

CONSULTATION RESPONSE ON BEHALF OF THE NORTHERN IRELAND PRACTICE AND EDUCATION COUNCIL FOR NURSING AND MIDWIFERY TO THE MENTAL CAPACITY BILL (NI)

1.0 Introduction

1.1 The Northern Ireland Practice and Education Council for Nursing and Midwifery (NIPEC) is pleased to have the opportunity to comment on the Mental Capacity Bill (NI). NIPEC is a Non-Departmental Public Body established in October 2002 with a statutory remit to support the practice, education and performance of nurses and midwives in Northern Ireland. NIPEC also provides advice and guidance on matters relating to nursing and midwifery. NIPEC's wide responsibility in relation to development of practice, education and professional development activities includes the appropriate support for registrants' contribution, to the delivery of safe, effective, person-centred care across a range of care settings.

1.2 NIPEC commends the work of the Departmental Group responsible for drafting the contents of the Bill, recognising that it encompasses complex proposed legislation, spanning the Departments of Health, Social Services and Public Safety and Justice. This response presents a number of general comments in relation to the Bill document and specific comments regarding individual paragraphs.

2.0 General Comments

2.1 NIPEC agrees that the Bill represents a ground breaking achievement which has been four years in development. NIPEC would like to reiterate concern, however, at the time scales cited for passage through the Assembly and on to full implementation. NIPEC suggests that a less ambitious timescale be considered to enable the appropriate level of consultation and preparation of supporting documents such as the Code of Practice and regulations which will be fundamental to implementation. In particular, the financial implications of the introduction and implementation of the Bill into legislation require impact planning and publication to assure transparency.

2.2 Nurses and midwives are the biggest single professional workforce within the health and social care system. NIPEC also recognises that there will be impact to those colleagues working within independent and voluntary sector organisations. With this in view, NIPEC suggests that nurses and midwives should be involved in the production of the intended Code of Practice, to inform the development of guidance for anticipated scenarios and circumstances.

2.3 In addition, NIPEC asserts that training/awareness raising programmes tailored to the roles of employees and linked to the amount of contact with

users of HSC services should be developed alongside the Code of Practice to support successful implementation.

- 2.4 In our response to the draft Bill, NIPEC raised the issue of the Bill title in view of the fact that the implications of this legislation extend far beyond the realms of the mental health and learning disability fields of practice. NIPEC would continue to urge the Ad Hoc Joint Committee to reconsider the use of the word “mental” in the title of the legislation and consider simply “Capacity Legislation” be used as a title instead.

3.0 Specific Comments

- 3.1 In relation to general safeguards, section 9, page 6, NIPEC asserts that clear guidance will be needed in terms of interpretation of ‘reasonable steps’ - acknowledging the link between section 7, page 4 - ‘reasonable’ belief of best interests and the need to record all decision making related to provision of care or treatment for a person who lacks capacity particularly when applied to the most routine of interventions. There is a range of unregulated staff that currently cares for persons in the community/primary care setting for whom ‘routine interventions’ are a daily part of their practice. A requirement to conduct an albeit brief assessment to determine reasonable belief and best interests, and ensuring documentation of this test, will necessitate significant training and assurance of competence, therefore assessment of these individuals. This in turn will have significant impact to the service provision and implementation which will need to be considered by the Ad Hoc Joint Committee.
- 3.2 NIPEC notes that the description of a person who is ‘suitably qualified’ to carry out a formal capacity assessment is not outlined in the Bill, and will be outlined in subsequent regulations –Section 13(4) page 9. NIPEC would urge that details around such matters are made public in the near future to allow appropriate consideration and consultation.
- 3.3 NIPEC believes that the term “restraint”, at section 12, page 8, is outdated. NIPEC would advocate the use of the term “restrictive interventions” or “restrictive practices”. Recent guidance from the Royal College of Nursing has been developed for health professionals with the aim of reducing the need for restrictive interventions in health and adult social care. The underpinning principles of that work are: that human rights must be protected and honoured at all times; that the involvement and participation of service users, their families and carers is essential; that people must be treated with compassion, dignity and kindness at all times; and that health and adult social services must keep people safe and free from harm. It is NIPECs view that the principles from that work should be used to help revise the wording within this section.

- 3.4 In relation to Deprivation of Liberty section 24, page14 – 15, NIPEC would reiterate previously expressed concerns regarding the need for and emphasis on proportionality in individual circumstances with due regard paid to appropriate safeguards for decision making being in place.
- 3.5 NIPEC recognises the challenges the Bill team faced in reviewing existing legislation related to children aged 16 – 17 and under 16 years. In relation to those who are taken into account of within the Bill, scenario based practice examples would be helpful with the Code of Practice, particularly in relation to the area of evolving common law regarding the refusal of consent by a 16 – 17 year old. NIPEC notes that other areas of law related to autonomy of the individual remain unchanged e.g. appointment of a lasting power of attorney or the making of a statutory will. Greater clarity is needed therefore, in relation to the refusal of treatment for this age group.

4.0 Conclusion

- 4.1 NIPEC is pleased to have the opportunity to comment on the Mental Capacity Bill (NI) consultation. At this time NIPEC has no comment to make in relation to equality implications requirements.
- 4.2 This response has been coordinated on behalf of NIPEC by Angela Drury and Frances Cannon, Senior Professional Officers.