



# Mental Capacity Act 2005

## 2005 CHAPTER 9

### PART 1

#### PERSONS WHO LACK CAPACITY

##### *Preliminary*

#### **5 Acts in connection with care or treatment**

- (1) If a person (“D”) does an act in connection with the care or treatment of another person (“P”), the act is one to which this section applies if—
  - (a) before doing the act, D takes reasonable steps to establish whether P lacks capacity in relation to the matter in question, and
  - (b) when doing the act, D reasonably believes—
    - (i) that P lacks capacity in relation to the matter, and
    - (ii) that it will be in P's best interests for the act to be done.
- (2) D does not incur any liability in relation to the act that he would not have incurred if P—
  - (a) had had capacity to consent in relation to the matter, and
  - (b) had consented to D's doing the act.
- (3) Nothing in this section excludes a person's civil liability for loss or damage, or his criminal liability, resulting from his negligence in doing the act.
- (4) Nothing in this section affects the operation of sections 24 to 26 (advance decisions to refuse treatment).

**Changes to legislation:**

There are currently no known outstanding effects for the Mental Capacity Act 2005, Section 5.