



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*

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.