



# Mental Capacity Act 2005

## 2005 CHAPTER 9

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

#### PERSONS WHO LACK CAPACITY

##### *Independent mental capacity advocate service*

### 37 **Provision of serious medical treatment by NHS body** **E+W**

- (1) This section applies if an NHS body—
  - (a) is proposing to provide, or secure the provision of, serious medical treatment for a person (“P”) who lacks capacity to consent to the treatment, and
  - (b) is satisfied that there is no person, other than one engaged in providing care or treatment for P in a professional capacity or for remuneration, whom it would be appropriate to consult in determining what would be in P's best interests.
- (2) But this section does not apply if P's treatment is regulated by Part 4 [<sup>F1</sup>or 4A]<sup>F1</sup> of the Mental Health Act.
- (3) Before the treatment is provided, the NHS body must instruct an independent mental capacity advocate to represent P.
- (4) If the treatment needs to be provided as a matter of urgency, it may be provided even though the NHS body has not been able to comply with subsection (3).
- (5) The NHS body must, in providing or securing the provision of treatment for P, take into account any information given, or submissions made, by the independent mental capacity advocate.
- (6) “Serious medical treatment” means treatment which involves providing, withholding or withdrawing treatment of a kind prescribed by regulations made by the appropriate authority.
- (7) “NHS body” has such meaning as may be prescribed by regulations made for the purposes of this section by—

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**Changes to legislation:** *Mental Capacity Act 2005, Section 37 is up to date with all changes known to be in force on or before 23 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*

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- (a) the Secretary of State, in relation to bodies in England, or
- (b) the National Assembly for Wales, in relation to bodies in Wales.

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**Textual Amendments**

- F1** Words in s. 37(2) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 35(6), 56**; [S.I. 2008/1900](#), **art. 2(k)** (with [art. 3](#), [Sch.](#))
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**Commencement Information**

- II** S. 37 wholly in force at 1.10.2007; s. 37 not in force at Royal Assent see s. 68(1)-(3); s. 37 in force for E. at 1.11.2006 for certain purposes and otherwise 1.4.2007 by [S.I. 2006/2814](#), **art. 5**; s. 37 in force at 1.10.2007 for W. by [S.I. 2007/856](#), **art. 5**

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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\(b\)](#)