
Addendum

Possible amendments to Parts IV and V following review of the commentaries:

As a result of a consideration of the commentaries on the Model Law we propose a number of possible amendments to Parts IV and V that take account of some of the points raised (see our response to the commentaries). We here reproduce the complete clauses as amended.

Clause 7 needs to be amended to allow for the changes in Part IV

7. Application of the Parts of the Act

The following Parts of the Act apply to certain decisions or acts:

- (1) Part III applies if the decision or act involves serious medical treatment.
- (2) Part IV applies if P does not object to the care or treatment but is likely, at some time within the next 28 days, to require care or treatment in a hospital or care home in circumstances that amount to deprivation of liberty.
- (3) Part V applies if a person (“P”) objects to a decision or act that involves the provision of care or treatment to P, unless that decision or act is authorised by clause 6.

Part IV Persons lacking capacity who need to be deprived of their liberty

Part IV now deals only with provisions for the deprivation of liberty and comprises just three clauses. The original **Clauses 16 – 20** are eliminated.

13. Application of this Part

- (1) This Part applies to a person (“P”) when the following conditions are met:
 - (a) P, because of an impairment or disturbance in the functioning of the mind, lacks the capacity to make a decision relating to his or her care or treatment (including accommodation for care and treatment)
 - (b) P is likely, at some time within the next 28 days, to require care or treatment in a hospital or care home in circumstances that amount to deprivation of liberty
 - (c) P does not object to receiving care or treatment in circumstances that amount to deprivation of liberty
 - (d) P needs to be deprived of liberty in his or her best interests
 - (e) deprivation of liberty is a proportionate response to the likelihood of P suffering harm, and the likely seriousness of that harm.
- (2) P shall be considered to be deprived of liberty within this Part if:
 - (a) he or she would not be permitted to leave the hospital or care home upon expressing a wish to do so or attempting to do so, or
 - (b) effective control is exercised over P’s care and his or her freedom of movement is so confined as to amount to a deprivation of liberty.

14. Deprivation of liberty

- (1) P may be deprived of liberty under this Part for up to 28 days when a registered medical practitioner has examined P and certified in writing to the hospital or care home in which P is already accommodated or which has agreed to admit P that the conditions in clause 13 are met.
- (2) The hospital or care home shall then register P with the appropriate authority.
- (3) The appropriate authority shall appoint a person as the responsible clinician in charge of the care or treatment of P.
- (4) Registration provides the authority for the conveyance of P to the hospital or care home.
- (5) The responsible clinician shall prepare a written care plan for P.
- (6) Before preparing the care plan the responsible clinician shall consult the substitute decision maker for P or, in the absence of such a person, the primary carer.
- (7) A copy of the care plan shall be provided to P, the substitute decision maker, the primary carer and any advocate of P.
- (8) If there is no substitute decision maker the responsible clinician shall apply to the Tribunal to appoint one.
- (9) If the conditions are no longer met within the period of 28 days specified in subclause (1) above the responsible clinician shall certify that fact in writing to the hospital or care home and P shall be released from these provisions.
- (10) A deprivation of liberty may only extend beyond 28 days if another health or social care professional, who is independent of the care or treatment team, has also examined P and certified that the conditions in clause 13 are met, whereupon deprivation of liberty under this Part is authorised for up to 12 months.
- (11) The period of deprivation of liberty shall not exceed 12 months, unless the responsible clinician and another health or social care professional, who is independent of the treatment team, each examine the patient and certify that the conditions in clause 13 continue to be met, in which case the deprivation of liberty may extend for another agreed period up to 12 months.

15. Applications to the Mental Capacity Tribunal

P, P's primary carer, or P's substitute decision maker may apply to the Tribunal for a review of a decision to deprive P of liberty under this Part

Part V. The Compulsory Treatment Order could be amended to provide for a simplified assessment process by amending **Clause 27(3)** and by replacing **Clauses 28–33** as follows:

27 (3) Requires a small change so that treatment for a further 7 days cannot be given contrary to Clause 31 below (not Clause 28 in the original)

28 Certificate of Further Assessment

- (1) During the period of initial assessment the responsible clinician may complete a Certificate of Further Assessment stating in writing his or her view that:
 - (a) the conditions in clause 21 are met; and
 - (b) a further period of assessment is required.

(2) The completion of that Certificate authorises further compulsory assessment of P for up to 21 further days.

29. Application for Compulsory Treatment Order

(1) Before the end of the 21 day period of further assessment the responsible clinician may apply to the Tribunal for a Compulsory Treatment Order.

(2) If no such application is made the authority for the compulsory assessment of P shall lapse at the end of the period of further assessment.

(3) A Compulsory Treatment Order may be made, following a full hearing, by a three member Tribunal.

30. Urgent application for a hearing before Tribunal

(1) At any time during the period of P's initial or further assessment, P, P's SDM, P's primary carer, or any other person with a legitimate interest in P's welfare, may apply to the Tribunal for an urgent hearing concerning P's need for compulsory assessment.

(2) That application will be heard by a single member Tribunal within 7 days.

(3) Following that hearing, the Tribunal shall order P's immediate release from compulsory assessment unless it finds that the conditions in clause 21 are met.

(4) This hearing does not prejudice P's right to a full hearing before the Tribunal concerning any application for a Compulsory Treatment Order.

31. Treatment within the period of preliminary examination and assessment

(1) During the period of preliminary examination and assessment P may not be provided with medical treatment to which he or she objects unless:

(a) it is covered by the general authority established by clause 6

(b) it is necessary to prevent serious harm to P's health or safety or to protect another person from harm

(c) where serious medical treatment is to be provided that is covered by clause 12, the requirements of that clause are satisfied.

(2) Any treatment provided under (1)(b) or (c) shall not be given in the community but P shall be conveyed to hospital for the purposes of treatment.

32. Draft care plan

(1) Prior to the hearing before the Tribunal concerning the Compulsory Treatment Order, the responsible clinician shall prepare a draft care plan, setting out the medical treatment which the person ("P") is to receive under compulsory powers.

(2) This plan shall be included in P's records.

(3) A copy of the plan shall be provided to P and to his or her SDM.

(4) If it is appropriate for the person ("P") to be subject to treatment in the community, the plan must specify the conditions to be imposed on P:

(a) to ensure that the treatment may be properly carried out

(b) to protect the health or safety of P or any other person.

(5) *The conditions may include a condition that P:*

- (a) shall attend at a specified place at specified times*
- (b) shall be available for treatment during specified periods.*

33. General consultation requirements concerning draft care plan

(1) *Before finalising the draft care plan the responsible clinician shall consult:*

- (a) P, unless inappropriate or impracticable*
- (b) P's substitute decision maker, if one has been appointed*
- (c) if no substitute decision maker has been appointed, the person who usually provides care for P (the primary carer)*
- (d) any other person who will have the care of P in the community.*

(2) *If the substitute decision maker does not agree with any element of the plan this shall be recorded in the plan and the matter shall be decided by the Tribunal.*