



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).