



Mental Capacity Act 2005

2005 CHAPTER 9

PART 3

MISCELLANEOUS AND GENERAL

General

65 Rules, regulations and orders

- (1) Any power to make rules, regulations or orders under this Act [^{F1}, other than the power in section 21]^{F1}—
- (a) is exercisable by statutory instrument;
 - (b) includes power to make supplementary, incidental, consequential, transitional or saving provision;
 - (c) includes power to make different provision for different cases.
- (2) Any statutory instrument containing rules, regulations or orders made by the Lord Chancellor or the Secretary of State under this Act, other than—
- (a) regulations under section 34 (loss of capacity during research project),
 - (b) regulations under section 41 (adjusting role of independent mental capacity advocacy service),
 - (c) regulations under paragraph 32(1)(b) of Schedule 3 (private international law relating to the protection of adults),
 - (d) an order of the kind mentioned in section 67(6) (consequential amendments of primary legislation), or
 - (e) an order under section 68 (commencement),

is subject to annulment in pursuance of a resolution of either House of Parliament.

- [^{F2}(2A) Any statutory instrument containing regulations made by the Welsh Ministers under Schedule AA1 is subject to annulment in pursuance of a resolution of the National Assembly for Wales.]

Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, Section 65. (See end of Document for details)

- (3) A statutory instrument containing an Order in Council under paragraph 31 of Schedule 3 (provision to give further effect to Hague Convention) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) A statutory instrument containing regulations made by the Secretary of State under section 34 or 41 or by the Lord Chancellor under paragraph 32(1)(b) of Schedule 3 may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (4A) [^{F3}Subsection (2) does not apply to a statutory instrument containing regulations made by the Secretary of State under Schedule A1.]
- (4B) [^{F3}If such a statutory instrument contains regulations under paragraph 42(2)(b), 129, 162 or 164 of Schedule A1 (whether or not it also contains other regulations), the instrument may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.]
- (4C) [^{F3}Subject to that, such a statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament.]
- ^{F4}[^{F5}(5) An order under section 21—
- (a) may include supplementary, incidental, consequential, transitional or saving provision;
 - (b) may make different provision for different cases;
 - (c) is to be made in the form of a statutory instrument to which the Statutory Instruments Act 1946 applies as if the order were made by a Minister of the Crown; and
 - (d) is subject to annulment in pursuance of a resolution of either House of Parliament.]^{F5}

Textual Amendments

- F1** Words in s. 65(1) inserted (3.4.2006) by [The Lord Chancellor \(Transfer of Functions and Supplementary Provisions\) \(No.2\) Order 2006 \(S.I. 2006/1016\)](#), arts. 1, 2, **Sch. 1 para. 37(2)**
- F2** S. 65(2A) inserted (16.5.2019 for specified purposes) by [Mental Capacity \(Amendment\) Act 2019 \(c. 18\)](#), s. 6(3), **Sch. 2 para. 12(2)**
- F3** S. 65(4A)-(4C) omitted (16.5.2019 for specified purposes) by virtue of [Mental Capacity \(Amendment\) Act 2019 \(c. 18\)](#), s. 6(3), **Sch. 2 para. 12(3)**
- F4** S. 65(4A)-(4C) inserted (1.4.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 50, 56, **Sch. 9 para. 11(2)**; S.I. 2008/745, **art. 4(b)**
- F5** S. 65(5) inserted (3.4.2006) by [The Lord Chancellor \(Transfer of Functions and Supplementary Provisions\) \(No.2\) Order 2006 \(S.I. 2006/1016\)](#), arts. 1, 2, **Sch. 1 para. 37(3)**

Changes to legislation:

There are currently no known outstanding effects for the Mental Capacity Act 2005, Section 65.