
Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, Paragraph 4 is up to date with all changes known to be in force on or before 20 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

SCHEDULES

SCHEDULE 8

Amendments of Mental Health Order

4 After Article 3 insert—

“General provisions about patients under 16

Best interests of patient under 16

3A.—(1) This Article applies to a person responsible for the treatment or care (or both) of a patient under 16.

(2) The person's primary consideration, when making decisions about the patient's treatment or care, must be the patient's best interests.

(3) In this Article—

- (a) “treatment” means any treatment relating to mental disorder;
- (b) “care” means any care given where the patient is being assessed or treated for mental disorder.

(4) In this paragraph references to assessment or treatment are to any assessment or treatment, whether or not under Part 2.

Determination of a patient's best interests

3B.—(1) This Article applies where for any purpose of this Order it falls to a person to determine what treatment or care would be in the best interests of a patient (“C”) who is under 16.

(2) In determining what would be in C's best interests, the person must take into account C's age but must not make the determination merely on the basis of—

- (a) C's age or appearance; or
- (b) any other characteristic of C's, including any condition that C has, which might lead others to make unjustified assumptions about what might be in C's best interests.

(3) The person—

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- (a) must consider all the relevant circumstances (that is, all the circumstances of which the person is aware which it is reasonable to regard as relevant); and
 - (b) must in particular take the following steps.
- (4) The person—
- (a) must consider whether it is likely that C will, when he or she reaches the age of 16, have capacity in relation to the matter in question; and
 - (b) if it appears likely that C will, must consider when C will reach that age.
- (5) The person must, so far as reasonably practicable—
- (a) encourage and help C to participate, or to improve C's ability to participate, as fully as possible in any decision about C's treatment or care; and
 - (b) in particular, ensure that C is provided in an appropriate way with information and advice about the treatment or care.
- (6) The person must have special regard to (so far as they are reasonably ascertainable)—
- (a) C's past and present wishes and feelings (and, in particular, any relevant written statement made by C); and
 - (b) C's beliefs and values.
- (7) The person must—
- (a) so far as it is practicable and appropriate to do so, consult the relevant people about what would be in C's best interests and in particular about the matters mentioned in paragraph (6); and
 - (b) take into account the views of those people (so far as ascertained from that consultation or otherwise) about what would be in C's best interests and in particular about those matters.

For the definition of “the relevant people” see paragraph (9).

(8) The person must, in relation to anything proposed to be done, have regard to whether the same purpose can be as effectively achieved in a way that is less restrictive of C's rights and freedoms of action.

(9) In paragraph (7) “the relevant people” means—

- (a) every person who has parental responsibility for C;
- (b) C's nearest relative;
- (c) if at the time of the determination there is an independent advocate instructed to represent and provide support to C, the independent advocate;

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- (d) any other person named by C as someone to be consulted on the matter in question or on matters of that kind;
- (e) anyone engaged in caring for C or interested in C's welfare.

Independent Advocates

3C.—(1) The Department must make regulations about independent advocates.

(2) An “independent advocate” means a person who has been appointed by an HSC trust, in accordance with the regulations, to be a person to whom the trust may from time to time offer instructions to represent and provide support to a patient who is under 16 in relation to matters specified in the instructions.

(3) The regulations may in particular—

- (a) require HSC trusts to make arrangements for the purpose of ensuring that independent advocates are available to be instructed;
- (b) make provision about such arrangements (including provision providing that a person may be appointed as mentioned in paragraph (2) only if the person meets prescribed conditions);
- (c) make provision for the purpose of securing the independence of independent advocates;
- (d) make provision in relation to the instruction of independent advocates (including provision permitting or requiring a prescribed person, in prescribed circumstances, to request an HSC trust to instruct an independent advocate);
- (e) make provision about the functions of independent advocates.

(4) The conditions that may be prescribed by virtue of paragraph (3)(b) include—

- (a) a condition that the person is approved, or belongs to a description of persons approved, in accordance with the regulations;
- (b) a condition that the person has prescribed qualifications or skills or has undertaken prescribed training.

(5) The regulations must make provision for the purpose of securing that, except in prescribed circumstances, an independent advocate is instructed—

- (a) where a patient under 16 is admitted to a hospital (whether under Part 2 or otherwise) for the assessment or treatment of mental disorder; or
- (b) where it is proposed to give a patient under 16 a form of medical treatment to which Article 63 or 63B applies.

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(6) The regulations may apply, or make provision corresponding to, any provision within paragraph (7) (with or without modifications).

(7) The provisions are—

- (a) any provision of Part 4 of the 2016 Act;
- (b) any provision of regulations made under that Part;
- (c) any provision that could be made by regulations under that Part.

In-patients under 16: duties of hospital managers

3D.—(1) This Article applies in relation to a patient who—

- (a) is under 16; and
- (b) is an in-patient in a hospital for the purposes of the assessment or treatment of mental disorder (whether by virtue of Part 2 or otherwise).

(2) The responsible authority of the hospital must ensure that (subject to the patient's needs) the patient's environment in the hospital is suitable having regard to his or her age.

(3) For the purposes of deciding how to fulfil the duty under paragraph (2), the responsible authority must consult a person who appears to that authority to have knowledge or experience which makes that person suitable to be consulted.”.

Commencement Information

- II** Sch. 8 para. 4 in operation at 2.12.2019 for specified purposes (but omit until “In-patients under 16: duties of hospital managers”) by [S.R. 2019/163](#), [art. 2\(2\)](#), [Sch. Pt. 2](#) (with [arts. 3, 4](#)) (as amended by [S.R. 2019/190](#), [art. 2](#))

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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\(b\)](#)