



2016 CHAPTER 18

PART 2

LACK OF CAPACITY: PROTECTION  
FROM LIABILITY, AND SAFEGUARDS

CHAPTER 5

ADDITIONAL SAFEGUARD: INDEPENDENT MENTAL CAPACITY ADVOCATE

**Independent mental capacity advocate: need to have in place and consult**

**35.**—(1) This section applies where the act mentioned in section 9(1) is a relevant act (as defined by section 36).

(2) Section 9(2) (protection from liability) applies to the act only if the independent mental capacity advocate conditions (as well as the conditions of section 9(1)(c) and (d), and any other conditions that apply under this Part) are met.

(3) The independent mental capacity advocate conditions are that—

- (a) at the time when D determines whether the act would be in P's best interests, there is an independent mental capacity advocate who is instructed under section 91 to represent and provide support to P; and
- (b) in determining whether the act would be in P's best interests, D consults and takes into account the views of the independent mental capacity advocate to the extent required by section 7(7) (duty to consult where practicable and appropriate and to take views into account).

(4) This section does not apply if—

- (a) the situation is an emergency; or

- (b) at the time when D determines whether the act would be in P's best interests, P has made a declaration under section 90 or 93 (declarations declining services of an independent mental capacity advocate) in relation to the matter in question (and has not revoked the declaration).