:

“(1) The court may, with respect to the property and affairs of a patient, do or secure the doing of all such things as appear necessary or expedient –

(a) for the maintenance or other benefit of the patient;

(b) for the maintenance or other benefit of members of the patient's family;

(c) for making provision for other persons or purposes for whom or which the patient might be expected to provide if he were not mentally disordered; or

(d) otherwise for administering the patient's affairs.”

In general it is still the common law position of ‘best interests’.

## **7. What role do family members play and what are the requirements imposed on them?**

Family members may have a role under: Enduring Power of Attorney; the Nearest Relative can be an applicant for compulsory admission under the Mental Health (Northern Ireland) Order 1986 and must be consulted in admission and Guardianship processes. They can also be the Guardian and/or controller.

## **8. What role do volunteers play and what are the requirements imposed on them?**

Advocacy is provided through a number of voluntary sector organisations. If a person has been arrested and is viewed as ‘vulnerable’ an appropriate adult must be present.

## **9. Are there professional supporters/legal representatives and what requirements/ qualifications do they have to satisfy?**

Beyond lawyers there are advocates in most areas of health and social care. There is great variation in their qualifications and training.

## **10. Who bears the costs for procedures and the supporter/legal representative?**

If a person's financial affairs are being managed through the Office of Care and Protection then they have to pay fees for those services although you can apply for means tested exemption/remission.

## **11. How are supporters/legal representatives supervised and what is done to ensure that the rights, the will, and the preferences of the adult concerned are respected? (cf. Art. 12 section 4 UN CRPD)**

The Regulation and Quality Improvement Authority have an overall responsibility for standards in the provision of health and social care. The Northern Ireland Human Rights Commission also has a role in

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the promotion and protection of rights. The Office of Care and Protection provides the management arrangements for controllers.

**12. Who decides on deprivation of liberty and involuntary medical measures and what requirements does this decision underlie? Is there a distinction between self-endangerment and endangerment of others?**

Under the Mental Health (Northern Ireland) Order 1986, if the deprivation of liberty is compulsory admission to hospital and subsequent treatment then this is based on the application of an approved social worker or the person's nearest relative and a medical recommendation. Treatment decisions would then be made by the Consultant Psychiatrist. The criteria, under Article 4(2) are:

“(a) he is suffering from mental disorder of a nature or degree which warrants his detention in a hospital for assessment (or for assessment followed by medical treatment); and

(b) failure to so detain him would create a substantial likelihood of serious physical harm to himself or to other persons.”

**13. Additional comments (elements of your country's system that may be of interest and are not covered above)**

The law in Northern Ireland has recently been reviewed and it is proposed that a new law the Mental Capacity Act Northern Ireland 2016 will replace the current Mental Health (Northern Ireland) Order 1986. The new act will be a more comprehensive legal framework that will apply to everyone who, despite appropriate support being provided, is unable to make a decision. The intention is therefore to no longer have a separate mental health law.

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