



2016 CHAPTER 18

**PART 2**

LACK OF CAPACITY: PROTECTION  
FROM LIABILITY, AND SAFEGUARDS

CHAPTER 9

DEFINITIONS FOR PURPOSES OF PART 2

*Meaning of “emergency”*

**Section 65: definitions etc**

- 66.**—(1) For the purposes of section 65(2) and (3) and this section—
- (a) the safeguard in section 13 is met when a formal capacity assessment has been carried out and a statement of incapacity made;
  - (b) the safeguard in section 15 is met when a nominated person is in place for P;
  - (c) the safeguard in section 16 or 17 is met when a second opinion is obtained;
  - (d) the safeguard in section 19, 20, 24, 26 or 28 is met where the provision of treatment, detention or requirement mentioned in that section is authorised;
  - (e) the safeguard in section 35 is met when—
    - (i) an independent mental capacity advocate is instructed under section 91 to represent and provide support to P in the determination of what would be in P's best interests; or
    - (ii) P has made (and not revoked) a declaration under section 90 or 93 in relation to the matter.

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*Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, Section 66 is up to date with all changes known to be in force on or before 23 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*

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(2) In section 65(2) and (3) and this section “the relevant time” means—

- (a) in relation to section 15 or 35, the time when D determines that the act mentioned in that section would be in P's best interests;
- (b) in relation to any other section mentioned in section 65(1), the time when the act mentioned in that section is done.

(3) For the purposes of section 65(2), the risk of harm to P created by delaying until a particular safeguard is met, or until it is established whether it is met, is an “unacceptable” risk if—

- (a) the seriousness of the harm that could be caused to P by such delay, and
- (b) the likelihood of the harm,

are such as to outweigh the risk of harm to P of not complying with the safeguard.

(4) In determining for the purposes of section 65(2) and this section when a safeguard would be met, or when it would be established whether a safeguard is met, it must be assumed that any necessary steps would be taken as soon as practicable.

(5) For the purposes of section 65(3), a failure by D at any time (“the time in question”) to take a practicable step for the purposes of ensuring that the safeguard is met by the relevant time is unreasonable unless, at the time in question—

- (a) he or she reasonably believes that (ignoring any provision of this Act relating to emergency situations) the matter is not one to which the safeguard will apply; or
- (b) he or she reasonably believes that that step does not have to be taken immediately in order for the safeguard to be met in time, and not taking that step immediately is reasonable in the circumstances.

(6) Expressions used in a paragraph of subsection (1) and in the section mentioned in that paragraph have the same meaning in that paragraph as in that section.

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#### **Commencement Information**

- I1** S. 66(1)(a)(b) (2)-(6) in operation at 2.12.2019 for specified purposes by [S.R. 2019/163](#), [art. 2\(4\)](#), [Sch. Pt. 4](#) (with [art. 3](#)) (as amended by [S.R. 2019/190](#), [art. 2](#))
- I2** S. 66(1)(d) in operation at 2.12.2019 for specified purposes (but omitting “19, 20” and “28”) by [S.R. 2019/163](#), [art. 2\(4\)](#), [Sch. Pt. 4](#) (with [art. 3](#)) (as amended by [S.R. 2019/190](#), [art. 2](#))

**Changes to legislation:**

Mental Capacity Act (Northern Ireland) 2016, Section 66 is up to date with all changes known to be in force on or before 23 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.

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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\(b\)](#)