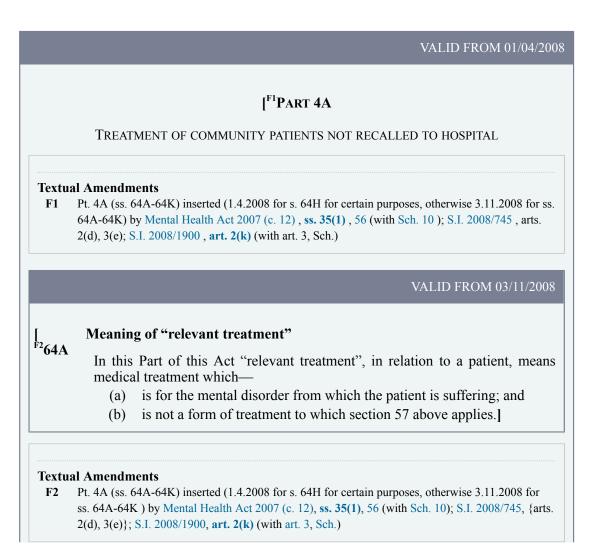
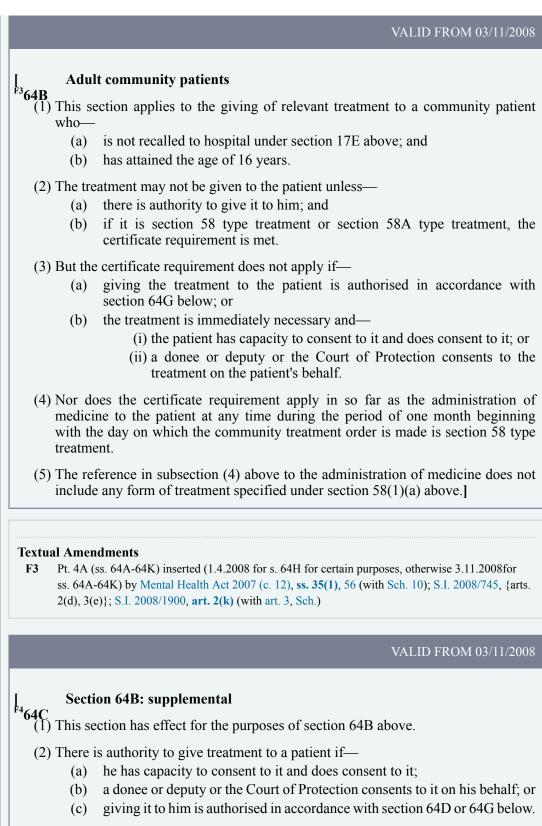


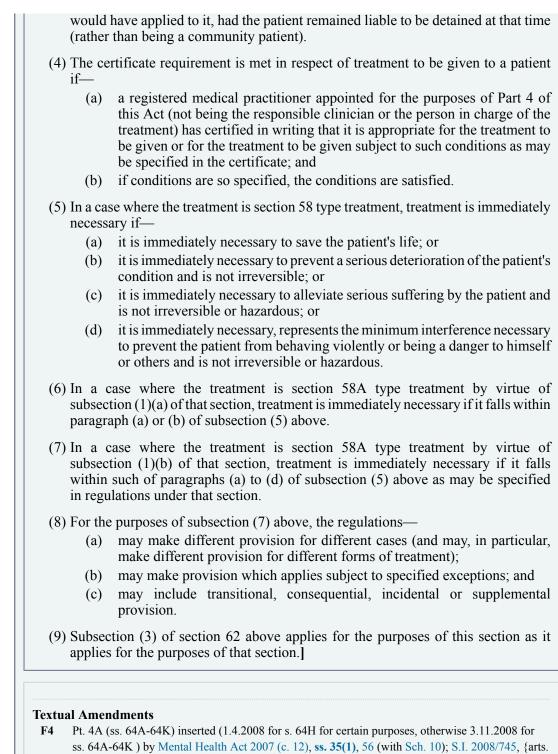
# Mental Health Act 1983

**1983 CHAPTER 20** 

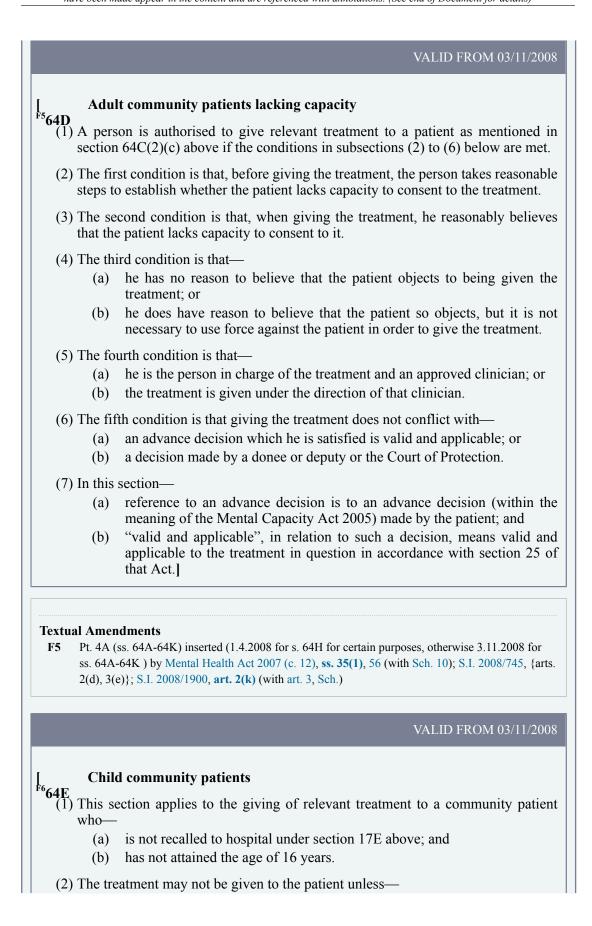




(3) Relevant treatment is section 58 type treatment or section 58A type treatment if, at the time when it is given to the patient, section 58 or 58A above (respectively)



2(d), 3(e)}; S.I. 2008/1900, art. 2(k) (with art. 3, Sch.)



| <ul> <li>(a) there is authority to give it to him; and         <ul> <li>(b) if it is section 58 type treatment or section 58A type treatment, the certificate requirement does not apply if—</li></ul></li></ul>   |                   |  |   |
|--|-------------------|--|---|
| <ul> <li>(a) giving the treatment to the patient is authorised in accordance with section 64G below; or</li> <li>(b) in a case where the patient is competent to consent to the treatment and does consent to it, the treatment is immediately necessary.</li> <li>(4) Nor does the certificate requirement apply in so far as the administration of medicine to the patient at any time during the period of one month beginning with the day on which the community treatment order is made is section 58 type treatment.</li> <li>(5) The reference in subsection (4) above to the administration of medicine does not include any form of treatment specified under section 58(1)(a) above.</li> <li>(6) For the purposes of subsection (2)(a) above, there is authority to give treatment to a patient if—         <ul> <li>(a) he is competent to consent to it and he does consent to it; or</li> <li>(b) giving it to him is authorised in accordance with section 64F or 64G below.</li> </ul> </li> <li>(7) Subsections (3) to (9) of section 64C above have effect for the purposes of this section as they have effect for the purposes of subsection 32(2)(d) above apply for the purposes of this section as they apply for the purposes of Part 2 of this Act.]</li> <li><b>Textual Amendments</b> <ul> <li>F6</li> <li>Pt 4A (ss. 64A-64K) inserted (14.2008 for s. 64H for certain purposes, otherwise 3.11.2008 for ss. 64A-64K is methed to give relevant treatment to a patient as mentioned in section 64E(6)(b) above if the conditions in subsections (2) to (5) below are met.</li> </ul> </li> <li><b>Child community patients lacking competence</b> <ul> <li>(1) A person is authorised to give relevant treatment to a patient as mentioned in section 64E(6)(b) above if the conditions in subsections (2) to (5) below are met.</li> <li>(2) The first condition is that, before giving the treatment, he person takes reasonable steps to establish whether the p</li></ul></li></ul> |                   |  | if it is section 58 type treatment or section 58A type treatment, the   |
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- (b) he does have reason to believe that the patient so objects, but it is not necessary to use force against the patient in order to give the treatment.
- (5) The fourth condition is that—
  - (a) he is the person in charge of the treatment and an approved clinician; or
  - (b) the treatment is given under the direction of that clinician.]

#### **Textual Amendments**

F7 Pt. 4A (ss. 64A-64K) inserted (1.4.2008 for s. 64H for certain purposes, otherwise 3.11.2008 for ss. 64A-64K) by Mental Health Act 2007 (c. 12), ss. 35(1), 56 (with Sch. 10); S.I. 2008/745, {arts. 2(d), 3(e)}; S.I. 2008/1900, art. 2(k) (with art. 3, Sch.)

#### VALID FROM 03/11/2008

### [ <sup>F8</sup>64,G

#### Emergency treatment for patients lacking capacity or competence

- A person is also authorised to give relevant treatment to a patient as mentioned in section 64C(2)(c) or 64E(6)(b) above if the conditions in subsections (2) to (4) below are met.
- (2) The first condition is that, when giving the treatment, the person reasonably believes that the patient lacks capacity to consent to it or, as the case may be, is not competent to consent to it.
- (3) The second condition is that the treatment is immediately necessary.
- (4) The third condition is that if it is necessary to use force against the patient in order to give the treatment—
  - (a) the treatment needs to be given in order to prevent harm to the patient; and
  - (b) the use of such force is a proportionate response to the likelihood of the patient's suffering harm, and to the seriousness of that harm.

#### (5) Subject to subsections (6) to (8) below, treatment is immediately necessary if-

- (a) it is immediately necessary to save the patient's life; or
- (b) it is immediately necessary to prevent a serious deterioration of the patient's condition and is not irreversible; or
- (c) it is immediately necessary to alleviate serious suffering by the patient and is not irreversible or hazardous; or
- (d) it is immediately necessary, represents the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or others and is not irreversible or hazardous.
- (6) Where the treatment is section 58A type treatment by virtue of subsection (1)(a) of that section, treatment is immediately necessary if it falls within paragraph (a) or (b) of subsection (5) above.
- (7) Where the treatment is section 58A type treatment by virtue of subsection (1)(b) of that section, treatment is immediately necessary if it falls within such of paragraphs (a) to (d) of subsection (5) above as may be specified in regulations under section 58A above.

(8) For the purposes of subsection (7) above, the regulations—

- (a) may make different provision for different cases (and may, in particular, make different provision for different forms of treatment);
- (b) may make provision which applies subject to specified exceptions; and
- (c) may include transitional, consequential, incidental or supplemental provision.
- (9) Subsection (3) of section 62 above applies for the purposes of this section as it applies for the purposes of that section.]

#### **Textual Amendments**

F8 Pt. 4A (ss. 64A-64K) inserted (1.4.2008 for s. 64H for certain purposes, otherwise 3.11.2008 for ss. 64A-64K) by Mental Health Act 2007 (c. 12), ss. 35(1), 56 (with Sch. 10); S.I. 2008/745, {arts. 2(d), 3(e)}; S.I. 2008/1900, art. 2(k) (with art. 3, Sch.)

#### 64H Certificates: supplementary provisions

- (1) A certificate under section 64B(2)(b) or 64E(2)(b) above (a "Part 4A certificate") may relate to a plan of treatment under which the patient is to be given (whether within a specified period or otherwise) one or more forms of section 58 type treatment or section 58A type treatment.
- (2) A Part 4A certificate shall be in such form as may be prescribed by regulations made by the appropriate national authority.
- (3) Before giving a Part 4A certificate, the registered medical practitioner concerned shall consult two other persons who have been professionally concerned with the patient's medical treatment but, of those persons—
  - (a) at least one shall be a person who is not a registered medical practitioner; and
  - (b) neither shall be the patient's responsible clinician or the person in charge of the treatment in question.
- (4) Where a patient is given treatment in accordance with a Part 4A certificate, a report on the treatment and the patient's condition shall be given by the person in charge of the treatment to the appropriate national authority if required by that authority.
- (5) The appropriate national authority may at any time give notice directing that a Part 4A certificate shall not apply to treatment given to a patient after a date specified in the notice, and the relevant section shall then apply to any such treatment as if that certificate had not been given.
- (6) The relevant section is—
  - (a) if the patient is not recalled to hospital in accordance with section 17E above, section 64B or 64E above;
  - (b) if the patient is so recalled or is liable to be detained under this Act following revocation of the community treatment order under section 17F above—
    - (i) section 58 above, in the case of section 58 type treatment;
    - (ii) section 58A above, in the case of section 58A type treatment;

(subject to section 62A(2) above).

- (7) The notice under subsection (5) above shall be given to the person in charge of the treatment in question.
- (8) Subsection (5) above shall not preclude the continuation of any treatment or of treatment under any plan pending compliance with the relevant section if the person in charge of the treatment considers that the discontinuance of the treatment or of treatment under the plan would cause serious suffering to the patient.

#### (9) In this section, "the appropriate national authority" means-

- (a) in relation to community patients in respect of whom the responsible hospital is in England, the Secretary of State;
- (b) in relation to community patients in respect of whom the responsible hospital is in Wales, the Welsh Ministers.

VALID FROM 03/11/2008

# Liability for negligence

Nothing in section 64D, 64F or 64G above excludes a person's civil liability for loss or damage, or his criminal liability, resulting from his negligence in doing anything authorised to be done by that section.]

#### **Textual Amendments**

F9 Pt. 4A (ss. 64A-64K) inserted (1.4.2008 for s. 64H for certain purposes, otherwise 3.11.2008 for ss. 64A-64K) by Mental Health Act 2007 (c. 12), ss. 35(1), 56 (with Sch. 10); S.I. 2008/745, {arts. 2(d), 3(e)}; S.I. 2008/1900, art. 2(k) (with art. 3, Sch.)

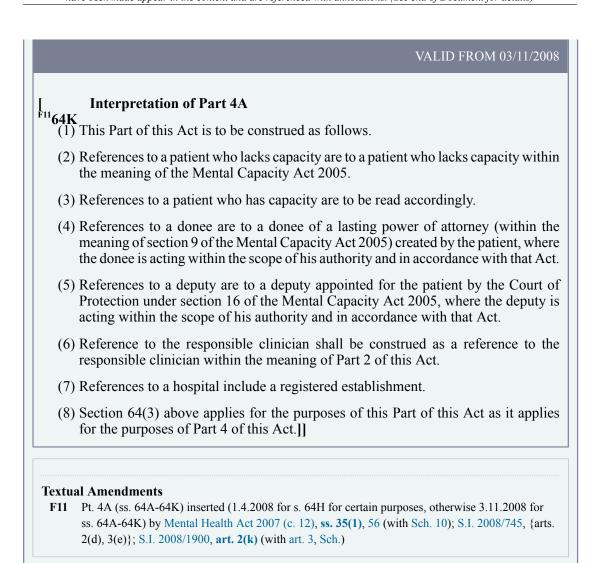
#### VALID FROM 03/11/2008

### [ Factors to be considered in determining whether patient objects to treatment

- (1) In assessing for the purposes of this Part whether he has reason to believe that a patient objects to treatment, a person shall consider all the circumstances so far as they are reasonably ascertainable, including the patient's behaviour, wishes, feelings, views, beliefs and values.
- (2) But circumstances from the past shall be considered only so far as it is still appropriate to consider them.]

#### **Textual Amendments**

F10 Pt. 4A (ss. 64A-64K) inserted (1.4.2008 for s. 64H for certain purposes, otherwise 3.11.2008 for ss. 64A-64K) by Mental Health Act 2007 (c. 12), ss. 35(1), 56 (with Sch. 10); S.I. 2008/745, {arts. 2(d), 3(e)}; S.I. 2008/1900, art. 2(k) (with art. 3, Sch.)



#### Status:

Point in time view as at 01/10/1992. This version of this part contains provisions that are not valid for this point in time.

#### Changes to legislation:

Mental Health Act 1983, Part 4A is up to date with all changes known to be in force on or before 23 May 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.