



# Mental Capacity Act 2005

## 2005 CHAPTER 9

### PART 3 **E+W**

#### MISCELLANEOUS AND GENERAL

##### *General*

#### 65 Rules, regulations and orders **E+W**

- (1) Any power to make rules, regulations or orders under this Act [<sup>F1</sup>, other than the power in section 21]<sup>F1</sup>—
- is exercisable by statutory instrument;
  - includes power to make supplementary, incidental, consequential, transitional or saving provision;
  - includes power to make different provision for different cases.
- (2) Any statutory instrument containing rules, regulations or orders made by the Lord Chancellor or the Secretary of State under this Act, other than—
- regulations under section 34 (loss of capacity during research project),
  - regulations under section 41 (adjusting role of independent mental capacity advocacy service),
  - regulations under paragraph 32(1)(b) of Schedule 3 (private international law relating to the protection of adults),
  - an order of the kind mentioned in section 67(6) (consequential amendments of primary legislation), or
  - an order under section 68 (commencement),

is subject to annulment in pursuance of a resolution of either House of Parliament.

[<sup>F2</sup>(2A) Any statutory instrument containing regulations made by the Welsh Ministers under Schedule AA1 is subject to annulment in pursuance of a resolution of the National Assembly for Wales.]

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**Changes to legislation:** *Mental Capacity Act 2005, Section 65 is up to date with all changes known to be in force on or before 20 October 2023. 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. (See end of Document for details) View outstanding changes*

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- (3) A statutory instrument containing an Order in Council under paragraph 31 of Schedule 3 (provision to give further effect to Hague Convention) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) A statutory instrument containing regulations made by the Secretary of State under section 34 or 41 or by the Lord Chancellor under paragraph 32(1)(b) of Schedule 3 may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (4A) <sup>F3</sup>Subsection (2) does not apply to a statutory instrument containing regulations made by the Secretary of State under Schedule A1.]
- (4B) <sup>F3</sup>If such a statutory instrument contains regulations under paragraph 42(2)(b), 129, 162 or 164 of Schedule A1 (whether or not it also contains other regulations), the instrument may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.]
- (4C) <sup>F3</sup>Subject to that, such a statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament.]
- <sup>F4</sup><sup>F5</sup>(5) An order under section 21—
- (a) may include supplementary, incidental, consequential, transitional or saving provision;
  - (b) may make different provision for different cases;
  - (c) is to be made in the form of a statutory instrument to which the Statutory Instruments Act 1946 applies as if the order were made by a Minister of the Crown; and
  - (d) is subject to annulment in pursuance of a resolution of either House of Parliament.]<sup>F5</sup>

#### Textual Amendments

- F1** Words in s. 65(1) inserted (3.4.2006) by [The Lord Chancellor \(Transfer of Functions and Supplementary Provisions\) \(No.2\) Order 2006 \(S.I. 2006/1016\)](#), arts. 1, 2, **Sch. 1 para. 37(2)**
- F2** S. 65(2A) inserted (16.5.2019 for specified purposes) by [Mental Capacity \(Amendment\) Act 2019 \(c. 18\)](#), s. 6(3), **Sch. 2 para. 12(2)**
- F3** S. 65(4A)-(4C) omitted (16.5.2019 for specified purposes) by virtue of [Mental Capacity \(Amendment\) Act 2019 \(c. 18\)](#), s. 6(3), **Sch. 2 para. 12(3)**
- F4** S. 65(4A)-(4C) inserted (1.4.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 50, 56, **Sch. 9 para. 11(2)**; [S.I. 2008/745](#), **art. 4(b)**
- F5** S. 65(5) inserted (3.4.2006) by [The Lord Chancellor \(Transfer of Functions and Supplementary Provisions\) \(No.2\) Order 2006 \(S.I. 2006/1016\)](#), arts. 1, 2, **Sch. 1 para. 37(3)**

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**Changes and effects yet to be applied to :**

- s. 65(1)(c) words inserted by [2023 c. 42 Sch. para. 11](#)

**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\(b\)](#)