

Mental Capacity and Deprivation of Liberty Ordinance:

Consultation Report

March 2025



**Falkland Islands
Government**
Social Services Department

Overview

The Falkland Islands Government (FIG) Social Services Department held a public consultation from 10 February to 01 March 2025, on the proposed Mental Capacity and Deprivation of Liberty Ordinance (MCO) including implementation of Deprivation of Liberty Safeguards (DoLS).

The consultation was undertaken following ExCo paper (191/24), which noted the draft Mental Capacity and Deprivation of Liberty Ordinance Policy and sought formal public consultation of the draft Policy with interested and affected Stakeholders. The consultation asked participants to examine the draft policy and to consider the proposals. FIG wished to hear from family, carers, professionals and most importantly, from people who may have personal experience of the Mental Capacity and Deprivation of Liberty Ordinance.

The survey was available online and in paper format and provided in four languages (English, Spanish, Tagalog and Shona) along with Easy read information. Drop-in sessions for the general public and professionals were held at Tussac House and KEMH. One-to-one meetings were offered to private legal practitioners. The results of the public consultation and a summary of responses received are presented in this report. The comments and considerations raised by stakeholders and the public are being used to revise the Mental Capacity and Deprivation of Liberty Policy which will be finalised and taken to ExCo.

Key findings from the public consultation

- 100% of respondents were satisfied or very satisfied with The Five Statutory Principles underpinning the proposed Ordinance.
- 95% of respondents were satisfied or very satisfied with how the MCO proposes to define when a person is considered to lack capacity to make a decision.
- 90% of respondents were satisfied or very satisfied with the approach for making a best interest decision on behalf of a person who lacks capacity.
- 100% of respondents were satisfied or very satisfied with the proposed approaches for how a person can plan for decision-making, should they lose capacity in the future.
- 94% of respondents were satisfied or very satisfied with the proposed legal mechanisms under the MCO.
- 83% of respondents were satisfied with how deprivation of liberty, and deprivation of liberty safeguards, are proposed to be dealt with under the MCO.

Table 1: Demographic profile of consultation respondents

Variable	Group	N	%
Respondent Category	Responding as a member of the public	13	62
	Responding as a family member of someone for whom the legislation may be relevant now or in the future.	3	14
	Responding as a professional whose role may involve working with people who may lack capacity to make some decisions	3	14
	Skipped	2	10
Age Group	16-18	-	
	19-25	1	5
	26-35	4	19
	36-45	5	24
	46-55	5	24
	56-65	4	19
	Over 65	-	
	Skipped	2	10
Length of time living in the Falkland Island	Less than 1 year	1	5
	1-5 years	2	10
	6-10 years	4	19
	11-20 years	2	10
	More than 20 years	10	48
	Skipped	2	10
Location	Stanley	19	90
	East Falkland		
	West Falkland		
	An Outer Islands		
	MPC		
	Other		
	Skipped	2	10

Note: Not all respondents completed the demographic questions. Percent totals may not sum to 100 due to rounding.

Section One

This section covers the broader points of the proposed Mental Capacity and Deprivation of Liberty Ordinance including:

- The five statutory principles
- Clarity on who is regarded as lacking capacity
- Best Interest Decisions

Level of satisfaction with proposal for the broader points of the proposed Mental Capacity and Deprivation of Liberty Ordinance.

The five statutory principles

	N	%
Very satisfied	13	62
Satisfied	8	38
Neither satisfied or dissatisfied		
Dissatisfied		
Very dissatisfied		
Answered 21		Skipped 0

Clarity on who is regarded as lacking capacity

	N	%
Very satisfied	7	33
Satisfied	13	62
Neither satisfied or dissatisfied		5
Dissatisfied		
Very dissatisfied		
Answered 21		Skipped 0

Best interest decisions

	N	%
Very satisfied	8	38
Satisfied	11	52
Neither satisfied or dissatisfied	2	10
Dissatisfied		
Very dissatisfied		
Answered 21		Skipped 0

In total 21 respondents provided comments related to Section One. Figure 1 shows the frequency different themes were mentioned in relation to the broader points of the proposed Mental Capacity and Deprivation of Liberty Ordinance.

Figure 1: Themes arising from comments on the broader points of the proposed Mental Capacity and Deprivation of Liberty Ordinance.

The principles of the Mental Capacity and Deprivation of Liberty Ordinance represent a positive move offering a clear framework to support decision making for adults who may lack capacity.

2

Focus on individual’s right to participate within decision making process.

2

Appropriate support to be provided to enable people to make their own decisions.

2

Note: only issues that were raised by two or more respondents are shown. Any comments provided by respondents which were unrelated to the question are not included here.

Section Two

This section describes the methods a person may use to plan for the future described within the proposed Mental Capacity and Deprivation of Liberty Ordinance, including:

- Lasting Power of Attorney
- Deputyship
- Advance decision to refuse treatment (ADRT)
- Independent Mental Capacity Advocates
- Excluded Decisions

Level of satisfaction with the proposed methods a person may use to plan for the future described within the proposed Mental Capacity and Deprivation of Liberty Ordinance.

	N	%
Very satisfied	8	42
Satisfied	11	58
Neither satisfied or dissatisfied		
Dissatisfied		
Very dissatisfied		
Answered 19		Skipped 2

In total 19 respondents provided comments related to Section Two. Figure 2 shows the frequency different themes were mentioned in relation to how a person may plan for future described within the proposed Mental Capacity and Deprivation of Liberty Ordinance.

Figure 2: Themes arising from comments on the methods a person may use to plan for the future described within the proposed Mental Capacity and deprivation of Liberty Ordinance.

Approaches for how a person can plan for future decision-making represents a positive move offering a clear framework to support adults who may lack capacity.

12

FIG need to be responsible for ensuring necessary safeguards are in place to prevent the risk of harm or exploitation.

6

Introduction of specialist roles should be supported by relevant training to ensure skills and knowledge are upheld.

3

ADRT process needs to have a clear review process, to consider change in circumstances.

2

Note: only issues that were raised by two or more respondents are shown. Any comments provided by respondents which were unrelated to the question are not included here.

Section Three

This section describes the legal mechanisms contained within the proposed Mental Capacity and Deprivation of Liberty Ordinance including;

- Court of Protection
- Codes of Practice
- Office of the Public Guardian
- Offences and Penalties

Level of satisfaction with the legal mechanisms contained within the proposed Mental Capacity and Deprivation of Liberty Ordinance.

	N	%
Very satisfied	6	33
Satisfied	11	61
Neither satisfied or dissatisfied	1	6
Dissatisfied		
Very dissatisfied		
Answered 18		Skipped 3

In total 18 respondents provided comments related to Section Three. Figure 3 shows the frequency different themes were mentioned in relation to the legal mechanisms included within the proposed Mental Capacity and Deprivation of Liberty Ordinance.

Figure 3: Themes arising from comments on the legal mechanisms contained within the proposed Mental Capacity and Deprivation of Liberty Ordinance.

The legal mechanisms contained within the proposed Mental Capacity and Deprivation of Liberty Ordinance represent a positive move towards the protection of people’s decision-making rights.

6

Legal safeguards to protect people from exploitation are vital.

6

Needs to be clearly defined process and procedure, including clarity of roles to uphold the principles of the Ordinance.

5

Necessity of independence and scrutiny when undertaking role of Public Guardian.

2

Note: only issues that were raised by two or more respondents are shown. Any comments provided by respondents which were unrelated to the question are not included here.

Section Four

This section describes deprivation of liberty, including the implementation of Deprivation of Liberty Safeguards (DoLS) contained within the proposed Mental Capacity and Deprivation of Liberty Ordinance.

Level of satisfaction with proposal for Deprivation of Liberty Safeguards (DoLS) contained within the proposed Mental Capacity and Deprivation of Liberty Ordinance.

	N	%
Very satisfied	6	33
Satisfied	9	50
Neither satisfied or dissatisfied	2	11
Dissatisfied*	1	6
Very dissatisfied		
Answered 18		Skipped 3

In total 18 respondents provided comments related to Section Four. Figure 4 shows the frequency different themes were mentioned in relation to the Deprivation of Liberty Safeguards (DoLS) contained within the proposed Mental Capacity and Deprivation of Liberty Ordinance.

Figure 4: Themes arising from comments on the Deprivation of Liberty Safeguards contained within the proposed Mental Capacity and Deprivation of Liberty Ordinance.

Deprivation of Liberty Safeguards Process needs to have a clear and robust monitoring and review process.

4

Full training must be provided for all professionals involved in the Deprivation of Liberty Safeguards process.

3

The introduction of Deprivation of Liberty Safeguards represents a positive move, offering protection for adults who are required to be deprived of their liberty to ensure their safety and wellbeing.

2

Note: only issues that were raised by two or more respondents are shown. Any comments provided by respondents which were unrelated to the question are not included here.

***Additional Comments received regarding 'dissatisfied' response;**

1. **Comment:** 'Urgent authorisations should be granted by 1 central person at the care home, and 1 or 2 central people at the hospital to ensure latest training/guidance being followed.'

Response: *This point has been considered and will be addressed within legislation and accompanying Codes of Practice.*

2. **Comment:** 'Standard authorisations - 12 month is a long time for DOLS, is it anticipated that cases will be encountered requiring this length of deprivation of liberties?'

Response: *Primary Care settings such as KEMH are unlikely to require standard authorisation for a prolonged period. Care Home/Extra Care facility such as Tussac House are more likely to seek standard authorisation for longer term residents and will therefore be required to seek a standard authorisation for a longer period. A twelve-month limit ensures those deprived of their liberty are regularly reviewed to ensure the conditions of authorisation continue to be met and that individuals are not being deprived of their liberty unlawfully.*