



# Mental Capacity Act 2005

## 2005 CHAPTER 9

### PART 1

#### PERSONS WHO LACK CAPACITY

##### *General powers of the court and appointment of deputies*

#### **20 Restrictions on deputies**

- (1) A deputy does not have power to make a decision on behalf of P in relation to a matter if he knows or has reasonable grounds for believing that P has capacity in relation to the matter.
- (2) Nothing in section 16(5) or 17 permits a deputy to be given power—
  - (a) to prohibit a named person from having contact with P;
  - (b) to direct a person responsible for P's health care to allow a different person to take over that responsibility.
- (3) A deputy may not be given powers with respect to—
  - (a) the settlement of any of P's property, whether for P's benefit or for the benefit of others,
  - (b) the execution for P of a will, or
  - (c) the exercise of any power (including a power to consent) vested in P whether beneficially or as trustee or otherwise.
- (4) A deputy may not be given power to make a decision on behalf of P which is inconsistent with a decision made, within the scope of his authority and in accordance with this Act, by the donee of a lasting power of attorney granted by P (or, if there is more than one donee, by any of them).
- (5) A deputy may not refuse consent to the carrying out or continuation of life-sustaining treatment in relation to P.

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*Status: Point in time view as at 01/10/2007. This version of this provision has been superseded.*

*Changes to legislation: Mental Capacity Act 2005, Section 20 is up to date with all changes known to be in force on or before 19 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. (See end of Document for details)*

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- (6) The authority conferred on a deputy is subject to the provisions of this Act and, in particular, sections 1 (the principles) and 4 (best interests).
- (7) A deputy may not do an act that is intended to restrain P unless four conditions are satisfied.
- (8) The first condition is that, in doing the act, the deputy is acting within the scope of an authority expressly conferred on him by the court.
- (9) The second is that P lacks, or the deputy reasonably believes that P lacks, capacity in relation to the matter in question.
- (10) The third is that the deputy reasonably believes that it is necessary to do the act in order to prevent harm to P.
- (11) The fourth is that the act is a proportionate response to—
  - (a) the likelihood of P's suffering harm, [<sup>F1</sup>and<sup>F1</sup>]
  - (b) the seriousness of that harm.
- (12) For the purposes of this section, a deputy restrains P if he—
  - (a) uses, or threatens to use, force to secure the doing of an act which P resists, or
  - (b) restricts P's liberty of movement, whether or not P resists,
 or if he authorises another person to do any of those things.
- (13) But a deputy does more than merely restrain P if he deprives P of his liberty within the meaning of Article 5(1) of the Human Rights Convention (whether or not the deputy is a public authority).

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#### Textual Amendments

- F1** Word in s. 20(11)(a) substituted (1.10.2007) by [Mental Health Act 2007 \(c. 12\)](#), ss. 51, 56; S.I. 2007/2635, art. 2

**Status:**

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