



2016 CHAPTER 18

PART 15

SUPPLEMENTARY

Definitions

Persons “unconnected with” a person

304.—(1) For the purposes of this Act a person (“B”) is “unconnected with” another person (“A”) unless—

- (a) B receives any payments made on account of A's maintenance, or has an interest in the receipt of any such payments;
 - (b) B is A's spouse, civil partner, parent, child, brother, sister, mother-in law, father-in law, son-in-law, daughter-in-law, sister-in-law or brother-in-law;
 - (c) B is living with A as if he or she were A's spouse or civil partner and has been so living for a period of at least 6 months;
 - (d) B is someone with whom A lives and has been living for a period of at least 5 years; or
 - (e) A is living in a relevant place and, at the time when A started living in the relevant place—
 - (i) B had been living with A as if he or she were A's spouse or civil partner for a period of at least 6 months; or
 - (ii) B was a person with whom A had been living for a period of at least 5 years.
- (2) In subsection (1)(e) “relevant place” means—
- (a) a hospital;

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- (b) a care home; or
- (c) a place of a prescribed description.

Meaning of “mental disorder”

305.—(1) In this Act “mental disorder” means any disorder or disability of the mind.

(2) Dependence on alcohol or drugs is not to be considered a disorder or disability of the mind for the purposes of subsection (1) (but this does not prevent a disorder or disability of the mind that is related to alcohol or drugs, but is not dependence, from being so considered).

Definitions for purposes of Act

306.—(1) In this Act—

“the 2003 Order” means the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003;

“approved social worker” has the meaning given by section 280;

“the area” of an HSC trust means the area prescribed by regulations as the area of that trust for the purposes of this Act;

“bankrupt”: references to an individual's being bankrupt include the individual's being subject to a bankruptcy restrictions order, or interim bankruptcy restrictions order, under the Insolvency (Northern Ireland) Order 1989;

“best interests”—

(a) in relation to a person who is 16 or over, is to be read in accordance with section 7 (subject to paragraph (b));

(b) in Part 9, is to be read in accordance with section 157;

“capacity”: see “lacks capacity”;

“care home” means—

(a) a residential care home, as defined by Article 10 of the 2003 Order, in respect of which a person is registered under Part 3 of that Order; or

(b) a nursing home, as defined by Article 11 of that Order, in respect of which a person is registered under Part 3 of that Order;

“care or treatment” includes care and treatment;

“condition”, in the context of any reference to treatment for a condition or medication for a condition, includes pain;

“the court” (except in Part 10) means the High Court;

“Court Visitor” has the meaning given by section 130;

“the Department” means the Department of Health;

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“deprivation of liberty” means a deprivation of liberty within the meaning of Article 5(1) of the Human Rights Convention (and for the purposes of any reference to a deprivation of liberty, it does not matter whether the deprivation of liberty is done by a public authority or not);

“deputy” is to be read in accordance with section 113(2)(b);

“enduring power of attorney” means a power of attorney that is an enduring power within the meaning of the Enduring Powers of Attorney (Northern Ireland) Order 1987;

“examination”, in relation to a person, includes an interview with the person for the purpose of ascertaining the person's mental or physical condition or of ascertaining any other matter for the purposes of this Act;

“harm”—

- (a) except in references to physical or psychological harm, means harm of any kind whether physical or non-physical; and
- (b) except in references to physical harm, includes harm to a person resulting from that person's harming others;

[^{F1}“health record” has the meaning given by section 205 of the Data Protection Act 2018;]

“hospital” means any establishment whose main purpose is to provide treatment to people with illness and which—

- (a) receives such people as in-patients; and
- (b) is managed by an HSC trust or is an independent hospital in respect of which a person is registered under Part 3 of the 2003 Order;

“HSC trust” means a Health and Social Care trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991 (but does not include the Northern Ireland Ambulance Service Health and Social Care Trust);

“the Human Rights Convention” has the same meaning as “the Convention” in the Human Rights Act 1998;

“illness” includes any injury, disorder or disability requiring treatment or nursing (see subsection (4));

“independent hospital” has the same meaning as in the 2003 Order;

“independent mental capacity advocate” has the meaning given by section 86;

“lacks capacity”: any reference to a person who is 16 or over lacking capacity in relation to a matter is to be read in accordance with sections 1 and 3 to 6, and any reference to such a person having capacity in relation to a matter is to be read accordingly;

“lasting power of attorney” has the meaning given by section 97;

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“liable to be detained”: any reference to a person who, by virtue of this Act, is liable to be detained in a place in circumstances amounting to a deprivation of liberty includes—

- (a) person who is detained in the place in such circumstances, where section 9(2) applies in relation to the detention, and
- (b) a person who would fall within paragraph (a) if he or she were so detained,

whether or not an authorisation under Schedule 1 or 2 is in force in respect of the person;

“life-sustaining treatment” means treatment that in the view of a person providing health care for the person concerned is necessary to sustain life;

“the managing authority”, in relation to a hospital or care home, means—

- (a) in relation to a hospital managed by an HSC trust, that trust;
- (b) in relation to an independent hospital, a person registered under Part 3 of the 2003 Order in respect of the hospital;
- (c) in relation to a care home, a person registered under Part 3 of the 2003 Order in respect of the care home;

but paragraphs (b) and (c) are subject to any regulations made under subsection (6).

“making decisions”: references to making decisions, in relation to an attorney under a lasting power of attorney or a deputy appointed by the court, include (where appropriate) acting on decisions made;

“medical practitioner” means a fully registered person within the meaning of the Medical Act 1983 who holds a licence to practise under that Act;

“mental disorder” has the meaning given by section 305;

“the Mental Health Order” means the Mental Health (Northern Ireland) Order 1986;

“nominated person” has the meaning given by section 69;

“parental responsibility” has the same meaning as in the Children (Northern Ireland) Order 1995 (see Article 6 of that Order);

“prescribed” is to be read in accordance with subsection (7);

“property” includes any thing in action and any interest in real or personal property;

“psychosurgery” means any surgical operation for destroying brain tissue or for destroying the functioning of brain tissue;

“public authority” has the same meaning as in the Human Rights Act 1998;

“Public Guardian” has the same meaning as in section 125;

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“purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property;

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“regulations” is to be read in accordance with subsection (7);

“RQIA” means the Health and Social Care Regulation and Quality Improvement Authority;

“rules of court” means rules of court made under section 55 of the Judicature (Northern Ireland) Act 1978;

“statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

“taking” a person to a place includes returning or transferring the person to that place;

“treatment” includes any examination, any procedure (diagnostic or otherwise), and any therapy;

“the Tribunal” means the Review Tribunal constituted under Article 70 of the Mental Health Order;

“trust corporation” has the same meaning as in the Trustee Act (Northern Ireland) 1958;

“unconnected with”, in relation to a person, is to be read in accordance with section 304;

“working day” means a day that is not—

- (a) a Saturday or Sunday; or
- (b) a public holiday.

(2) Regulations prescribing the area of an HSC trust for the purposes of this Act may prescribe, as that area, a specified area and specified premises which are outside that specified area.

(3) The Department may by regulations amend the definition of “HSC trust” in subsection (1).

(4) For the purposes of the definition of “illness” in subsection (1), a disorder, disability or injury of a person “requires” treatment or nursing if it, or any of its symptoms or manifestations, could be alleviated or prevented from worsening by treatment or nursing.

(5) Any reference in this Act to a person who “lacks capacity” (without more) is to be read, in relation to a person who is 16 or over, as a reference to a person who lacks capacity in relation to a matter that is relevant for the purposes of the provision containing the reference.

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(6) Regulations may provide that for the purposes of any prescribed provision of this Act, “the managing authority”, in relation to an independent hospital or a care home (“the establishment”)—

- (a) means the person registered as the person who manages the establishment;
- (b) means the person registered as the person who carries on the establishment;
or
- (c) means both the person mentioned in paragraph (a) and the person mentioned in paragraph (b).

“Registered” here means registered under Part 3 of the 2003 Order.

(7) In this Act “regulations” and “prescribed” mean—

- (a) in section 126, Part 9 and Part 10 (except section 229), regulations made by the Department of Justice, and prescribed by such regulations;
- (b) in any other provision of this Act (except sections 262, 263, 302, 303 and 307 and this subsection), regulations made by the Department, and prescribed by such regulations.

(8) Part 1 (principles) applies in relation to regulations made under any provision of this Act as it applies in relation to that provision.

(9) For the avoidance of doubt, the definition of “act” in section 46(2) of the Interpretation Act (Northern Ireland) 1954 does not apply for the purposes of this Act.

Textual Amendments

- F1** Words in s. 306(1) substituted (25.5.2018) by [Data Protection Act 2018 \(c. 12\)](#), s. 212(1), [Sch. 19 para. 206](#) (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)
- F2** Words in s. 306(1) omitted (1.4.2022) by virtue of [Health and Social Care Act \(Northern Ireland\) 2022 \(c. 3\)](#), s. 8(1)(b), [Sch. 1 para. 252\(8\)](#); S.R. 2022/102, art. 2(b)

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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\(b\)](#)