

Status: Point in time view as at 02/04/2020.

Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, Cross Heading: Default nominated person is up to date with all changes known to be in force on or before 02 September 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 3

NOMINATED PERSON

Default nominated person

Default nominated person

73.—(1) Where—

- (a) a person (“P”) is 16 or over, and
- (b) there is no person currently appointed as P's nominated person under section 70 or 81,

this section and sections 74 to 76 apply to determine who (if anyone) is the default nominated person for P.

(2) The default nominated person for P is—

- (a) where there is only one person who is within the list in subsection (3), that person;
- (b) where there are two or more persons who are within that list, the person highest up the list;

but this is subject to sections 74 and 75.

(3) The list is as follows—

- (a) P's carer (as defined by section 76);
- (b) P's spouse or civil partner (except one within subsection (4) (separation etc));
- (c) a person within subsection (5) (person living with P as spouse etc);

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- (d) P's child;
 - (e) P's parent;
 - (f) P's brother or sister;
 - (g) P's grandparent;
 - (h) P's grandchild;
 - (i) P's aunt or uncle;
 - (j) P's niece or nephew;
 - (k) a person within subsection (6) (person living with P etc).
- (4) A person is within this subsection if—
- (a) the person is permanently separated from P (either by agreement or under an order of a court); or
 - (b) the person has deserted or been deserted by P for a period which has not ended.
- (5) A person is within this subsection if—
- (a) the person is living with P as if he or she were P's spouse or civil partner, and has been so living for a period of at least 6 months; or
 - (b) if P is living in a relevant place, at the relevant time the person had been living with P as if he or she were P's spouse or civil partner for a period of at least 6 months.
- (6) A person is within this subsection if—
- (a) the person is someone with whom P lives and has been living for a period of at least 5 years; or
 - (b) if P is living in a relevant place, at the relevant time the person was someone with whom P had been living for a period of at least 5 years.
- (7) In this section—
- “relevant place” means—
- (a) a hospital;
 - (b) a care home; or
 - (c) a place of a prescribed description;
- “the relevant time” means the time when P started living at the relevant place.

Commencement Information

- II** S. 73 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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Section 73: the list

74.—(1) This section contains provisions about the list in section 73(3) (“the list”).

(2) A person within the list (“A”) is “higher” up the list than another person within the list (“B”) if A is within a paragraph of the list that comes before the paragraph which B is within.

(3) Where—

- (a) two or more persons are within the same paragraph of the list, and
- (b) there is no person higher up the list,

the default nominated person is the older (or oldest) of those persons (but this is subject to subsections (5) and (6)).

(4) In determining who is the default nominated person for P—

- (a) a stepchild of a person is to be treated as the child of that person; and
- (b) a relationship of the half-blood is to be treated as a relationship of the whole blood;

but this is subject to subsections (5) and (6).

(5) Subsection (6) applies where—

- (a) P has two or more relatives within the same paragraph of the list (“the relevant paragraph”);
- (b) there is no person higher up the list; and
- (c) one or more of the relatives is within the relevant paragraph because of subsection (4).

(6) In determining who is the default nominated person for P—

- (a) any relatives of the whole blood are to be preferred over the relatives who are within the relevant paragraph because of subsection (4);
- (b) any relatives of the half-blood are to be preferred over any relatives who are within the relevant paragraph because of subsection (4)(a).

(7) This section is subject to section 75.

Commencement Information

I2 S. 74 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)

Section 73: persons to be disregarded

75.—(1) This section supplements section 73.

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(2) In determining who is the default nominated person for P, the following are to be disregarded—

- (a) any person under 16;
- (b) where P is ordinarily resident in the United Kingdom, the Channel Islands, the Isle of Man or Ireland, any person who is not so resident;
- (c) any person who under section 77 (declaration by P) is to be disregarded in determining who is the default nominated person for P;
- (d) any person who has in accordance with section 78 declined to be the nominated person for P (and has not withdrawn that notice);
- (e) any person who under an order of the Tribunal under section 82 is to be disregarded in determining who is the default nominated person for P.

Commencement Information

- I3** S. 75 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)

Section 73: meaning of “carer”

76.—(1) In section 73, the reference to a “carer” of P is to a person who is 16 or over and—

- (a) provides a substantial amount of care for and support to P—
 - (i) on a regular basis; and
 - (ii) on a domestic basis; or
- (b) where P is living in a relevant place, provided a substantial amount of care for and support to P on a regular basis and on a domestic basis, before the relevant time.

(2) For the purposes of subsection (1) care and support is provided on a domestic basis unless it is provided under a contract of employment, under any other contract with any person, or as a volunteer for any organisation.

(3) Where there are two or more persons within subsection (1), but one of them provides (or provided, before the relevant time) most of the care for and support to P, that person is P's carer for the purposes of section 73.

(4) Where there are two or more persons within subsection (1) and subsection (3) does not apply, each of those persons is P's “carer” (and accordingly section 74(3) applies).

(5) In this section “relevant place” and “the relevant time” have the same meaning as in section 73.

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Commencement Information

- I4** S. 76 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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