

Status: This version of this cross heading contains provisions that are prospective.
Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, Cross Heading: Deprivation of liberty is up to date with all changes known to be in force on or before 12 September 2019. 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

Deprivation of liberty

Deprivation of liberty

24.—(1) This section applies where the act mentioned in section 9(1) amounts to, or is one of a number of acts that together amount to, a deprivation of P's liberty.

(2) Section 9(2) (protection from liability) applies to the act only if—

(a) the deprivation of P's liberty consists of—

(i) the detention of P, in circumstances amounting to a deprivation of liberty, in a place in which care or treatment is available for P; or

(ii) related detention;

(b) the detention in question is authorised; and

(c) the prevention of serious 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.

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(3) Subsection (2)(b) does not apply where the situation is an emergency (see section 65).

(4) See section 25 for—

- (a) the meaning of “related detention” and of detention being “authorised”;
- (b) the prevention of serious harm condition.

(5) In this Part any reference to an act which is one of a number of acts that together amount to a deprivation of P's liberty includes (in particular) where P is detained in circumstances amounting to a deprivation of liberty, instructing another person to carry out or continue the detention.

Section 24: definitions

25.—(1) This section applies for the purposes of section 24.

(2) “Related detention” means—

- (a) the detention of P in circumstances amounting to a deprivation of liberty while P is being taken to a place in which care or treatment is available for P; or
- (b) the detention of P in circumstances amounting to a deprivation of liberty in pursuance of a condition imposed on P that relates to permission given to P to be absent from a relevant place (as defined by section 27).

(3) Detention is “authorised” if, at the time the act is done, there is in force an authorisation granted—

- (a) by a panel under Schedule 1, or
- (b) by the making of a report under paragraph 2 of Schedule 2 (authorisation of short-term detention for examination etc),

which authorises that detention.

(4) See paragraph 22 of Schedule 1 or paragraph 18 of Schedule 2 (as the case may be) for provisions about the scope of an authorisation.

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

- (a) that failure to detain P in circumstances amounting to a deprivation of liberty would create a risk of serious harm to P or of serious physical harm to other persons; and
- (b) that the detention in question is a proportionate response to—
 - (i) the likelihood of harm to P, or of physical harm to other persons; and
 - (ii) the seriousness of the harm concerned.

(6) References in this section to “the act” are to the act mentioned in section 24(1).

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Taking person to a place for deprivation of liberty

26.—(1) This section applies where—

- (a) the act mentioned in section 9(1) is, or is done in the course of, taking P to a place; and
- (b) although taking P to that place does not itself involve a deprivation of liberty, it is done in order that P can be detained in circumstances amounting to a deprivation of liberty at that place.

(2) Section 9(2) (protection from liability) applies to the act only if—

- (a) the detention that is to be carried out is authorised; and
- (b) the prevention of serious 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) Subsection (2)(a) does not apply where the situation is an emergency (see section 65).

(4) In this section “authorised” and “the prevention of serious harm condition” have the same meaning as in section 25(3) and (5), but for this purpose references there to “the act” are to be read as the act mentioned in subsection (1)(a) of this section.

Permission for absence

27.—(1) For the avoidance of doubt, if—

- (a) by virtue of this Part a person (“P”) is detained in a relevant place,
- (b) P is given permission to be absent from the relevant place for a particular period or a particular occasion, and
- (c) a person does an act within subsection (2),

section 9(2) (protection from liability) applies to that act provided that the conditions of section 9(1)(c) and (d), and any other conditions that apply under this Part, are met in relation to that act.

(2) The acts within this subsection are—

- (a) imposing any condition on P in relation to the permission;
- (b) any act for the purpose of ensuring that P complies with such a condition;
- (c) recalling P to the relevant place.

(3) For the purposes of this section a place is a “relevant place” if—

- (a) P is detained in the place in circumstances amounting to a deprivation of liberty; and
- (b) care or treatment is available to P in the place.

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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. 288(1)(a)-(c)s. 288(1)(e)(i)(2)-(8) coming into force by [S.R. 2019/163](#) art. 2(3)Sch. Pt. 3