

***Date of adoption by the NPM Steering Group: 25 November 2025***

## **Background**

The NPM Steering Group agreed a definition of deprivation of liberty as:

*Confinement – physical, legal or administrative – of a person by or with the knowledge of a state or delegated authority to a specific location or area, from which they are unable to leave at will.*

There will be times when a person is or may be deprived of their liberty under UK jurisdiction and control, where no NPM constituent body has the statutory mandate to monitor their treatment or conditions of detention. In such cases the NPM can identify deprivation of liberty and seek access in order to fulfil its visiting function (via its collaborative, educational and advisory functions).

## **Process**

An individual NPM body can refer to the definition and evidence from scrutiny to make a proposal to the NPM Stand up board through the following process.

### **1. The referral party**

- a. Any NPM body, or external interested party, may refer to
  - i. the definition; and
  - ii. evidence from scrutiny

to make a proposal to an NPM Stand up board (See Clause 2) that a setting, area or order be defined as a deprivation of liberty.

- b. In order to make a referral, the referral party should send by email to [UKNPM@hmpirisons.gov.uk](mailto:UKNPM@hmpirisons.gov.uk) completed pro-forma provided in Annex 1.
- c. If the referral party is not aware of this process but approaches the NPM central team or any NPM constituent body, that person should redirect them to the process outlined in Clause 1.b.

### **2. The NPM Stand up board**

- a. The NPM Stand up board (The Board) shall comprise:
  - i. Any NPM body with a scrutiny mandate for comparable settings
  - ii. Two members of the NPM Steering Group whose organisation scrutinises different settings to the bodies covered by 2.a.i.
  - iii. The Head of the UK NPM
  - iv. The authorised representative of one NPM constituent body by invitation of the other members of the Board.

1. The basis of the invitation will be that the constituent body can provide a peer review of the decision reached by the Board, through any of the following or similar qualities:
  - a. Having a statutory role in a different UK jurisdiction to the other Board members or the referral party; having the mandate to scrutinise a different type of setting than the other Board members or the referral party; additional expertise of the authorised representative.
- v. An optional external expert may sit on the Board in an advisory capacity. This individual expert will be decided and invited by the Board members in clause 2.a.i-iv. The external expert will not have decision making power.

### 3. Decision-making process of the Stand up board

- a. Upon receipt of a referral, the Head of UK NPM shall convene the Board.
- b. The Board shall be appointed within 30 working days of referral, and either:
  - i. Agree an ad-hoc meeting to review the referral and reach a decision; or
  - ii. Agree a process to review and reach a decision by email.
- c. Before meeting or evaluating by email, the Board shall agree the evidence needed to reach a decision and request it from relevant bodies. Such bodies may be, for example, relevant government ministries or departments, other institutions where people are deprived of their liberty, NPM constituent bodies or external experts. Evidence may also take the form of an exploratory visit to the individual or setting referred to in the referral.
- d. The Board will consider the referral and all evidence collected alongside the NPM definition of deprivation of liberty and interpretive statement (Annex 2).
- e. The Board can decide:
  - i. Whether the referred scenario is a deprivation of; or
  - ii. Whether the referred scenario may become a deprivation of liberty if certain criteria are met, and what those criteria are.
  - iii. Where deprivation of liberty is identified, which NPM body should be responsible for its scrutiny. If that body is not already a member of the Board, they will be engaged at the earliest opportunity to participate in the decision-making process.
- f. The Board's decision, including the body identified as the appropriate scrutiny body, will be by **[consensus/veto/majority – delete/insert as appropriate]**
- g. The Board shall reach a decision within three months from receipt of the referral.

### 4. Procedure following a positive decision

- a. After determining that a scenario or setting does amount to deprivation of liberty, the stand up board shall inform, via a letter from the NPM Chair:
  - i. The relevant UK government department
  - ii. The SPT
  - iii. The CPT
  - iv. Any other stakeholders the group agrees

of their identification of the deprivation and of the competent NPM body to inspect, monitor or visit the person or persons deprived of their liberty.

- b. That body will then take the steps necessary to fulfil their visiting function. On direction from the Board, the NPM central team will support this work through engagement with government department and operational staff as appropriate.



## Annex 1: NPM stand-up board – referral form

Name of the person submitting referral	
Organisation	
The setting or scenario being referred	
According to the NPM definition of deprivation of liberty, who is being deprived of their liberty, by what means, and under whose authority?	
What NPM organisation ought to visit the person(s) deprived of their liberty, and do they currently have the mandate to do so?	
Does the setting or person(s) deprived of their liberty currently have any independent scrutiny in place?	
What evidence from scrutiny or intelligence has informed this referral?	
What elements of the definition and interpretive statement are engaged by the evidence?	

### Proposed definition:

*Confinement – physical, legal or administrative – of a person by or with the knowledge of a state or delegated authority to a specific location or area, from which they are unable to leave at will.*

### Interpretive statement

All environments meeting the above criteria must be considered as deprivation of liberty or detention. However, the definition must be accompanied by the understanding that the particular context of any setting and of the individual is needed to determine whether that particular person is deprived of their liberty. This reflects SPT guidance clarifying that, “in some cases, an individual might be in a place that does not seem to constitute a place of deprivation of liberty but, when examined in the full context of an individual case, does indeed constitute such a place”<sup>1</sup> If a person is unable to leave a place without exposing themselves to serious human rights violations, then that place should also be recognised as a deprivation of liberty.<sup>2</sup>

This approach looks beyond an understanding of the physical setting (the ‘bricks and mortar’ approach) to assess whether an individual is able to leave at will, taking account of individual vulnerabilities as well as the nature and extent of measures of control. This approach is supported by the guidance of the SPT which acknowledges that a setting that might not usually constitute a deprivation of liberty would, in fact, do so when examined in context. Materials to examine context include legislation, caselaw,<sup>3</sup> a cultural or informal understanding, as well as the definition provided by the OPCAT itself.

For example, temporary accommodation and hotels – not sites of detention – have been used to house children in England and Wales subject to Deprivation of Liberty (DoL) orders when secure accommodation or mental health in-patient unit placements are not available. In the context of the DoL, the accommodation or hotel then becomes a site of deprivation of liberty.

---

<sup>1</sup> SPT General comment No. 1 (2024) on article 4 of the Optional Protocol (places of deprivation of liberty), at 43.

<sup>2</sup> A/HRC/43/49, at 65.

<sup>3</sup> See, for instance, *P (by his litigation friend the Official Solicitor) (FC) (Appellant) v Cheshire West and Chester Council and another (Respondents)* [2014] UKSC 19.