

Status: This version of this provision is prospective.

Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, Section 98 is up to date with all changes known to be in force on or before 20 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*



2016 CHAPTER 18

PART 5

LASTING POWERS OF ATTORNEY

Scope of lasting power of attorney

PROSPECTIVE

Restrictions on scope of lasting power of attorney

98.—(1) Where a lasting power of attorney authorises an attorney to make decisions about the donor's care, treatment and personal welfare (or about any of those matters), the authority—

- (a) does not extend to making such decisions in circumstances other than those where the donor lacks, or the attorney reasonably believes that the donor lacks, capacity; and
- (b) is subject to section 99(2) (effective advance decision to refuse treatment made after execution of instrument).

(2) Where a lasting power of attorney authorises an attorney to make decisions about the donor's treatment (whether or not it also authorises the making of decisions about other matters), the authority extends to giving or refusing consent to the provision of a treatment by a person providing health care for the donor; but this subsection—

- (a) is subject to subsections (1) and (7) and to any conditions or restrictions in the instrument; and

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(b) authorises the giving or refusing of consent to the provision of life-sustaining treatment only if the instrument contains express provision to that effect.

(3) A lasting power of attorney does not authorise an attorney to deprive the donor of his or her liberty or to authorise another person to deprive the donor of his or her liberty.

(4) A lasting power of attorney authorises an attorney to do, or to authorise another person to do, an act restraining the donor only if the conditions in subsection (6) are met.

(5) In subsection (4) an “act restraining the donor” means an act (other than a deprivation of the donor's liberty) which—

- (a) is intended to restrict the donor's liberty of movement, whether or not the donor 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 the donor resists.

(6) The conditions referred to in subsection (4) are that the attorney reasonably believes—

- (a) that the donor lacks capacity in relation to the matter in question;
- (b) that there is a risk of harm to the donor if the attorney does not do or (as the case may be) authorise the act restraining the donor; and
- (c) that doing or authorising that act is a proportionate response to—
 - (i) the likelihood of harm to the donor; and
 - (ii) the seriousness of the harm concerned.

(7) A lasting power of attorney does not authorise an attorney to give consent to psychosurgery in respect of the donor.

(8) Where the donor of a lasting power of attorney was under 18 when he or she executed the instrument mentioned in section 97(2)(a)—

- (a) the lasting power of attorney has the same effect as it would have if the donor had been 18 or over when he or she executed the instrument; except that
- (b) at any time when the donor is under 18, the authority conferred by the lasting power does not extend to doing anything that the donor could not do at that time (even if the donor had capacity, within the meaning of Part 1, in relation to the matter in question).

(9) The Department may by regulations amend subsection (7) so as to extend the descriptions of treatment to which an attorney 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\(b\)](#)