



# Mental Capacity Act 2005

## 2005 CHAPTER 9

### PART 1

#### PERSONS WHO LACK CAPACITY

##### *Excluded decisions*

#### **28 Mental Health Act matters**

- (1) Nothing in this Act authorises anyone—
- (a) to give a patient medical treatment for mental disorder, or
  - (b) to consent to a patient's being given medical treatment for mental disorder,
- if, at the time when it is proposed to treat the patient, his treatment is regulated by Part 4 of the Mental Health Act.

[<sup>F1</sup>(1A) Subsection (1) does not apply in relation to any form of treatment to which section 58A of that Act (electro-convulsive therapy, etc.) applies if the patient comes within subsection (7) of that section (informal patient under 18 who cannot give consent).]

<sup>F1</sup>[<sup>F2</sup>(1B) Section 5 does not apply to an act to which section 64B of the Mental Health Act applies (treatment of community patients not recalled to hospital).]

<sup>F2</sup>(2) “Medical treatment”, “mental disorder” and “patient” have the same meaning as in that Act.

#### **Textual Amendments**

**F1** S. 28(1A) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 28(10)**, 56; S.I. 2008/1900, **art. 2(g)** (with [art. 3](#), Sch.)

**F2** S. 28(1B) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 35(5)**, 56; S.I. 2008/1900, **art. 2(k)** (with [art. 3](#), Sch.)

**Changes to legislation:**

There are currently no known outstanding effects for the Mental Capacity Act 2005, Section 28.