



2016 CHAPTER 18

PART 2

LACK OF CAPACITY: PROTECTION FROM LIABILITY, AND SAFEGUARDS

CHAPTER 8

SUPPLEMENTARY

Other supplementary provision

Failure by person other than D to take certain steps

- 59.**—(1) This section applies if, in relation to an act done by a person (“D”)—
- (a) all the conditions for section 9 to apply are met, except that supportive steps that it would have been practicable to take were not taken;
 - (b) the fact that those steps were not taken is not to any extent due to an unreasonable failure by D to take such steps; and
 - (c) at the time of the act, it is no longer practicable for such steps to be taken.
- (2) For the purposes of determining whether D is liable in relation to the act, section 9 is to be taken to apply to the act.
- (3) But if—
- (a) D is an employee of a person (“E”), and
 - (b) any other employee of E unreasonably failed to take supportive steps in relation to the matter at a time when it would have been practicable to take such steps,

Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, Section 59 is up to date with all changes known to be in force on or before 04 April 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*

for the purposes of determining whether E is liable in relation to the act subsection (2) is to be disregarded.

(4) In this section “supportive steps” means steps to help or support the person to whom the act relates (“P”) to enable P to make a decision for himself or herself about the matter.

(5) For the purposes of this section a failure by a person at any time to take a supportive step that it would be practicable to take is unreasonable unless—

(a) at the time in question the person reasonably believes that the step can be taken at a later time and still be as effective as it would be if taken immediately; and

(b) not taking the step immediately is reasonable in the circumstances.

(6) Any person for whose acts another person may be vicariously liable is to be treated for the purposes of this section as an employee of that other person.

Commencement Information

- II** S. 59 in operation at 2.12.2019 for specified purposes by [S.R. 2019/163](#), [art. 2\(4\)](#), [Sch. Pt. 4](#)
(with [art. 3](#)) (as amended by [S.R. 2019/190](#), [art. 2](#))

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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\(b\)](#)