



# Mental Capacity Act 2005

## 2005 CHAPTER 9

### PART 1 **E+W**

#### PERSONS WHO LACK CAPACITY

##### *Excluded decisions*

#### 28 **Mental Health Act matters** **E+W**

- (1) Nothing in this Act authorises anyone—
- (a) to give a patient medical treatment for mental disorder, or
  - (b) to consent to a patient's being given medical treatment for mental disorder,
- if, at the time when it is proposed to treat the patient, his treatment is regulated by Part 4 of the Mental Health Act.

[<sup>F1</sup>(1A) Subsection (1) does not apply in relation to any form of treatment to which section 58A of that Act (electro-convulsive therapy, etc.) applies if the patient comes within subsection (7) of that section (informal patient under 18 who cannot give consent).]

<sup>F1</sup>[<sup>F2</sup>(1B) Section 5 does not apply to an act to which section 64B of the Mental Health Act applies (treatment of community patients not recalled to hospital).]

<sup>F2</sup>(2) “Medical treatment”, “mental disorder” and “patient” have the same meaning as in that Act.

#### Textual Amendments

**F1** S. 28(1A) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 28(10)**, 56; S.I. 2008/1900, **art. 2(g)** (with [art. 3](#), [Sch.](#))

**F2** S. 28(1B) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 35(5)**, 56; S.I. 2008/1900, **art. 2(k)** (with [art. 3](#), [Sch.](#))

**Changes to legislation:**

Mental Capacity Act 2005, Section 28 is up to date with all changes known to be in force on or before 18 February 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.

[View outstanding changes](#)

**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\(b\)](#)