



## Mental Capacity Act 2005 in brief

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- **16+ Years** Applies to all those aged 16+ years (save Schedules 1A and A1 (the deprivation of liberty safeguards (DOLS)) which apply only to those aged 18+ years) who lack the capacity to make the decision themselves.
- **Mental capacity** Presumption of capacity. (cf Gillick competency for those under 16 years, where P has to show that they have 'sufficient maturity' to make the decision). Mental capacity is time and issue specific. Person must be given the best support available to enable them to make the decision themselves. A person must not be considered to lack capacity just because they make an 'unwise decision'.
- **Best interests** All acts done or decisions made on behalf of a person who lacks the mental capacity to make the decision themselves must be done or made in P's best interests. (Cf Children Act 1989 Welfare of the child is paramount.)
- **Court of Protection** Expanded the remit of the Court of Protection from dealing with financial and property matters only to deal with health and welfare matters in relation to those who did not have the mental capacity to make those health and welfare decisions themselves.
- **Lasting Power of Attorney (Property and Financial Affairs)** Introduced Lasting Power of Attorney (Property and Financial Affairs) which replaced the old enduring powers of attorney. An LPA is granted by P to a person or people of his or her own choice. An LPA (Property and Financial Affairs) is responsible for managing a persons' financial and property affairs if that person does not have the capacity to manage them himself. An LPA must be registered with the Court of Protection before the Attorney can act.
- **Deputy (Property and Financial Affairs)** replacing the role of Receiver. A Deputy is appointed by the Court of Protection following an application by the person who wishes to be appointed as Deputy. The Court must be satisfied that the person being appointed as Deputy is suitable to so act. As with the LPA (Property and Financial Affairs) a Deputy (Property and Financial Affairs) manages the finances of a person who lacks the capacity to manage them themselves.
- **Lasting Power of Attorney (Health and Welfare)** Introduced Lasting Power of Attorney (Health and Welfare). As with the LPA (Property and Financial Affairs) a LPA (Health and Welfare) is granted by P. A health and welfare Attorney can make decisions in relation to P's health and welfare such as residence and their care if P lacks the capacity to make those decisions themselves.
- **Deputy (Health and Welfare)** Like a Deputy (Property and Financial Affairs) a Deputy (Health and Welfare) is appointed by the Court of Protection. However very few have been appointed by the Court and when they have it usually follows a very serious dispute either within a family as to P's care or with a local authority.

- **Advance Decisions** Introduced Advance Decisions.
- **IMCAs** Introduced Independent Mental Capacity Advocates (IMCAs) for those who may have no-one to advocate on their behalf in major decisions eg a change of residence, or where there is a major dispute with P and/or family members, P is subject to a DOLS Authorisation
- **DOLS Authorisations** MHA 2007 amended the MCA 2005 with the introduction of the deprivation of liberty safeguards (DOLS) which apply only to those aged 18+ who reside in a residential care home or are in hospital (and are not eligible to be detained under the Mental Health Act 1983).
- **Article 5: S64 MCA 2005** (which applies to all those aged 16+) states that Article 5 HRA 1998 applies and P cannot be deprived of his or her liberty unless it is authorised by law.

#### Further information

For further information on this or on any other Private Capital matter you may have, please contact us via:

See key contacts

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