

National Consent Policy

Train the Trainer

Resource Manual

Reader information

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Introduction

1. Introduction

This resource manual has been developed as part of the HSE Quality & Patient Safety Division's 'Train the Trainer's' programme to support the implementation of the National Consent Policy. It is a practical guide to support Health and Social Care Professionals to provide training regarding the use of the National Consent Policy by guiding daily practice in your organisation/service.

The resource manual includes information and reference material on key topics presented during the training course. This includes:

- The HSE National Consent Policy
- DVD Presentation on the National Consent Policy by Dr. Deirdre Madden
- Case studies
- Valid Consent Visual Aids:
 - ⇒ Adults
 - ⇒ Children and Minors
- Template Agenda for Consent Training Programme
- Key Reading List
- Frequently Asked Questions

Development of the National Consent Policy

2. Development of the National Consent Policy

The National Consent Policy was developed by the National Consent Advisory Group (NCAG) chaired by Dr. Deirdre Madden, under the auspices of Dr. Philip Crowley, National Director of the Quality and Patient Safety Division (QPSD). The National Consent Policy was launched in May 2013 by Dr. James Reilly, Minister for Health at the Patient Safety Conference. The policy was developed over a two year period by the multi agency, multidisciplinary advisory group following a literature review, national policy documentation review, an extensive national consultation, review by external international reviewers and finally a robust HSE approval process.

The dearth of standardised guidance in the area of consent has resulted in numerous variations of consent policies and guidelines being developed by individual services and regions. Poor consent practices have been cited in numerous incidents, complaints and claims and highlighted as an area of concern in terms of patient safety, requiring national direction.

The National Consent Policy provides the first overarching national guidance on this very important area of health and social care practice in Ireland. The policy will guide health and social care professionals employed or contracted by HSE to obtain valid and genuine consent in line with best practice. The national policy is far reaching in its application as it extends to all interventions conducted on service users in all locations. It includes social as well as healthcare interventions and applies to those receiving care and treatment in hospitals, in the community and in residential care settings. The National Consent Policy is underpinned by comprehensive research into current professional practice and relevant law and ethical principles. As such, the development of the National Consent Policy is a highly significant development for the QPSD and indeed the HSE. Moreover, obtaining informed consent in accordance with legislation and best practice is a requirement of the National Standards for Safer Better Healthcare (HIQA, 2012), thus effective implementation of the Consent Policy will support service providers in demonstrating how services are meeting their licensing requirements.

The national policy has been welcomed by professional and patient advocacy groups as providing clear guidance for engaging in meaningful discussions about health and social care interventions. The policy guides the provision of information to patients about risks and alternatives to treatment, together with ensuring adequate support to enable patients to make their own informed decisions. This therefore ensures respect for the views, wishes and autonomy of patients and service users.

Overview of the National Consent Policy

3. Overview of the National Consent Policy

Background:

Consent is the giving of permission or agreement for an intervention, receipt or use of a service or participation in research following a process of communication about the proposed intervention. Consent must be obtained before starting treatment or investigation, or providing personal or social care for a service user or involving a service user in teaching and research (all defined as 'interventions' for the purpose of this policy). This requirement is consistent with fundamental ethical principles, with good practice in communication and decision-making and with national health and social care policy. In the case of medical examination, treatment, investigation or social care service, the need for consent is also required by Irish and International law.

The need for consent, and the application of the general principles in this policy, extends to all interventions conducted by or on behalf of the HSE on service users in all locations. Thus, it includes social as well as health care interventions and applies to those receiving care and treatment in hospitals, in the community and in residential care settings. How the principles are applied, such as the amount of information provided and the degree of discussion needed to obtain valid consent, will vary with the particular situation. In some situations, permission, as matter of common courtesy and of respect for the service user, rather than consent may be required e.g. to enter a person's home, and should be obtained in keeping with relevant HSE codes of conduct. Knowledge of the importance of obtaining consent is expected of all staff employed or contracted by the HSE.

Other than in exceptional circumstances, it is important to note that treating patients without their consent is a violation of their legal and constitutional rights and may result in civil or criminal proceedings being taken by the patient. Such exceptional circumstances relate primarily to emergency situations where it is necessary to intervene in the absence of consent in order to preserve the patient's life or health, or where the patient lacks capacity to give personal consent and a decision is made in his/her best interests.

Overview of the National Consent Policy

What is valid and genuine consent?

Valid and genuine consent is the giving of permission or agreement for an intervention following a process of communication about the proposed intervention. Seeking consent is part of good practice in communication and decision-making and should usually occur as an on-going process rather than a once-off event or merely signing a consent form. The consent form exists to demonstrate evidence that a process of communication has taken place during which the patient has learned about his/her illness and treatment options and reached a point where they can decide, on an informed basis to proceed with, restrict, or decline the proposed intervention.

In general terms, the constituent elements of a valid consent to medical treatment are:

- ⇒ Decision-making capacity
- ⇒ Disclosure of information
- ⇒ Comprehension
- ⇒ Voluntariness

Decision making capacity

Best practice favours a 'functional' or decision-specific approach to defining decision-making capacity; that capacity is to be judged in relation to a particular decision to be made, at the time it is to be made - in other words it should be issue specific and time specific – and depends upon the ability of an individual to comprehend, reason with and express a choice with regard to information about the specific decision.

Disclosure of information

The amount of information to be provided about an intervention will depend on the urgency, complexity, nature and level of risk associated with the intervention and on the preferences of the person. Many decisions require the person to balance potential risks and benefits of the intervention and, in order to do so, he or she will need adequate information about:

- ⇒ Their diagnosis and prognosis
- ⇒ Options for treating or managing the condition, including the option not to treat
- ⇒ The purpose of any proposed intervention and what it will involve
- ⇒ The potential benefits, risks and the likelihood of success of a proposed intervention, as well as that of any available alternative.

Overview of the National Consent Policy

Comprehension

The exchange of information between those who provide health and social care and the service user is central to consent. Ensuring that information is provided in a manner that is comprehensible to the service user requires consideration of the quality of the communication. The manner in which the health and social care options are discussed is as important as the information itself.

Voluntariness

An important component of consent is voluntarism, which may be defined as authentic choice in the absence of coercion. The Service user must not be acting under duress and their agreement should be given freely, in other words they must understand they have a choice. Similarly, service users must be allowed to withdraw consent to treatment at any time.

Please note the Overview of the Consent Policy above, provides a synopsis only, for further information and details regarding valid and genuine consent please see the National Consent Policy.

The National Consent Policy is presented in four parts namely;

Part one:	General Principles
Part two:	Children and Minors
Part three:	Research
Part four:	Do Not Attempt Resuscitation

This train the trainer resource manual will focus on delivery of training relating to the National Consent Policy– Part One: General Principles and Part Two: Children and Minors only.

How Health and Social Care providers can improve their consent practices

4. How Health and Social Care providers can improve their consent practices

The effective implementation of the National Consent Policy in each organisation/service requires a number of fundamental elements namely;

Management Support

Senior management should demonstrate support for the National Consent Policy in their organisation/service by adopting the policy and through effective implementation. Senior management may illustrate their ongoing support of work practice change and quality improvements by facilitating staff release to attend National Consent Policy training, thereby meeting the requirements of the National Standards for Safer Better Healthcare (HIQA, 2012).

Clinical Leadership

Effective clinical leadership and support for the implementation of the consent policy is essential to ensure the successful improvement of consent practices. The clinician has continuing clinical and professional responsibility for service users under his/her care and each member of the multidisciplinary team has a key leadership role to play with regards to their area of expertise within the team. The lead clinician should encourage good practice in communication among the multidisciplinary team to ensure that the service user receives sufficient information to make informed choices regarding their health and social care. Thereby improving the service user's involvement and experience of care while striving to improve the quality, safety and outcomes of care.

How Health and Social Care providers can improve their consent practices

Education and training

Each organisation/service should assess their own training needs in relation to the Implementation of the consent policy and may consider it appropriate to:

- ⇒ Provide staff awareness sessions regarding the National Consent Policy to highlight the importance of good practices in obtaining consent.
- ⇒ Deliver consent policy training tailored to the specific organisation/service and targeted at key relevant staff involved in obtaining consent in health and social care.
- ⇒ Consider integrating consent policy training into existing education programmes e.g. staff induction programmes, grand rounds, journal clubs, continuing professional development programmes for clinicians.
- ⇒ Use all opportunities to introduce and educate staff regarding the National Consent Policy e.g. training regarding National Standards for Safer Better Health-care (HIQA, 2012), open disclosure training.

Communication

Each organisation/service should consider using all modes of communication available to raise staff awareness and increase staff accessibility to the National Consent Policy including:

- ⇒ Access to the consent resources on the QPSD webpage <http://www.hse.ie/go/Consent>.
- ⇒ Use of the intranet.
- ⇒ Shared network drives and folders etc.
- ⇒ Display the visual aids in clinical areas e.g. Valid Consent: Adults and Children and Minors: Consent.
- ⇒ Copy of the National Consent Policy should be accessible, see also brief guides for ease of reference.

Aim of the National Consent Policy Training

5. Aim of the National Consent Policy Training

This Train the Trainers programme aims to support you the 'Consent Trainer' in the delivery of training regarding the National Consent Policy in your organisation/service.

The objectives of the programme:

- To present part one: general principles and part two: children and minors of the National Consent Policy.
- To highlight key consent issues which may pose challenges for health and social care staff in everyday service provision.
- To support you the 'Consent Trainer' in using the National Consent Policy to guide staff in practice issues.

Engaging your target audience:

The training needs of each organisation/service will differ depending on its size and services provided. Assess the training needs of your organisation/service and consider tailoring the training programme to suit the learning required in your individual service.

Liaise with Senior Management and the Clinical Director/Lead to engage their commitment and support. Identify key target audience i.e. relevant health and social care professionals involved in the practice of obtaining consent.

Identify key opportunities in your organisation/service to deliver consent policy training or integrate training into existing education programmes e.g. induction training, grand rounds, journal clubs, multidisciplinary team meetings etc.

Highlight the requirement for informed consent as outlined in Theme 1: Person-Centred care and Support in the National Standards for Safer Better Healthcare (HIQA, 2012). The Quality Assessment and Improvement Tool (QA+I) developed by the Quality and Patient Safety Division (QPSD) provides examples of evidence to verify the chosen level of quality, which specifically includes staff training on obtaining consent. This may prove to be a useful driver to engage support in your service.

The National Consent Policy presentation – DVD

6. The National Consent Policy presentation – DVD

The National Consent Policy DVD presentation which accompanies this resource manual includes Dr. Deirdre Madden, Chair of the National Consent Advisory Group providing an overview of both part one: general principles and part two: children and minors. This presentation may be used at the beginning of the training session. The DVD is presented in five sections with a pause in recording to facilitate questions or points of clarification in the training session.

Section 1:

- Introduction - Slide 1
- Where does the requirement for consent come from? Slide 2
- What is informed consent? Slide 3
- What is HSE Policy on consent? Slide 4
- What should I know about the key underpinning principles in consent? Slide 5
- Does everyone have the capacity to give consent? Slide 6
- How should I assess someone's capacity to give consent? Slide 7
- What should I do if someone lacks capacity? Slide 8
- Are there any legal issues or developments I should be aware of in relation to capacity? Slide 9

Discussion point

Break in the session for discussion around issues of capacity

Please see reading list , Appendix II

Please refer to the National Consent Policy Part one: general principles, pages 20-34.

The National Consent Policy presentation – DVD

Section 2:

- How much information should I give the patient before seeking consent? Slide 10
- What kinds of things should I discuss with the patient? Slide 11
- Who should disclose the information to the patient and is there a good time when this should be done? Slide 12

Please refer to the National Consent Policy Part one: general principles, pages 23-28.

Discussion point

Re: risk disclosure, junior members of staff being asked to take consent, OPD clinic versus immediately pre-operatively

Section 3:

- Is consent always necessary? Slide 13
- What should I do if the patient refuses treatment? Slide 14

Please refer to the National Consent Policy Part one: general principles, pages 35 & 41.

Discussion point

Re: refusal of Intervention. Consider examples namely, Jehovah's Witnesses refusal of blood transfusion etc...

The National Consent Policy presentation – DVD

Section 4:

- Does consent always have to be in writing? Slide 15
- Do you think consent forms are useful? Slide 16
- You are stressing good communication in all of this, how important is this in practice? Slide 17
- How can I help patients to understand the relevant information? Are there tools I can use? Slide 18

Please refer to the National Consent Policy Part one: general principles, pages 23-28.

Discussion point

Re: participants own examples of good practice in aiding understanding, or the pros and cons of consent forms

Section 5:

- What about children under the age of 16, whose consent is required? Slide 19
- When can teenagers give their own consent without involving their parents? Slide 20

Please refer to the National Consent Policy Part one: general principles, pages 48-54.

Discussion point

Final discussion point re children and minors.



Case Studies— Interactive group work

Case Studies – Interactive group work

7. Case Studies – Interactive group work

A number of case studies and prompt questions are included in this resource manual for use in the training session. You may wish to use your own case studies or develop your own questions based on each case study tailored to the learning needs of your group or individual organisation/service.

Objectives of group work:

To generate interest and discussion among the participants in working with the National Consent Policy.

To highlight how staff can access the National Consent Policy in your organisation/service e.g. shared folders via intranet, internet, on ward based desktops, visual aids in clinical areas, use of brief guides for health and social care professionals.

Tips to get started:

- Divide the participants into small groups and identify a group leader to provide feedback.
- Allocate a case study to each group and a period of time for each group to read and discuss the case study.
- Encourage use of the National Consent Policy to guide participants in their considerations.
- Disseminate the case questions and allocate a period of time for review and response.
- Invite each group to present their case study, questions and group responses.
- Encourage group discussion.

Case Studies – Interactive group work

Case Study 1

Mary is 35 years old, has moderate intellectual disabilities and lives in a residential care home. Mary was scheduled to have a laparoscopy as a day procedure in the local hospital. While attending the pre-assessment clinic, a Staff Nurse from the Surgical Day Ward asked Mary's carer to sign the consent form. The Carer explained that she was not authorised to sign the consent form. The Staff Nurse asked who would sign the consent form? Mary has no family and is not a ward of court. Mary has waited several months for this procedure and has been experiencing pain and discomfort.

Questions to consider:

What advice would you give in this situation?

Who should give consent to this procedure?

Should Mary be made a ward of court?



Please refer to the HSE National Consent Policy for full details on obtaining valid and genuine consent
<http://www.hse.ie/go/consent>

Case Studies – Interactive group work

Trainer's Notes: Case Study 1

Discussion/Considerations:

The group may raise any number of issues in their discussions and considerations, some of which may include the following, which is not intended as an exhaustive list;

Capacity to make a decision

The group should consider if Mary has capacity herself to consent to her own treatment. Applying the functional test of capacity, Mary may understand in broad terms the reasons for and nature of the decision to be made. Mary may have sufficient understanding of the principal benefits and risks of an intervention and relevant alternative options after these have been explained to her in a manner and in a language appropriate to her individual level of cognitive functioning. Also, Mary may understand the relevance of the decision, appreciate the advantages and disadvantages in relation to the choices open to her and may be able to retain this knowledge long enough to make a voluntary choice (see National Consent Policy part one: 5).

The role of the family

The group may consider the role of the family and discuss the 'next of kin' e.g. *"No other person such as a family member, friend or carer and no organisation can give or refuse consent to a health or social care service on behalf of an adult service user who lacks capacity to consent unless they have specific legal authority to do so"* (see National Consent Policy part one: 5.6.1).

Making decisions if capacity is absent

The group should consider who should make the decision if capacity is assessed to be lacking (see National Consent Policy part one: 5.6).

Please refer to the HSE National Consent Policy for full details on obtaining valid and genuine consent
<http://www.hse.ie/go/consent>

Case Studies – Interactive group work

Case Study 2

Tom, a 28 year old man presents to the Emergency Department (ED) complaining of fever, headache and malaise, accompanied by his wife Kate. In the ED Tom's condition begins to deteriorate, he is found to be febrile and initial diagnosis following blood work is of sepsis of unknown aetiology.

Tom becomes unconscious. The doctor treating Tom wishes to commence IV antibiotics and undertake a lumbar puncture and communicates the treatment plan to Kate. Kate refuses as she has heard that the lumbar puncture procedure may cause paralysis.

Questions to consider:

The Doctor asks you for your advice, what advice would you give in this situation?

Who should give consent to this procedure?



Please refer to the HSE National Consent Policy for full details on obtaining valid and genuine consent
<http://www.hse.ie/go/consent>

Case Studies – Interactive group work

Trainer's Notes: Case Study 2

Discussion/Considerations:

The group may raise any number of issues in their discussions and considerations, some of which may include the following, which is not intended as an exhaustive list:

The role of the family

The group may consider Kate's (Tom's Wife) role in making a decision on Tom's behalf and her right to give or refuse consent to treatment. The role of the family and 'next of kin' e.g. *"No other person such as a family member, friend or carer and no organisation can give or refuse consent to a health or social care service on behalf of an adult service user who lacks capacity to consent unless they have specific legal authority to do so"* (see National Consent Policy part one: 5.6.1).

Emergency situations involving service users who lack capacity

In emergency situations where a service user is deemed to lack capacity consent is not necessary.

The health and social care professional may treat the service user provided the treatment is immediately necessary to save their life or to prevent a serious deterioration of their condition and that there is no valid advance refusal of treatment. The treatment provided should be the least restrictive of the service user's future choices. While it is good practice to inform those close to the service user, and they may be able to provide insight into the service user's likely preferences, nobody else can consent on behalf of the service user in this situation (see National Consent Policy part one: 5.6.2).

The importance of the communication process in obtaining valid consent

Although Kate may not have the legal authority to give consent or refuse treatment, the group may discuss the importance of the communication process in allaying Kate's fears and anxieties. Reasonable time and attempts should be made to listen to Kate's concerns and to provide sufficient information and reassurance about the proposed intervention for her husband.

Please refer to the HSE National Consent Policy for full details on obtaining valid and genuine consent
<http://www.hse.ie/go/consent>

Case Studies – Interactive group work

Case Study 3

Mike arrives to his local health clinic with his five year old son Jack for pre - school booster vaccination. The practice nurse explains the purpose of the vaccination and outlines the possible risks and side effects. The nurse presents Mike with the vaccination consent form and proceeds to confirm that Mike is Jack's legal guardian. Mike explains to the practice nurse that he is not married to Jack's mother and they have an acrimonious relationship since their separation.

The practice nurse asks for your advice.

Questions to consider:

What advice would you give in this situation?

Who should give consent to this procedure?

Can the practice nurse proceed and give Jack the vaccination?



Please refer to the HSE National Consent Policy for full details on obtaining valid and genuine consent
<http://www.hse.ie/go/consent>

Case Studies – Interactive group work

Trainer's Notes: Case Study 3

Discussion/Considerations:

The group may raise any number of issues in their discussions and considerations, some of which may include the following, which is not intended as an exhaustive list;

Role of parents and legal guardians

The child's best interests are of paramount importance therefore the National Consent Policy advocates for a child-centred approach to be taken in relation to any decision in the area of health and social care services as they relate to children. This means putting the interests and wellbeing of the child at the centre of all decisions and ensuring that the child's own voice is heard and respected as far as possible. The group may discuss the role of Jack's parents/legal guardians in providing consent for the pre-school vaccination (see National Consent Policy part two: 2).

Part two: children and minors section 2.2 of the National Consent Policy provides detailed information regarding who can give consent for a child and it is advised that parents/legal guardians together with the health and social care professionals should try to resolve the matter at local level.

If however, agreement is not possible then the service should generally not be provided to the child unless it is deemed by the health and social care professional to be necessary to safeguard the child's best interests. In such circumstances legal advice should be sought as to whether an application to court is required (see National Consent Policy part two: 6).

Please refer to the HSE National Consent Policy for full details on obtaining valid and genuine consent
<http://www.hse.ie/go/consent>

Case Studies – Interactive group work

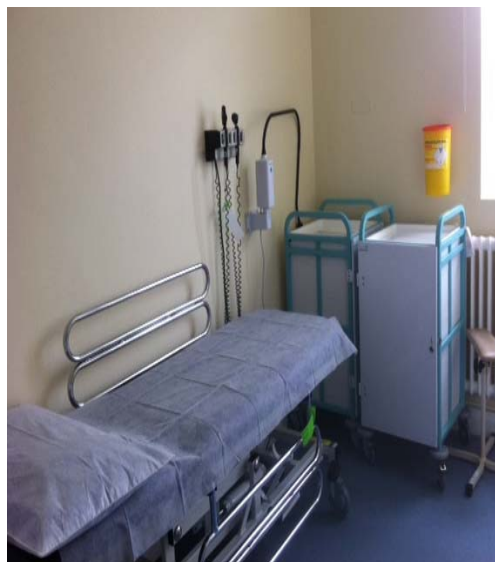
Case Study 4

Margaret phones her local health centre and wishes to speak with one of the Mental Health team. Her Mother, Eileen a 71 year old lady has received a letter offering her an opportunity to participate in the cancer screening programme. If Eileen consents to participate in the screening programme, she will receive a kit in the post to conduct a test on a stool sample at home, which will then be sent to the laboratory for analysis. If the test is positive then Eileen will be invited to attend the local day unit for a colonoscopy. Eileen has a diagnosis of Alzheimer's Disease and experiences periods of disorientation and confusion. Margaret wishes to enrol her mother in the programme.

Questions to consider:

What advice would you give Margaret?

Is Eileen capable of understanding the nature of an invasive colonoscopy?



Please refer to the HSE National Consent Policy for full details on obtaining valid and genuine consent
<http://www.hse.ie/go/consent>

Case Studies – Interactive group work

Trainer's Notes: Case Study 4

Discussion/Considerations:

The group may raise any number of issues in their discussions and considerations, some of which may include the following, which is not intended as an exhaustive list:

The group may consider the nature of the proposed intervention i.e. screening programmes are performed on a generally well population, which may highlight underlying health issues and concerns for Eileen.

The role of the family

The group may consider Margaret's role and right to enrol her mother Eileen in the screening programme. The National Consent Policy states that e.g. *"No other person such as a family member, friend or carer and no organisation can give or refuse consent to a health or social care service on behalf of an adult service user who lacks capacity to consent unless they have specific legal authority to do so"* (see National Consent Policy part one: 5.6.1).

The importance of the communication process in obtaining valid consent

Although Margaret may not have the legal authority to give consent to the screening programme on behalf of her mother, the importance of the good communication involving Margaret as Eileen's closest carer should be considered.

Capacity to make a decision

The group should consider if Eileen has capacity herself to consent to her participation in the screening programme. Applying the functional test of capacity, Eileen may understand in broad terms the reasons for and nature of the decision to be made. Eileen may have sufficient understanding of the principal benefits and risks of an intervention and relevant alternative options after these have been explained to her in a manner and in a language appropriate to her individual level of cognitive functioning. Also, Eileen may understand the relevance of the decision, appreciate the advantages and disadvantages in relation to the choices open to her and may be able to retain this knowledge long enough to make a voluntary choice (see National Consent Policy part one: 5).

Please refer to the HSE National Consent Policy for full details on obtaining valid and genuine consent
<http://www.hse.ie/go/consent>

Case Studies – Interactive group work

Case Study 5

Joanne aged 24 years, arrives into the Emergency Department (ED) accompanied by her parents. Joanne admits to ingesting 45 Panadol tablets, however, is refusing treatment. Joanne has no history of depression and is not known to the mental health services. Her parents cite a recent relationship breakup as a possible reason but Joanne will not admit to any emotional distress or problems. Joanne is conscious and does not wish to speak to anyone in the ED but would rather go home. Her parents are very distressed and anxious. You have been asked for your advice.

Questions to consider:

What advice would you give in this situation?

Can Joanne be discharged home or should the treatment be given?

What role do her parents play in this situation?



Please refer to the HSE National Consent Policy for full details on obtaining valid and genuine consent
<http://www.hse.ie/go/consent>

Case Studies – Interactive group work

Trainer's Notes: Case Study 5

Discussion/Considerations:

The group may raise any number of issues in their discussions and considerations, some of which may include the following, which is not intended as an exhaustive list:

When consent is refused

Adult service users are presumed to have capacity to make decisions about their care, and to decide whether to agree to, or refuse, an examination, investigation or treatment. If an adult with capacity refuses treatment on a voluntary basis having received and understood relevant information relating to the proposed intervention, then the decision must be respected, even where the service user's decision may result in his or her death (see National Consent Policy, part one: 7.7).

Capacity to consent or refuse

However, if there is uncertainty about the service user's capacity please refer to the National Consent Policy, part one: 5.5.

The group may also discuss the refusal of treatment by a service user involuntarily admitted under the Mental Health Act 2001 (see National Consent Policy: part one 7.7.3).

The role of Joanne's parents

The group may consider the role of the family and discuss the 'next of kin' e.g. *"No other person such as a family member, friend or carer and no organisation can give or refuse consent to a health or social care service on behalf of an adult service user who lacks capacity to consent unless they have specific legal authority to do so"* (see National Consent Policy, part one: 5.6.1).

Please refer to the HSE National Consent Policy for full details on obtaining valid and genuine consent
<http://www.hse.ie/go/consent>

Case Studies – Interactive group work

Case Study 6

Paul, a 45 year old man has been received in the theatre suite for an emergency exploratory laparoscopy for acute severe abdominal pain following presentation to the Emergency Department. While reviewing Paul's pre-operative checklist, Rose, the theatre nurse notes the inclusion of a signed consent form. However, when Rose questions Paul about his understanding of the proposed procedure, Paul admits that he signed the consent form but was very unsure what he was signing as he cannot read. The theatres are very busy and the surgeon and the theatre staff are ready to start Paul's surgery. Rose asks for your advice.

Questions to consider:

What should Rose do?

The consent form is signed, can the surgery proceed?



Please refer to the HSE National Consent Policy for full details on obtaining valid and genuine consent
<http://www.hse.ie/go/consent>

Case Studies – Interactive group work

Trainer's Notes: Case Study 6

Discussion/Considerations:

The group may raise any number of issues in their discussions and considerations, some of which may include the following, which is not intended as an exhaustive list:

Valid and genuine consent

The group may wish to discuss the constituent elements of a valid and genuine consent, which is the giving of permission or agreement for an intervention, receipt or use of a service following a process of communication.

For the consent to be valid, the following should be observed:

- The service user should have received sufficient information in a manner that is comprehensible pertaining to the nature, purpose, benefits and risks of an intervention.
- Not be acting under duress; and
- Have the capacity to make the particular decision.

For further information, please see National Consent Policy part one: 2 and 3, including specifically part one:3.4 how and when information should be provided.

The communication process

The group may discuss the importance of the communication process in allaying Paul's fears and anxieties. Reasonable time and attempts should be made to listen to Paul's concerns and to provide sufficient information in a format that is accessible, outlining the nature, purpose, benefits and risks of the proposed surgery.

Please refer to the HSE National Consent Policy for full details on obtaining valid and genuine consent
<http://www.hse.ie/go/consent>

Case Studies – Interactive group work**Case Study 7**

While conducting a home visit for a post natal check, Catherine, a Public Health Nurse is asked to check an 84 year old elderly gentleman Paddy, who has fallen out of bed. Catherine is brought to Paddy's bedroom and finds an emaciated frail drowsy gentleman who is holding his left arm and wincing in pain. While examining Paddy's injured arm, Catherine observes some very deep and sloughy pressure sores on his elbow and shoulders. Catherine is concerned and wishes to call an ambulance and transfer Paddy to hospital; however the family refuses to allow Catherine to call the ambulance and insist that Paddy is treated in the house.

Question to consider:

What should Catherine do?



Please refer to the HSE National Consent Policy for full details on obtaining valid and genuine consent
<http://www.hse.ie/go/consent>

Case Studies – Interactive group work

Trainer's Notes: Case Study 7

Discussion/Considerations:

The group may raise any number of issues in their discussions and considerations, some of which may include the following, which is not intended as an exhaustive list:

The communication process

The group may discuss the importance of the communication process in allaying the family's fear and anxieties. Reasonable time and attempts should be made to listen to their concerns and to provide sufficient information in a format that is accessible, while explaining Paddy's immediate need for care and treatment.

The role of the family

The group may consider the role of the family and discuss the 'next of kin' e.g. *"No other person such as a family member, friend or carer and no organisation can give or refuse consent to a health or social care service on behalf of an adult service user who lacks capacity to consent unless they have specific legal authority to do so"* (see National Consent Policy, part one: 5.6.1).

The group may discuss the need to involve a third party Health Care Professional, for example, Paddy's GP to obtain information about Paddy's history, the family circumstances and possibly to mediate in resolving the situation.

Please refer to the HSE National Consent Policy for full details on obtaining valid and genuine consent
<http://www.hse.ie/go/consent>

Case Studies – Interactive group work

Case Study 8

Sinead has been approached by the midwife following the birth of her first baby by caesarean section requesting consent to carry out the newborn screening 'heel prick' test. The midwife explains the purpose of the test and the illness the test screens for. Sinead has recently lost her sister to cystic fibrosis and refuses consent to the screening test, insisting that there is nothing wrong with her baby. The midwife asks for your advice as Sinead is four days post op delivery and the test must be completed within 24 hours. Sinead's husband David has had to return to work.

Questions to consider:

What advice would you give?

What should the midwife do?



Please refer to the HSE National Consent Policy for full details on obtaining valid and genuine consent
<http://www.hse.ie/go/consent>

Case Studies – Interactive group work

Trainer's Notes: Case Study 8

Discussion/Considerations:

The group may raise any number of issues in their discussions and considerations, some of which may include the following, which is not intended as an exhaustive list:

The role of parents

The group may raise the issue of parental consent and who can give consent or refuse treatment for a child (see National Consent Policy part two: children and minors).

The group may discuss the role of the baby's father, David.

The communication process

The group may discuss the importance of the communication process in allaying Sinead's fears and anxieties. Reasonable time and attempts should be made to listen to Sinead's concerns and to provide sufficient information in a format that is accessible.

Please refer to the HSE National Consent Policy for full details on obtaining valid and genuine consent
<http://www.hse.ie/go/consent>

Appendix I: Frequently asked questions

**National Consent Policy
Train the Trainer Programme
Frequently Asked Questions**

Question: Does the National Consent Policy apply to me?

Answer:

Yes, if you are employed by the HSE or contracted by the HSE, then the National Consent Policy applies to you. The need for consent, and the application of the general principles in this policy, extends to all interventions conducted by or on behalf of the HSE on service users in all locations. Thus, it includes social as well as health care interventions and applies to those receiving care and treatment in hospitals, in the community and in residential care settings. Knowledge of the importance of obtaining consent is expected of all staff employed or contracted by the HSE.

See National Consent Policy Part One: General Principles 1.1 pg20.

Question: What is the age of consent in Ireland?

Answer:

The age of consent in Ireland is outlined in the following Acts:

- The Non-Fatal Offences against the Persons Act, 1997 states that persons over the age of 16 years can give consent for surgical, medical and dental procedures.
- The Child Care Act 1991, the Children Act 2001 and the Mental Health Act 2001 define a “child” as a service user under the age of 18 years, “other than a service user who is or who has been married”.

See National Consent Policy Part Two: Children & Minors 1.5 pg22.

Appendix I: Frequently asked questions

Question: What is a valid and genuine consent?

Answer:

Consent is the giving of permission or agreement for an intervention, receipt or use of a service following a process of communication about the proposed intervention. The process of communication begins at the initial contact and continues through to the end of the service user's involvement in the treatment process, provision of social care. Seeking consent is not merely getting a consent form signed; the consent form is just one means of documenting that a process of communication has occurred.

For the consent to be valid, the service user must:

- have received sufficient information in a comprehensible manner about the nature, purpose, benefits and risks of an intervention/service or research project.;
- not be acting under duress, acting voluntarily ;and
- have the capacity to make the particular decision.

See National Consent Policy Part One: General Principles 2.0 pg 23.

Question: When should consent be obtained from a service user?

Answer:

Seek consent at a time that is appropriate to the service user and their condition e.g. if it is an elective procedure, the relevant discussion could take place at an outpatient's clinic prior to hospital admission.

- Give the service user time to consider their options and ask questions.
- Provide information in a way that facilitates the service users understanding e.g. use simple, clear plain English avoid medical terminology.
- Use an interpreter, sign language interpretation, visual graphs as appropriate.
- Check the service users understanding.

See National Consent Policy Part One: General Principles 3.4 pg 26.

Appendix I: Frequently asked questions**Question: Who can obtain consent?****Answer:**

The person who is providing a particular health and social care service or intervention is ultimately responsible for ensuring that the service user is consenting to what is being done. The task of providing information and seeking consent may be delegated to another professional, as long as that professional is suitably trained and qualified.

In particular, they must have sufficient knowledge of the proposed intervention and of the benefits and risks in order to be able to provide the information the service user requires.

See National Consent Policy Part One: General Principles 7.2 pg 37.

Question: What about an emergency situation?**Answer:**

Treatment may be given without consent in an emergency life threatening situation where the service user lacks the capacity to consent or time does not allow the service user to sufficiently understand what treatment is required. This exception only applies to the necessary treatment to save the life or preserve the health of the service user.

See National Consent Policy Part One: General Principles 6.1 pg 35.

Question: Can a service user 'Next of Kin' sign the consent from?**Answer:**

No other person such as a family member, friend or carer and no organisation can give or refuse consent to a health or social care service on behalf of an adult service user who lacks capacity to consent unless they have specific legal authority to do so.

See National Consent Policy Part One: General Principles 5.6.1 pg 33.

Question: How long is consent valid for?

Answer: There is no legal timeframe regarding the validity of consent.

Appendix II: Reading List

Appendix II: Reading List

Law Reform Commission *Report on Vulnerable Adults and the Law* (LRC 83 -2006) (available at www.lawreform.ie)

Law Reform Commission *Report on Advance Care Directives* (LRC 94–2009) (available at www.lawreform.ie)

Medical Council *Guide to Professional Conduct and Ethics for Registered Medical Practitioners* (7th Ed) (2009) (available at www.medicalcouncil.ie)

Donnelly 'The Right of Autonomy in Irish Law' (2008) 14 *Medico-Legal Journal of Ireland* 34

Madden *Medicine, Ethics and the Law* 2nd Ed (Bloomsbury, 2011)

O' Keeffe 'A Clinician's Perspective: Issues of Capacity in Care' (2008) 14 *Medico-Legal Journal of Ireland* 41

Whelan *Mental Health Law and Policy* (Thompson Roundhall, 2009)

Appendix III: Training Programme

National Consent Policy

Training programme

DRAFT TEMPLATE

Location:

Date:

Venue

Item	Responsible	Time allocated	
Welcome & Introductions	??		<i>Suggested</i>
Background to National Consent Policy development	??		<i>(Optional) may include local policy and context</i>
Overview of the National Consent Policy <ul style="list-style-type: none"> Part One: General Principles Part Two: Children and Minors 	??		Required
Working with the National Consent Policy - Case studies	??		Required
Feedback and discussion	??		<i>Suggested</i>
Frequently Asked Questions	??		<i>Suggested</i>
Close	??		<i>Suggested</i>

