

*These notes refer to the Mental Capacity Act (Northern Ireland)
2016 (c.18) which received Royal Assent on 9 May 2016*

Mental Capacity Act (Northern Ireland) 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 14 – Miscellaneous

Section 274 - Renaming of Mental Health Review Tribunal

Section 274 provides for the renaming of the Mental Health Review Tribunal for Northern Ireland (as constituted under Article 70 of the Mental Health Order). It will be known as the ‘Review Tribunal’ when the Act comes into operation.

Section 275 - Visiting etc powers of medical practitioners in connection with the Tribunal

Section 275 is to be read alongside a number of provisions in the Act that give medical practitioners certain powers to visit and to obtain/examine health and other records relating to P for certain purposes. If P has capacity regarding the granting of access to such records, this section provides that the medical practitioner must obtain P’s consent prior to exercising that power.

Section 276 – Power to make regulations about dealing with money and valuables

Section 276 gives the Department a power to make regulations about dealing with P’s money and valuables where P is aged 16 or over and lacks capacity in relation to the management of his or her property or affairs and is an inpatient in hospital, or a resident of a care home, or any other establishment specified by the Department.

The regulations may permit the HSC trust or the management authority of the care home in which P is resident to hold money and valuables on behalf of P and to spend or dispose of them for P’s benefit. This only applies to money or valuables not exceeding £20,000. For valuables or money in excess of this sum, the consent of RQIA will be required. The Department is given the power under the section to amend this sum by regulations. The regulations cannot give the HSC trust any authority to act in any way that is inconsistent with a decision made by a lasting power of attorney, or court deputy that falls within the scope of their powers and is made in accordance with this Act, or a decision made

by an enduring power of attorney in accordance with the Enduring Powers of Attorney (Northern Ireland) Order 1987.

Section 277 – Contravention of regulations under section 276(2)

This section allows the Department to make it an offence for any person to fail to comply with regulations made under the previous section 276.

Sections 278 and 279 – Expenditure and payment for necessary goods and services

Section 278 ensures that, provided the applicable safeguards are met under Part 2, D can use cash in the possession of a person who lacks capacity or promise payment on his or her behalf to cover the expenditure involved. They can also be reimbursed should they choose instead to pay for the goods or services themselves.

Section 279 ensures that where a contract for necessary goods or services has been made on behalf of a person who lacks capacity, they must pay a reasonable price for them. “Necessary” is defined for this purpose as suitable to the person’s condition in life and to that person’s actual requirements at the time when the goods or services are supplied.

These rules do not however extend to accessing a person’s bank account or selling their property. A finance intervention of this kind can only be done under the legal authority conveyed to an attorney under a lasting power of attorney (or an EPA) or by application to the court or if the power to make decisions of this kind has been given to a deputy by the court.

Section 280 – Appointment of approved social workers

Section 280 requires each HSC trust to ensure that it appoints a sufficient number of approved social workers to carry out the functions assigned to them under the Act. The section also provides that no one can be appointed an approved social worker unless the HSC trust has approved him or her as having appropriate competence in dealing with people who lack capacity. In appointing approved social workers the HSC trust must also have regard to directions issued by the Department.

Section 281– Miscellaneous functions of HSC trusts

Section 281 enables a HSC trust in certain circumstances to provide occasional personal expenses, financial assistance, suitable training or occupation to a person who lacks capacity. The extent of any such schemes will be set by the Department.

Section 282 – Direct payments in place of provision of care services

This section amends section 8 of the Carers and Direct Payments Act (Northern Ireland) 2002 to enable regulations to be made allowing a suitable person to

receive a direct payment on behalf of another person who lacks capacity to consent. Provisions describe the consent required, namely that of the suitable person and an attorney/deputy of the service user, and enable regulations to be made to specify matters that the HSC trust must have regard to, how individuals with fluctuating capacity are to be treated, and to set out conditions that must/may be imposed in relation to the direct payment.

Section 283 – International protection of adults

This section provides that Schedule 9 gives effect in Northern Ireland to the Convention on the International Protection of Adults 2000.

Section 284 – Review of law relating to advance decisions

This section puts an obligation on the Department to review the law in relation to advance decisions and to lay a report of that review before the Assembly, within 3 years of this section coming into operation which, under section 307, will be the day after Royal Assent.

Sections 285 and 286 – Matters excluded from the Act

Section 285 sets out a number of decisions which can never be made under the Act on behalf of someone who lacks capacity. Many of these decisions are of such a personal nature, such as consenting to marriage, that it would be inappropriate for a person other than the person directly involved to make it. Section 286 also clarifies that the Act does not give anybody the right to place an electoral vote on someone else's behalf.

Unlike equivalent legislation elsewhere, there is no exclusion in relation to matters governed by mental health legislation. The Act will replace the Mental Health Order as it applied to persons aged 16 and over.

Section 287 – Relationship of Act with law relating to murder etc

Section 287 clarifies that the Act does not affect the existing laws on murder, manslaughter, or assisted suicide.