



2016 CHAPTER 18

PART 5

LASTING POWERS OF ATTORNEY

Scope of lasting power of attorney

Relationship between advance decisions and lasting powers of attorney

99.—(1) This section applies in relation to any authority conferred on an attorney by a lasting power of attorney to give or refuse consent to the carrying out or continuation of a treatment.

(2) The authority is subject to any effective advance decision to refuse the treatment made by the donor after, or at the same time as, the execution of the relevant instrument.

(3) Any relevant decision to refuse the treatment made by the donor before the execution of the relevant instrument is to be treated as having been withdrawn by the execution of the relevant instrument (and accordingly is not an effective advance decision to refuse the treatment).

(4) In this section—

- (a) “an effective advance decision to refuse the treatment” means a decision which, under the common law relating to advance decisions, has the same effect as if at the material time the donor—
 - (i) refused consent to the treatment’s being carried out or continued; and
 - (ii) had capacity to refuse that consent;
- (b) “the material time” means the time when the question arises whether the treatment should be carried out or continued;

- (c) “relevant decision to refuse the treatment” means a decision that would (but for the execution of the relevant instrument) have been an effective advance decision to refuse the treatment;
 - (d) references to the “execution of the relevant instrument” are to the execution by the donor of an instrument with a view to creating the lasting power of attorney.
- (5) Subsection (3) does not affect any rule of law under which a decision that would otherwise fall within subsection (4)(a) is to be regarded as having been withdrawn.