



2016 CHAPTER 18

PART 2

LACK OF CAPACITY: PROTECTION FROM LIABILITY, AND SAFEGUARDS

CHAPTER 8

SUPPLEMENTARY

Other supplementary provision

Failure by person other than D to take certain steps

- 59.**—(1) This section applies if, in relation to an act done by a person (“D”)—
- (a) all the conditions for section 9 to apply are met, except that supportive steps that it would have been practicable to take were not taken;
 - (b) the fact that those steps were not taken is not to any extent due to an unreasonable failure by D to take such steps; and
 - (c) at the time of the act, it is no longer practicable for such steps to be taken.
- (2) For the purposes of determining whether D is liable in relation to the act, section 9 is to be taken to apply to the act.
- (3) But if—
- (a) D is an employee of a person (“E”), and
 - (b) any other employee of E unreasonably failed to take supportive steps in relation to the matter at a time when it would have been practicable to take such steps,

for the purposes of determining whether E is liable in relation to the act subsection (2) is to be disregarded.

(4) In this section “supportive steps” means steps to help or support the person to whom the act relates (“P”) to enable P to make a decision for himself or herself about the matter.

(5) For the purposes of this section a failure by a person at any time to take a supportive step that it would be practicable to take is unreasonable unless—

- (a) at the time in question the person reasonably believes that the step can be taken at a later time and still be as effective as it would be if taken immediately; and
- (b) not taking the step immediately is reasonable in the circumstances.

(6) Any person for whose acts another person may be vicariously liable is to be treated for the purposes of this section as an employee of that other person.

Part 2 not applicable where other authority for act

60.—(1) Section 9 does not apply in relation to an act—

- (a) which gives effect to a relevant decision; or
- (b) which a person has a power (or duty) to do under any other statutory provision (including any provision of this Act).

(2) In this section a “relevant decision” means a decision concerning the care, treatment or personal welfare of a person (“P”) which—

- (a) is made by the court on P’s behalf under section 113(2)(a);
- (b) is made in accordance with this Act by an attorney under a lasting power of attorney granted by P and is within the scope of the attorney’s authority;
- (c) is made in accordance with this Act by a deputy appointed for P by the court and is within the scope of the deputy’s authority; or
- (d) where P is under 18, is a decision made by a parent or guardian of P which is effective under any rule of law.

Power to make further provision

61.—(1) The Department may by regulations make provision modifying any provision of this Part in relation to cases where—

- (a) an act is proposed to be done in respect of a person after that person has reached the age of 16, but
- (b) at the time the act is proposed, the person is under 16.

(2) The Department may by regulations make provision enabling prescribed relevant documents that are found to be incorrect or defective within a prescribed period from being made—

- (a) to be rectified within a prescribed period, and
 - (b) to have effect as if originally made as rectified.
- (3) In subsection (2) “relevant document” means an authorisation, or other document, made for the purposes of this Part.