



# Mental Capacity Act 2005

## 2005 CHAPTER 9

### PART 1

#### PERSONS WHO LACK CAPACITY

##### *Advance decisions to refuse treatment*

#### 26 Effect of advance decisions

- (1) If P has made an advance decision which is—
  - (a) valid, and
  - (b) applicable to a treatment,the decision has effect as if he had made it, and had had capacity to make it, at the time when the question arises whether the treatment should be carried out or continued.
- (2) A person does not incur liability for carrying out or continuing the treatment unless, at the time, he is satisfied that an advance decision exists which is valid and applicable to the treatment.
- (3) A person does not incur liability for the consequences of withholding or withdrawing a treatment from P if, at the time, he reasonably believes that an advance decision exists which is valid and applicable to the treatment.
- (4) The court may make a declaration as to whether an advance decision—
  - (a) exists;
  - (b) is valid;
  - (c) is applicable to a treatment.
- (5) Nothing in an apparent advance decision stops a person—
  - (a) providing life-sustaining treatment, or
  - (b) doing any act he reasonably believes to be necessary to prevent a serious deterioration in P's condition,while a decision as respects any relevant issue is sought from the court.

**Status:**

Point in time view as at 01/04/2018.

**Changes to legislation:**

Mental Capacity Act 2005, Section 26 is up to date with all changes known to be in force on or before 09 June 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.