

**Changes to legislation:** Mental Capacity Act 2005, Part 1 is up to date with all changes known to be in force on or before 26 April 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

## SCHEDULES

### SCHEDULE 1A **E+W**

#### [<sup>F1</sup>PERSONS INELIGIBLE TO BE DEPRIVED OF LIBERTY BY THIS ACT]

##### Textual Amendments

- F1** Sch. 1A omitted (16.5.2019 for specified purposes) by virtue of [Mental Capacity \(Amendment\) Act 2019](#) (c. 18), s. 6(3), [Sch. 2 para. 2\(c\)](#)

#### [<sup>F1</sup>PART 1 **E+W**

##### INELIGIBLE PERSONS

###### *Application*

- 1 This Schedule applies for the purposes of—
- section 16A, and
  - paragraph 17 of Schedule A1.

###### *Determining ineligibility*

- 2 A person (“P”) is ineligible to be deprived of liberty by this Act (“ineligible”) if—
- P falls within one of the cases set out in the second column of the following table, and
  - the corresponding entry in the third column of the table —or the provision, or one of the provisions, referred to in that entry — provides that he is ineligible.

	<i>Status of P</i>	<i>Determination of ineligibility</i>
<i>Case A</i>	P is— <ol style="list-style-type: none"><li>subject to the hospital treatment regime, and</li><li>detained in a hospital under that regime.</li></ol>	P is ineligible.
<i>Case B</i>	P is— <ol style="list-style-type: none"><li>subject to the hospital</li></ol>	See paragraphs 3 and 4.

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	treatment regime, but	
	(b) not detained in a hospital under that regime.	
<i>Case C</i>	P is subject to the community treatment regime.	See paragraphs 3 and 4.
<i>Case D</i>	P is subject to the guardianship regime.	See paragraphs 3 and 5.
<i>Case E</i>	P is— (a) within the scope of the Mental Health Act, but (b) not subject to any of the mental health regimes.	See paragraph 5.

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*Authorised course of action not in accordance with regime*

- 3 (1) This paragraph applies in cases B, C and D in the table in paragraph 2.
- (2) P is ineligible if the authorised course of action is not in accordance with a requirement which the relevant regime imposes.
- (3) That includes any requirement as to where P is, or is not, to reside.
- (4) The relevant regime is the mental health regime to which P is subject.

*Treatment for mental disorder in a hospital*

- 4 (1) This paragraph applies in cases B and C in the table in paragraph 2.
- (2) P is ineligible if the relevant care or treatment consists in whole or in part of medical treatment for mental disorder in a hospital.

*P objects to being a mental health patient etc*

- 5 (1) This paragraph applies in cases D and E in the table in paragraph 2.
- (2) P is ineligible if the following conditions are met.
- (3) The first condition is that the relevant instrument authorises P to be a mental health patient.
- (4) The second condition is that P objects—
- (a) to being a mental health patient, or
  - (b) to being given some or all of the mental health treatment.
- (5) The third condition is that a donee or deputy has not made a valid decision to consent to each matter to which P objects.

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- (6) In determining whether or not P objects to something, regard must be had to all the circumstances (so far as they are reasonably ascertainable), including the following—
- (a) P's behaviour;
  - (b) P's wishes and feelings;
  - (c) P's views, beliefs and values.
- (7) But regard is to be had to circumstances from the past only so far as it is still appropriate to have regard to them.]

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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. 58(4)(ca) inserted by [2023 c. 42 Sch. para. 10](#)
- Sch. 1 para. 4A inserted by [2023 c. 42 Sch. para. 3](#)
- Sch. 1 para. 10A and cross-heading inserted by [2023 c. 42 Sch. para. 6](#)
- Sch. 1 para. 13A inserted by [2023 c. 42 Sch. para. 7\(2\)](#)
- Sch. 1 para. 16(1A) inserted by [2023 c. 42 Sch. para. 8\(b\)](#)