

Status: Point in time view as at 01/04/2009.

Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, Part 1. (See end of Document for details)

SCHEDULES

[^{F1}SCHEDULE 1A

PERSONS INELIGIBLE TO BE DEPRIVED OF LIBERTY BY THIS ACT

Textual Amendments

- F1** Sch. 1A inserted (1.4.2009) by Mental Health Act 2007 (c. 12), ss. 50, 56, Sch. 8 (with s. 50(8)-(13)); S.I. 2009/139, art. 2(d) (with art. 3)

PART 1

INELIGIBLE PERSONS

Application

- 1 This Schedule applies for the purposes of—
- (a) section 16A, and
 - (b) paragraph 17 of Schedule A1.

Determining ineligibility

- 2 A person (“P”) is ineligible to be deprived of liberty by this Act (“ineligible”) if—
- (a) P falls within one of the cases set out in the second column of the following table, and
 - (b) the corresponding entry in the third column of the table—or the provision, or one of the provisions, referred to in that entry—provides that he is ineligible.

	<i>Status of P</i>	<i>Determination of ineligibility</i>
<i>Case A</i>	P is— <ul style="list-style-type: none">(a) subject to the hospital treatment regime, and(b) detained in a hospital under that regime.	P is ineligible.
<i>Case B</i>	P is— <ul style="list-style-type: none">(a) subject to the hospital	See paragraphs 3 and 4.

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	treatment regime, but	
	(b) not detained in a hospital under that regime.	
<i>Case C</i>	P is subject to the community treatment regime.	See paragraphs 3 and 4.
<i>Case D</i>	P is subject to the guardianship regime.	See paragraphs 3 and 5.
<i>Case E</i>	P is— (a) within the scope of the Mental Health Act, but (b) not subject to any of the mental health regimes.	See paragraph 5.

Authorised course of action not in accordance with regime

- 3 (1) This paragraph applies in cases B, C and D in the table in paragraph 2.
- (2) P is ineligible if the authorised course of action is not in accordance with a requirement which the relevant regime imposes.
- (3) That includes any requirement as to where P is, or is not, to reside.
- (4) The relevant regime is the mental health regime to which P is subject.

Treatment for mental disorder in a hospital

- 4 (1) This paragraph applies in cases B and C in the table in paragraph 2.
- (2) P is ineligible if the relevant care or treatment consists in whole or in part of medical treatment for mental disorder in a hospital.

P objects to being a mental health patient etc

- 5 (1) This paragraph applies in cases D and E in the table in paragraph 2.
- (2) P is ineligible if the following conditions are met.
- (3) The first condition is that the relevant instrument authorises P to be a mental health patient.
- (4) The second condition is that P objects—
- (a) to being a mental health patient, or
- (b) to being given some or all of the mental health treatment.
- (5) The third condition is that a donee or deputy has not made a valid decision to consent to each matter to which P objects.

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- (6) In determining whether or not P objects to something, regard must be had to all the circumstances (so far as they are reasonably ascertainable), including the following—
- (a) P's behaviour;
 - (b) P's wishes and feelings;
 - (c) P's views, beliefs and values.
- (7) But regard is to be had to circumstances from the past only so far as it is still appropriate to have regard to them.]

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