



## 2016 CHAPTER 18

### PART 2

#### LACK OF CAPACITY: PROTECTION FROM LIABILITY, AND SAFEGUARDS

##### CHAPTER 3

##### ADDITIONAL SAFEGUARD: SECOND OPINION

#### **Second opinion needed for continuation of medication**

**17.—**(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 medication for any condition;
- (b) the medication is treatment with serious consequences and is of a description specified for the purposes of this paragraph by regulations;
- (c) medication for that condition has been provided to P, on more than an occasional basis, for at least the relevant period; and
- (d) at the time of the act P is, and for at least the relevant period has been, a qualifying person (see subsection (5)).

(2) Section 9(2) (protection from liability) applies to the act only if, at the time the act is done, a second opinion has been obtained (and the conditions of section 9(1)(c) and (d), and any other conditions that apply under this Part, are met in relation to the act).

(3) The second opinion must have been obtained—

- (a) recently enough for it to be reasonable in all the circumstances to rely on it; and

- (b) in any event, since the beginning of the relevant period.
- (4) This section does not apply where the situation is an emergency (see section 65).
- (5) For the purposes of this section—
  - (a) a person is a “qualifying person” at any time when he or she—
    - (i) is an in-patient or resident in a hospital, care home or place of a prescribed description; or
    - (ii) is subject to a requirement to attend at a particular place and particular times or intervals for the purpose of being given treatment for the condition;
  - (b) “the relevant period” is the period of 3 months ending immediately before the day on which the act is done;
  - (c) “second opinion” means a relevant certificate (as defined by section 18) in respect of the treatment mentioned in subsection (1)(a).
- (6) The Department may by regulations amend subsection (5)(b) so as to alter the period mentioned there.