



# Mental Capacity Act 2005

## 2005 CHAPTER 9

### PART 1

#### PERSONS WHO LACK CAPACITY

##### *Excluded decisions*

#### **27 Family relationships etc.**

(1) Nothing in this Act permits a decision on any of the following matters to be made on behalf of a person—

- (a) consenting to marriage or a civil partnership,
- (b) consenting to have sexual relations,
- (c) consenting to a decree of divorce being granted on the basis of two years' separation,
- (d) consenting to a dissolution order being made in relation to a civil partnership on the basis of two years' separation,
- (e) consenting to a child's being placed for adoption by an adoption agency,
- (f) consenting to the making of an adoption order,
- (g) discharging parental responsibilities in matters not relating to a child's property,
- (h) giving a consent under the Human Fertilisation and Embryology Act 1990 (c. 37).

[<sup>F1</sup>(i) giving a consent under the Human Fertilisation and Embryology Act 2008.]

<sup>F1</sup>(2) “Adoption order” means—

- (a) an adoption order within the meaning of the Adoption and Children Act 2002 (c. 38) (including a future adoption order), and
- (b) an order under section 84 of that Act (parental responsibility prior to adoption abroad).

*Status: Point in time view as at 01/09/2021.*

*Changes to legislation: Mental Capacity Act 2005, Cross Heading: Excluded decisions is up to date with all changes known to be in force on or before 22 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)*

### Textual Amendments

- F1** S. 27(1)(i) inserted (6.4.2009) by [Human Fertilisation and Embryology Act 2008 \(c. 22\)](#), ss. 56, 68, [Sch. 6 para. 40](#); S.I. 2009/479, [art. 6\(1\)\(d\)](#) (with transitional provisions in [art. 7 Sch. 1](#))

### Modifications etc. (not altering text)

- C1** S. 27(1)(g) restricted (1.9.2014) by [The Special Educational Needs and Disability Regulations 2014 \(S.I. 2014/1530\)](#), regs. 1, [65](#)
- C2** S. 27(1)(g) excluded (1.4.2015) by [The Special Educational Needs and Disability \(Detained Persons\) Regulations 2015 \(S.I. 2015/62\)](#), regs. 1, [33](#)
- C3** S. 27(1)(g) restricted (2.11.2020 for specified purposes, 1.9.2021 in so far as not already in force) by 2010 c. 15, [Sch. 17 para. 6F](#) (as inserted by [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), s. 100(3), [Sch. 1 para. 19\(5\)\(h\)](#)); S.I. 2020/1182, reg. 3(1)(n); S.I. 2021/373, art. 8(j)(xxxiii)
- C4** S. 27(1)(g): power to restrict conferred (2.11.2020 for specified purposes, 1.9.2021 in so far as not already in force) by [Additional Learning Needs and Education Tribunal \(Wales\) Act 2018 \(anaw 2\)](#), ss. [83](#), 100(3); S.I. 2020/1182, reg. 3(1)(j); S.I. 2021/373, art. 8(h)
- C5** S. 27(1)(g) excluded (W.) (1.9.2021) by [The Additional Learning Needs \(Wales\) Regulations 2021 \(S.I. 2021/401\)](#), regs. 1(2), [42](#)
- C6** S. 27(1)(g) excluded (W.) (1.9.2021) by [The Equality Act 2010 \(Capacity of parents and persons over compulsory school age\) \(Wales\) Regulations 2021 \(S.I. 2021/403\)](#), regs. 1(2), [6](#)

## 28 Mental Health Act matters

(1) Nothing in this Act authorises anyone—

- (a) to give a patient medical treatment for mental disorder, or
  - (b) to consent to a patient's being given medical treatment for mental disorder,
- if, at the time when it is proposed to treat the patient, his treatment is regulated by Part 4 of the Mental Health Act.

[<sup>F2</sup>(1A) Subsection (1) does not apply in relation to any form of treatment to which section 58A of that Act (electro-convulsive therapy, etc.) applies if the patient comes within subsection (7) of that section (informal patient under 18 who cannot give consent).]

<sup>F2</sup>[<sup>F3</sup>(1B) Section 5 does not apply to an act to which section 64B of the Mental Health Act applies (treatment of community patients not recalled to hospital).]

<sup>F3</sup>(2) “Medical treatment”, “mental disorder” and “patient” have the same meaning as in that Act.

### Textual Amendments

- F2** S. 28(1A) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. [28\(10\)](#), 56; S.I. 2008/1900, [art. 2\(g\)](#) (with [art. 3, Sch.](#))
- F3** S. 28(1B) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. [35\(5\)](#), 56; S.I. 2008/1900, [art. 2\(k\)](#) (with [art. 3, Sch.](#))

## 29 Voting rights

(1) Nothing in this Act permits a decision on voting at an election for any public office, or at a referendum, to be made on behalf of a person.

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- (2) “Referendum” has the same meaning as in section 101 of the Political Parties, Elections and Referendums Act 2000 (c. 41).

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