

Mental Capacity Act 2005

Factsheet 14 – 13 January 2010 (4 pages)

The Mental Capacity Act 2005 came into force fully in October 2007. It provides a legal framework to empower and protect people who are unable to make some decisions for themselves. It covers how we should deal with situations where an adult does not have the ability or ‘capacity’ to make certain decisions about their life. These decisions can range from routine questions like what to eat, to questions about where to live or whether to have a particular treatment.

The Act covers the good practice and common law principles that were already in place. It replaces previous arrangements for Enduring Powers of Attorney and Court of Protection receivers.

Who is this act for?

People aged 16 and over who;

- **have an impairment of the mind or brain and**
- **are unable, or lack the ‘capacity’ to make a certain decision**

What does the act cover?

- **A single, clear test for assessing whether a person lacks capacity to make a particular decision at a particular time**
- **Five ‘principles’ that should be considered whenever there is a**

concern that an adult may not be able to make a particular decision;

- **assume someone has capacity, unless assessed and evidenced as otherwise**
- **take all practicable steps to support individuals to make their own decisions**
- **decisions considered by others as unwise, should not be seen as meaning someone lacks capacity or the right to make that decision**
- **an act done or decision taken on behalf of someone who lacks capacity, must be done in that person's 'best interests' and,**
 - **is the least restrictive on that person's rights and freedoms**
- **Lasting Powers of Attorney (LPA) - ways to appoint others to act on your behalf for a time when you may lack capacity in relation to either your financial or health and social care arrangements.**
- **Advance decisions to refuse treatment - rules with clear safeguards so that people may make a decision in advance to refuse treatment if they should lack capacity in the future**
- **Neglect or ill-treatment criminal offence - a new criminal offence of ill-treatment or neglect of a person who lacks capacity**
- **Independent Mental Capacity Advocate - someone appointed to support a person who lacks capacity but has no one to speak for them, such as family or friends. They can be involved where decisions are being made about serious medical treatment or a change in the person's accommodation where it is provided by**

the National Health Service or a local authority.

- **Research** – the act provides boundaries for any research involving someone who lacks the capacity to consent to their involvement in that research.

What else does the act involve?

- **Court of Protection** - The new Court will have jurisdiction relating to the whole Act. It will have its own procedures and nominated judges. It will be able to make declarations, decisions and orders affecting people who lack capacity. It will make decisions for, or appoint deputies to make decisions on behalf of people lacking capacity. It will deal with decisions concerning property and affairs, as well as health and welfare decisions. It will be particularly important in resolving complex or disputed cases involving, for example, whether or not someone lacks capacity or what is in their best interests.
- **Public Guardian** - The Public Guardian has several duties under the Act and will be supported in carrying these out by an Office of the Public Guardian (OPG). The Public Guardian and his staff will be the registering authority for LPAs and *deputies*. They will supervise deputies appointed by the Court and provide information to help the Court make decisions. They will also work together with other agencies, such as the police and Adult & Community Services, to respond to any concerns raised about the way in which an attorney or deputy is operating. For more information see www.publicguardian.gov.uk.

Who has to use the act?

Anyone involved in making decisions for an adult who is unable to do so for themselves, needs to use the Mental Capacity Act to make sure they protect themselves and the rights of the person on whose behalf they are acting. A *Code of Practice*

www.dca.gov.uk/menincap/legis.htm#codeofpractice sets out the provisions of the act in more detail and certain people like professionals, paid workers and attorneys have to 'have regard' for that code of practice.

How can I find out more?

- A range of booklets about the act for carers, friends, family and professionals can be found at www.publicguardian.gov.uk/forms/additional-publications-and-newsletters.htm#mcab
- Devon County Council website www.devon.gov.uk/mentalcapacityact

Further factsheets can be found online at www.devon.gov.uk/factsheets

If you have any further questions please contact Care Direct 0845 1551 007

If you would like this factsheet in a different format such as Braille or audio, or in a different language, please contact our Customer Service Centre on 0845 155 1015 or email customer@devon.gov.uk.

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