



Mental Capacity (Amendment) Act 2019

2019 CHAPTER 18

Safeguards

1 Deprivation of liberty: authorisation of arrangements enabling care and treatment

(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.

(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

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—
 - (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

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.”