



PANEL 2: SUPPORT AND REPRESENTATION MENTAL CAPACITY ACT NORTHERN IRELAND 2016

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NORTHERN IRELAND CONTEXT





OVERVIEW

The new *Mental Capacity Act Northern Ireland 2016*

Principles

Levels of intervention and associated safeguards

Support principle and representation

Ongoing issues

FUSION APPROACH

Bamford Review concluded:

“having one law for decisions about physical illness and another for mental illness is anomalous, confusing and unjust’ and so “...the Review considers that Northern Ireland should take steps to avoid the discrimination, confusion and gaps created by separately devising two separate statutory approaches, but should rather look to creating a comprehensive legislative framework which would be truly principles-based and non-discriminatory.”

Mental Capacity Act Northern Ireland 2016 to replace the current parallel mental health and mental capacity legal frameworks

PRINCIPLES BASED SECTIONS 1 AND 2

Section 1: Capacity

Presumption of capacity

Functional not status approach

Support principle

Unwise decisions

Section 2: Best interests

Detailed in Section 7 that in establishing what is in a person's best interests you must have special regard:

The person's past and present wishes and feelings;

The beliefs and values that would be likely to influence their decision; and

the other factors that they would be likely to consider if able to do so.

Range of causes of impairment	Types of decision	Levels of intervention	Safeguards
Dementia Learning disability Brain injury Mental health Personality disorder Physical health Alcohol and drugs Any cause	Decisions in relation to care, treatment and/or personal welfare	Routine	Reasonable belief the person lacks capacity and the intervention proposed is in their Best interests
		Serious (surgery, pain, distress, consequences)	And Formal assessment of capacity Nominated person Second opinion (certain treatments)
		Authorised (compulsory treatment with serious consequences, deprivation of liberty, community attendance for treatment and residence)	And Independent advocate ASW and Medical Recommendation Trust Authorisation Tribunal
			High Court, Public Guardian

SUPPORT IN THE NEW ACT

Key principle in Section 1(4) “The person is not to be treated as unable to make a decision for himself or herself about the matter unless all practicable help and support to enable the person to make a decision about the matter have been given without success.”

Section 5 sets out a number of steps which must be taken. These include: the provision of all information relevant to the decision in the most appropriate way; ensuring the timing and context of the decision making process is the most supportive; ensuring people who might be likely to help support the person are involved; and ensuring there is consideration of the ‘reasonably foreseeable consequences of’ both making a decision and not making a decision.

WHAT WILL THIS INVOLVE IN PRACTICE?

“all practicable help and support” would suggest a wide range

Similar wording in the Mental Capacity Act 2005 for England and Wales, Section 1(3): “A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success”

“Supported decision-making, and the adjustments required to enable it, are not well embedded.” House of Lords, 2014, Post-legislative Scrutiny

Support to be further defined in the Code of Practice

Representation – range of safeguards depending on the level of the proposed intervention. They include: involvement of nominated person; authorisation by a panel (deprivation of liberty) and involvement of an independent mental capacity advocate must be appointed. There is also a new enduring power of attorney and the High Court is still available and can appoint deputies. All will be subject to the principles of the new Act.

ONGOING ISSUES

How will the support principle be implemented in practice?

UNCRPD Article 12 - is the fusion approach a positive, non-discriminatory response?

Is it appropriate to frame everything as supported decision making?

Best interests and rights, will and preferences?

The new Act only applies to those aged 16 and over

It raises difficult, ethical and societal questions about certain unwise decisions, especially about suicide

Awareness in the area of physical health?

When will the Act be implemented?