

Status: This version of this provision is prospective.

Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, Section 157 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 9

POWER OF POLICE TO REMOVE PERSON TO PLACE OF SAFETY

Supplementary

PROSPECTIVE

Principles applying for purposes of Part 9

157.—(1) Where for any purpose of this Part a determination falls to be made of whether a person is unable to make a decision for himself or herself about a matter—

- (a) the question whether the person is or is not able to make such a decision is to be determined solely by reference to whether the person is or is not able to do the things mentioned in section 4(1)(a) to (d);
- (b) the person is not to be treated as unable to make a decision for himself or herself about the matter unless all practicable help and support to enable the person to make such a decision have been given without success;
- (c) the person is not to be treated as unable to make a decision for himself or herself about the matter merely because the person makes an unwise decision.

(2) A determination that a person is unable to make a decision, or about what is in a person's best interests, must not be made for any purpose of this Part merely on the basis of—

- (a) the person's age or appearance; or

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(b) any other characteristic of the person, including any condition that the person has, which might lead others to make unjustified assumptions about the person's ability to make a decision or about what is in the person's best interests.

(3) Where for any purpose of this Part it falls to a person (“the relevant officer”) to determine what would be in the best interests of another person (“R”), the relevant officer—

(a) must consider all the relevant circumstances (that is, all the circumstances of which the relevant officer is aware which it is reasonable to regard as relevant); and

(b) must in particular take the steps in subsections (4) to (8).

(4) The relevant officer must, in determining what would be in R's best interests—

(a) so far as practicable, encourage and help R to participate as fully as possible in that determination; and

(b) have special regard to (so far as they are reasonably ascertainable) R's past and present wishes and feelings.

(5) Where it is practicable for the relevant officer to consult—

(a) a key person (see subsection (7)), or

(b) any other person who is named by R as someone to be consulted or who is engaged in caring for R or interested in R's welfare,

about what would be in R's best interests and in particular about R's past and present wishes and feelings, the relevant officer must, so far as is practicable and appropriate, consult those persons about those questions.

(6) So far as the views of any of those persons about those questions are ascertained, the relevant officer must take those views into account.

(7) In subsection (5) “a key person” means—

(a) if R is 16 or over, any person who is R's nominated person;

(b) if R is under 16, a person with parental responsibility for R.

(8) The relevant officer must, in relation to any removal, detention or transfer that is being considered, have regard to whether the purpose for which it would be carried out can be as effectively achieved in a way that is less restrictive of R's rights and freedom of action.

(9) In consequence of this section, sections 1 to 3 and 5 to 8 (principles, best interests etc) do not apply for the purposes of this Part.

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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\(b\)](#)