

*Status: Point in time view as at 01/04/2009.*

**Changes to legislation:** Mental Capacity Act 2005, Part 1 is up to date with all changes known to be in force on or before 18 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)

## SCHEDULES

### [<sup>F1</sup>SCHEDULE 1A E+W

#### 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 E+W

##### 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"><li>(a) subject to the hospital treatment regime, and</li><li>(b) detained in a hospital under that regime.</li></ul>	P is ineligible.
<i>Case B</i>	P is— <ul style="list-style-type: none"><li>(a) subject to the hospital</li></ul>	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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