



Mental Capacity (Amendment) Act 2019

2019 CHAPTER 18

PROSPECTIVE

Safeguards

1 Deprivation of liberty: authorisation of arrangements enabling care and treatment **E+W**

- (1) The Mental Capacity Act 2005 is amended as follows.
- (2) In section 4A (restriction on deprivation of liberty) for subsection (5) substitute—

“(5) D may deprive P of liberty if, by doing so, D is carrying out arrangements authorised under Schedule AA1 (arrangements enabling the care and treatment of persons who lack capacity).”
- (3) After section 4B insert—

“4C Carrying out of authorised arrangements giving rise to deprivation of liberty

- (1) This section applies to an act that a person (“D”) does in carrying out arrangements authorised under Schedule AA1.
- (2) D does not incur any liability in relation to the act that would not have been incurred if the cared-for person—
 - (a) had had capacity to consent in relation to D doing the act, and
 - (b) had consented to D doing the act.
- (3) Nothing in this section excludes a person's civil liability for loss or damage, or a person's criminal liability, resulting from that person's negligence in doing the act.
- (4) Paragraph 31 of Schedule AA1 applies if an authorisation ceases to have effect in certain cases.

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Changes to legislation: There are currently no known outstanding effects for the Mental Capacity (Amendment) Act 2019, Cross Heading: Safeguards. (See end of Document for details)

(5) “Cared-for person” has the meaning given by paragraph 2(1) of that Schedule.”

(4) Before Schedule 1 insert the Schedule AA1 set out in Schedule 1 to this Act.

2 Deprivation of liberty: authorisation of steps necessary for life-sustaining treatment or vital act **E+W**

For section 4B of the Mental Capacity Act 2005 substitute—

“4B Deprivation of liberty necessary for life-sustaining treatment or vital act

- (1) If Conditions 1 to 4 are met, D is authorised to take steps which deprive P of liberty.
- (2) Condition 1 is that the steps—
 - (a) are wholly or partly for the purpose of giving P life-sustaining treatment or doing any vital act, or
 - (b) consist wholly or partly of giving P life-sustaining treatment or doing any vital act.
- (3) A vital act is any act which the person doing it reasonably believes to be necessary to prevent a serious deterioration in P's condition.
- (4) Condition 2 is that the steps are necessary in order to give the life-sustaining treatment or do the vital act.
- (5) Condition 3 is that D reasonably believes that P lacks capacity to consent to D taking the steps.
- (6) Condition 4 is that—
 - (a) subsection (7) applies, or
 - (b) there is an emergency.
- (7) This subsection applies if—
 - (a) a decision relevant to whether D is authorised to deprive P of liberty is being sought from the court, or
 - (b) a responsible body is carrying out functions under Schedule AA1 with a view to determining whether to authorise arrangements that give rise to a deprivation of P's liberty.
- (8) In subsection (7) it does not matter—
 - (a) whether the decision mentioned in paragraph (a) relates to the steps mentioned in subsection (1);
 - (b) whether the arrangements mentioned in paragraph (b) include those steps.
- (9) There is an emergency if D reasonably believes that—
 - (a) there is an urgent need to take the steps mentioned in subsection (1) in order to give the life-sustaining treatment or do the vital act, and
 - (b) it is not reasonably practicable before taking those steps—

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- (i) to make an application for P to be detained under Part 2 of the Mental Health Act,
- (ii) to make an application within subsection (7)(a), or
- (iii) to secure that action within subsection (7)(b) is taken.”

3 Powers of the court to determine questions **E+W**

After section 21 of the Mental Capacity Act 2005 insert—

“Powers of the court in relation to Schedule AA1

21ZA Powers of court in relation to Schedule AA1

- (1) This section applies where an authorisation under Schedule AA1—
 - (a) has effect, or
 - (b) is to have effect from a date specified under paragraph 28 of that Schedule.
- (2) The court may determine any question relating to—
 - (a) whether Schedule AA1 applies to the arrangements, or whether the authorisation conditions are met;
 - (b) what period the authorisation has effect for;
 - (c) what the authorisation relates to.
- (3) If the court determines a question under subsection (2), the court may make an order—
 - (a) varying or terminating the authorisation;
 - (b) directing the responsible body to vary the authorisation.
- (4) Where the court makes an order under subsection (3) the court may make an order about a person's liability for anything done in carrying out the arrangements before the variation or termination.
- (5) An order under subsection (4) may, in particular, exclude a person from liability.
- (6) “Authorisation conditions” has the meaning given by paragraph 13 of Schedule AA1.”

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