

Protection of Liberty Safeguards Consultation

Fields marked with * are mandatory.

Development of Protection of Liberty Safeguards Legislation

This survey is part of the Department of Health's consultation to develop Protection of Liberty Safeguards legislation. It should be completed by **30th May 2025**.

The Department requests that you fill in as many questions as possible, however you need not answer every question.

Privacy Notice

By completing this survey, you are agreeing to take part in this consultation. Personal, confidential or commercially sensitive information should not be included in your submission. If personally identifiable details are included, they will be deleted. All submissions and survey answers are subject to release under the Freedom of Information (FOI) Act 2014 and are also subject to Data Protection legislation. The Department's Privacy Policy can be viewed [here](#).

Part 1: About You

* Please give your name/the name of your organisation:

Irish Medical Organisation

If you are providing feedback on behalf of an organisation, can you please specify the type of organisation:

Maximum 1 selection(s)

- ☐ Academic
- ☐ Advocacy (disability)
- ☐ Advocacy (older persons)
- ☐ Legal
- ☐ Professional body
- ☒ Representative body
- ☐ Statutory body/state agency
- ☐ Other

If you have answered 'Other', can you please specify:

Part 2: Feedback By Section of Discussion Paper

This part will ask questions that correspond to sections of the paper in a sequential manner.

Section 4: Criteria (p.10-11)

What are your views on the proposed criteria for lawful deprivation of liberty as presented?

1200 character(s) maximum

The proposed criteria for lawful deprivation of liberty seem reasonable and necessary.

Should the framework apply to those aged 18 years and over? If you do not agree, please provide your rationale:

1200 character(s) maximum

Yes, the framework should apply to those aged 18 and over with consideration that young adults (those aged 18 to 23 years old) are often a particularly vulnerable group. - Gaps in services can arise as young people transition from Child to Adult services.

What are your views on the characterisation of a “care arrangement” as presented on page 9?

1200 character(s) maximum

The characterisation of care arrangement by containing the phrase "elements of their care" is too broad and not well defined. The framework says it will not deal with "Healthcare treatment" thus there will need to be guidance as what "Elements of care means" and where is the boundary being "Care" and "Healthcare". Specifically in regards to items like changing dressing, catheter maintenance, stoma bags etc.

Section 5: Definition and concept of deprivation of liberty

What are your views on the Department’s characterisation of deprivation of liberty as presented?

1200 character(s) maximum

The IMO notes that the proposed legislation does not intend to cover the private home, however the Government must ensure that appropriate standards for home care services and safeguards are in place to protect adults from abuse in the home.

The IMO notes also that the proposed legislation has not taken cognisance of the Medical officer of health powers of detention under the 1947 Health Act, section 38: Health Act, 1947, Section 38

This needs to also be considered. The legislation was previously challenged in the High court and was upheld

What are your views on the Department's characterisation of confinement as presented?

1200 character(s) maximum

The IMO welcomes the specification that a 'locked door' such as for Maternity unit security or residential home security does not mean a person is confined. It is important to note also that while there are no physical barriers a person might still be confined due to their physical disability

The IMO notes that the MOH legislation speaks of detention and so perhaps this should also be included in some capacity in relation to medical care.

What are your views on the Department's characterisation of valid consent as presented? Should the proposals be amended to better reflect the emerging role of will and preference in the ADMCA, UNCPRD and domestic case law, as referenced in Appendix B?

1200 character(s) maximum

The Department's characterisation of valid consent should further emphasise the need for clear concise information so consent is informed and valid.

There needs to be guidance on Will and Preference. Usually individuals' Will and Preference are context dependent and made within specific frames of reference. In dealing with unique situations how is Will and Preference to be determined. Also in the context of personality and decision making changes that can happen with dementia and cognitive impairment how is Will and Preference to be determined.

What are your views on the Department's characterisation of state imputability, including:

- the list of facilities as presented on page 13 and any other types of health and social care facilities that should be considered (please provide a rationale);
- the considerations around the private home on pages 14-15.

1200 character(s) maximum

The private home discussion is important in terms of the potential for abuse and the lack of national standards in relation to homecare services.

Robust safeguards to protect against coercive control and financial abuse of elderly, infirm, and disabled persons as well as National standards for home care services are required as a matter of urgency.

What are your views on Advance Place of Care Decisions as outlined on page 15?

1200 character(s) maximum

Advance Healthcare Directives (AHDs) and Advance Place of Care Decisions (APCDs) can only outline what a person does not wish to consent to. As it is their medical condition and physical disability that will determine what options are available, APCDs are likely to be made in very different circumstances to those that will occur when the APCD is activated. Also APCDs may be made without full knowledge of the choices available.

Cases may arise also where someone is diagnosed with dementia and they assign a Designated Health Representative who wishes to honour their wishes, however, the situation becomes too difficult to manage and they need to change the agreed upon plan.

A place of care wish or aspiration of a person when they have capacity would be desirable, however, with changes in circumstances/facilities it may only be aspirational. The IMO would support that any statement of person's will and preference with regard to their place of care should not be legally binding as this could lead to significant delayed discharges and other complications.

Section 6: Authorising body

What are your views on the proposals related to the structure of the authorising body?

1200 character(s) maximum

Evidence should be provided to support the proposed model and structure of the Authorising body, including why it should be separate from the Mental Health Commission and the DSS.

What are your views on the proposals related to the functions and powers of the authorising body?

1200 character(s) maximum

While it is accepted that the court model can be time consuming and expensive, there is the benefit that it is definitive. Given that all orders by the authorising body can be referred back into the courts for adjudication is there a danger that the authorising the body will just be duplicating work that will end up in the courts.

Furthermore, There is no indication of the resources required to enable the authorising body to carry out its functions. For example what resources will be required to ensure that authorising officers are available on a 24-hour basis. It is difficult to further comment on the role of the authorising officer without first being aware of the skill mix that will be required for the role.

Section 7: Engagement with and representation for the person

What are your views on the proposals regarding engagement with, and representation for, the person?

1200 character(s) maximum

Clarity will be required in situations where there are competing family representatives

Where the person has no friend or family available and requires a representative, clarity is also required as to how the panel of representatives is to be established and their availability .

Clarity is required also in relation to "Support". This term is used in multiple places and is very poorly defined. Is this simply providing information or clarification of information. How is it ensured that "Supportive actions" are not "guiding actions" and are free from bias.

At what stage in the process should legal representation be provided?

1200 character(s) maximum

Legal representation should be provided to persons in cases where there is any doubt as to whether a person has capacity, at the appeal stage, and at any stage that a person requests legal representation.

Section 8: Authorisation process

Indicate whether you broadly agree with the proposed steps within the authorisation process as presented:

Step 1: Identification of possible deprivation of liberty and commencement of process

Maximum 1 selection(s)

- ☐ Strongly Agree
- ☐ Agree
- ☒ Neither Agree Nor Disagree
- ☐ Disagree
- ☐ Strongly Disagree

Step 2: Proportionality assessment

Maximum 1 selection(s)

- ☐ Strongly Agree
- ☐ Agree
- ☒ Neither Agree Nor Disagree
- ☐ Disagree
- ☐ Strongly Disagree

Step 3: Seek valid consent, presuming capacity

Maximum 1 selection(s)

- ☐ Strongly Agree
- ☐ Agree
- ☒ Neither Agree Nor Disagree
- ☐ Disagree
- ☐ Strongly Disagree

Step 4: Assess capacity

Maximum 1 selection(s)

- ☐ Strongly Agree
- ☐ Agree
- ☒ Neither Agree Nor Disagree
- ☐ Disagree
- ☐ Strongly Disagree

Step 5: Application for deprivation of liberty submitted

Maximum 1 selection(s)

- ☐ Strongly Agree
- ☐ Agree
- ☒ Neither Agree Nor Disagree
- ☐ Disagree
- ☐ Strongly Disagree

Step 6: Assessment of application by authorising body

Maximum 1 selection(s)

- ☐ Strongly Agree
- ☐ Agree
- ☒ Neither Agree Nor Disagree
- ☐ Disagree
- ☐ Strongly Disagree

If answered disagree or neither agree or disagree to any of the above, please provide further detail:

5000 character(s) maximum

While the pathway is logical and comprehensive, it will place a large administrative burden on health care staff to complete the associated paperwork (even if online). This will have significant resource implications on an already over burdened system. A workflow analysis of compliance activity versus care activity should inform any decisions on this process.

Specific questions relating to the authorisation process:

Given that the process will cover a number of different settings, who might the most appropriate responsible person (p20-21) from your perspective?

1200 character(s) maximum

The most appropriate responsible person relating to the authorisation process is likely to depend on the context and setting. . Due to staffing mechanisms in current healthcare facilities it is likely most patients will have this role spread between more than one professional. There thus needs to be flexibility to allow for this, especially given the increase in rostering of healthcare staff and job sharing arrangements.

In the context of people who are already in care arrangements at the time of enactment of this legislation, what considerations are required? (p21)

1200 character(s) maximum

In the context of individuals who are already in care arrangements there will be a need to retrospectively seek consent and take the steps from there with due regard to the persons vulnerable state. There would need to be a reasonable time period to allow for patients to be assessed and paperwork completed.

The proposal as presented requires that one healthcare professional will conduct the assessments (proportionality and capacity) and the authorising body will have the power to request an independent assessment, if required. What are your views on this?

1200 character(s) maximum

The proposal as presented requires that one healthcare professional will conduct the assessments (proportionality and capacity), however this process is ill-defined. Many clinical situations that require liberty to be withdrawn are urgent and will likely fall to the GP creating substantial administrative workload and cause significant delays to patients, as well as causing medico-legal risk for GPs.

In emergency situations this may be unworkable or cause delay that may be detrimental to health, e.g. spread of XDR TB

The authorising body should have the option to request a second opinion from a panel of medical professionals.

What are your views on the requirement for medical opinion for compliance with Article 5 of the ECHR, as presented on pages 23-4?

1200 character(s) maximum

The IMO would support the requirement for a medical opinion for compliance with Article 5 of the ECHR. As outlined in the document this is supported in European case law. This would likely require a panel of doctors with the relevant expertise.

Section 9: Ongoing management of authorisation and safeguards

What are your views on the proposals presented regarding management of authorisations and safeguards, including authorisation periods, review of authorisation and appeals?

1200 character(s) maximum

The authorising body will require substantial resources to ensure the ongoing review of at end of each period (six months, one year, three years)

If a person has a condition that is not going to improve for example, advanced dementia annual review is not required. — review could take place at the six months, then three years with the option to appeal.

Section 10: Interim authorisation

What are your views on the interim authorisation process, as presented, including criteria, process and timeframes?

1200 character(s) maximum

If the five criteria are met there should be no additional risk criteria for interim orders. Risk prediction lacks evidence base and is subjective and could lead to both over use and under use. The order should be based upon the main five criteria.

Part 3: Overall feedback

What are your views on the aims as presented in Chapter 3, and the overall language used throughout?

1200 character(s) maximum

While the proposed legislation aims to protect patients' rights to liberty, the right to timely and appropriate care and protection from abuse must also be considered.

In the IMO Submission to the Covid 19 Nursing Homes Expert Panel, the IMO highlighted widespread staffing and governance issues in relation to Nursing Homes that need to be addressed.

See https://www.imo.ie/policy-international-affair/documents/IMO-Submission-to-Covid-19-Nursing-Homes-Expert-Panel_Final.pdf

Do you agree that the overall draft proposals as presented in this Discussion Paper are broadly in the right direction and meet requirements?

Maximum 1 selection(s)

- ☐ Strongly Agree
- ☐ Agree
- ☒ Neither Agree Nor Disagree
- ☐ Disagree
- ☐ Strongly Disagree

If answered disagree or neither agree or disagree to any of the above, please provide further detail:

1200 character(s) maximum

The processes involved are lengthy and will require substantial resources and will likely cause delay to patients in accessing necessary care. The introduction of legislation without adequate resourcing and staffing is not tenable. In the context of a growing and ageing population a full review of the resources and staffing required should be undertaken to ensure that resources are not taken away from clinical care.

The issue of confinement in a private home needs to be addressed with appropriate standards and safeguards in place to protect vulnerable people from abuse .

The determination of Will and Preference requires further guidance.

Please use the box below to provide any additional comments you have about the policy proposals on Protection of Liberty Safeguards legislation.

5000 character(s) maximum

Many clinical situations that need liberty withdrawn are urgent. Procedures for approval through the authorisation body as well as the possibility of disagreement between family members, will increase the likelihood of delay in clinical care and increased workload for GPs.

The definitions in the document need refining but broadly the document ignores a real and present risk for patients whose situation at a particular moment may require lack of liberty. Furthermore, the clinical situations can be fluid and revert to normality.

Indeed, many of the clinical cases presented are simple and not as complex as the cases GP's are met with on a day-to-day basis. This document fails to capture these clinical situations

Contact

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