

*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 9 – Definitions for Purposes of Part 2

Sections 63 and 64 – “Serious intervention”

The definition of “serious intervention” for the purposes of Part 2 is intended to capture any intervention which has serious consequences (physical or non-physical) for P. Regulations may provide more detail as to what might fall under each of the four main categories listed in paragraph (1). However, for the avoidance of doubt, section 63 makes it clear that all interventions requiring authorisation under the Act (see Chapter 4 of Part 2) will always be a serious intervention for the purposes of Part 2. The provision of serious compulsory treatment (sections 19-23) is not mentioned because it is obvious from the definition of treatment with serious consequences in section 21 that it will also always be a serious intervention under Part 2.

As additional safeguards need to be put in place for serious interventions, it will be critical for D to consider whether what he or she is proposing for P is serious. However, section 63 recognises that there may be circumstances in which something that appears initially to be routine can turn out to be serious and D could not have been expected to foresee that it would turn out as such. In such cases, the intervention is to be treated as not being serious for the purposes of the Act if the risk of it being serious was a negligible one.

Section 64 makes it clear that any use or threat of force for the purposes of doing an act which a person is resisting is to be taken as being part of the same intervention as the act that is being resisted by P.