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Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, Cross Heading: Supplementary is up to date with all changes known to be in force on or before 30 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) View outstanding changes



2016 CHAPTER 18

PART 9 N.I.

POWER OF POLICE TO REMOVE PERSON TO PLACE OF SAFETY

PROSPECTIVE

Supplementary

Principles applying for purposes of Part 9 N.I.

157.—(1) Where for any purpose of this Part a determination falls to be made of whether a person is unable to make a decision for himself or herself about a matter—

- (a) the question whether the person is or is not able to make such a decision is to be determined solely by reference to whether the person is or is not able to do the things mentioned in section 4(1)(a) to (d);
- (b) the person is not to be treated as unable to make a decision for himself or herself about the matter unless all practicable help and support to enable the person to make such a decision have been given without success;
- (c) the person is not to be treated as unable to make a decision for himself or herself about the matter merely because the person makes an unwise decision.

(2) A determination that a person is unable to make a decision, or about what is in a person's best interests, must not be made for any purpose of this Part merely on the basis of—

- (a) the person's age or appearance; or

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(b) any other characteristic of the person, including any condition that the person has, which might lead others to make unjustified assumptions about the person's ability to make a decision or about what is in the person's best interests.

(3) Where for any purpose of this Part it falls to a person (“the relevant officer”) to determine what would be in the best interests of another person (“R”), the relevant officer—

(a) must consider all the relevant circumstances (that is, all the circumstances of which the relevant officer is aware which it is reasonable to regard as relevant); and

(b) must in particular take the steps in subsections (4) to (8).

(4) The relevant officer must, in determining what would be in R's best interests—

(a) so far as practicable, encourage and help R to participate as fully as possible in that determination; and

(b) have special regard to (so far as they are reasonably ascertainable) R's past and present wishes and feelings.

(5) Where it is practicable for the relevant officer to consult—

(a) a key person (see subsection (7)), or

(b) any other person who is named by R as someone to be consulted or who is engaged in caring for R or interested in R's welfare,

about what would be in R's best interests and in particular about R's past and present wishes and feelings, the relevant officer must, so far as is practicable and appropriate, consult those persons about those questions.

(6) So far as the views of any of those persons about those questions are ascertained, the relevant officer must take those views into account.

(7) In subsection (5) “a key person” means—

(a) if R is 16 or over, any person who is R's nominated person;

(b) if R is under 16, a person with parental responsibility for R.

(8) The relevant officer must, in relation to any removal, detention or transfer that is being considered, have regard to whether the purpose for which it would be carried out can be as effectively achieved in a way that is less restrictive of R's rights and freedom of action.

(9) In consequence of this section, sections 1 to 3 and 5 to 8 (principles, best interests etc) do not apply for the purposes of this Part.

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Reasonable belief etc **N.I.**

158.—(1) This section applies if, after a person (“the relevant officer”) has removed, detained or transferred another person in reliance on any provision of this Part, any question arises—

- (a) whether a particular provision of section 157 was complied with; or
- (b) whether a belief of the relevant officer that a condition in section 139(2), 144(2) or 145(2) was met was a reasonable belief.

(2) In deciding that question, regard is to be had in particular to—

- (a) the place and other circumstances in which the relevant officer's determination fell to be made; and
- (b) in particular, where the relevant officer did not have available to him or her the advice of a medical practitioner or approved social worker, that fact.

(3) Nothing in this section affects the matters to which regard is to be had in deciding any similar question that may arise under any other Part.

Power of constable to use reasonable force **N.I.**

159 Where—

- (a) a power is conferred on a constable by virtue of this Part, and
- (b) the provision conferring the power does not provide that the power may be exercised only with the consent of a person other than a police officer,

the constable may use reasonable force, if necessary, in the exercise of the power.

Definitions for purposes of Part 9 **N.I.**

160.—(1) In this Part—

“the appropriate officer”, in relation to a person who is detained in a place of safety, means—

- (a) where the place of safety is a hospital, the constable who has charge of the person;
- (b) where the place of safety is a police station, the custody officer at that police station;

“best interests”: see section 157 for provisions about the determination of a person's best interests;

“custody officer”, in relation to a police station, means a person who under PACE is a custody officer, or performing the functions of a custody officer, at that police station;

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“PACE” means the Police and Criminal Evidence (Northern Ireland) Order 1989;

“place of safety” means—

- (a) any hospital whose managing authority is willing temporarily to receive persons who may be taken there under this Part; or
- (b) any police station;

“public place” means a place to which the public have access;

“unable to make a decision”, and references to enabling a person to make a decision, are to be read in accordance with section 4.

(2) The Department of Justice may by regulations amend the definition of “place of safety” in subsection (1).

(3) Regulations under subsection (2) may make such consequential amendments of this Part as the Department of Justice considers appropriate.

(4) The provision which may be made by virtue of subsection (3) includes, in particular, provision which amends or applies either of sections 142 and 143 or makes provision corresponding to those sections.

(5) For the purposes of sections 147 and 157, where the age of a person is not known, it is to be taken to be the age that the person appears to be.

Relationship of Part 9 to other provisions **N.I.**

161.—(1) A power that a constable has under any provision of this Part (a “place of safety power”) does not affect—

- (a) any authority that the constable has under Part 2 to do an act other than an act authorised by the place of safety power;
- (b) any authority to do any act that a person other than the constable has; or
- (c) any power that the constable has otherwise than under this Act.

(2) If, while a person is detained in or being taken to a place of safety under any provision of this Part, the person is arrested for an offence—

- (a) the relevant provisions of PACE apply; and
- (b) the person ceases to be liable to be detained under this Part or taken to a place of safety under this Part.

(3) Nothing in subsection (2)(b) affects the application of this Part on any subsequent occasion on which the person is found in a public place.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 285(2)(a)-(c) substituted for s. 285(2)(a)(b) by [2022 c. 18 \(N.I.\) Sch. 3 para. 77\(b\)](#)