

*Status: This version of this provision is prospective.*

**Changes to legislation:** *Mental Capacity Act (Northern Ireland) 2016, Section 117 is up to date with all changes known to be in force on or before 21 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*



## 2016 CHAPTER 18

### PART 6

#### HIGH COURT POWERS: DECISIONS AND DEPUTIES

##### *Decisions and deputies*

PROSPECTIVE

##### **Restrictions on deputies**

**117.—(1)** A deputy does not have power to make a decision on behalf of P in relation to a matter unless P lacks capacity, or the deputy reasonably believes that P lacks capacity, in relation to the matter.

(2) The authority conferred on a deputy is subject to the provisions of this Act and, in particular, sections 1, 2, 5 and 7 (principles, best interests).

(3) Nothing in section 113 or 114 permits a deputy to be given power—

- (a) to prohibit a specified person from having contact with P;
- (b) to direct a person responsible for P's health care to allow a different person to take over that responsibility.

(4) Nothing in section 113 or 115 permits a deputy to be given powers with respect to—

- (a) the settlement of any of P's property, whether for P's benefit or for the benefit of others;
- (b) the execution for P of a will; or

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- (c) the exercise of any power (including a power to consent) vested in P whether beneficially or as trustee or otherwise.
- (5) A deputy may not be given power to make a decision on behalf of P which is inconsistent with—
  - (a) a decision that is made in accordance with this Act by an attorney under a lasting power of attorney granted by P, and is within the scope of the attorney's authority; or
  - (b) a decision that is made in accordance with the Enduring Powers of Attorney (Northern Ireland) Order 1987 by an attorney under an enduring power of attorney granted by P, and is within the scope of the attorney's authority.
- (6) A deputy may not refuse consent to the provision of life-sustaining treatment to P.
- (7) A deputy may not deprive P of his or her liberty or authorise another person to deprive P of his or her liberty.
- (8) A deputy may not do, or authorise another person to do, an act restraining P unless in doing so the deputy is acting within the scope of an authority expressly conferred on the deputy by the court and the deputy reasonably believes—
  - (a) that P lacks capacity in relation to the matter in question;
  - (b) that there is a risk of harm to P if the deputy does not do or (as the case may be) authorise the act restraining P; and
  - (c) that doing or authorising that act is a proportionate response to—
    - (i) the likelihood of harm to P; and
    - (ii) the seriousness of the harm concerned.
- (9) In this section an “act restraining P” means an act (other than a deprivation of P's liberty) which—
  - (a) is intended to restrict P's liberty of movement, whether or not P resists; or
  - (b) is a use of force or a threat to use force and is done with the intention of securing the doing of an act which P resists.
- (10) A deputy may not give consent to psychosurgery in respect of P.
- (11) The Department may by regulations amend subsection (10) so as to extend the descriptions of treatment to which a deputy may not give consent.

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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\(b\)](#)