



2016 CHAPTER 18

PART 2

LACK OF CAPACITY: PROTECTION  
FROM LIABILITY, AND SAFEGUARDS

CHAPTER 1

PROTECTION FROM LIABILITY, AND GENERAL SAFEGUARDS

**Acts of restraint: condition that must be met**

12.—(1) This section applies where the act mentioned in section 9(1) (“the relevant act”) is—

- (a) an act restraining P; or
- (b) an act that consists of instructing or authorising another person to do an act restraining P.

(2) Section 9(2) (protection from liability) applies to the relevant act only if the restraint condition (as well as the conditions of section 9(1)(c) and (d), and any other conditions that apply under this Part) is met in relation to the relevant act.

(3) The restraint condition is that at the time the relevant act is done, D reasonably believes—

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

(4) In this section an “act restraining P” means an act 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.
- (5) This section does not apply to an act which in itself amounts to a deprivation of liberty (as to which see sections 24 and 25).
- (6) Subsection (5) does not affect the application of this section to an act restraining P which is done while P is detained in circumstances amounting to a deprivation of liberty.