



## 2016 CHAPTER 18

### **PART 2**

#### LACK OF CAPACITY: PROTECTION FROM LIABILITY, AND SAFEGUARDS

##### CHAPTER 2

##### ADDITIONAL SAFEGUARDS FOR SERIOUS INTERVENTIONS

###### *Formal capacity assessments etc*

#### **Formal assessment of capacity**

- 13.**—(1) This section applies where—
- (a) section 9(1)(a) and (b) apply; and
  - (b) the act mentioned there is, or is part of, a serious intervention (see section 63).
- (2) Where this section applies—
- (a) the condition in section 9(1)(c) is to be regarded as met only if, before the act is done, a formal capacity assessment is carried out; and
  - (b) a belief by D, at the time the act is done, that P lacks capacity in relation to the matter in question is not to be regarded as a reasonable belief if no statement of incapacity has been made.
- (3) The formal capacity assessment must have been carried out, and the statement of incapacity made, recently enough before the act is done for it to be reasonable in all the circumstances to rely on them.

**Changes to legislation:** *Mental Capacity Act (Northern Ireland) 2016, CHAPTER 2 is up to date with all changes known to be in force on or before 14 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*

(4) This section does not apply where the situation is an emergency (see section 65).

(5) See section 14 for the meaning of “formal capacity assessment” and “statement of incapacity”.

#### Commencement Information

- II** S. 13 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)

### Section 13: formal capacity assessments and statements of incapacity

**14.—**(1) This section supplements section 13.

(2) A “formal capacity assessment” means an assessment carried out by a suitably qualified person (who may be D if D is suitably qualified) of whether P lacks capacity in relation to the matter in question.

(3) A “statement of incapacity” means a statement in writing, by the person who carried out the formal capacity assessment (“the assessor”)—

- (a) recording the fact that the assessment was carried out, by whom it was carried out and when;
- (b) certifying that, in the opinion of the assessor, P lacks capacity within the meaning of this Act in relation to the matter in question;
- (c) specifying which of the things mentioned in section 4(1)(a) to (d) P is, in the assessor's opinion, not able to do in relation to that matter because of an impairment of, or a disturbance in the functioning of, P's mind or brain; and
- (d) specifying any help or support that has been given to P, without success, to enable P to make a decision in relation to the matter.

(4) In this section references to a “suitably qualified” person are to a person of a prescribed description.

#### Commencement Information

- I2** S. 14 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)

### *Nominated persons*

#### **Nominated person: need to have in place and consult**

**15.—**(1) This section applies where the act mentioned in section 9(1) is, or is part of, a serious intervention (see section 63).

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

(3) The nominated person conditions are that—

- (a) a nominated person is in place for P when D determines whether the act would be in P's best interests; and
- (b) in making that determination, D consults and takes into account the views of the nominated person 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 where the situation is an emergency (see section 65).

(5) For the purposes of this section a nominated person “is in place for P” at a particular time if at that time there is someone who is P's nominated person (see section 69).

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**Commencement Information**

- I3** S. 15 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)

**Changes to legislation:**

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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\(b\)](#)