



## 2016 CHAPTER 18

PROSPECTIVE

### **PART 3**

#### **NOMINATED PERSON**

##### *Nominated person*

##### **Nominated person**

**69.**—(1) A person is the nominated person, within the meaning of this Act, of another person (“P”) if—

- (a) the person is currently appointed as P's nominated person under section 70 or 81; or
- (b) where no-one is so appointed, the person is the default nominated person for P under sections 73 to 76.

(2) For the purposes of this Part a person is “currently” appointed under section 70 or 81 if—

- (a) the person has been appointed under that section; and
- (b) the appointment has not been revoked under any provision of this Part and the person has not resigned under any such provision.

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### *Appointment by person of his or her nominated person*

#### **Appointment of nominated person**

**70.**—(1) A person who is 16 or over (“the appointer”) may, at any time when he or she has capacity to do so, appoint one person who is 16 or over to be the appointer's nominated person.

(2) An appointment under this section is valid only if—

- (a) the appointment is in writing and the conditions of section 79 (formalities) are met; and
- (b) the person appointed consents in writing to being the appointer's nominated person.

(3) That consent may be given—

- (a) before section 79 is complied with (in which case the appointment takes effect when that section is complied with); or
- (b) at the same time as, or after, that section is complied with (in which case the appointment takes effect when the consent is given).

(4) An appointment under this section remains effective even where, at a time after the appointment, the appointer no longer has capacity to make decisions about his or her nominated person.

#### **Revocation of appointment**

**71.**—(1) An appointment may, where the appointer has capacity to revoke it, be revoked by the appointer.

(2) A revocation under subsection (1) is valid only if the revocation is in writing and the conditions of section 79 (formalities) are met.

(3) An appointment made by a person revokes any previous appointment made by that person.

(4) In this section “appointment” means an appointment under section 70.

#### **Resignation**

**72.** A person appointed under section 70 may resign as the appointer's nominated person by giving notice in writing to that effect to the appointer.

### *Default nominated person*

#### **Default nominated person**

**73.**—(1) Where—

- (a) a person (“P”) is 16 or over, and

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- (b) there is no person currently appointed as P's nominated person under section 70 or 81,

this section and sections 74 to 76 apply to determine who (if anyone) is the default nominated person for P.

- (2) The default nominated person for P is—

- (a) where there is only one person who is within the list in subsection (3), that person;
- (b) where there are two or more persons who are within that list, the person highest up the list;

but this is subject to sections 74 and 75.

- (3) The list is as follows—

- (a) P's carer (as defined by section 76);
- (b) P's spouse or civil partner (except one within subsection (4) (separation etc));
- (c) a person within subsection (5) (person living with P as spouse etc);
- (d) P's child;
- (e) P's parent;
- (f) P's brother or sister;
- (g) P's grandparent;
- (h) P's grandchild;
- (i) P's aunt or uncle;
- (j) P's niece or nephew;
- (k) a person within subsection (6) (person living with P etc).

- (4) A person is within this subsection if—

- (a) the person is permanently separated from P (either by agreement or under an order of a court); or
- (b) the person has deserted or been deserted by P for a period which has not ended.

- (5) A person is within this subsection if—

- (a) the person is living with P as if he or she were P's spouse or civil partner, and has been so living for a period of at least 6 months; or
- (b) if P is living in a relevant place, at the relevant time the person had been living with P as if he or she were P's spouse or civil partner for a period of at least 6 months.

- (6) A person is within this subsection if—

- (a) the person is someone with whom P lives and has been living for a period of at least 5 years; or

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(b) if P is living in a relevant place, at the relevant time the person was someone with whom P had been living for a period of at least 5 years.

(7) In this section—

“relevant place” means—

- (a) a hospital;
- (b) a care home; or
- (c) a place of a prescribed description;

“the relevant time” means the time when P started living at the relevant place.

### **Section 73: the list**

**74.**—(1) This section contains provisions about the list in section 73(3) (“the list”).

(2) A person within the list (“A”) is “higher” up the list than another person within the list (“B”) if A is within a paragraph of the list that comes before the paragraph which B is within.

(3) Where—

- (a) two or more persons are within the same paragraph of the list, and
- (b) there is no person higher up the list,

the default nominated person is the older (or oldest) of those persons (but this is subject to subsections (5) and (6)).

(4) In determining who is the default nominated person for P—

- (a) a stepchild of a person is to be treated as the child of that person; and
- (b) a relationship of the half-blood is to be treated as a relationship of the whole blood;

but this is subject to subsections (5) and (6).

(5) Subsection (6) applies where—

- (a) P has two or more relatives within the same paragraph of the list (“the relevant paragraph”);
- (b) there is no person higher up the list; and
- (c) one or more of the relatives is within the relevant paragraph because of subsection (4).

(6) In determining who is the default nominated person for P—

- (a) any relatives of the whole blood are to be preferred over the relatives who are within the relevant paragraph because of subsection (4);
- (b) any relatives of the half-blood are to be preferred over any relatives who are within the relevant paragraph because of subsection (4)(a).

(7) This section is subject to section 75.

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### **Section 73: persons to be disregarded**

**75.—**(1) This section supplements section 73.

(2) In determining who is the default nominated person for P, the following are to be disregarded—

- (a) any person under 16;
- (b) where P is ordinarily resident in the United Kingdom, the Channel Islands, the Isle of Man or Ireland, any person who is not so resident;
- (c) any person who under section 77 (declaration by P) is to be disregarded in determining who is the default nominated person for P;
- (d) any person who has in accordance with section 78 declined to be the nominated person for P (and has not withdrawn that notice);
- (e) any person who under an order of the Tribunal under section 82 is to be disregarded in determining who is the default nominated person for P.

### **Section 73: meaning of “carer”**

**76.—**(1) In section 73, the reference to a “carer” of P is to a person who is 16 or over and—

- (a) provides a substantial amount of care for and support to P—
  - (i) on a regular basis; and
  - (ii) on a domestic basis; or
- (b) where P is living in a relevant place, provided a substantial amount of care for and support to P on a regular basis and on a domestic basis, before the relevant time.

(2) For the purposes of subsection (1) care and support is provided on a domestic basis unless it is provided under a contract of employment, under any other contract with any person, or as a volunteer for any organisation.

(3) Where there are two or more persons within subsection (1), but one of them provides (or provided, before the relevant time) most of the care for and support to P, that person is P's carer for the purposes of section 73.

(4) Where there are two or more persons within subsection (1) and subsection (3) does not apply, each of those persons is P's “carer” (and accordingly section 74(3) applies).

(5) In this section “relevant place” and “the relevant time” have the same meaning as in section 73.

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### *Declarations etc*

#### **Declaration that particular person not to be nominated person**

**77.—(1)** A person who is 16 or over and has capacity to do so (“the declarer”) may make a declaration—

- (a) stating that a person specified in the declaration is not to be the declarer's nominated person;
- (b) specifying two or more persons and stating that neither (or none) of them is to be the declarer's nominated person;
- (c) stating that no person of a description specified in the declaration is to be the declarer's nominated person.

(2) Where a declaration has been made under subsection (1) and has not been revoked, any person who is specified, or of a description specified, in the declaration—

- (a) is to be disregarded in determining who is the default nominated person for the declarer under sections 73 to 76; and
- (b) may not be appointed by the Tribunal under section 81 as the declarer's nominated person (subject to subsection (3)).

(3) Subsection (2)(b) does not apply where there has been a change of circumstances since the declaration was made that, in the Tribunal's opinion, justifies appointing the person concerned.

(4) A declaration under this section remains effective even where, at a time after making the declaration, the declarer no longer has capacity to make decisions about the declaration.

(5) A declaration under this section may be revoked by the declarer at any time when the declarer has capacity to do so.

(6) A declaration, or revocation of a declaration, under this section is valid only if it is in writing and the conditions of section 79 (formalities) are met.

#### **Notice declining to be a person's nominated person**

**78.—(1)** A person may at any time decline to be the default nominated person for another person (“P”) by giving notice in writing to that effect to P.

(2) A person who has given notice under subsection (1) may at any time withdraw the notice by giving a further notice in writing to P.

### *Formalities*

#### **Formalities for documents under Part 3**

**79.—(1)** This section applies in relation to—

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- (a) the appointment of a nominated person under section 70;
- (b) the revocation of an appointment under section 71(1);
- (c) the making of a declaration under section 77(1);
- (d) the revocation of a declaration under section 77(5).

(2) For the purposes of section 70(2), 71(2) and 77(6), the conditions of this section are met if—

- (a) the document containing the appointment, revocation or declaration is signed by the person making the appointment, revocation or declaration (“X”);
- (b) X's signature is witnessed by a person of a prescribed description; and
- (c) the person witnessing the signature certifies that, in his or her opinion, X—
  - (i) understands the effect of the appointment, revocation or declaration; and
  - (ii) has not been subjected to any undue pressure in relation to the appointment, revocation or declaration.

(3) In the case of an appointment of a nominated person under section 70, the certificate under subsection (2)(c) must include a statement that, in the opinion of the person witnessing the signature, X understands that the appointment may result in information about X (including sensitive personal information) being disclosed by virtue of this Act to the person appointed.

(4) Regulations may make provision for this section to have effect with prescribed modifications where a person making an appointment, revocation or declaration mentioned in subsection (1) is physically unable to make a signature.

### *Powers of the Tribunal*

#### **Application to Tribunal for appointment of nominated person**

**80.**—(1) A qualifying person may apply to the Tribunal for an order under section 81 in relation to a person who is 16 or over (“P”) if the qualifying person reasonably believes that—

- (a) P lacks capacity to make decisions about who should be his or her nominated person; and
- (b) one of the conditions mentioned in subsection (2) is met.

(2) Those conditions are—

- (a) the person who is P's nominated person is not suitable to be so;
- (b) there is no-one who is P's nominated person;

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- (c) it is not practicable to establish whether P has a nominated person;
- (d) someone is P's nominated person, but it is not practicable to establish who that is.

(3) The factors that may be taken into account in determining whether a person is not suitable to be P's nominated person include whether the person has behaved, is behaving or proposes to behave in a way that is not in P's best interests.

(4) An application may be made on the ground mentioned in subsection (2) (c) or (d) only if the applicant has taken reasonable steps to establish—

- (a) whether P has a nominated person; or (as the case may be)
- (b) who P's nominated person is.

(5) In this section “a qualifying person” means any of the following—

- (a) an appropriate healthcare professional;
- (b) if P is an in-patient in a hospital or care home, the managing authority of the hospital or care home;
- (c) if P is living in a place of a prescribed description, a prescribed person;
- (d) an attorney under a lasting power of attorney, or an enduring power of attorney, granted by P;
- (e) a deputy appointed for P by the court;
- (f) any relative of P;
- (g) any person interested in P's welfare.

(6) In this section “appropriate healthcare professional” means a person of a prescribed description.

(7) Where the applicant is a person within subsection (5)(a) or (b), the applicant must send a copy of the application to RQIA as soon as practicable.

### **Tribunal's power to appoint nominated person**

**81.**—(1) This section applies where an application is made to the Tribunal under section 80 in relation to a person (“P”).

(2) The Tribunal may, if it is satisfied of the matters mentioned in paragraphs (a) and (b) of section 80(1), make an order under this section.

(3) An order under this section is an order appointing as P's nominated person one person who is 16 or over and is specified in the order.

(4) An appointment under this section revokes any previous appointment under this section or section 70 of a person as P's nominated person.

(5) A person who has been appointed under this section may resign as P's nominated person by giving notice in writing to that effect to P.

(6) This section is subject to section 77(2)(b) (effect of declaration by P).

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### **Tribunal's power to disqualify person from being default nominated person**

**82.**—(1) This section applies where the Tribunal makes an order under section 81 on the ground that the person who is P's nominated person (“the person concerned”) is not suitable to be P's nominated person.

(2) The Tribunal may order that, if at any time a determination falls to be made of who (if anyone) is the default nominated person for P, the person concerned is to be disregarded.

### **Revocation of Tribunal's appointment where P regains capacity**

**83.**—(1) This section applies if—

- (a) an appointment of a nominated person for a person (“P”) has been made by the Tribunal under section 81; and
- (b) P regains capacity to make decisions about who should be his or her nominated person.

(2) P may, at any time while he or she has capacity to do so, apply to the Tribunal for revocation of the appointment.

(3) On an application under this section the Tribunal must make an order revoking the appointment under section 81 unless it is satisfied that P no longer has capacity to make decisions about who should be his or her nominated person.

(4) If on such an application the Tribunal is satisfied—

- (a) that P no longer has capacity to make decisions about who should be his or her nominated person, but
  - (b) that a different person should be appointed as P's nominated person,
- the Tribunal may make an order under section 81.

### *Duties in relation to nominated person*

#### **Duties in relation to nominated person: supplementary**

**84.**—(1) This section applies where under any provision of or made under this Act a person (“the person concerned”) is subject to—

- (a) a duty to consult (if it is practicable and appropriate to do so), and take into account the views of, the nominated person of a person (“P”) in determining what would be in P's best interests; or
- (b) a duty to inform, send a document to, or do any other thing in relation to, P's nominated person.

(2) Subsection (3) applies if the person concerned—

- (a) takes reasonable steps to establish who P's nominated person is; and

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(b) at the relevant time reasonably believes that a particular person (“NP”) is P's nominated person.

(3) In determining whether the person concerned has complied with the duty in question, anything done by that person in relation to NP for the purposes of that duty is to be treated as if NP were P's nominated person (even if NP was in fact not P's nominated person).

(4) Subsection (5) applies (subject to subsection (6)) if the person concerned takes reasonable steps to establish who P's nominated person is and at the relevant time—

(a) the person concerned reasonably believes that there is no-one who is P's nominated person;

(b) it has not been practicable to establish whether P has a nominated person;  
or

(c) it has not been practicable to establish who P's nominated person is.

(5) The person concerned is to be taken not to have contravened the duty in question (even if it has in fact been contravened because there is a person who is P's nominated person as respects whom the duty has not been complied with).

(6) Subsection (5) does not apply if—

(a) the duty in question is the duty imposed by section 7(7) and (11)(a) (duty to consult P's nominated person, if any, in determining best interests); and

(b) the case is one where by virtue of section 15 or 54 a nominated person must be in place for P at the relevant time.

(7) In this section “the relevant time” means—

(a) in relation to a duty mentioned in subsection (1)(a), the time when the person concerned determines what would be in P's best interests;

(b) in relation to a duty mentioned in subsection (1)(b), the time when the duty applies.

(8) Subsections (2)(b) and (4)(a) are to be read in accordance with section 85(1).

(9) Subsection (4)(b) and (c) are to be read in accordance with section 85(3).

### **Determining who is nominated person**

**85.**—(1) Where a person (“D”) is determining for any purpose of this Act whether another person (“P”) has a nominated person or who P's nominated person is, then unless D has reason to believe that an action mentioned in subsection (2) has been taken, D may assume that that action has not been taken.

(2) The actions referred to in subsection (1) are—

(a) the appointment of a person as P's nominated person;

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- (b) the revocation of such an appointment;
- (c) a declaration by P that a particular person is not to be P's default nominated person;
- (d) any other action under Part 3 which would affect whether P has a nominated person or who P's nominated person is.

(3) For the purposes of this Act it is “practicable to establish” whether a person has a nominated person, or who a person's nominated person is, if it is practicable to form a reasonable belief about that matter (having regard to subsection (1)).

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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](#)