



Mental Capacity Act (Northern Ireland) 2016 and Mental Health (Northern Ireland) Order 1986

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Objectives

- Recap on the Mental Capacity Act and DoLS
- Interface with the Mental Health Order
- Case examples
- Updates and challenges
- Q & A



MCA Recap - Background

- Unique piece of legislation
- Will fuse mental health and mental capacity law in NI when fully commenced.
- Phased approach, with deprivation of liberty (DoL) being the main provision
- When fully implemented the Mental Health Order will be repealed for anyone aged 16 and over.
- To manage the commencement of the MCA, the MHO was initially kept for all, and a dual system continues to exist, with both the MHO and the MCA providing statutory frameworks for DoL.

What does this mean?



- Where a person ('P') meets the criteria to be detained under both the MHO and MCA legislative frameworks, the MHO must be the legislative vehicle used.

Activity



From commencement in Dec 2019:

- 11481 Applications authorised
- 7264 (63%) reviewed by AG
- 2859 (25%) reviewed by RT
- (only 3 cases revoked)



What is Mental Capacity?

P is unable to make a decision for himself or herself about the matter, because of an impairment of, or a disturbance in the functioning of, the mind or brain.

The Act and DoLS apply only to people who lack capacity.

What is a DoL?



To test if a person who lacks capacity is deprived of his or her liberty the following questions must be asked:

is P under continuous supervision or control?

And

is P free to leave?

- If P lacks capacity, is under continuous supervision / control and is not free to leave, there needs to be consideration of **DoL Safeguards**.
- DoLS apply only to people who lack capacity and are deprived of their liberty.
- Anyone meeting this definition needs to be referred to the MCA Service for DoLS assessments.

DoLS Authorisations



A DoLS Authorisation can be sought in two ways under the Act:

Short-term Detention Authorisation in hospital for examination, or examination followed by treatment - can last for a maximum of **28** days. The short term detention of P must be in a hospital setting and **must also include an element of examination, or examination followed by other treatment and care**

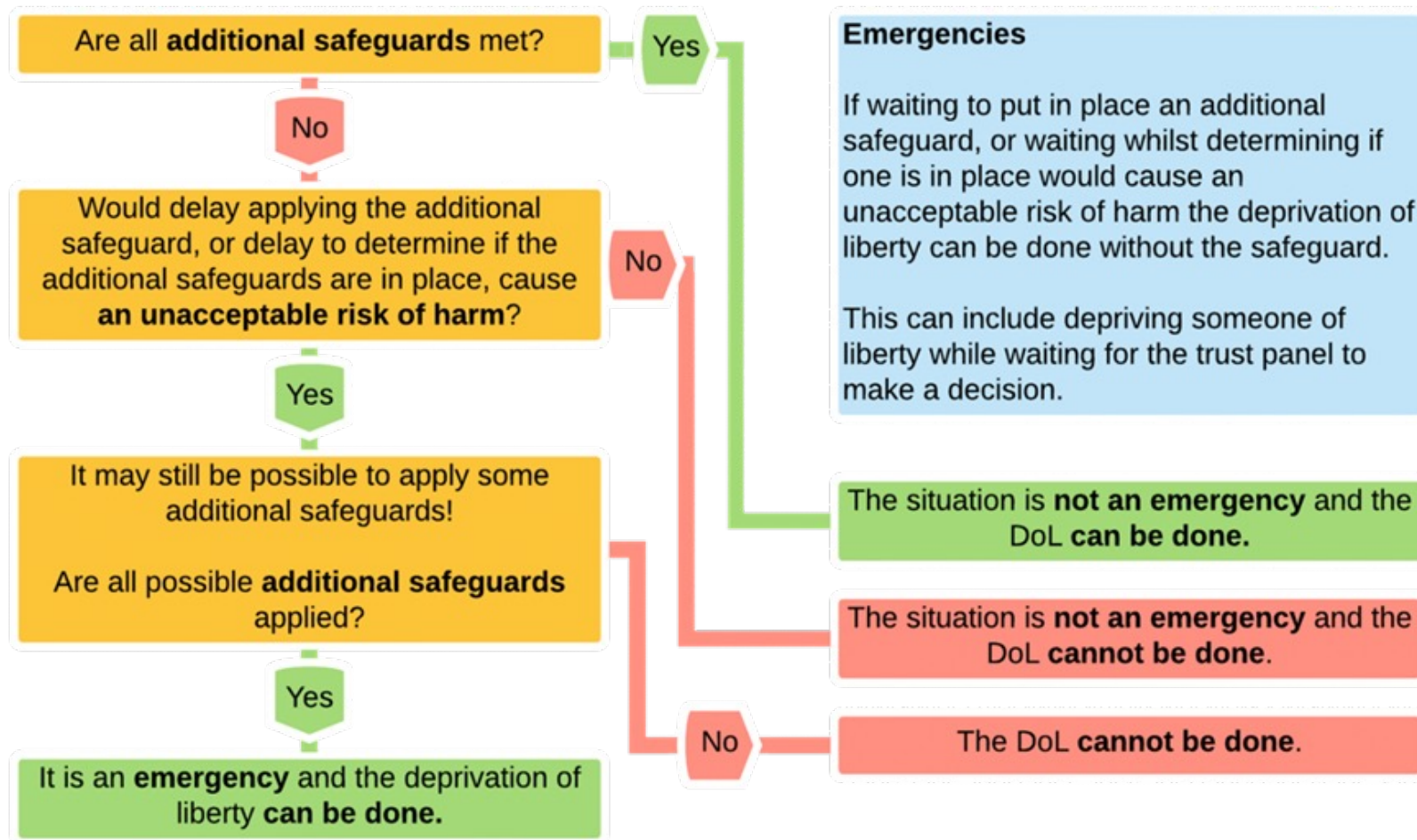
Trust Panel Authorisation - can last for a maximum of **six months** and may be extended, initially for **six months** and then for **one year** at a time.

Emergency Provisions



- The emergency provisions of the MCA enables a patient to be taken to or to stay in a place of a DoL without all of the deprivation of liberty safeguards being in place yet.
- Not necessarily a MEDICAL emergency
- It might be the case that P is moved to a place where they are deprived of their liberty under emergency provisions whilst awaiting the outcome of a Trust Panel Authorisation or Short Term Detention Authorisation.
- The **General Safeguards are required:**
 - reasonable belief of incapacity
 - reasonable belief of best interests
 - as well as the additional safeguard of **POSH must always be met**, whether it is an emergency or not
- The requirement under emergency provisions is a recording in the patient's notes. Some staff prefer to use the emergency provisions checklist – available through your local Trust MCA Team or on GPNI website.

Emergency Provisions





Select Trust

Mental Capacity Act (Northern Ireland) 2016: Emergency Deprivation of Liberty - Checklist

Please affix Addressograph or fill details below	
PATIENT NAME:	
DATE OF BIRTH:	
H&C NUMBER:	

I have a reasonable belief that this person lacks capacity	
The decision to deprive this person of their liberty is being made in their best interests	
This decision to deprive this person of their liberty is to Prevent Serious Harm to self or Serious Physical Harm to <u>others?</u>	
<p>I have a reasonable belief that this is an <u>Emergency Situation?</u></p> <p><i>i.e.</i> I do not know whether the additional safeguards are met, but I have a reasonable belief that to delay until safeguards are met would create unacceptable risk of harm to P</p> <p><i>Unacceptable risk is where the seriousness of the harm that could be caused to P by delay/waiting and the likelihood of the harm outweigh the risk to P, in not complying with safeguards. i.e. unacceptable risk of harm if the deprivation of liberty is not carried out</i></p>	
<p>Please select any of the safeguards below that you believe to be in place.</p> <p><i>Note: the deprivation of liberty can proceed under emergency provisions if none of the below are in place at this time.</i></p> <ul style="list-style-type: none"> A. Formal assessment of capacity B. Requirement to consult a Nominated Person C. Best Interests Determination Statement or Decision Making D. Authorisation (either Short-term detention or Trust Panel) E. Authorisation to take a person to a place for a Deprivation of Liberty 	

Completed by:

Role:

Date:



Interface between MCA and Mental Health (Northern Ireland) Order 1986 (MHO)



MHO has precedence over MCA

- Both the Mental Capacity (Commencement No.1) Order (Northern Ireland) 2019 (S.R.2019 No.163 (C.5)) and the Mental Capacity (Deprivation of Liberty) (No.2) Regulations (Northern Ireland) 2019 (S.R. 2019 No. 199) include provision on limitations to commencement of the MCA.
- Article 3 of the Commencement Order outlines that the provisions of the MCA which are commenced by Article 2 do not apply in any circumstances in which a deprivation of liberty may instead be authorised by provisions in Part 2 or Part 3 of the MHO.

MHO / MCA?



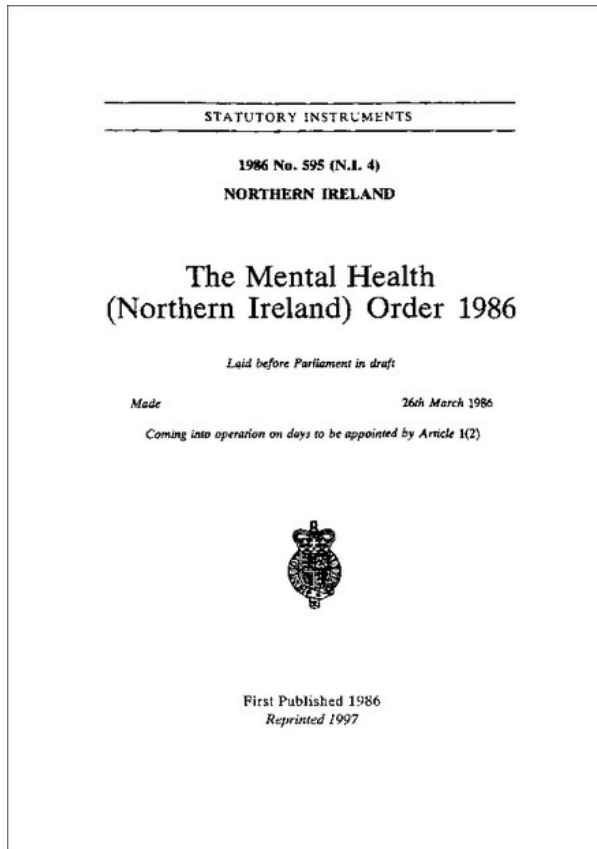
- Currently in the majority of cases, the appropriate legal framework for a DoL in a psychiatric hospital is the MHO.
- When deciding what the patient needs a key thing to consider is where does P need to go – a psychiatric hospital? Or an acute hospital / care home?
- There may be instances where P may have been formerly detained in a psychiatric hospital under MHO - no longer meets the criteria for detention under MHO - but remains in the psychiatric hospital (e.g., delayed discharge) + staff believe that it would still be in P's best interests to be deprived of their liberty.
- The fact that P was previously detained under MHO or that the person continues to reside in a psychiatric hospital does not prevent Trust staff from applying DoLS under MCA.
- **Detention under MCA can only be considered if it has been established that the criteria for detention under the MHO is no longer met.**

Process to deciding which legislation to use

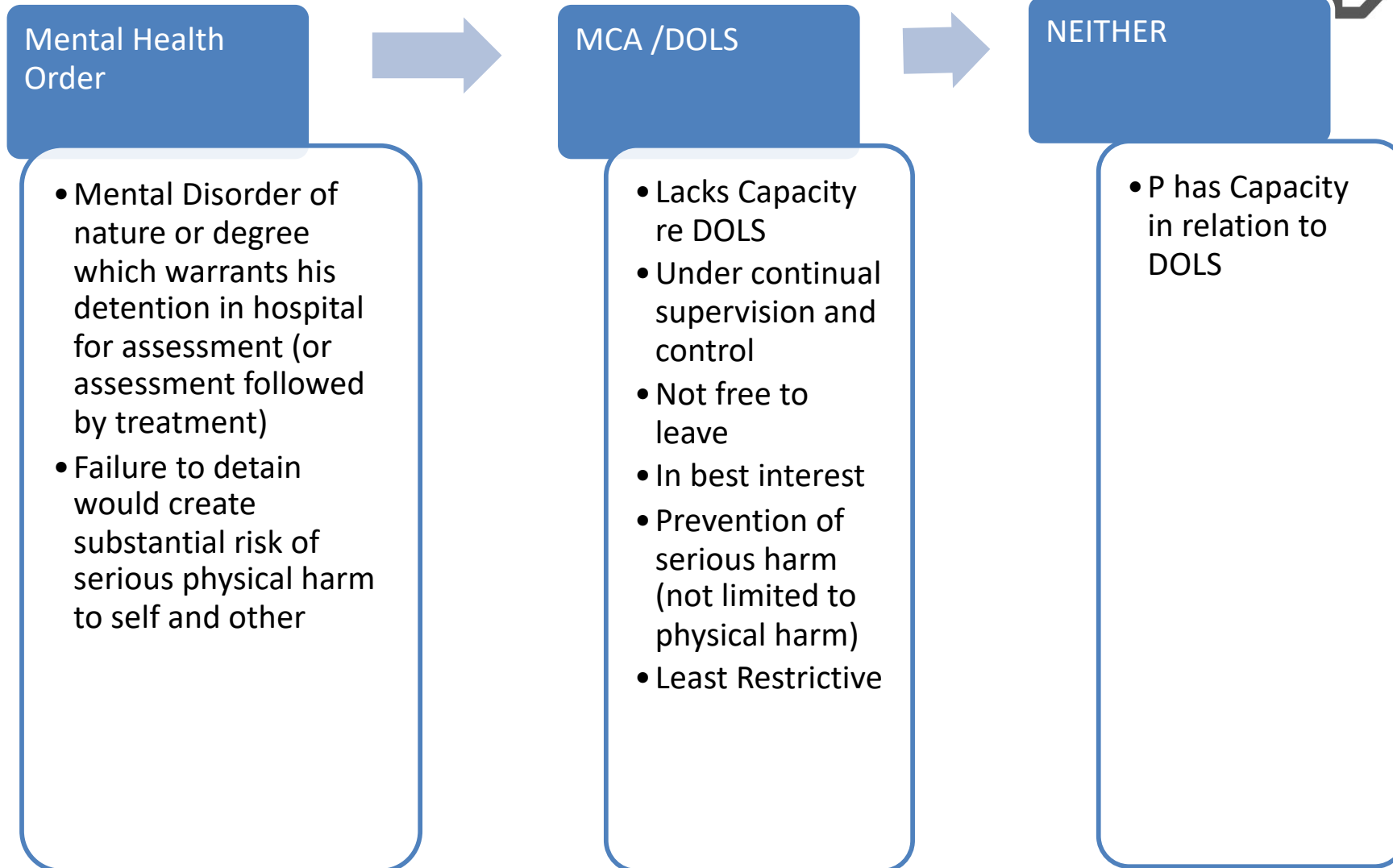


FIRST CONSIDER MHO CRITERIA

SECOND CONSIDER MCA / DOLS CRITERIA



Process of decision making



Scenario: P no longer meets MHO criteria, but meets DOLS criteria



Mental Health - Mr B – 56 years old- Schizophrenia

- Lacks insight into mental state, needs and risk. Non-compliant with medications, using alcohol and cannabis and has had poor engagement with CMHT. Undergoing assessment by CMHT
- Mental disorder – significant deterioration, floridly psychotic, agitated, not managing personal care needs, poor oral intake, not sleeping.
- Substantial likelihood of causing serious physical harm to self – Attempted to jump out of 2nd floor window believing he could fly
- Detained under the MHO for assessment– criteria met and he lacked capacity to consent to a voluntary admission and further detained for treatment under the MHO
- During admission, mental state improved, accepting of medications, Back to baseline. Undergoing MDT assessment to maximise opportunity for a safe and effective discharge from hospital. NO LONGER MEETS CRITERIA FOR MHO DETENTION
- Mr B continues to lack insight into his mental state and needs, doesn't plan on using alcohol or drugs
- Continues to lack capacity re care arrangements amounting to a DOL – knows he is under continuous supervision and is not free to leave but is unable to appreciate, use and weigh up information relevant to making a decision on his current care arrangements.

Criteria for a STDA was met -

- Impairment of or disturbance in the functioning of, the mind or brain (Schizophrenia)
- Lacks capacity re his DOL care arrangements in hospital
- Requires further assessment and care in hospital
- Remaining in hospital is in his best interest and it
- Will prevent serious harm to him (as it is likely his physical and mental health will deteriorate without appropriate support and service provision)

Scenario: Referral from Supported Living



- 75 years old, lives in supported living with limited domiciliary support, no informal support. One call once a day.
- Known to local team for dom package and to District Nursing support with leg dressings.
- Cellulitis, non compliance with antibiotic treatment.
- Increasingly unusual behaviour – in communal areas in states of undress, not eating or drinking, falling, refusing District Nursing dressing legs, disorientated to place and time. Dom care provider has concerns.

Scenario: Ms D

- Ms D is 63 years old and has a diagnosis of schizophrenia – known to Comm MH Team. Also had type 2 diabetes. Had not had depot medication in several months, had not attended diabetes clinic in two years.
- Comm MH staff have been unable to gain access to property for several months. Ms D has stopped going to work and contact with family has decreased. She is no longer going to her local shop. Family / staff have left food at the front door, which has been taken inside.
- Referral for assessment under MHO.
- Concerns raised regarding Ms D's physical health potentially due to Type 2 diabetes.
- **MHO or MCA?**

Roles and Responsibilities



- Complete your statutory training (see next slide)
- Whilst it is a Trust responsibility to complete DoLS, the law is everyone's responsibility and you may need to use it
- If a patient presents who might need admitted to acute hospital but does not meet MHO criteria, apply MCA using emergency provisions where it is not practicable to apply safeguards. Note – this is no different to what you would do before MCA to keep a patient safe, except now there is a legal framework to do so.
- Consult with the Trust if you are unsure which framework to use
- Escalate any challenges around conveyance through your management channels
- Keep in touch – we're here to help (contact details on at the end)

Training



Level 2: E-Learning

This is basic awareness training and should be completed by all client facing staff. Please note, this training is available in other formats. For more info, contact MCA Team:

<https://www.health-ni.gov.uk/mental-capacity-act-training>

Level 3 E-Learning

This is deprivation of liberty training and should be completed by all staff who will work with people who may be deprived of their liberty. Examples include Social Workers, Social Care Workers, Nurses, Doctors, day centre staff and many others. If you are unsure if you should complete this training, talk to your line manager or contact MCA Team:

<http://mca-learning.health-ni.gov.uk/level3/>

Level 4 E-Learning

This training is for those who will complete functions under MCA including assessment of capacity. The following professionals can fulfil this task: medics, social workers, nurses, OTs, SALTs, dentists and psychologists.

<http://mca-learning.health-ni.gov.uk/level4/>

For any additional training needs, please contact your local MCA office – who will be more than happy to help. There are a number of additional modules available regionally, and in-person sessions are available within Trusts.

MCA Offices – Contact Details



HSC Trust	MCA Lead	Email Address	Number
Belfast Trust	Steph Kerr	MCABelfast@belfasttrust.hscni.net	02896151300
Northern Trust	Catherine Lynn	MCA.NHSCT@northerntrust.hscni.net	02894413226
South Eastern Trust	Rosaleen Murphy	MCAsetrust@setrust.hscni.net	02890413760
Western Trust	Deirdre Kane	MCA.WHSCT@westerntrust.hscni.net	02871345171
Southern Trust	Angela Hawkins	MCA.SHSCT@southerntrust.hscni.net	028 3756 7268

Useful Resources



[Mental Capacity Act | Department of Health \(health-ni.gov.uk\)](http://www.health-ni.gov.uk)

Belfast HSC Trust: Guidance Site, MS Teams

<https://teams.microsoft.com/l/team/19%3a111c9b49524e4de98d4ee26a447cacc2%40thread.skype/conversations?groupId=90a98e50-7c94-4618-bff9-e4ea1d8119b1&tenantId=9c9a30de-d8d7-4aa4-9600-4be7625ff6c5>

Guests are permitted access to guidance, updates and FAQs.

Northern HSC Trust: MCA PageTiger

MCA Resource Toolkit can be accessed here: <https://northerntrust-hscni.pagetiger.com/cvcimad/1>

MCA Independent / Care Home Resource: <https://northerntrust-hscni.pagetiger.com/mutsyk/1>

Southern HSC Trust: MCA PageTiger

[Mental Capacity Act \(NI\) 2016 Staff Resource - 1 \(pagetiger.com\)](https://www.pagetiger.com)

Thank you.

