



2016 CHAPTER 18

PART 4

INDEPENDENT MENTAL CAPACITY ADVOCATES

Independent mental capacity advocates

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86.—(1) Each HSC trust must make arrangements to secure that, where the trust is required by section 91 to instruct an independent mental capacity advocate to represent and provide support to a person (“P”) in the determination of whether a particular act in relation to which P lacks capacity would be in P’s best interests, an independent mental capacity advocate is available to be instructed by the trust to represent and provide support to P in that determination.

(2) Arrangements under subsection (1) may include provision for payments to be made to, or in relation to, persons carrying out functions by virtue of the arrangements.

(3) In making arrangements under subsection (1), and instructing an independent mental capacity advocate under section 91, an HSC trust must have regard to the principle that a person to whom a proposed act would relate should be represented by someone who is independent of any person who will be responsible for the act if it is done.

(4) In this Act “independent mental capacity advocate” means a person who has been appointed by an HSC trust, in accordance with regulations under the following provisions of this section, to be a person to whom the trust may from time to time offer instructions under section 91.

- (5) The Department may make regulations about the arrangements that may be entered into by HSC trusts for the purposes of this section.
- (6) The regulations may in particular—
- (a) provide that a person may be appointed as mentioned in subsection (4) only if the person meets prescribed conditions;
 - (b) provide for the appointment of a person to be subject to prescribed conditions;
 - (c) enable an appointment to be such that the person appointed will only be offered instructions of a description specified by the appointment.
- (7) The conditions that may be prescribed under subsection (6)(a) include—
- (a) a condition that the person is approved, or belongs to a description of persons approved, in accordance with the regulations;
 - (b) a condition that the person has prescribed qualifications or skills or has undertaken prescribed training.

Functions of independent mental capacity advocates: provision of support, etc

87.—(1) The Department may make regulations about the functions of independent mental capacity advocates.

(2) The regulations may in particular require prescribed steps to be taken by an independent mental capacity advocate who has been instructed under section 91 to represent and provide support to a person (“P”) in the determination of whether a particular act in relation to which P lacks capacity would be in P’s best interests.

(3) The steps that may be prescribed under subsection (2) include steps for the purpose of—

- (a) providing support to P so that P may participate as fully as possible in any relevant decision;
- (b) obtaining and evaluating relevant information;
- (c) ascertaining P’s past and present wishes and feelings, and the beliefs and values that would be likely to influence P’s decision if P had capacity;
- (d) ascertaining what alternative courses of action are available in relation to P;
- (e) informing persons responsible for determining what would be in P’s best interests of the independent mental capacity advocate’s conclusions;
- (f) informing P’s nominated person (if any) of matters relevant to the nominated person.

(4) The regulations may also make provision as to circumstances in which an independent mental capacity advocate may challenge, or provide assistance for the purposes of challenging, any relevant decision.