



# Mental Capacity Act

(Northern Ireland) 2016

## Money and Valuables & Research Code of Practice



Department of  
**Health**

An Roinn Sláinte

Máinnystrie O Poustie

[www.health-ni.gov.uk](http://www.health-ni.gov.uk)

## CONTENTS

Contents.....	1
Glossary of terms.....	2
Chapter 1. Introduction .....	3
Chapter 2. Money and valuables when a patient is a resident or in-patient.....	5
Chapter 3. Research.....	8



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## GLOSSARY OF TERMS

the Act	the Mental Capacity Act (Northern Ireland) 2016
appropriate body	a person or a body designated as an appropriate body by an HSC Trust or a University
best interests	a holistic consideration of all relevant factors, including special regard for P's wishes, feelings, beliefs and values
D	usually the person doing an act
the Department	the Department of Health (Northern Ireland)
emergency	where delaying with a deprivation of liberty to put in place certain additional safeguards would cause an unacceptable risk of harm to P
formal assessment of capacity	an additional safeguard
P	a person who is over the age of 16 and lacks capacity
protection from liability	a limited protection from civil or criminal liability

# Chapter 1. INTRODUCTION

## Introduction

- 1.1. The Mental Capacity Act (Northern Ireland) 2016 provides a statutory framework for people who lack capacity to make a decision for themselves and for those who now have capacity but wish to make preparations for a time in the future when they lack capacity.
- 1.2. The legal framework provided by the Act is supported by this Code of Practice which provides practical information for how the Act works. **This Code supports Phase 1 of the implementation and commencement of the Act only.** In particular, this Code focusses on how the provisions relating to **money and valuables and research** work.
- 1.3. Section 288 of the Act requires the Department of Health to prepare one or more Codes of Practice which must be laid before the Assembly, which can vote to have the Code(s) withdrawn. This Code meets these requirements.
- 1.4. Section 289 of the Act provides that the Code has a statutory force, meaning that certain people have a legal obligation to have regard to the Code when working with people who lack, or may lack, capacity to make decisions for himself or herself.
- 1.5. This introductory chapter provides a brief overview of the legal status of this Code, how the Code should be used, who it is for and what is in the Code.

## The legal status of the Code

- 1.6. The Act, and therefore this Code, applies to anyone who is present in Northern Ireland, disregarding where a person may be from or where he or she is habitually resident.
- 1.7. Section 289 of the Act provides that anyone who acts in a professional capacity, for remuneration, as an attorney under an enduring power of attorney or as a trust panel member, must have regard to this Code. This is particularly relevant where the Act requires a person to act reasonably, appropriately or practically, as the Code provides guidance of what this is.
- 1.8. The Code is not the only support material for people who work with persons who lack, or may lack, capacity. Consideration must also be given to other relevant material from the Department of Health, the Department of Justice, regulatory bodies and employers.

## Using the Code of Practice

- 1.9. Throughout this document the Code of Practice is referred to as “the Code” and the Mental Capacity Act (Northern Ireland) 2016 is referred to as “the Act”. A person who lacks capacity is referred to as “P” and the person who carries out an act as “D”. A glossary of terms used in the Code can be found immediately after the index, before this chapter.
- 1.10. This Code provides an overview of the relevant provisions of the Act to help those who need to work with persons who lack, or may lack, capacity **in relation to money and valuables and research**.

## Code for money and valuables and research – additional information

- 1.11. In addition to this Code there is a further Code of Practice relating to Deprivation of Liberty. That Code provides guidance on capacity, capacity assessments, best interests and other aspects. This Code must be read in conjunction with relevant chapters in the deprivation of liberty Code.

## Who is the Code for?

- 1.12. The Code is not designed to provide help and support for P or P’s relatives or friends, nor to explain or provide the reasoning behind the provisions of the Act.
- 1.13. The purpose of this Code is to help those who work with persons who lack, or may lack, capacity in the context of money and valuables and research.

## Contents of the Code

- 1.14. The Code provides detail on the relevant provisions of the Act which relate to money and valuables and research. This Code provides specific details and must be read with relevant chapters of the deprivation of liberty Code of Practice.
- 1.15. **Chapter 2** describes what acts can be done in relation to a person’s money and valuables if the person is an in-patient in a hospital or a resident in a residential care or nursing home, and lacks capacity in relation to the management of their financial affairs.
- 1.16. **Chapter 3** explains provisions for research in relation to persons who lack capacity.

## Chapter 2. MONEY AND VALUABLES WHEN A PATIENT IS A RESIDENT OR IN-PATIENT

### Introduction

- 2.1. The Act provides for the spending of a person (“P”) who lacks capacity’s money and valuables in certain circumstances and for certain things. The managing authority of a hospital or care home may receive and hold money and valuables for P and spend it for the benefit of P. This chapter provides how P’s money and valuables can be held and used when P is a resident or an in-patient.
- 2.2. Valuables may mean different things to different people. For the purpose of this chapter a valuable is an item of worth, an item of personal property or a costly article of personal effect.

### Money and valuables

- 2.3. The managing authority of a hospital or care home (both residential and nursing) can hold and receive money and valuables on behalf of P up to a maximum value of £20,000 (unless it has the consent of the RQIA). The managing authority may also spend the money and dispose of any valuables if this would benefit P. This may, for example, include using P’s money to buy new clothes for P or to sell a non-sentimental valuable so a new TV can be bought for P.
- 2.4. The managing authority of a hospital or care home means the person registered as the person who manages the establishment or the person registered as the person who carries on the establishment. This person, or persons, must be registered to operate the hospital, residential care or nursing home.
- 2.5. If a residential care or nursing home carries out services commissioned from a HSC trust the managing authority of the home is still the person registered as the person managing the home or carrying on the home. The trust does not become the managing authority in such circumstances. Similarly simply because a trust places a person in a residential care or nursing home does not make the trust the managing authority.
- 2.6. When spending money or selling valuables the managing authority must consider the sentimental value of the things being disposed of. The sentimental value depends on the individual circumstances, but, in general, if P would have been unwilling to part with the item if P had capacity it should be considered sentimental. The managing authority must also consult P’s nominated person, if one is appointed and if it is reasonable and practicable to do so. The managing authority cannot use P’s money

or valuables in a way which would limit P's future options, unless it is to meet a contractual commitment or to ensure P's best interests.

- 2.7. If the combined total of the money and valuables for one individual exceeds £20,000 consent from the Regulation and Quality Improvement Authority ("RQIA") is required. The purpose of requiring consent is to ensure that only hospitals and residential care or nursing homes with adequate procedures can hold money and valuables over such amounts. RQIA's role is not to determine if holding the money or valuables are in the person's best interests or to decide (or approve) how the money or valuables should be used. It is merely to ensure that there are procedures that protect the person from unwarranted loss.

### **Power to act**

- 2.8. The managing authority has a specific statutory power to receive, hold and spend or dispose of money or valuables. There is no need to rely on the protection from liability provided by section 9 of the Act. However, any acts done must adhere to the principles of the Act, P must lack capacity and the act must be in P's best interests. Also, any decision made by the court on behalf of P or any decision made by an enduring power of attorney or by a controller takes precedence over the power.
- 2.9. The power in relation to money and valuables cannot be used to pay for regular cost in relation to the care and treatment of P, such as residential or nursing care home fees. This includes costs in relation to assessed needs that would be provided for even if P did not have any money to spend.
- 2.10. Costs that are expected to be included in such fees, such as routine upgrading of paint or wallpaper, the provision of mobility aids, high profiling mattresses should not be considered as a separate expenditure that could be spent on behalf of the individual from their own resource. Other, non-essential, furnishings such as TVs, radios or internet access that would normally not be included in fees would be appropriate, if spending such money would be in P's best interests.

### **Holding of money and valuables and record keeping**

- 2.11. A managing authority that holds money and valuables for P must do so securely, such as keeping the money and valuables in a safe place. The way the managing authority considers safe should be clear in the authority's policies. Any losses of money or valuables are the responsibility of the managing authority which must replace any losses.
- 2.12. A managing authority must also keep records of what money and valuables has been received, where it is being stored, when it was received, how, why and by whom it

has been spent or disposed of and the reasons for expenditure or disposal. An annual return must also be sent to the RQIA upon their request, and include such information as they require.

## Oversight

- 2.13. The RQIA has an oversight function in relation to P's money that is being held or used by managing authorities. The managing authority must be aware of its responsibility to comply with the requirements of the Act and the requirements to send relevant information to the RQIA. The RQIA can also consent to money and valuables exceeding £20,000 being received and held on behalf of P. When RQIA considers such consent requests it must consider if the hospital or care home can safely store the money and valuables.
- 2.14. The provisions in relation to money and valuables means that there is no requirement to refer the routine handling of money and valuables under the limit of £20,000 to the High Court. Neither is there a requirement for the handling of money and valuables with a value over £20,000 to be referred to the High Court if the RQIA has consented to the handling.
- 2.15. The purpose of RQIA consent is not to make individual decisions in relation to specific money queries. Rather, it is a high level oversight role. If a residential care, nursing home or hospital has been compliant and can show good working practices in relation to money and valuables, consent should in general be provided. Only where the RQIA is of the belief that providing such consent would jeopardise P's assets should consent be withheld.

## Chapter 3. RESEARCH

### Overview

3.1. Part 8 of the Act provides when research can be done on, or in relation to, a person (“P”) who is 16 and over and lacks capacity to consent to the research. This chapter sets out what is research, when research can be done and what procedures need to be followed when carrying out such research.

### What is research?

3.2. Research that requires consent of the person involved in the research is not lawful unless the person has provided consent. If the person lacks capacity in relation to the research he or she is unable to consent. In such circumstances the research can go ahead without the person’s consent only if the conditions outlined below are met. It is important to note that a lack of objection or lack of resistance can never be interpreted as consent.

3.3. Some research does not require the consent of the person subject to the research and can therefore be done without consent and without the safeguards in this chapter. This includes:

- a. some research including anonymised data (e.g. statistics);
- b. research using confidential patient information under the Health Service (Control of Patient Information) Regulations 2002; and
- c. research with anonymised human tissues under the Human Tissue Act 2004.

3.4. Clinical trials under Medicines for Human Use (Clinical Trials) Regulations 2004 are not research and are not governed by this chapter. Clinical trials are subject to its own rules and regulations and guidance should be sought from professional bodies and health and social care guidance before such trials are carried out.

### Criteria for research

3.5. For research in relation to a person who lacks capacity to be lawful the interests of P must at all times be assumed to outweigh those of science and society and:

- a. it must be connected with the condition which is the cause or contributed to an impairment of, or a disturbance in the functioning of, the mind or brain (“impairing condition”) or its treatment;

- b. there must be reasonable belief that research of comparable effectiveness cannot be carried out if the project has to be confined, or relate, to persons who have capacity to consent only;
  - c. it must have the potential to benefit P and that the burden of the research project is proportionate to the benefit or be intended to provide knowledge of causes or treatment, or care, of persons affected by same or similar conditions as P;
  - d. nothing can be done to P to which P appears to be objecting except for where the act is done to prevent harm or to reduce pain or discomfort;
  - e. nothing can be done to P which is contrary to an effective advance decision to refuse treatment;
  - f. nothing can be done to P which is contrary to a written statement made by P when P had capacity; and
  - g. if P indicates (in any way) a wish to be withdrawn from the project P must be withdrawn without delay.
- 3.6. In addition to meeting the criteria above the research project must also be approved by an appropriate body and the researcher must consult others before commencing the research.

### **Approval by an appropriate body**

- 3.7. For research in relation to P to be lawful it has to be approved by an appropriate body. The body must consider a request for research and ensure that the criteria noted above are met before providing its approval.
- 3.8. An appropriate body is a person, committee or other body which has been established to advise on matters relating to ethics of intrusive research in relation to persons who lack capacity. This can be a University or HSC Trust ethics committee or similar body. The appropriate body has to be recognised as an appropriate body by the Department of Health.

### **Consultation with others**

- 3.9. After receiving approval for a research project but before commencing the research the researcher must consult with a person who is engaged in caring for P or is interested in P's welfare. This person cannot be engaged with P in a professional capacity and must be prepared to be consulted by the researcher. However, the person can be an attorney under an enduring power of attorney, a deputy or P's

nominated person. If the researcher is unable to identify anyone willing to be consulted the researcher must appoint a person who is prepared to be consulted on the project and has no connections with the project.

- 3.10. The researcher must provide information to the person and seek his or her views on whether P should take part in the project and what P's wishes and feelings would be if P had capacity. It is important to note that the person is not a decision maker and does not make the decision whether P should take part in the research project.
- 3.11. If, at any time, the person communicates with P and is of the opinion that P's wishes and feelings are to no longer take part in the research, the person must notify the researcher of this. The researcher must then withdraw P from the research.

### **Urgent treatment**

- 3.12. Any research, including urgent research, must be approved by an appropriate body.
- 3.13. If the researcher considers it necessary to take action for the purposes of the research but it is not practicable to consult with others the researcher can provide the treatment if:
  - a. the researcher has the agreement of a medical practitioner who is not involved in the organisation or conduct of the research project; or
  - b. if it is not practicable to get that agreement the researcher acts in accordance with a procedure agreed by the appropriate body when the research was approved.

### **Instances when research can never be carried out**

- 3.14. There are a few instances where research can never be carried out on a person who lacks capacity to consent to the research. These include research that:
  - a. is not in relation to the impairing condition;
  - b. is not approved;
  - c. is contrary to an advance decision or written statement by P;
  - d. P expresses objection or resistance against participation in the research; or
  - e. is not potentially beneficial to P or intended to enhance knowledge of P's impairing condition or treatment.