

Status: This version of this chapter contains provisions that are prospective.

Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, CHAPTER 5 is up to date with all changes known to be in force on or before 14 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*



2016 CHAPTER 18

PART 2

LACK OF CAPACITY: PROTECTION FROM LIABILITY, AND SAFEGUARDS

PROSPECTIVE

CHAPTER 5

ADDITIONAL SAFEGUARD: INDEPENDENT MENTAL CAPACITY ADVOCATE

Independent mental capacity advocate: need to have in place and consult

35.—(1) This section applies where the act mentioned in section 9(1) is a relevant act (as defined by section 36).

(2) Section 9(2) (protection from liability) applies to the act only if the independent mental capacity advocate conditions (as well as the conditions of section 9(1)(c) and (d), and any other conditions that apply under this Part) are met.

(3) The independent mental capacity advocate conditions are that—

- (a) at the time when D determines whether the act would be in P's best interests, there is an independent mental capacity advocate who is instructed under section 91 to represent and provide support to P; and
- (b) in determining whether the act would be in P's best interests, D consults and takes into account the views of the independent mental capacity advocate to the extent required by section 7(7) (duty to consult where practicable and appropriate and to take views into account).

(4) This section does not apply if—

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- (a) the situation is an emergency; or
- (b) at the time when D determines whether the act would be in P's best interests, P has made a declaration under section 90 or 93 (declarations declining services of an independent mental capacity advocate) in relation to the matter in question (and has not revoked the declaration).

Section 35: relevant acts

36.—(1) In section 35 “relevant act” means any of the following—

- (a) an act which amounts to a deprivation of P's liberty, or one of a number of acts that together amount to such a deprivation;
- (b) the imposition on P of a requirement to attend at a particular place at particular times or intervals for the purpose of being given treatment that would or might be treatment with serious consequences;
- (c) the imposition on P of a community residence requirement;
- (d) the provision of serious compulsory treatment;
- (e) a serious compulsory intervention not falling within paragraphs (a) to (d).

(2) For the purposes of subsection (1)(d) an act is “the provision of serious compulsory treatment” if—

- (a) it is, or is done in the course of, the provision to P of treatment with serious consequences; and
- (b) the treatment is carried out despite a reasonable objection from P's nominated person or subsection (4) applies.

(3) For the purposes of subsection (1)(e) an act is a “serious compulsory intervention” if—

- (a) it is, or is part of, a serious intervention; and
- (b) the intervention is carried out despite a reasonable objection from P's nominated person or subsection (4) applies.

(4) This subsection applies if—

- (a) the act—
 - (i) is resisted by P (see section 68); or
 - (ii) is done while P is subject to an additional measure (see section 23);and
- (b) the circumstances are such as may be prescribed.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 285(2)(a)-(c) substituted for s. 285(2)(a)(b) by [2022 c. 18 \(N.I.\) Sch. 3 para. 77\(b\)](#)