



Mental Capacity Act 2005

2005 CHAPTER 9

PART 1

PERSONS WHO LACK CAPACITY

General powers of the court and appointment of deputies

20 Restrictions on deputies

- (1) A deputy does not have power to make a decision on behalf of P in relation to a matter if he knows or has reasonable grounds for believing that P has capacity in relation to the matter.
- (2) Nothing in section 16(5) or 17 permits a deputy to be given power—
 - (a) to prohibit a named person from having contact with P;
 - (b) to direct a person responsible for P's health care to allow a different person to take over that responsibility.
- (3) A deputy may not be given powers with respect to—
 - (a) the settlement of any of P's property, whether for P's benefit or for the benefit of others,
 - (b) the execution for P of a will, or
 - (c) the exercise of any power (including a power to consent) vested in P whether beneficially or as trustee or otherwise.
- (4) A deputy may not be given power to make a decision on behalf of P which is inconsistent with a decision made, within the scope of his authority and in accordance with this Act, by the donee of a lasting power of attorney granted by P (or, if there is more than one donee, by any of them).
- (5) A deputy may not refuse consent to the carrying out or continuation of life-sustaining treatment in relation to P.

Status: This is the original version (as it was originally enacted).

- (6) The authority conferred on a deputy is subject to the provisions of this Act and, in particular, sections 1 (the principles) and 4 (best interests).
- (7) A deputy may not do an act that is intended to restrain P unless four conditions are satisfied.
- (8) The first condition is that, in doing the act, the deputy is acting within the scope of an authority expressly conferred on him by the court.
- (9) The second is that P lacks, or the deputy reasonably believes that P lacks, capacity in relation to the matter in question.
- (10) The third is that the deputy reasonably believes that it is necessary to do the act in order to prevent harm to P.
- (11) The fourth is that the act is a proportionate response to—
 - (a) the likelihood of P’s suffering harm, or
 - (b) the seriousness of that harm.
- (12) For the purposes of this section, a deputy restrains P if he—
 - (a) uses, or threatens to use, force to secure the doing of an act which P resists, or
 - (b) restricts P’s liberty of movement, whether or not P resists,or if he authorises another person to do any of those things.
- (13) But a deputy does more than merely restrain P if he deprives P of his liberty within the meaning of Article 5(1) of the Human Rights Convention (whether or not the deputy is a public authority).