



2016 CHAPTER 18

PART 3

NOMINATED PERSON

Powers of the Tribunal

Application to Tribunal for appointment of nominated person

80.—(1) A qualifying person may apply to the Tribunal for an order under section 81 in relation to a person who is 16 or over (“P”) if the qualifying person reasonably believes that—

- (a) P lacks capacity to make decisions about who should be his or her nominated person; and
- (b) one of the conditions mentioned in subsection (2) is met.

(2) Those conditions are—

- (a) the person who is P’s nominated person is not suitable to be so;
- (b) there is no-one who is P’s nominated person;
- (c) it is not practicable to establish whether P has a nominated person;
- (d) someone is P’s nominated person, but it is not practicable to establish who that is.

(3) The factors that may be taken into account in determining whether a person is not suitable to be P’s nominated person include whether the person has behaved, is behaving or proposes to behave in a way that is not in P’s best interests.

(4) An application may be made on the ground mentioned in subsection (2) (c) or (d) only if the applicant has taken reasonable steps to establish—

- (a) whether P has a nominated person; or (as the case may be)
 - (b) who P's nominated person is.
- (5) In this section “a qualifying person” means any of the following—
- (a) an appropriate healthcare professional;
 - (b) if P is an in-patient in a hospital or care home, the managing authority of the hospital or care home;
 - (c) if P is living in a place of a prescribed description, a prescribed person;
 - (d) an attorney under a lasting power of attorney, or an enduring power of attorney, granted by P;
 - (e) a deputy appointed for P by the court;
 - (f) any relative of P;
 - (g) any person interested in P's welfare.
- (6) In this section “appropriate healthcare professional” means a person of a prescribed description.
- (7) Where the applicant is a person within subsection (5)(a) or (b), the applicant must send a copy of the application to RQIA as soon as practicable.

Tribunal's power to appoint nominated person

- 81.**—(1) This section applies where an application is made to the Tribunal under section 80 in relation to a person (“P”).
- (2) The Tribunal may, if it is satisfied of the matters mentioned in paragraphs (a) and (b) of section 80(1), make an order under this section.
- (3) An order under this section is an order appointing as P's nominated person one person who is 16 or over and is specified in the order.
- (4) An appointment under this section revokes any previous appointment under this section or section 70 of a person as P's nominated person.
- (5) A person who has been appointed under this section may resign as P's nominated person by giving notice in writing to that effect to P.
- (6) This section is subject to section 77(2)(b) (effect of declaration by P).

Tribunal's power to disqualify person from being default nominated person

- 82.**—(1) This section applies where the Tribunal makes an order under section 81 on the ground that the person who is P's nominated person (“the person concerned”) is not suitable to be P's nominated person.
- (2) The Tribunal may order that, if at any time a determination falls to be made of who (if anyone) is the default nominated person for P, the person concerned is to be disregarded.

Revocation of Tribunal's appointment where P regains capacity

83.—(1) This section applies if—

- (a) an appointment of a nominated person for a person (“P”) has been made by the Tribunal under section 81; and
- (b) P regains capacity to make decisions about who should be his or her nominated person.

(2) P may, at any time while he or she has capacity to do so, apply to the Tribunal for revocation of the appointment.

(3) On an application under this section the Tribunal must make an order revoking the appointment under section 81 unless it is satisfied that P no longer has capacity to make decisions about who should be his or her nominated person.

(4) If on such an application the Tribunal is satisfied—

- (a) that P no longer has capacity to make decisions about who should be his or her nominated person, but
- (b) that a different person should be appointed as P's nominated person,

the Tribunal may make an order under section 81.