

Status: This version of this cross heading contains provisions that are prospective.
Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, Cross Heading: Community residence requirements is up to date with all changes known to be in force on or before 29 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

CHAPTER 4

ADDITIONAL SAFEGUARD: AUTHORISATIONS ETC

PROSPECTIVE

Community residence requirements

Community residence requirements: authorisation etc

- 30.—**(1) This section applies where the act mentioned in section 9(1) is—
- (a) the imposition on P of a community residence requirement (see section 31); or
 - (b) an act done for the purpose of ensuring that P complies with a community residence requirement.
- (2) Section 9(2) (protection from liability) applies to the act only if—
- (a) the community residence requirement is authorised; and
 - (b) the prevention of harm condition (as well as the conditions of section 9(1) (c) and (d), and any other conditions that apply under this Part) is met.
- (3) For the purposes of subsection (2)(a) the community residence requirement is “authorised” if, at the time the act is done, there is in force

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an authorisation granted under Schedule 1 which permits that community residence requirement to be imposed.

(4) The prevention of harm condition is that at the time the act is done D reasonably believes—

- (a) that failure to do the act would create a risk of harm to P; and
- (b) that the act is a proportionate response to—
 - (i) the likelihood of harm to P; and
 - (ii) the seriousness of the harm concerned.

Meaning of “community residence requirement”

31.—(1) In this Part a “community residence requirement”, in relation to a person (“P”), means a requirement imposed on P by an HSC trust for P to live at a particular place, whether or not the requirement also contains provision imposing one or more of the requirements mentioned in subsection (2).

(2) Those requirements are—

- (a) a requirement for P to allow a healthcare professional access to P at a place where P is living;
- (b) a requirement (or requirements) for P to attend at particular places and times or intervals for the purpose of training, education, occupation or treatment.

(3) In subsection (2)(a) “healthcare professional” means a person of a prescribed description.

(4) In subsection (2)(b) “treatment” does not include treatment that would or might be treatment with serious consequences (requirements to attend for which are dealt with by section 28).

(5) References in this Part to an act done for the purpose of ensuring that P complies with a community residence requirement are to an act done—

- (a) for the purpose of ensuring that P moves to, continues to live at or resumes living at the place required by the community residence requirement; or
- (b) for the purpose of ensuring that P complies with a provision of the community residence requirement that requires P to attend a place or allow a person access to P.

Duty to revoke community residence requirement where criteria no longer met

32.—(1) If—

- (a) a community residence requirement which is permitted by an authorisation under Schedule 1 to be imposed on a person has been imposed, and

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- (b) at any time after the imposition of the requirement, the approved social worker in charge of the person's case considers that any of the conditions in subsection (2) is no longer met,

the requirement must be revoked.

(2) Those conditions are—

- (a) that the person lacks capacity in relation to the matters covered by the community residence requirement;
- (b) that revoking the community residence requirement would create a risk of harm to the person;
- (c) that keeping the requirement in place is a proportionate response to—
 - (i) the likelihood of harm to the person if the requirement were revoked; and
 - (ii) the seriousness of the harm concerned;
- (d) that the community residence requirement is in the person's best interests.

(3) Subsection (1) is without prejudice to section 30 (under which acts to ensure compliance with a community residence requirement are unlawful if criteria are not met).

(4) Where a community residence requirement is revoked in the circumstances mentioned in subsection (1)(b), another community residence requirement may not be imposed on the person by virtue of the same authorisation.

Duties in relation to people subject to community residence requirements

33 The Department may make regulations—

- (a) for imposing on HSC trusts such duties as the Department considers appropriate in the interests of people who are subject to community residence requirements;
- (b) requiring people subject to community residence requirements to be visited on prescribed occasions or at prescribed intervals.

Community residence requirements: further provision

34.—(1) For the avoidance of doubt, the imposition by an HSC trust of a community residence requirement is not to be regarded for the purposes of this Act—

- (a) as an act which in itself amounts to a deprivation of liberty; or
- (b) as an act within section 12(4) (acts of restraint).

(2) Subsection (3) applies if—

- (a) a person is detained in a place in circumstances which—

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(i) amount to a deprivation of liberty; and

(ii) include a requirement for the person to live in the place; and

(b) the detention of the person in the place in circumstances amounting to a deprivation of liberty is authorised under Schedule 1.

(3) Where this subsection applies, the requirement for the person to live in the place is not to be regarded for the purposes of section 30 or any other provision of this Act as a community residence requirement.

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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\(b\)](#)