



# Mental Capacity Act 2005

## 2005 CHAPTER 9

### PART 1

#### PERSONS WHO LACK CAPACITY

##### *Lasting powers of attorney*

#### **11 Lasting powers of attorney: restrictions**

- (1) A lasting power of attorney does not authorise the donee (or, if more than one, any of them) to do an act that is intended to restrain P, unless three conditions are satisfied.
- (2) The first condition is that P lacks, or the donee reasonably believes that P lacks, capacity in relation to the matter in question.
- (3) The second is that the donee reasonably believes that it is necessary to do the act in order to prevent harm to P.
- (4) The third is that the act is a proportionate response to—
  - (a) the likelihood of P's suffering harm, and
  - (b) the seriousness of that harm.
- (5) For the purposes of this section, the donee 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.
- (6) But the donee 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.
- (7) Where a lasting power of attorney authorises the donee (or, if more than one, any of them) to make decisions about P's personal welfare, the authority—
  - (a) does not extend to making such decisions in circumstances other than those where P lacks, or the donee reasonably believes that P lacks, capacity,

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*Status: This is the original version (as it was originally enacted).*

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- (b) is subject to sections 24 to 26 (advance decisions to refuse treatment), and
  - (c) extends to giving or refusing consent to the carrying out or continuation of a treatment by a person providing health care for P.
- (8) But subsection (7)(c)—
- (a) does not authorise the giving or refusing of consent to the carrying out or continuation of life-sustaining treatment, unless the instrument contains express provision to that effect, and
  - (b) is subject to any conditions or restrictions in the instrument.