



2016 CHAPTER 18

PART 2

LACK OF CAPACITY: PROTECTION FROM LIABILITY, AND SAFEGUARDS

PROSPECTIVE

CHAPTER 3

ADDITIONAL SAFEGUARD: SECOND OPINION

Second opinion needed for certain treatment

16.—(1) This section applies where the act mentioned in section 9(1) is, or is done in the course of, the provision to P of any of the following treatment—

- (a) electro-convulsive therapy;
- (b) any treatment with serious consequences which is also treatment of a description specified for the purposes of this paragraph by regulations;
- (c) any treatment with serious consequences where, at the time of the act—
 - (i) the question whether it is in P's best interests to have the treatment is finely balanced; and
 - (ii) the circumstances are such as may be prescribed.

(2) Section 9(2) (protection from liability) applies to the act only if, at the time the act is done, a second opinion has been obtained (and the conditions of section 9(1)(c) and (d), and any other conditions that apply under this Part, are met in relation to the act).

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

Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, CHAPTER 3 is up to date with all changes known to be in force on or before 10 April 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

(3) The second opinion must have been obtained recently enough before the act is done for it to be reasonable in all the circumstances to rely on it.

(4) This section does not apply where the situation is an emergency (see section 65).

(5) In this section a “second opinion” means a relevant certificate (as defined by section 18) in respect of the treatment mentioned in subsection (1).

(6) For the purposes of subsection (1)(c)(i) it does not matter whether the choice is between—

- (a) the treatment in question and no treatment; or
- (b) the treatment in question and another treatment.

(7) For the meaning of “treatment with serious consequences” see section 21.

Second opinion needed for continuation of medication

17.—(1) This section applies where—

- (a) the act mentioned in section 9(1) is, or is done in the course of, the provision to P of treatment which is medication for any condition;
- (b) the medication is treatment with serious consequences and is of a description specified for the purposes of this paragraph by regulations;
- (c) medication for that condition has been provided to P, on more than an occasional basis, for at least the relevant period; and
- (d) at the time of the act P is, and for at least the relevant period has been, a qualifying person (see subsection (5)).

(2) Section 9(2) (protection from liability) applies to the act only if, at the time the act is done, a second opinion has been obtained (and the conditions of section 9(1)(c) and (d), and any other conditions that apply under this Part, are met in relation to the act).

(3) The second opinion must have been obtained—

- (a) recently enough for it to be reasonable in all the circumstances to rely on it; and
- (b) in any event, since the beginning of the relevant period.

(4) This section does not apply where the situation is an emergency (see section 65).

(5) For the purposes of this section—

- (a) a person is a “qualifying person” at any time when he or she—
 - (i) is an in-patient or resident in a hospital, care home or place of a prescribed description; or

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(ii) is subject to a requirement to attend at a particular place and particular times or intervals for the purpose of being given treatment for the condition;

(b) “the relevant period” is the period of 3 months ending immediately before the day on which the act is done;

(c) “second opinion” means a relevant certificate (as defined by section 18) in respect of the treatment mentioned in subsection (1)(a).

(6) The Department may by regulations amend subsection (5)(b) so as to alter the period mentioned there.

Second opinion: relevant certificates

18.—(1) In this Chapter “relevant certificate” means a statement in writing which—

(a) is made by an appropriate medical practitioner; and

(b) certifies that, in that practitioner's opinion, it is in P's best interests to have the treatment.

(2) An appropriate medical practitioner may, for the purposes of exercising any function under subsection (1), at any reasonable time—

(a) visit P and examine him or her in private;

(b) require the production of and examine any health records relating to P that are relevant.

(3) A medical practitioner may give a relevant certificate only if the medical practitioner has—

(a) examined P;

(b) examined any health records relating to P that have been produced under subsection (2)(b) and appear to the practitioner to be relevant (having taken reasonable steps to require the production of relevant health records); and

(c) consulted such person or persons as appear to the practitioner to be principally concerned with treating P (generally).

(4) A medical practitioner who gives a relevant certificate must immediately send a copy of it to RQIA.

(5) For the purposes of this section “an appropriate medical practitioner” means a medical practitioner who—

(a) is unconnected with P (see section 304);

(b) is approved for the purposes of this section by RQIA; and

(c) has been asked by RQIA, following a relevant request, to provide an opinion on whether it would be in P's best interests to have the treatment.

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(6) Where RQIA receives a relevant request and proposes to ask a medical practitioner to provide an opinion on whether it would be in P's best interests to have the treatment, it must (when considering who to ask) have regard to the desirability of asking a medical practitioner who is independent of any medical practitioner concerned with the provision to P of the treatment.

(7) In this section a “relevant request” means a request, made by a person for the purposes of section 16 or 17, for RQIA to arrange for a medical practitioner to provide such an opinion.

Status:

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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\(b\)](#)