Further information

**Public Guardian**
Website: www.publicguardian.gov.uk telephone: 0845 330 2900

**Your local Citizens’ Advice Bureau**
01384 816222 (central advice line)

**NHS choices website**

Other publications giving information about the Mental Capacity Act 2005:

**Health and social care assessments - information for carers**

**Deprivation of liberty safeguards**

---

If you require any assistance with regard to this document or would like to request an interpreter, large print or audio version, please contact the equality and diversity unit on 01384 813400
What is mental capacity?

Having mental capacity means that a person is able to make their own decisions. The new law says that a person is unable to make a particular decision if they cannot do one or more of the following four things:

• Understand information given to them.
• Retain that information long enough to be able to make the decision.
• Weigh up the information available to make the decision.
• Communicate their decision - this could be by talking, using sign language or even simple muscle movements such as blinking an eye or squeezing a hand.

This law is designed to cover situations where someone is unable to make a decision because the way their mind or brain works is affected by illness or disability, eg. stroke (or other brain injury), dementia, mental illness or learning disability.

About the Act

The Mental Capacity Act 2005 for England and Wales provides a framework to empower and protect people who may lack capacity to make some decisions for themselves. It makes it clear who can take decisions in which situations, and how they should go about this. It also allows people to plan ahead for a time when they may lack capacity.

It covers major decisions about someone's property and affairs, healthcare treatment and where the person lives, as well as everyday decisions about personal care (such as what the person eats), where the person lacks capacity to make those decisions themselves.

Key principles

There are five key principles in the Act:

• Every adult has the right to make his or her own decisions and must be assumed to have the capacity to make them unless it is proved otherwise.
• A person must be given all practicable help before anyone treats them as not being able to make their own decisions.
• Just because an individual makes what might be seen as an unwise decision, they should not be treated as lacking capacity to make that decision.
• Anything done or any decision made on behalf of a person who lacks capacity must be done in their best interests.
• Anything done for or on behalf of a person who lacks capacity should be the least restrictive of their basic rights and freedoms.

What does the Act do?

The Act enshrines in statute current best practice and common law principles concerning people who lack mental capacity and those who take decisions on their behalf. If replaces current statutory schemes for Enduring Powers of Attorney and Court of Protection receivers with reformed and updated schemes.

The Act deals with the assessment of a person's capacity and acts by carers of those who lack capacity:

• Assessing lack of capacity
• Best Interests
• Acts in connection with care or treatment
• Restraint

The Act deals with two situations where a designated decision-maker can act on behalf of someone who lacks capacity:

• Lasting Powers of Attorney (LPAs)
• Court appointed deputies

The Act creates a new public body and a new official to support the statutory framework, both of which will be designed around the needs of those who lack capacity:

• A new Court of Protection
• A new Public Guardian

The Act also includes three further key provisions to protect vulnerable people:

• Independent Mental Capacity Advocate (IMCA)
• Advance decisions to refuse treatment
• A new criminal offence of willful ill treatment or neglect

The Act also sets out clear parameters for research

Excluded decisions are for example, marriage, civil partnership, divorce, sexual relationships, voting and treatment for mental disorder (which is covered by the Mental Health Act).

Deprivation of liberty safeguards

The deprivation of liberty safeguards were introduced from 1/4/09 to ensure that no one is deprived of their liberty in a hospital or care home setting unless it is in their “best interests” and that people who are deprived of their liberty receive the care they need while retaining specific rights.