

Status: Point in time view as at 02/12/2019. This version of this cross heading contains provisions that are prospective.
Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, Cross Heading: Medical reports: involvement of nominated person and independent mental capacity advocate is up to date with all changes known to be in force on or before 14 June 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)



2016 CHAPTER 18

PART 2

LACK OF CAPACITY: PROTECTION FROM LIABILITY, AND SAFEGUARDS

CHAPTER 8

SUPPLEMENTARY

*Medical reports: involvement of nominated
person and independent mental capacity advocate*

Medical reports: involvement of nominated person

- 54.**—(1) A relevant medical report may be made only if—
- (a) a nominated person is in place for P at the time when the person making the report determines for the purposes of the report what would be in P's best interests; and
 - (b) in making that determination, the person making the report consults and takes into account the views of the nominated person to the extent required by section 7(7) (duty to consult where practicable and appropriate and to take views into account).
- (2) Subsection (1)—
- (a) does not apply where the situation is an emergency for the purposes of this section (see section 56); and
 - (b) is without prejudice to section 55 (need to involve independent mental capacity advocate).

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(3) For the purposes of this section a nominated person is “in place for P” at a particular time if at that time there is someone who is P's nominated person (see section 69).

(4) In this section “a relevant medical report” means—

- (a) a report under section 39;
- (b) a medical report under paragraph 7 of Schedule 1;
- (c) a medical report under paragraph 4, 11, 13 or 14 of Schedule 2; or
- (d) a medical report under paragraph 5 of Schedule 3.

Commencement Information

- II** S. 54 in operation at 2.12.2019 for specified purposes by S.R. 2019/163, art. 2(4), **Sch. Pt. 4** (with art. 3) (as amended by S.R. 2019/190, art. 2)

PROSPECTIVE

Medical reports: involvement of independent mental capacity advocate

55.—(1) A relevant medical report may be made only if—

- (a) at the time when the person making the report determines for the purposes of the report what would be in P's best interests, there is an independent mental capacity advocate who is instructed under section 91 to represent and provide support to P; and
- (b) in determining what would be in P's best interests, the person making the report consults and takes into account the views of the independent mental capacity advocate to the extent required by section 7(7) (duty to consult where practicable and appropriate and to take views into account).

(2) Subsection (1)—

- (a) does not apply where the situation is an emergency for the purposes of this section (see section 56); and
- (b) is without prejudice to section 54 (need to involve nominated person).

(3) Subsection (1) does not apply if, at the time mentioned in subsection (1) (a), P has made a declaration under section 90 or 93 (declarations declining services of an independent mental capacity advocate) in relation to the matter in question (and has not revoked the declaration).

(4) In this section “a relevant medical report” has the same meaning as in section 54.

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Sections 54 and 55: meaning of “emergency”

56.—(1) For the purposes of section 54 or 55 the situation is an “emergency” if, at the time when the person making the report determines what would be in P's best interests, that person—

- (a) knows that the safeguard in that section is not met, but reasonably believes that to delay the report until that safeguard is met would involve an unacceptable risk of harm to P; or
- (b) does not know whether the safeguard is met, but reasonably believes that to delay the report even until it is established whether the safeguard is met would involve an unacceptable risk of harm to P.

(2) For the purposes of this section—

- (a) the safeguard in section 54 is met when a nominated person is in place for P (within the meaning given by that section);
- (b) the safeguard in section 55 is met when—
 - (i) an independent mental capacity advocate is instructed under section 91 to represent and provide support to P in the determination of what would be in P's best interests; or
 - (ii) P has made (and not revoked) a declaration under section 90 or 93 in relation to the matter.

(3) For the purposes of this section the risk of harm to P involved in delaying the report until a particular safeguard is met, or until it is established whether it is met, is an “unacceptable” risk if—

- (a) the seriousness of the harm that could be caused to P by such delay, and
- (b) the likelihood of the harm,

are such as to outweigh the risk of harm to P of making the report without that safeguard being met.

(4) In deciding for the purposes of this section when a safeguard would be met, or when it would be established whether a safeguard is met, it must be assumed that any necessary steps would be taken as soon as practicable.

Commencement Information

- I2** S. 56(1)(2)(a)(3)(4) in operation at 2.12.2019 for specified purposes by S.R. 2019/163, art. 2(4), Sch. Pt. 4 (with art. 3) (as amended by S.R. 2019/190, art. 2)

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