2016 CHAPTER 18

PART 1 N.I.

PRINCIPLES

Principles

Principles: capacity N.I.

1.—(1) The principles in subsections (2) to (5) must be complied with where for any purpose of this Act a determination falls to be made of whether a person who is 16 or over lacks capacity in relation to a matter.

(2) The person is not to be treated as lacking that capacity unless it is established that the person lacks capacity in relation to the matter within the meaning given by section 3.

(3) Whether the person is, or is not, able to make a decision for himself or herself about the matter—

(a) is to be determined solely by reference to whether the person is or is not able to do the things mentioned in section 4(1)(a) to (d); and

(b) accordingly, is not to be determined merely on the basis of any condition that the person has, or any other characteristic of the person, which might lead others to make unjustified assumptions about his or her ability to make a decision.

(4) The person is not to be treated as unable to make a decision for himself or herself about the matter unless all practicable help and support to enable the person to make a decision about the matter have been given without success (see section 5).

(5) The person is not to be treated as unable to make a decision for himself or herself about the matter merely because the person makes an unwise decision.

(6) Nothing in subsections (1) to (5) removes any obligation that a person may be under in a particular situation to take steps to establish whether another person has capacity in relation to a matter.

Commencement Information

I1 S. 1 in operation at 1.10.2019 by S.R. 2019/163, art. 2(1), **Sch. Pt. 1** (with art. 3) (as amended by S.R. 2019/190, art. 2)

I2 S. 1 in operation at 2.12.2019 for specified purposes by S.R. 2019/163, art. 2(3), **Sch. Pt. 3** (as amended by S.R. 2019/190, art. 2)

Principle: best interests N.I.

2.—(1) The principle in subsection (2) applies where, under this Act—

(a) an act is done for or on behalf of a person who is 16 or over and lacks capacity in relation to whether the act should be done; or

(b) a decision is made for or on behalf of a person who is 16 or over and lacks capacity to make the decision.

(2) The act must be done, or the decision must be made, in the person's best interests (see section 7).

Commencement Information

I3 S. 2 in operation at 1.10.2019 for specified purposes by S.R. 2019/163, art. 2(1), **Sch. Pt. 1** (with art. 3) (as amended by S.R. 2019/190, art. 2)

I4 S. 2 in operation at 2.12.2019 for specified purposes by S.R. 2019/163, art. 2(3), **Sch. Pt. 3** (as amended by S.R. 2019/190, art. 2)

Establishing whether a person has capacity

Meaning of "lacks capacity" N.I.

3.—(1) For the purposes of this Act, a person who is 16 or over lacks capacity in relation to a matter if, at the material time, the person is unable to make a decision for himself or herself about the matter (within the meaning given by section 4) because of an impairment of, or a disturbance in the functioning of, the mind or brain.

(2) It does not matter—

(a) whether the impairment or disturbance is permanent or temporary;

(b) what the cause of the impairment or disturbance is.

(3) In particular, it does not matter whether the impairment or disturbance is caused by a disorder or disability or otherwise than by a disorder or disability.

Commencement Information

I5 S. 3 in operation at 1.10.2019 for specified purposes by S.R. 2019/163, art. 2(1), **Sch. Pt. 1** (with art. 3) (as amended by S.R. 2019/190, art. 2)

I6 S. 3 in operation at 2.12.2019 for specified purposes by S.R. 2019/163, art. 2(3), **Sch. Pt. 3** (as amended by S.R. 2019/190, art. 2)

Meaning of "unable to make a decision" N.I.

4.—(1) For the purposes of this Part a person is "unable to make a decision" for himself or herself about a matter if the person—

(a) is not able to understand the information relevant to the decision;

(b) is not able to retain that information for the time required to make the decision;

(c) is not able to appreciate the relevance of that information and to use and weigh that information as part of the process of making the decision; or

(d) is not able to communicate his or her decision (whether by talking, using sign language or any other means);

and references to enabling or helping a person to make a decision about a matter are to be read accordingly.

(2) In subsection (1) "the information relevant to the decision" includes information about the reasonably foreseeable consequences of—

(a) deciding one way or another; or

(b) failing to make the decision.

(3) For the purposes of subsection (1)(a) the person is not to be regarded as "not able to understand the information relevant to the decision" if the person is able to understand an appropriate explanation of the information.

(4) An appropriate explanation means an explanation of the information given to the person in a way appropriate to the person's circumstances (using simple language, visual aids or any other means).

Commencement Information

I7 S. 4 in operation at 1.10.2019 for specified purposes by S.R. 2019/163, art. 2(1), **Sch. Pt. 1** (with art. 3) (as amended by S.R. 2019/190, art. 2)

I8 S. 4 in operation at 2.12.2019 for specified purposes by S.R. 2019/163, art. 2(3), **Sch. Pt. 3** (as amended by S.R. 2019/190, art. 2)

Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, PART 1 is up to date with all changes known to be in force on or before 28 June 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*

Supporting person to make decision N.I.

5.—(1) A person is not to be regarded for the purposes of section 1(4) as having been given all practicable help and support to enable him or her to make a decision unless, in particular, the steps required by this section have been taken so far as practicable.

(2) Those steps are—

(a) the provision to the person, in a way appropriate to his or her circumstances, of all the information relevant to the decision (or, where it is more likely to help the person to make a decision, of an explanation of that information);

(b) ensuring that the matter in question is raised with the person—

(i) at a time or times likely to help the person to make a decision; and

(ii) in an environment likely to help the person to make a decision;

(c) ensuring that persons whose involvement is likely to help the person to make a decision are involved in helping and supporting the person.

(3) The information referred to in subsection (2)(a) includes information about the reasonably foreseeable consequences of—

(a) deciding one way or another; or

(b) failing to make the decision.

(4) For the purposes of providing the information or explanation mentioned in subsection (2)(a) in a way appropriate to the person's circumstances it may, in particular, be appropriate—

(a) to use simple language or visual aids; or

(b) to provide support for the purposes of communicating the information or explanation.

(5) The reference in subsection (2)(c) to persons whose involvement is likely to help the person to make a decision may, in particular, include a person who provides support to help the person communicate his or her decision.

(6) Nothing in this section is to be taken as in any way limiting the effect of section 1(4).

Commencement Information

I9 S. 5 in operation at 1.10.2019 for specified purposes by S.R. 2019/163, art. 2(1), **Sch. Pt. 1** (with art. 3) (as amended by S.R. 2019/190, art. 2)

I10 S. 5 in operation at 2.12.2019 for specified purposes by S.R. 2019/163, art. 2(3), **Sch. Pt. 3** (as amended by S.R. 2019/190, art. 2)

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Compliance with section 1(2) N.I.

6.—(1) In proceedings under this Act or any other statutory provision, any question whether a person who is 16 or over lacks capacity in relation to a matter (within the meaning of this Act) is to be decided on the balance of probabilities.

(2) Subsection (3) applies where, other than in such proceedings, it falls to a person to determine for any purpose of this Act whether another person who is 16 or over ("P") lacks capacity in relation to a matter.

(3) If—

(a) the person making the determination has taken reasonable steps to establish whether P lacks capacity in relation to the matter,

(b) the person reasonably believes that P lacks capacity in relation to the matter, and

(c) the principles in section 1(3) to (5) and section 5 have been complied with,

for the purposes of section 1(2) the person is to be taken to have sufficiently "established" that P lacks capacity in relation to the matter.

(4) In this section "proceedings" includes proceedings before a tribunal and proceedings of any panel constituted under Schedule 1 or 3.

Commencement Information

I11 S. 6 in operation at 1.10.2019 for specified purposes by S.R. 2019/163, art. 2(1), **Sch. Pt. 1** (with art. 3) (as amended by S.R. 2019/190, art. 2)

I12 S. 6 in operation at 2.12.2019 for specified purposes by S.R. 2019/163, art. 2(3), **Sch. Pt. 3** (as amended by S.R. 2019/190, art. 2)

Establishing what is in a person's best interests

Best interests N.I.

7.—(1) This section applies where for any purpose of this Act it falls to a person to determine what would be in the best interests of another person who is 16 or over ("P").

(2) The person making the determination must not make it merely on the basis of—

(a) P's age or appearance; or

(b) any other characteristic of P's, including any condition that P has, which might lead others to make unjustified assumptions about what might be in P's best interests.

(3) That person—

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(a) must consider all the relevant circumstances (that is, all the circumstances of which that person is aware which it is reasonable to regard as relevant); and

(b) must in particular take the following steps.

(4) That person must consider—

(a) whether it is likely that P will at some time have capacity in relation to the matter in question; and

(b) if it appears likely that P will, when that is likely to be.

(5) That person must, so far as practicable, encourage and help P to participate as fully as possible in the determination of what would be in P's best interests.

(6) That person must have special regard to (so far as they are reasonably ascertainable)—

(a) P's past and present wishes and feelings (and, in particular, any relevant written statement made by P when P had capacity);

(b) the beliefs and values that would be likely to influence P's decision if P had capacity; and

(c) the other factors that P would be likely to consider if able to do so.

(7) That person must—

(a) so far as it is practicable and appropriate to do so, consult the relevant people about what would be in P's best interests and in particular about the matters mentioned in subsection (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 P's best interests and in particular about those matters.

For the definition of "the relevant people" see subsection (11).

(8) That person must, in relation to any act or decision that is being considered, have regard to whether the same purpose can be as effectively achieved in a way that is less restrictive of P's rights and freedom of action.

(9) That person must, in relation to any act that is being considered, have regard to whether failure to do the act is likely to result in harm to other persons with resulting harm to P.

(10) If the determination relates to life-sustaining treatment for P, the person making the determination must not, in considering whether the treatment is in the best interests of P, be motivated by a desire to bring about P's death.

(11) In subsection (7) "the relevant people" means—

(a) any person who at the time of the determination is P's nominated person (see section 69);

(b) if at the time of the determination there is an independent mental capacity advocate who is instructed under section 91 to represent and provide support to P, the independent mental capacity advocate;

(c) any other person named by P as someone to be consulted on the matter in question or on matters of that kind;

(d) anyone engaged in caring for P or interested in P's welfare;

(e) any attorney under a lasting power of attorney, or an enduring power of attorney, granted by P; and

(f) any deputy appointed for P by the court.

Commencement Information

I13 S. 7 in operation at 1.10.2019 for specified purposes by S.R. 2019/163, art. 2(1), **Sch. Pt. 1** (with art. 3) (as amended by S.R. 2019/190, art. 2)

I14 S. 7 in operation at 2.12.2019 for specified purposes by S.R. 2019/163, art. 2(3), **Sch. Pt. 3** (as amended by S.R. 2019/190, art. 2)

Compliance with section 2 N.I.

8.—(1) This section applies where a person other than the court ("the relevant person")—

(a) does an act for or on behalf of another person who is 16 or over and lacks capacity in relation to whether the act should be done; or

(b) makes a decision for or on behalf of another person who is 16 or over and lacks capacity to make the decision.

(2) The relevant person is to be taken to have sufficiently complied with the principle in section 2(2) (act or decision must be in best interests) if that person—

(a) reasonably believes that the act or decision is in the other person's best interests; and

(b) in determining whether the act or decision is in the other person's best interests, has complied with section 7.

Commencement Information

I15 S. 8 in operation at 1.10.2019 for specified purposes by S.R. 2019/163, art. 2(1), **Sch. Pt. 1** (with art. 3) (as amended by S.R. 2019/190, art. 2)

I16 S. 8 in operation at 2.12.2019 for specified purposes by S.R. 2019/163, art. 2(3), **Sch. Pt. 3** (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)