

Deprivation of Liberty: Safeguard Proposals Consultation

Paper Feedback

IASW Feedback

Date: 09.03.18

Questions on Head 1

1.1 Do you have any views on the definitions currently included in this draft Head?

- Consider defining "continuous supervision" and "control".
- It may also be necessary to define "not free to leave"

1.2 In particular, do you have any views as to the types of healthcare professionals that should be included within the definition of "other medical expert"?

- There could be consideration of developing of a post based on the Authorised Officer under the Mental Health Act (2001). This person would be a senior professional (social worker, nurse, therapist, psychologist, etc) working in the field of older persons services, disability services and / or mental health services. This person would received additional training and the support of their employing organisation to undertake this specialised role in making admission decisions.

1.3 Do you have any other views specific to Head 1?

- No

Questions on Head 2

2.1 Do you have any views specific to Head 2?

- No

Questions on Head 3:

3.1 Do you have any views specific to Head 3?

- This section refers to the professional who determines that a relevant person requires admission to a relevant facility. Current practice in the case of older persons is that a multi-disciplinary team make a recommendation that the older person requires care in a residential setting and then a local placement forum actually determines where the older persons care needs are best met. Some consideration will have to be given as to which professional is being referred to under Head 3.
- All healthcare professionals will require knowledge as to how one determines if there is a decision-making representative, co-decision making agreement or EPA is in place.

Questions on Head 4:

4.1 Do you think the term “under continuous supervision and control” should be defined? If so, what should this definition include?

- Yes, definitely - see comment 1.1. It may also be necessary to define "not free to leave"
- Many residential settings have 24 hour staffing which could be defined as providing continuous supervision. Other settings provide residents with one to one supervision, called a "special". The definition needs to be explicit in terms of what continuous supervision means.
- In terms of control, while most residential settings endeavour to promote choice and autonomy, residents do not live in accordance with the manner they would have, if they lived at home. The choices provided to residents, while well-meaning, are defined by the residential setting and often determined by factors that suit the running of the setting.
- Control of residents with a setting can include control over personal care, diet and meal, routine, activities, socialisation, finances, accommodation, medication management, visiting / visitors, etc

4.2 When the person in charge has reason to believe that a relevant person may lack capacity to decide to live in a relevant facility, who should be notified with a view to affording them the opportunity to make an application to Court under Part 5 of the Act? This issue also arises in Heads 3(3), 7(4) and 8(1).

- If there is no decision-making representative, co-decision making agreement or EPA is in place, then the new role akin to the authorised officer (see comment 1.2 above) could be of assistance in this circumstance by making the application to court for an admission decision.
- However I do not see this role falling to the Person in Charge of the Designated Centre. In the case of an older person, their care needs would have been assessed by a multi-disciplinary team who would have made the recommendation for residential care. Thereafter the Local Placement Forum would have reviewed the multidisciplinary care team's assessment and recommendation and would have made an ultimate determination in relation to the older persons needs. It should have been identified at multidisciplinary assessment stage or at local placement forum stage that the relevant person lacked the capacity to decide to live in a relevant facility and an order from the courts for an admission decision was necessary.

4.3 Do you have any other views specific to Head 4?

- No

Questions on Head 5:

5.1 In subhead (1), what are your views on the proposed circumstances in which an urgent admission can be made?

- I believe it is important to be able to access places of safety for vulnerable adults who may be at risk of abuse or harm in their own homes.

- I am unsure about the circumstances where an admission to a designated centre for a relevant person would reduce the risk of significant harm to another person. If the relevant person poses a risk of violence / harm to others, an admission to a designated centres populated by many other vulnerable adults may not be the appropriate decision or setting for the relevant person.
- The language used in this subhead in relation to risk and harm echos the provisions of the Mental Health Act 2001. It would therefore be beneficial to clarify that the circumstances in which this proposed urgent admissions take place are separate from circumstances necessitating an involuntary admission to Approved Centres of persons suffering from mental disorders.

5.2 In subhead 2(b), should a health professional other than a registered medical practitioner be able to provide medical evidence? If so, what type of healthcare professional? This issue also arises in Head 6(2).

- See comment 1.2 above.

5.3 In subhead (7), who should make the application to Court if no one else does so? Do you have a view on the proposed role of the Director of the Decision Support Service? This issue also arises in Heads 7(6), 7(11) and 8(3).

- See comment 1.2 above.

5.4 Do you have any other views specific to Head 5?

- This proposed legislation will have implications for many respite settings, where older persons, adults with a disability and adults with mental health needs, often receive temporary respite breaks in designated centres, sometimes without the capacity to consent to this temporary admission.

Questions on Head 6:

6.1 Is the evidence of one medical expert sufficient?

- The evidence of one medical expert may be sufficient provided that the relevant person has had their care needs assessed by a multi-disciplinary team, lead by another Consultant-grade doctor. This team have recommended residential care as being necessary for the relevant person, after considering all other lesser restrictive options. The team's recommendation has then been determined by the local placement forum. The multidisciplinary assessment

and local placement forum processes provide relevant persons with these necessary safeguards.

6.2 Do you have any other views specific to Head 6?

- No

14 - General Questions

14.3 Do you have any other views on the draft provisions?

- This proposed legislation is very welcome and will endeavour to protect older adults, adults with a disability and adults with mental health conditions living in, or proposed to live in, designated centres. However one must not lose sight of these same human beings who are being deprived of their liberty and experiencing chemical and other forms of restraint in hospital, community and home-based settings.
- One notes that that by making the application to court on behalf of the relevant person, legal aid can be availed of. However can the relevant person, themselves, access legal aid?