



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.

Deprivation of liberty

Deprivation of liberty

24.—(1) This section applies where the act mentioned in section 9(1) amounts to, or is one of a number of acts that together amount to, a deprivation of P’s liberty.

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

(a) the deprivation of P’s liberty consists of—

- (i) the detention of P, in circumstances amounting to a deprivation of liberty, in a place in which care or treatment is available for P; or
- (ii) related detention;

(b) the detention in question is authorised; and

(c) 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)(b) does not apply where the situation is an emergency (see section 65).

(4) See section 25 for—

- (a) the meaning of “related detention” and of detention being “authorised”;
- (b) the prevention of serious harm condition.

(5) In this Part any reference to an act which is one of a number of acts that together amount to a deprivation of P’s liberty includes (in particular) where P is detained in circumstances amounting to a deprivation of liberty, instructing another person to carry out or continue the detention.

Section 24: definitions

25.—(1) This section applies for the purposes of section 24.

Status: This is the original version (as it was originally enacted).

(2) “Related detention” means—

- (a) the detention of P in circumstances amounting to a deprivation of liberty while P is being taken to a place in which care or treatment is available for P; or
- (b) the detention of P in circumstances amounting to a deprivation of liberty in pursuance of a condition imposed on P that relates to permission given to P to be absent from a relevant place (as defined by section 27).

(3) Detention is “authorised” if, at the time the act is done, there is in force an authorisation granted—

- (a) by a panel under Schedule 1, or
- (b) by the making of a report under paragraph 2 of Schedule 2 (authorisation of short-term detention for examination etc),

which authorises that detention.

(4) See paragraph 22 of Schedule 1 or paragraph 18 of Schedule 2 (as the case may be) for provisions about the scope of an authorisation.

(5) The prevention of serious harm condition is that at the time the act is done D reasonably believes—

- (a) that failure to detain P in circumstances amounting to a deprivation of liberty would create a risk of serious harm to P or of serious physical harm to other persons; and
- (b) that the detention in question 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.

(6) References in this section to “the act” are to the act mentioned in section 24(1).

Taking person to a place for deprivation of liberty

26.—(1) This section applies where—

- (a) the act mentioned in section 9(1) is, or is done in the course of, taking P to a place; and
- (b) although taking P to that place does not itself involve a deprivation of liberty, it is done in order that P can be detained in circumstances amounting to a deprivation of liberty at that place.

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

- (a) the detention that is to be carried out 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) In this section “authorised” and “the prevention of serious harm condition” have the same meaning as in section 25(3) and (5), but for this purpose references there to “the act” are to be read as the act mentioned in subsection (1)(a) of this section.

Permission for absence

27.—(1) For the avoidance of doubt, if—

- (a) by virtue of this Part a person (“P”) is detained in a relevant place,
- (b) P is given permission to be absent from the relevant place for a particular period or a particular occasion, and
- (c) a person does an act within subsection (2),

section 9(2) (protection from liability) applies to that act provided that the conditions of section 9(1)(c) and (d), and any other conditions that apply under this Part, are met in relation to that act.

(2) The acts within this subsection are—

- (a) imposing any condition on P in relation to the permission;
- (b) any act for the purpose of ensuring that P complies with such a condition;
- (c) recalling P to the relevant place.

(3) For the purposes of this section a place is a “relevant place” if—

- (a) P is detained in the place in circumstances amounting to a deprivation of liberty; and
- (b) care or treatment is available to P in the place.

Requirements to attend for treatment with serious consequences

Requirements to attend for certain treatment

28.—(1) This section applies where the act mentioned in section 9(1) is—

- (a) the imposition on P of a requirement to attend at a particular place at particular times or intervals for the purpose of being given treatment that would or might be treatment with serious consequences (an “attendance requirement”); or
- (b) an act done for the purpose of ensuring that P complies with an attendance requirement.

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

- (a) the requirement is authorised; and

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- (b) the receipt of treatment 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 requirement is “authorised” if, at the time the act is done, there is in force an authorisation granted under Schedule 1 which permits that requirement to be imposed.

(5) The receipt of treatment condition is that at the time the act is done D reasonably believes that—

- (a) failure to impose the requirement, or
- (b) where the requirement is already imposed, failure to ensure that P complies with the requirement,

would be more likely than not to result in P’s not receiving the treatment.

Duty to revoke requirement where criteria no longer met

29.—(1) If—

- (a) an attendance requirement has been authorised under Schedule 1 and has been imposed on a person, and
- (b) at any time after the imposition of the requirement, the medical practitioner in charge of the treatment considers that any of the conditions in subsection (2) is no longer met,

the requirement must be revoked.

(2) Those conditions are—

- (a) that the person lacks capacity in relation to whether he or she should attend at the place and times or intervals concerned for the purpose of being given the treatment;
- (b) that it is more likely than not that, without the attendance requirement, the person would not receive the treatment;
- (c) that the attendance requirement is in the person’s best interests.

(3) Nothing in subsection (1) limits the effect of section 28 (under which acts to ensure compliance with an attendance requirement are unlawful if certain conditions are not met).

(4) Where an attendance requirement is revoked in the circumstances mentioned in subsection (1)(b), another attendance requirement may not be imposed on the person by virtue of the same authorisation.

(5) In this section “attendance requirement” has the same meaning as in section 28.

Community residence requirements

Community residence requirements: authorisation etc

30.—(1) This section applies where the act mentioned in section 9(1) is—

- (a) the imposition on P of a community residence requirement (see section 31); or
- (b) an act done for the purpose of ensuring that P complies with a community residence requirement.

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

- (a) the community residence requirement is authorised; and
- (b) the prevention of 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) For the purposes of subsection (2)(a) the community residence requirement is “authorised” if, at the time the act is done, there is in force an authorisation granted under Schedule 1 which permits that community residence requirement to be imposed.

(4) The prevention of harm condition is that at the time the act is done D reasonably believes—

- (a) that failure to do the act would create a risk of harm to P; and
- (b) that the act is a proportionate response to—
 - (i) the likelihood of harm to P; and
 - (ii) the seriousness of the harm concerned.

Meaning of “community residence requirement”

31.—(1) In this Part a “community residence requirement”, in relation to a person (“P”), means a requirement imposed on P by an HSC trust for P to live at a particular place, whether or not the requirement also contains provision imposing one or more of the requirements mentioned in subsection (2).

(2) Those requirements are—

- (a) a requirement for P to allow a healthcare professional access to P at a place where P is living;
- (b) a requirement (or requirements) for P to attend at particular places and times or intervals for the purpose of training, education, occupation or treatment.

(3) In subsection (2)(a) “healthcare professional” means a person of a prescribed description.

(4) In subsection (2)(b) “treatment” does not include treatment that would or might be treatment with serious consequences (requirements to attend for which are dealt with by section 28).

(5) References in this Part to an act done for the purpose of ensuring that P complies with a community residence requirement are to an act done—

- (a) for the purpose of ensuring that P moves to, continues to live at or resumes living at the place required by the community residence requirement; or
- (b) for the purpose of ensuring that P complies with a provision of the community residence requirement that requires P to attend a place or allow a person access to P.

Duty to revoke community residence requirement where criteria no longer met

32.—(1) If—

- (a) a community residence requirement which is permitted by an authorisation under Schedule 1 to be imposed on a person has been imposed, and
- (b) at any time after the imposition of the requirement, the approved social worker in charge of the person’s case considers that any of the conditions in subsection (2) is no longer met,

the requirement must be revoked.

(2) Those conditions are—

- (a) that the person lacks capacity in relation to the matters covered by the community residence requirement;
- (b) that revoking the community residence requirement would create a risk of harm to the person;
- (c) that keeping the requirement in place is a proportionate response to—
 - (i) the likelihood of harm to the person if the requirement were revoked; and
 - (ii) the seriousness of the harm concerned;
- (d) that the community residence requirement is in the person’s best interests.

(3) Subsection (1) is without prejudice to section 30 (under which acts to ensure compliance with a community residence requirement are unlawful if criteria are not met).

(4) Where a community residence requirement is revoked in the circumstances mentioned in subsection (1)(b), another community residence requirement may not be imposed on the person by virtue of the same authorisation.

Duties in relation to people subject to community residence requirements

33. The Department may make regulations—

- (a) for imposing on HSC trusts such duties as the Department considers appropriate in the interests of people who are subject to community residence requirements;
- (b) requiring people subject to community residence requirements to be visited on prescribed occasions or at prescribed intervals.

Community residence requirements: further provision

34.—(1) For the avoidance of doubt, the imposition by an HSC trust of a community residence requirement is not to be regarded for the purposes of this Act—

- (a) as an act which in itself amounts to a deprivation of liberty; or
 - (b) as an act within section 12(4) (acts of restraint).
- (2) Subsection (3) applies if—
- (a) a person is detained in a place in circumstances which—
 - (i) amount to a deprivation of liberty; and
 - (ii) include a requirement for the person to live in the place; and
 - (b) the detention of the person in the place in circumstances amounting to a deprivation of liberty is authorised under Schedule 1.
- (3) Where this subsection applies, the requirement for the person to live in the place is not to be regarded for the purposes of section 30 or any other provision of this Act as a community residence requirement.