



# Mental Capacity Act 2005

## 2005 CHAPTER 9

### PART 1 **E+W**

#### PERSONS WHO LACK CAPACITY

##### *Preliminary*

#### **5 Acts in connection with care or treatment **E+W****

- (1) If a person (“D”) does an act in connection with the care or treatment of another person (“P”), the act is one to which this section applies if—
  - (a) before doing the act, D takes reasonable steps to establish whether P lacks capacity in relation to the matter in question, and
  - (b) when doing the act, D reasonably believes—
    - (i) that P lacks capacity in relation to the matter, and
    - (ii) that it will be in P's best interests for the act to be done.
- (2) D does not incur any liability in relation to the act that he would not have incurred if P—
  - (a) had had capacity to consent in relation to the matter, and
  - (b) had consented to D's doing the act.
- (3) Nothing in this section excludes a person's civil liability for loss or damage, or his criminal liability, resulting from his negligence in doing the act.
- (4) Nothing in this section affects the operation of sections 24 to 26 (advance decisions to refuse treatment).

**Changes to legislation:**

Mental Capacity Act 2005, Section 5 is up to date with all changes known to be in force on or before 27 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.

[View outstanding changes](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 58(4)(ca) inserted by [2023 c. 42 Sch. para. 10](#)
- Sch. 1 para. 4A inserted by [2023 c. 42 Sch. para. 3](#)
- Sch. 1 para. 10A and cross-heading inserted by [2023 c. 42 Sch. para. 6](#)
- Sch. 1 para. 13A inserted by [2023 c. 42 Sch. para. 7\(2\)](#)
- Sch. 1 para. 16(1A) inserted by [2023 c. 42 Sch. para. 8\(b\)](#)