

*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 2 – Lack of Capacity: Protection from Liability, and Safeguards

Chapter 3 – Additional Safeguard: Second Opinion

Sections 16 – 18

The second opinion additional safeguard is based on a similar safeguard in the Mental Health Order. Sections 16-18 set out when it applies and what it involves.

Section 16 provides that, unless the situation is an emergency, a second opinion is required for the following types of treatment:

electro-convulsive therapy;

any treatment with serious consequences (defined in section 21) prescribed for this purpose in regulations to be made under the Act; or

any treatment with serious consequences (in circumstances to be prescribed in regulations) where the question of whether it is in the person's best interests is finely balanced.

In these cases, the second opinion must have been obtained recently enough for it to be reasonable to rely on it.

In addition, section 17 provides for another set of circumstances in which a second opinion is required, that is where medication that is treatment with serious consequences and of a prescribed description is given to P for any condition for a period of more than three months. This applies only where P is an in-patient or resident in a hospital, care home or other place to be prescribed in regulations, or subject to an attendance requirement (see section 28). The effect of this section is that if medication falling within its scope is given to P at any time after the first three months of the intervention, a second opinion must have been obtained within the three months before it is given and recently enough for it to be reasonable to rely on it. The three month time limit is therefore a rolling one.

For the purposes of sections 16 and 17, “second opinion” means a ‘relevant certificate’ as defined in section 18. It must include a statement in writing made

by an “appropriate medical practitioner”: someone who is qualified to undertake the assessment; is not connected with the person who lacks capacity; has been approved by the Regulation and Quality Improvement Authority (RQIA) for the purpose of providing second opinions and has been asked by the RQIA to provide the second opinion on whether the treatment is in P’s best interests. When asking a medical practitioner to provide a second opinion certificate, the RQIA should have regard to the desirability of asking someone who is independent of the medical practitioner providing treatment to P. The certificate must state that, in the medical practitioner’s opinion, it is in P’s best interests to have the proposed treatment. Once made, the medical practitioner must ensure that a copy of the medical certificate is immediately sent to the RQIA.

For the purpose of providing a second opinion, the appropriate medical practitioner can, at any reasonable time, visit and examine the person in private and obtain and examine relevant health records. A certificate may only be given if the medical practitioner has examined the person and any relevant health records and consulted persons principally concerned with treating P.