



Mental Capacity Act 2005

2005 CHAPTER 9

PART 1

PERSONS WHO LACK CAPACITY

Advance decisions to refuse treatment

25 Validity and applicability of advance decisions

- (1) An advance decision does not affect the liability which a person may incur for carrying out or continuing a treatment in relation to P unless the decision is at the material time—
 - (a) valid, and
 - (b) applicable to the treatment.
- (2) An advance decision is not valid if P—
 - (a) has withdrawn the decision at a time when he had capacity to do so,
 - (b) has, under a lasting power of attorney created after the advance decision was made, conferred authority on the donee (or, if more than one, any of them) to give or refuse consent to the treatment to which the advance decision relates, or
 - (c) has done anything else clearly inconsistent with the advance decision remaining his fixed decision.
- (3) An advance decision is not applicable to the treatment in question if at the material time P has capacity to give or refuse consent to it.
- (4) An advance decision is not applicable to the treatment in question if—
 - (a) that treatment is not the treatment specified in the advance decision,
 - (b) any circumstances specified in the advance decision are absent, or
 - (c) there are reasonable grounds for believing that circumstances exist which P did not anticipate at the time of the advance decision and which would have affected his decision had he anticipated them.

Status: This is the original version (as it was originally enacted).

- (5) An advance decision is not applicable to life-sustaining treatment unless—
 - (a) the decision is verified by a statement by P to the effect that it is to apply to that treatment even if life is at risk, and
 - (b) the decision and statement comply with subsection (6).
- (6) A decision or statement complies with this subsection only if—
 - (a) it is in writing,
 - (b) it is signed by P or by another person in P's presence and by P's direction,
 - (c) the signature is made or acknowledged by P in the presence of a witness, and
 - (d) the witness signs it, or acknowledges his signature, in P's presence.
- (7) The existence of any lasting power of attorney other than one of a description mentioned in subsection (2)(b) does not prevent the advance decision from being regarded as valid and applicable.