



2016 CHAPTER 18

PART 3

NOMINATED PERSON

Duties in relation to nominated person

Duties in relation to nominated person: supplementary

84.—(1) This section applies where under any provision of or made under this Act a person (“the person concerned”) is subject to—

- (a) a duty to consult (if it is practicable and appropriate to do so), and take into account the views of, the nominated person of a person (“P”) in determining what would be in P’s best interests; or
- (b) a duty to inform, send a document to, or do any other thing in relation to, P’s nominated person.

(2) Subsection (3) applies if the person concerned—

- (a) takes reasonable steps to establish who P’s nominated person is; and
- (b) at the relevant time reasonably believes that a particular person (“NP”) is P’s nominated person.

(3) In determining whether the person concerned has complied with the duty in question, anything done by that person in relation to NP for the purposes of that duty is to be treated as if NP were P’s nominated person (even if NP was in fact not P’s nominated person).

(4) Subsection (5) applies (subject to subsection (6)) if the person concerned takes reasonable steps to establish who P’s nominated person is and at the relevant time—

- (a) the person concerned reasonably believes that there is no-one who is P's nominated person;
 - (b) it has not been practicable to establish whether P has a nominated person;
or
 - (c) it has not been practicable to establish who P's nominated person is.
- (5) The person concerned is to be taken not to have contravened the duty in question (even if it has in fact been contravened because there is a person who is P's nominated person as respects whom the duty has not been complied with).
- (6) Subsection (5) does not apply if—
- (a) the duty in question is the duty imposed by section 7(7) and (11)(a) (duty to consult P's nominated person, if any, in determining best interests); and
 - (b) the case is one where by virtue of section 15 or 54 a nominated person must be in place for P at the relevant time.
- (7) In this section “the relevant time” means—
- (a) in relation to a duty mentioned in subsection (1)(a), the time when the person concerned determines what would be in P's best interests;
 - (b) in relation to a duty mentioned in subsection (1)(b), the time when the duty applies.
- (8) Subsections (2)(b) and (4)(a) are to be read in accordance with section 85(1).
- (9) Subsection (4)(b) and (c) are to be read in accordance with section 85(3).

Determining who is nominated person

85.—(1) Where a person (“D”) is determining for any purpose of this Act whether another person (“P”) has a nominated person or who P's nominated person is, then unless D has reason to believe that an action mentioned in subsection (2) has been taken, D may assume that that action has not been taken.

- (2) The actions referred to in subsection (1) are—
- (a) the appointment of a person as P's nominated person;
 - (b) the revocation of such an appointment;
 - (c) a declaration by P that a particular person is not to be P's default nominated person;
 - (d) any other action under Part 3 which would affect whether P has a nominated person or who P's nominated person is.
- (3) For the purposes of this Act it is “practicable to establish” whether a person has a nominated person, or who a person's nominated person is, if it is practicable to form a reasonable belief about that matter (having regard to subsection (1)).