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Background:

The Mental Capacity Act 2005 (the Act) provides the legal framework for acting and making decisions on behalf of individuals who lack the mental capacity to make the particular decision themselves.

Where it is reasonably believed to be in a person's best interests, the Act gives the power in certain circumstances to convey the person to alternative accommodation, such as a hospital or care home.

Why it matters:

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When arranging for a person to be conveyed from one setting to another, practitioners will need to determine the person's transport needs.

Factors that should be taken into account are the person's health, medical, physical and cognitive abilities.

In addition, practitioners should consider whether any forms of restraint may be required at the point of transfer.

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Questions:

For further information please contact Legal Services within your own organisation. Alternatively contact the MCA/DoLS Coordinator at Rochdale Borough Council on 0300 303 8886.

In some circumstances, the Mental Health Act 1983 may be used to convey a person to their place of residence.

Subsequent to statutory criteria being met, a Guardianship Order (Section 7, Mental Health Act 1983) gives authority to take or return a person to the place they are required to reside and does not rely upon the person giving consent to the conveyance.

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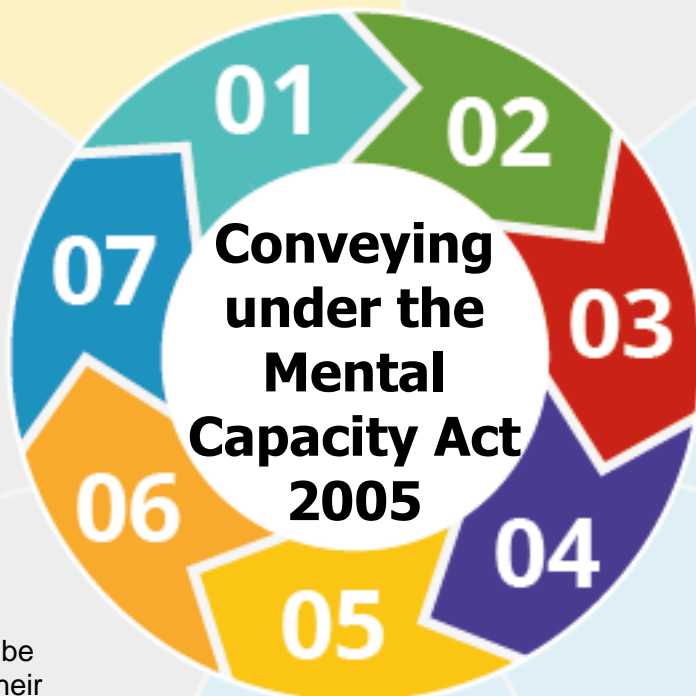
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Information:

Section 6(4) of the Act provides the definition of restraint.

Restraint is only permitted where this is necessary to protect the person from harm and is a proportionate response to the risk of harm (Paragraphs 6.40–6.53, MCA Code).

In emergency situations, where life sustaining treatment or the carrying out of a vital act to prevent a serious deterioration in the person's condition is required, both ambulance services and the police may be able to rely upon the Mental Capacity Act, to convey a person who lacks capacity to consent to admission to hospital or a place of safety.



If there is a serious disagreement about the need to move the person that cannot be settled in any other way, the Court of Protection can be asked to decide what is in the person's best interests and where they should live.

Legal Advice will need to be sought where a dispute is anticipated.

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