



2016 CHAPTER 18

PART 2

LACK OF CAPACITY: PROTECTION
FROM LIABILITY, AND SAFEGUARDS

CHAPTER 4

ADDITIONAL SAFEGUARD: AUTHORISATIONS ETC

Treatment with serious consequences

Treatment with serious consequences: objection from nominated person

19.—(1) This section applies where—

- (a) the act mentioned in section 9(1) is, or is done in the course of, the provision to P of treatment which is treatment with serious consequences (see section 21); and
- (b) the treatment is carried out despite a reasonable objection from P's nominated person.

(2) Section 9(2) (protection from liability) applies to the act only if—

- (a) the provision of the treatment to P is authorised; and
- (b) the prevention of serious harm condition (as well as the conditions of section 9(1)(c) and (d), and any other conditions that apply under this Part) is met.

(3) Subsection (2)(a) does not apply where the situation is an emergency (see section 65).

(4) For the purposes of subsection (2)(a) the provision of the treatment to P is “authorised” if, at the time the act is done, there is in force an authorisation granted under Schedule 1 which authorises the provision of the treatment to P.

(5) See section 22 for the prevention of serious harm condition.

Treatment with serious consequences: resistance by P etc

20.—(1) This section applies where—

- (a) the act mentioned in section 9(1) is, or is done in the course of, the provision to P of treatment which is treatment with serious consequences (see section 21);
- (b) section 19 (objection from nominated person) does not apply;
- (c) the act—
 - (i) is resisted by P (see section 68); or
 - (ii) is done while P is subject to an additional measure (see section 23);and

(d) the circumstances are such as may be prescribed.

(2) Section 9(2) (protection from liability) applies to the act only if—

- (a) the provision of the treatment to P is authorised; and
- (b) the prevention of serious harm condition (as well as the conditions of section 9(1)(c) and (d), and any other conditions that apply under this Part) is met.

(3) Subsection (2)(a) does not apply where the situation is an emergency (see section 65).

(4) For the purposes of subsection (2)(a) the provision of the treatment to P is “authorised” if, at the time the act is done, there is in force an authorisation granted under Schedule 1 which authorises the provision of the treatment to P.

(5) See section 22 for the prevention of serious harm condition.

Meaning of “treatment with serious consequences”

21.—(1) In this Part “treatment with serious consequences” means treatment which—

- (a) causes the person to whom it is given serious pain, serious distress, or serious side-effects;
- (b) is major surgery;
- (c) affects seriously the options that will be available to that person in the future, or has a serious impact on his or her day-to-day life; or
- (d) in any other way has serious consequences for that person, whether physical or non-physical.

Status: This is the original version (as it was originally enacted).

- (2) Regulations may provide that treatment of a specified description—
 - (a) is to be regarded as treatment falling within a particular paragraph of subsection (1); or
 - (b) is not to be regarded as such treatment.
- (3) If—
 - (a) the act mentioned in section 9(1) is, or is done in the course of, the provision to P of treatment which turns out to be treatment with serious consequences, but
 - (b) at the time when the act is done D reasonably believes that the risk that the treatment will turn out to be treatment with such consequences is negligible,

the act is to be treated for the purposes of this Part as if the treatment were not treatment with serious consequences.

Sections 19 and 20: the prevention of serious harm condition

22.—(1) For the purposes of sections 19 and 20, the prevention of serious harm condition is that at the time the act mentioned in subsection (1)(a) of that section is done, D reasonably believes—

- (a) that failure to provide the treatment in question to P would create a risk of serious harm to P or of serious physical harm to other persons; and
- (b) that carrying out that treatment is a proportionate response to—
 - (i) the likelihood of harm to P, or of physical harm to other persons; and
 - (ii) the seriousness of the harm concerned.
- (2) Subsection (3) applies where there are one or more treatments (other than the treatment mentioned in subsection (1))—
 - (a) that are available and would be appropriate in P’s case; and
 - (b) the provision of which would not involve the doing of acts to which section 19 or 20 applies.

(3) In determining whether failure to provide the treatment mentioned in subsection (1) would create a risk of serious harm to P or of serious physical harm to other persons, it must be assumed that if that treatment were not provided, another treatment would be provided as soon as practicable.

Meaning of “subject to an additional measure”

23.—(1) For the purposes of this Part a person is “subject to an additional measure” at the time a particular act is done if—

- (a) the act is done at a time when the person is detained by virtue of this Act in circumstances amounting to a deprivation of liberty;

- (b) the act is, or is done in the course of, the provision of treatment and is done at a time when the person is subject to a requirement to attend at a particular place at particular times or intervals for the purpose of being given that treatment;
 - (c) the act is done at a time when the person is subject to a community residence requirement; or
 - (d) the act is done at a time when a supervision and assessment order (see Schedule 7) is in force in respect of the person.
- (2) For further provision about the measures mentioned in subsection (1)(a) to (c), see sections 24 to 34.