



2016 CHAPTER 18

PART 1 PRINCIPLES

Establishing what is in a person's best interests

Best interests

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—

- (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.

Compliance with section 2

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.