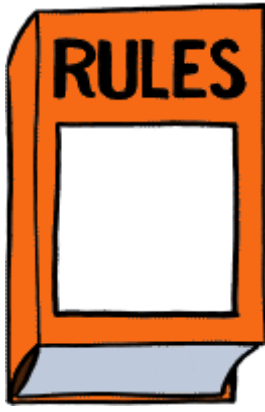


# **Consultation on the Deprivation of Liberty (Bournewood) Safeguards Code of Practice for England and Wales and Regulations for England**



**An easy read guide**

**asking you about the rules when  
somebody is made to live in a hospital  
or care home to be given care or  
treatment**



For more information you need to refer to the full documents. These are the **Code of Practice** and the Regulations. The **Code** is called an **addendum**.

# What is in this paper

**Page**

**Background**

**1**



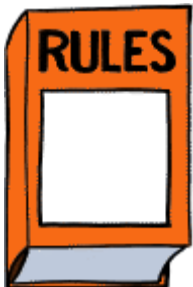
**What does Liberty mean?**

**3**



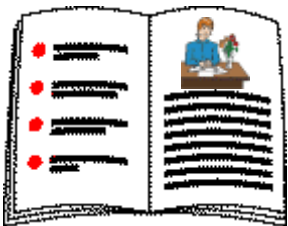
**What do you think?**

**5**



**The Regulations**

**6**



**The addendum to the Code of Practice**

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**What the words mean**

**35**



## Background



A few years ago, in the 'Bournewood' case, someone with a learning disability was taken to a mental health hospital because of the way he was behaving.



His carers said he should come home but the hospital said he should stay.



He wasn't **detained** under the **Mental Health Act** but was kept in hospital because staff believed it was in his **best interests**.



He was unable to speak but was clearly unhappy, so this went to court.



Because of this case new rules are needed to protect people who may need to be **deprived** of their **liberty** in hospitals or in care homes in their **best interests**.



The new rules have been put into the **Mental Capacity Act 2005**.

# What does Liberty mean?



The Bournemouth case was about a man whose **liberty** was taken away by the hospital he was staying in.



**Liberty** means being free to do the things you want to do and live where you want to live.



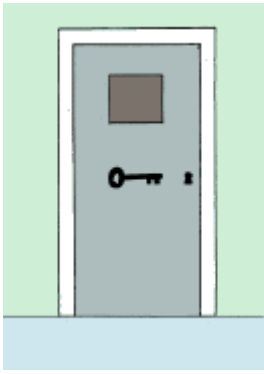
There are many ways that someone's **liberty** can be taken away in a hospital or care home.



When deciding if someone has had their **liberty** taken away it will be important to look at things like:



- Staff having control over all decisions in a person's life



- Having to stay somewhere and not being allowed to leave



- Carers not being allowed to take someone home



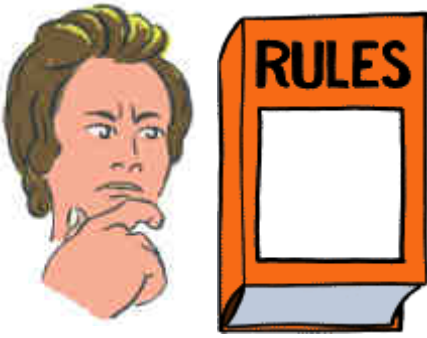
- Unnecessary restrictions on being allowed to see friends or family.



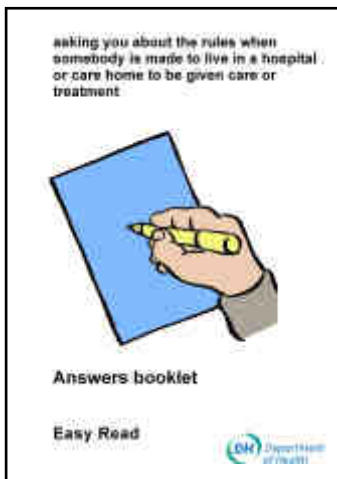
But it will always depend on each situation whether or not that person has had their **liberty** taken away.

(see question 19 for more details).

# What do you think?



This paper asks you what you think about the information about the new rules about when it is OK to take away someone's **liberty**.



There is a separate booklet for your answers.



We would be very interested to know what you want to say.

# The Regulations

## Issue 1

Things to check	
1. _____	<input type="checkbox"/>
2. _____	<input type="checkbox"/>
3. _____	<input type="checkbox"/>
4. _____	<input type="checkbox"/>
5. _____	<input type="checkbox"/>
6. _____	<input type="checkbox"/>



6 different checks or assessments have to be done before someone's **liberty** can be taken away (see issue 11 for more details).



These are checks on:

1. How old someone is



2. Their mental health



3. What is in their **best interests**



4. Whether they can make a decision



5. Which law to use



6. Whether anyone does not agree.



At least 2 people have to do these checks.  
They must:



- Have the skills and know what they are doing



- Be able to communicate with the person



- Not be from the same family as the person



- Not be getting any money from the care service for the person



- Not be giving any care or treatment to the person



- Not be the boss of other professionals asking for this permission (or the other way round)



- Have insurance in case things go wrong.

### Question 1

Do you agree with this list about the people doing the checks?

Should anything be added or changed?

Things to check	
1. _____	<input type="checkbox"/>
2. _____	<input type="checkbox"/>
3. _____	<input type="checkbox"/>
4. _____	<input type="checkbox"/>
5. _____	<input type="checkbox"/>
6. _____	<input type="checkbox"/>



## Issue 2



The people doing the checks will need good skills and need to know what they are doing.

This is especially true for people doing checks 2, 3 and 4 under issue 1. These were checks on:



2. Their mental health



3. What is in their **best interests**



4. Whether they can make a decision



**Check 2** should be done by a doctor who knows about mental health and who has been chosen under the rules in the **Mental Health Act**.



**Check 3** should be done by a different professional from Check 2. They should be independent and able to look at what is best for the person.

They should also be:



- Someone (not a doctor) chosen under the rules in the **Mental Health Act**



- A social worker from the list or



- A nurse who is from the list or



- An occupational therapist from the list or



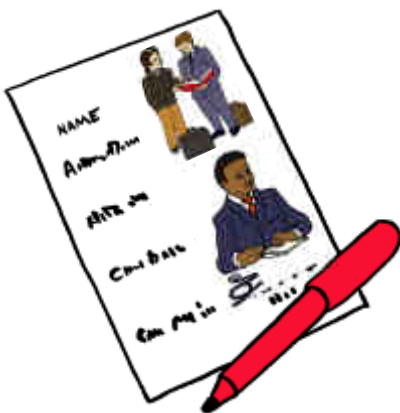
- A psychologist from the list.



**Check 4** can be done by whoever does either check 2 or 3.

## Question 2

Do you agree with these lists about who should be doing the checks?



If not who else do you think should do the checks?



### Issue 3

The checks must be done quickly so that permission can be given quickly to help give the care and / or treatment that is needed and keep people safe.



- All checks should be done in 21 days.



- In emergencies permission can be given to take away someone's **liberty** for 7 days. In this situation, the checks must be done in this time and the ordinary permission asked for.



The 7 day period can go up to 14 days in some situations, but not for any longer.



- If anyone thinks someone's **liberty** has been taken away without the proper permission then the checks must be done in 7 days to see if this is true or not.



### Question 3

Do you think these times are OK?

## Issue 4



To make sure the checks are carried out as quickly as possible and by the right people, some information about the person must be given by the hospital or care home.



The list is:

- Their name



- The names of their family



- The names of carers and any other important people



- The reasons for wanting to take away someone's **liberty**



- The care plan that is being suggested



#### Question 4

Do you think this is the right information?

## Issue 5



Once a person's **liberty** has been taken away they must have someone who can support them and speak up for them. This person is called a '**representative**'.

**18+**



**Representatives** should:

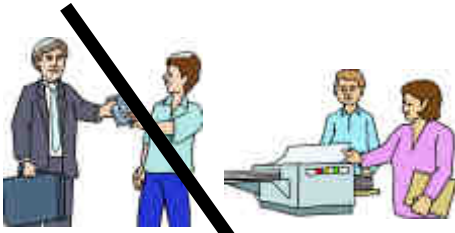
- Be over 18
- Be able to keep in touch with the person



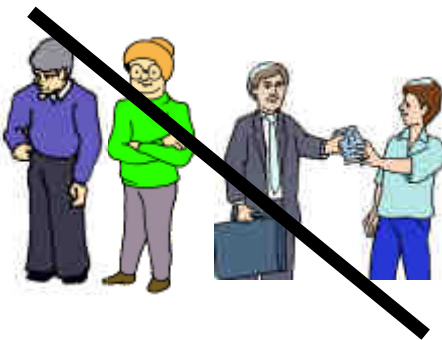
- Be well enough to do the job



- Agree to do the job



- Not be getting any money from, or have a job, with the services, authorities or care homes involved



- Not be from the same family as someone who is getting any money from the services involved



### Question 5

Do you think this is the right list for being a **representative**?

## Issue 6



Having a **representative** can be very important. So it is also important to get one as soon as possible.



The person doing the **best interests** checks should try to find someone to be a **representative**.

They can ask the person themselves, or others involved, who would be good. But they will need to check they meet the list under issue 5 above.



If the person doesn't have somebody to be their **representative** someone else has to be chosen. The **representative** must say in writing that they agree to do the job.



### Question 6

Do you think this is the right way to get a **representative**?

## Issue 7



If someone wants to, or has to, stop being a **representative**, because they don't now meet the rules or they don't do the job properly, then they can't be the person's representative anymore and someone else needs to be found.



### Question 7

Do you agree with this way of stopping someone being a **representative**?

## Issue 8



A **primary care trust**, **local health board** or a local authority might be in charge of getting the checks done and making sure things happen properly and quickly.



If a local authority does not think they should be doing this for someone they will still have to do it until another authority is told they are in charge.

This way the work will still be done even if authorities are arguing about who should do it.



### Question 8

Do you think this is a good way to get authorities to do the work?

## Issue 9



We think that people working in the area where the person is should be doing the checks.



Sometimes this means an authority paying for somebody's care in another area will be using people from another area to do the checks for them.

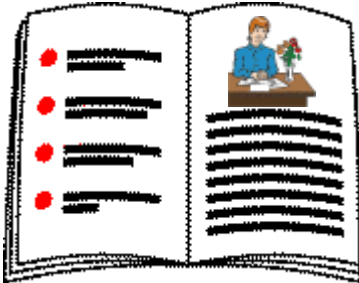


### Question 9

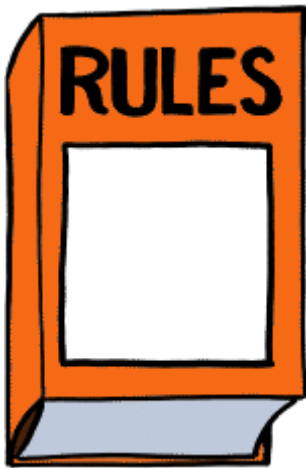
Do you agree with this?

# The addendum to the Code of Practice

## Issue 10



We have written information (in what is called an **addendum**) about what **primary care trusts**, **local health boards**, local authorities and hospital and care home managers should do when they are taking away someone's **liberty**.



These are in a book called the '**Draft Addendum** to the **Mental Capacity Act Code of Practice: Deprivation of Liberty** Safeguards'.



### Question 10

Do you agree with the way this information has been written down? Is there anything else that should have been written down?



Things to check	
1. _____	<input type="checkbox"/>
2. _____	<input type="checkbox"/>
3. _____	<input type="checkbox"/>
4. _____	<input type="checkbox"/>
5. _____	<input type="checkbox"/>
6. _____	<input type="checkbox"/>

## Issue 11

The information in Chapter 3 of the **Addendum** explains the 6 checks in Issue 1 and says how they should be carried out.



To remind you these checks are:

1. Are they over 18?



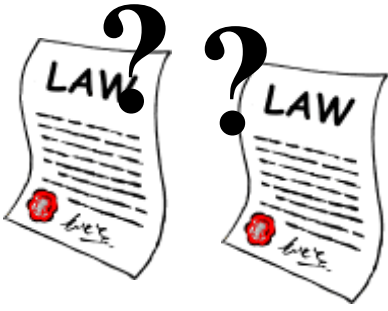
2. Do they have a mental health problem or a learning disability?



3. to try and work out if taking away someone's **liberty** is in their **best interests**.



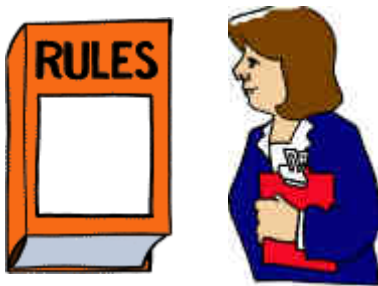
4. to check to see if the person is able to make a decision about their care.



5. should the Mental Health law or the Mental Capacity Act be used?



6. to check to see if other people, like the person's **representative** or carers, agree about taking away someone's **liberty**.



### Question 11

Does the **addendum** explain all the rules well enough for people doing the checks?



### Question 12

How could these rules be explained better for service users, families, friends and other carers?



And do you think they pay enough attention to the person but also listen enough to the important things families and carers are saying?

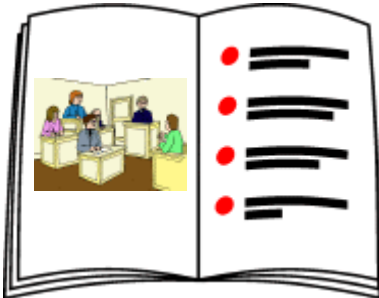
## Issue 13



Chapter 7 of the **Addendum** explains what the **Court of Protection** is and how it works to make sure the rules are followed.



The Court will listen to people who think things have not been done properly.



### Question 13

Is the job of the court clear? How could it be made clearer?

## Issue 14



When people are thinking about taking away a person's **liberty** and they have no family or friends to represent them they must have an **Independent Mental Capacity Advocate (IMCA)**, whilst the checks are being carried out.



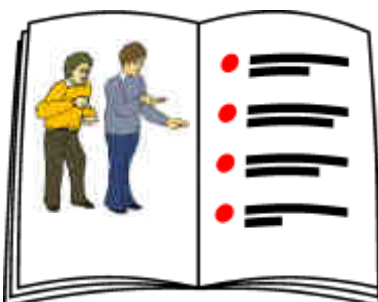
The job of the IMCA is to provide any information they can to those carrying out the checks. They can also ask questions if they think anything is wrong.



Once a person has their **liberty** taken away they must have a **representative** as soon as possible. The **representative** should support and speak up for the person as long as they are **deprived** of their **liberty**.



They can complain or go to the court if anything needs to be looked at again or is wrong.



### Question 14

Is the information in the **addendum** clear enough about what the IMCA and the **representative** do?

## Issue 15



If Health (a **primary care trust** in England, or **local health board** in Wales) is paying a hospital for care and they think it is best for a person to take away their **liberty** then they are in charge of getting everything done.



If a local authority is paying for somebody in a care home and they think it is best for a person to take away their **liberty** then the local authority is in charge of getting everything done.

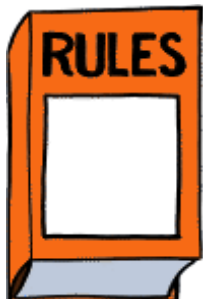


The authority in charge has to:

- get all the papers from anyone wanting to take away someone's **liberty**



- get the checks done to see if it is necessary to take away someone's **liberty** and that it is in the person's **best interests**, and



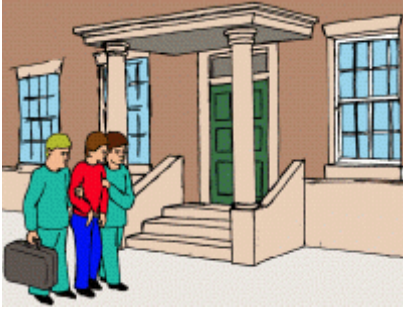
- make sure the proper rules are followed.



### Question 15

Are the rules clear about what these organisations have to do?

## Issue 16

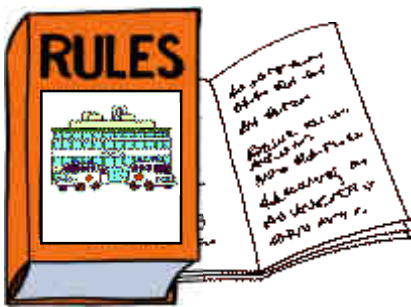


In some urgent situations a person's **liberty** has to be taken away straight away to give urgent care or treatment.

In very urgent situations hospitals and care homes can take away someone's **liberty** before the checks are made.



People who then do the checks on what is in a person's **best interests** must be given any work that has already been done on the person's care plan to see if taking away someone's **liberty** is in their **best interests**.



### Question 16

Are the rules clear enough about what hospitals and care homes have to do?

## Issue 17



Chapter 5 of the **addendum** gives details about reviews. A review should be held if a person does not meet the 6 checks under Issue 1 any more and if things have changed for the person.



A review must be done if:

- the person asks for it



- the **representative** asks for it



- the authority asks for it



- or at any other time (if anyone else asks for it).



## Issue 18



It is up to the court to decide what taking away someone's **liberty** means.



The sorts of things they have decided already are things like:

- Holding someone, including giving them drugs, to take them to hospital if they don't want to go.



- Staff having complete control over your care and what you do for a long time.



- Staff having control over checks, what treatments you have, who you can see and where you live.



- It has been decided that staff would stop you leaving somewhere if you tried.



- Your carers had asked for you to come home but that they had been told no.



- You could not see friends you wanted to see.



- You could not do the things you wanted to do because you were always being watched.



### Question 18

Is this list clear and helpful?

## Issue 19



The **addendum** says that people in care should still have as much control over their lives as possible so they don't take away a person's **liberty**.



They should do things like:

- make sure that all decisions are taken in a planned way, and the reasons for a decision are written down.



- Follow the rules about how to do good care plans



- Check to see if a person is able to agree with a care plan or not



- Make sure that all decisions about the person follow the rules in the **Mental Capacity Act 2005**.



- Think about whether there is an easier or better way of caring for someone that does not take away their **liberty**.



- Make sure that people in hospital or a care home are still allowed to do as much as possible.



- Give the person and their family and friends as much information as possible about their care.



- Help the person keep in contact with family, friends and carers.



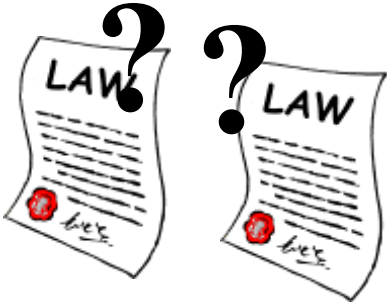
- Do reviews about whether a person can make a decision and about their care plan.



## Question 19

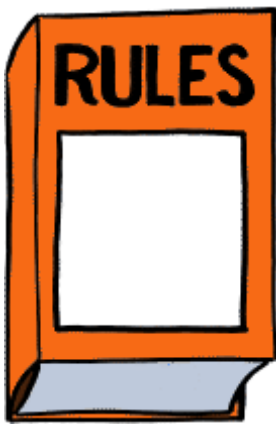
Are these points helpful?

## Issue 20



The rules about taking away someone's **liberty** are from the **Mental Capacity Act 2005** but people's **liberty** can also be taken away under the **Mental Health Act 1983**. It is important to decide which of these laws should be used.

The 2 Acts should be seen as working together with each other.



### Question 20

Does the information in the **addendum** make the difference between the Acts clear?

## Issue 21



The **addendum** will be in a book by itself, although it needs to be used with the main **Mental Capacity Code of Practice**.



The main **Code** says how to check if someone is able to make a decision, what to look at when thinking about what is in a person's **best interests** and how the 2 Acts work together.

### Question 21



Is it clear what is in the main **Code**? Should the new **addendum** be in a book by itself or put together with the main **Code**?

# What the words mean

## Addendum

A booklet giving extra information about the Code.

## Best interests

anything done for a person who cannot make decisions for themselves must be in their **best interests**. This means thinking about what is best for the person and not about what anyone else wants. The new law has a checklist of things that people must think about when deciding on someone's **best interests**.

## Code of Practice (Code)

guidance and information that explains how the **Mental Capacity Act** works. It tells people how to make sure they are following the new law. Some people – like doctors, nurses, lawyers, attorneys and deputies must pay attention to the **Code of Practice**.

## Court of Protection

the new court which deals with everything to do with the **Mental Capacity Act**. The court decides what is best for people who cannot decide for themselves.

## Detained

Being made to stay somewhere, usually a home or hospital.

## Deprived

Something being taken away or not given to you.

**Independent Mental Capacity Advocate (IMCA)**

someone who speaks up for people who have no family or friends. They help when important decisions have to be made by the NHS or local authorities. Decisions can be about things like serious medical treatment or moving to a hospital or care home.

They may become involved in other types of decisions as well.

**Local health board**

The local health service in Wales.

**Liberty**

being free to do the things you want to do and live where you want to live.

**Mental Capacity Act**

a new law about how to support and protect people who cannot make their own decisions because of a problem with the way their mind or brain works. It lets people plan ahead for a time when they may be unable to make their own decisions about some things.

**Mental Health Act 1983**

a law about the care and treatment of patients with mental health problems, especially about when they are not allowed to say “yes” or “no” to treatment.

**Primary Care Trust**

The local health service in England.

**Representative**

Someone speaking up for you.







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