



Mental Capacity (Amendment) Act 2019

2019 CHAPTER 18

PROSPECTIVE

An Act to amend the Mental Capacity Act 2005 in relation to procedures in accordance with which a person may be deprived of liberty where the person lacks capacity to consent; and for connected purposes. [16th May 2019]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PROSPECTIVE

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—

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

“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—

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- (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.

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- (6) “Authorisation conditions” has the meaning given by paragraph 13 of Schedule AA1.”

PROSPECTIVE

Code of practice etc

4 Deprivation of liberty: code of practice

- (1) Section 42 of the Mental Capacity Act 2005 (codes of practice) is amended as follows.

- (2) After subsection (1) insert—

“(1A) Guidance about what kinds of arrangements for enabling the care or treatment of a person fall within paragraph 2(1)(b) of Schedule AA1 must be included in the code, or one of the codes, issued under subsection (1).”

- (3) After subsection (2) insert—

“(2A) Before the end of each review period the Lord Chancellor must—

- (a) review each code for the guidance of persons exercising functions under Schedule AA1, and
- (b) lay a report of the review before Parliament.

But this does not affect the Lord Chancellor's functions under subsection (2).

- (2B) A review period is—

- (a) in relation to the first review, the period of 3 years beginning with the day on which this subsection comes into force, and
- (b) in relation to subsequent reviews, each period of 5 years beginning with the day on which the report of the previous review was laid before Parliament.”

- (4) In subsection (3) after “preparation” insert “ , review ”.

General

5 Consequential provision etc

- (1) The Secretary of State may by regulations make provision that is consequential on any provision made by this Act.

- (2) Regulations under this section—

- (a) may make different provision for different purposes or areas;
- (b) may amend, repeal or revoke any provision made by or under an Act passed before this Act or in the same Session.

- (3) The power to make regulations under this section is exercisable by statutory instrument.

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- (4) Regulations under this section that repeal or amend a provision of an Act may not be made unless a draft of the statutory instrument containing them has been laid before Parliament and approved by a resolution of each House of Parliament.
- (5) Any other regulations under this section are subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) Schedule 2 makes minor and consequential amendments.

Commencement Information

II S. 5(1)-(5) in force at Royal Assent, see s. 6(2)

6 Extent, commencement and short title

- (1) This Act extends to England and Wales only.
- (2) This section, and section 5 except subsection (6), come into force on the day this Act is passed.
- (3) The other provisions of this Act come into force—
 - (a) for the purpose only of enabling the exercise of any power to make regulations, on the day this Act is passed;
 - (b) for all other purposes, on whatever day the Secretary of State appoints by regulations.
- (4) Different days may be appointed for different purposes or different areas.
- (5) The Secretary of State may by regulations make transitional or saving provision in connection with the coming into force of any provision of this Act.
- (6) Regulations under subsection (5) may make different provision for different purposes or different areas.
- (7) The power to make regulations under this section is exercisable by statutory instrument.
- (8) This Act may be cited as the Mental Capacity (Amendment) Act 2019.