



# Mental Capacity Act 2005

## 2005 CHAPTER 9

### PART 1

#### PERSONS WHO LACK CAPACITY

##### *Advance decisions to refuse treatment*

#### **24 Advance decisions to refuse treatment: general**

- (1) “Advance decision” means a decision made by a person (“P”), after he has reached 18 and when he has capacity to do so, that if—
  - (a) at a later time and in such circumstances as he may specify, a specified treatment is proposed to be carried out or continued by a person providing health care for him, and
  - (b) at that time he lacks capacity to consent to the carrying out or continuation of the treatment,the specified treatment is not to be carried out or continued.
- (2) For the purposes of subsection (1)(a), a decision may be regarded as specifying a treatment or circumstances even though expressed in layman's terms.
- (3) P may withdraw or alter an advance decision at any time when he has capacity to do so.
- (4) A withdrawal (including a partial withdrawal) need not be in writing.
- (5) An alteration of an advance decision need not be in writing (unless section 25(5) applies in relation to the decision resulting from the alteration).

#### **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

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- (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  - (a) has withdrawn the decision at a time when he had capacity to do so,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.
- (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.

## **26 Effect of advance decisions**

- (1) If P has made an advance decision which is—
  - (a) valid, and
  - (b) applicable to a treatment,
 the decision has effect as if he had made it, and had had capacity to make it, at the time when the question arises whether the treatment should be carried out or continued.
- (2) A person does not incur liability for carrying out or continuing the treatment unless, at the time, he is satisfied that an advance decision exists which is valid and applicable to the treatment.
- (3) A person does not incur liability for the consequences of withholding or withdrawing a treatment from P if, at the time, he reasonably believes that an advance decision exists which is valid and applicable to the treatment.
- (4) The court may make a declaration as to whether an advance decision—

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- (a) exists;
  - (b) is valid;
  - (c) is applicable to a treatment.
- (5) Nothing in an apparent advance decision stops a person—
- (a) providing life-sustaining treatment, or
  - (b) doing any act he reasonably believes to be necessary to prevent a serious deterioration in P's condition,
- while a decision as respects any relevant issue is sought from the court.

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