

Easy Read Summary

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Department for
Constitutional Affairs
Justice, rights and democracy



Department
of Health



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Mental Capacity Act 2005 - A Summary

Mental capacity means being able to make your own decisions

The Mental Capacity Act 2005 will help people to make their own decisions.

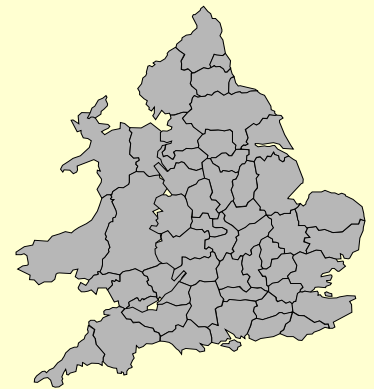


The Mental Capacity Act will not start until later in 2007. This means you cannot start using the Act yet.



The Act will affect people in England and Wales.

The Act will affect people who are 16 years or older



It will also protect people who cannot make their own decisions about some things. This is called “lacking capacity”.

The Act tells people:

- what to do to help someone make their own decisions about something
- how to work out if someone can make their own decisions about something
- what to do if someone cannot make decisions about something sometimes.



What the Mental Capacity Act covers

This booklet tells you about:

- The big ideas behind the Act
- The new things the Act introduces. These include things like:
 - **New Lasting Powers of Attorney and deputies, these will start in October 2007**
 - **A new Court of Protection, this will start in October 2007**
 - **A new Office of the Public Guardian**
 - **A new criminal offence, this will start in April 2007**
 - **A new Independent Mental Capacity Advocate service, this will start in England in April 2007**
 - **A code of Practice, this will tell people how to make sure they are following the Act. This will be available in April 2007**



Other things the Act introduces

The Act also sets out the rules on:

- **Acts in connection with care and treatment.**
- **Advance decisions to refuse treatment**
- **Research involving people who lack capacity.**



The rest of this booklet explains more about these things.

Mental Capacity Act - The Big Ideas

This is a list of the 5 most important things people must do and think about when using the Act.

These are:



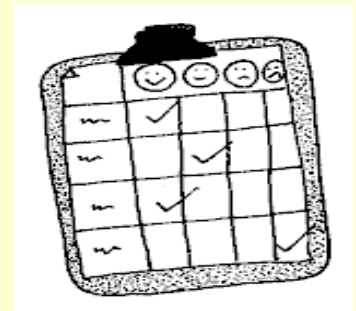
1. Start off by thinking that everyone can make their own decisions.

2. Give the person all the support they can to help them make decisions.



3. No-one should be stopped from making a decision just because someone else thinks it is wrong or bad.

4. Anytime someone does something or decides for someone who lacks capacity, it must be in the person's best interests - there is a checklist for this.



5. When they do something or decide something for another person, they must try to limit your own freedom and rights as little as possible.



Assessing Capacity

No one can assume you lack capacity because of

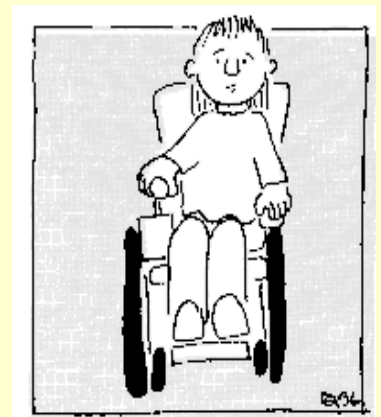
- how old you are
- how you look
- how you act.



If someone needs to make a decision for you, they must be sure that you cannot make the decision yourself.

No-one can assume that you cannot make the decision yourself just because:

- you have a disability
- you cannot make more complicated decisions
- you have not been able to make decisions like that in the past.



Best Interests

If someone has to make a decision for you they must decide what is in your best interests.



To work out what is in your best interests they must listen to what you want, ask people who know you and make sure you are involved.



No-one can assume you cannot make a decision just because of your age, your disability or how you look.



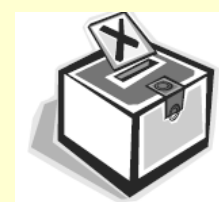
What sort of acts and decisions are not covered by the Act?

There are some decisions that can never be made under the Act by another person for someone who lacks capacity.



Decisions that cannot be made on behalf of someone else include:

- whether to get married or make a civil partnership
- whether to have sex
- placing a child for adoption
- voting at an election



Acts In Connection With Care or Treatment

If you need care or treatment someone can give you the care or treatment you need.

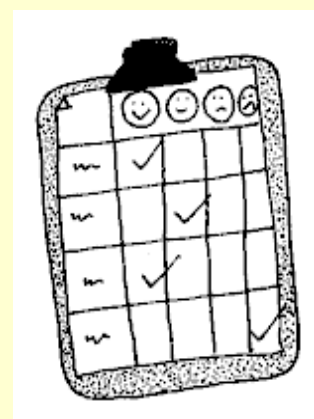


This may happen even if you need help to decide what care or treatment you want but you cannot decide on your own because you do not have capacity at the time.



The person caring or giving treatment must follow the best interests checklist to decide what is in your best interest.

If you have made a Lasting Power of Attorney, an Advance Decision or have a deputy, then they would make these decisions if you lack mental capacity.



Lasting Power of Attorney

Lasting Power of Attorney (LPA) is a legal document where you can say in writing who you want to make certain decisions for you, if you cannot make them for yourself. You will be able to make a Lasting Power of Attorney from **October 2007**.



You can only make this legal document if you understand what it means.

You can already do this for property and money. You would do this using an **Enduring Power of Attorney (EPA)**.

The Mental Capacity Act has a new kind of power of attorney called a **Lasting Power of Attorney (LPA)**.

The attorney must act in the best interests of the person lacking mental capacity.

This new power can include decisions about:

- **Health**, like if you should have an operation
- **Welfare**, like deciding which house is best for you
- **Property**, like if you need to sell your house
- **Money**, like looking after a lot of money.

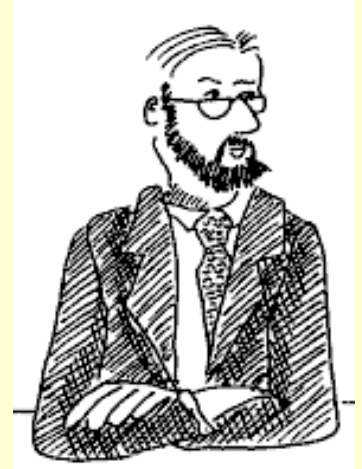


Deputies

The Court of Protection may make someone a **deputy**.

The **deputy** can make certain decisions for you if you cannot decide everything for yourself.

The Court can start making people deputies from **October 2007**.



The Court will know what the **deputy** is allowed to do and what they are not allowed to do.

The **deputy** must act in the persons best interests

A deputy will only be appointed if it is in your best interests.

It will not happen if you have made a Lasting Power of Attorney.



The **Public Guardian** will keep an eye on what the **deputy** does.

Sometimes the Court might need to make just one decision for you, so it will not need to appoint a **deputy**.

The Judge will just make the decision.

This is called "a single order of the court".

Advance Decisions to Refuse Treatment

Sometimes a doctor needs to treat a person who does not have the mental capacity to say whether they want a particular treatment or not.

An **advance decision** is when someone who has mental capacity decides that they do not want a particular type of treatment if they lack capacity in the future. A doctor must respect this decision.



An **advance decision** must be about treatment you want to refuse and when you want to refuse it.

If the **advance decision** says no to treatment which may help keep you alive, it must say this clearly and be signed by you. Another person can sign an **advance decision** for you but only if you agree and you can see them sign it.



People have to think very carefully before making an **advance decision**.

You are free to make an **advance decision** if you want to, but no one should force you to make it. It is your choice and you must understand what it means.

New Independent Mental Capacity Advocate (IMCA)

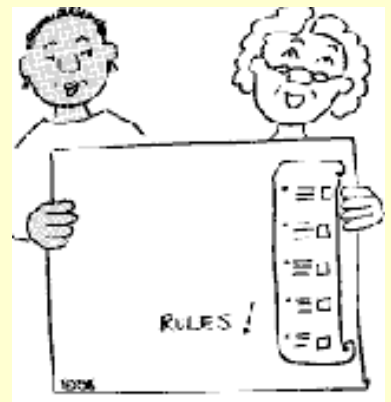
The Act sets up a new service – the Independent Mental Capacity Advocate (IMCA). This will be available from **April 2007**.

They will help people who have no family or friends. They will help people when important decisions have to be made involving health services and Local Authority services like social services and housing departments.



These include decisions about serious medical treatment or moving to a hospital or care home. The Independent Mental Capacity Advocate may become involved in other types of decision as well.

The Act says what the Independent Mental Capacity Advocate service must do. The government will produce more rules about how this service should be run. These rules are called regulations.



Research

The Mental Capacity Act has very strict rules about research.

This is to make sure useful research can take place and at the same time protect people who do not have the mental capacity to say if they want to take part in research or not.

A group of independent people will need to decide if the research follows the rules. Groups known as **Research Ethics Committees** will do this.

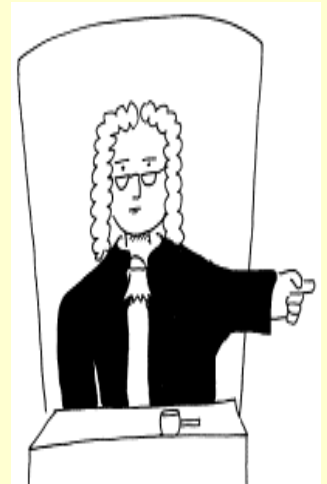
The rules are:

- the research work must be safe and must be about the condition you have
- it must be likely to help you or people with conditions like yours
- the risk of harm and hassle to you is as small as possible
- you must be happy to take part - if you show you do not want to take part anymore, the research must stop
- family, carers or an independent person must agree that the person can take part in the research and can say no if they think you would have said no.



New Court of Protection

The new Court of Protection is a court. There will be a judge, people will argue their case and the judge will decide what is best. The new Court will start working in **October 2007**.



People won't always have to go to the court itself to do this. Sometimes the case can be decided by letter.

The court and how it works will be open to everyone. It will deal with everything to do with the Mental Capacity Act. It will help when you cannot say or decide what to do.

So it might decide about:

- whether you should have an operation especially if your family and the doctors don't agree and you cannot decide for yourself
- how your money should be handled if you cannot decide yourself
- and anything else where someone needs to make a decision for you because you cannot decide for yourself but people cannot agree on what is best.



New Public Guardian

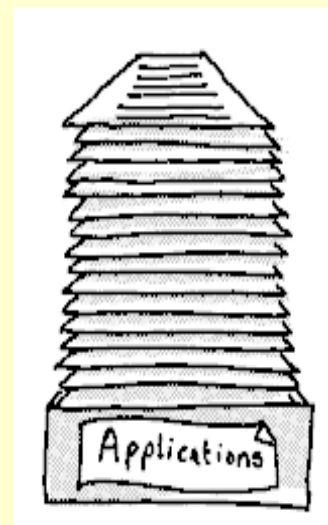
The Public Guardian will:

- be in charge of the Office of the Public Guardian which will help the court by looking after the paperwork and applications for Lasting Powers of Attorney and deputies
- keep an eye on deputies to make sure they are doing their job properly
- work with the police and social services when they think that somebody may have been abused.



The Public Guardian will make a report every year.

A group of people chosen by the Government, called the 'Public Guardian Board', will look at how the Public Guardian does its job.



Other ways the Act protects people

There are other ways the Act also helps protect people who may lack capacity.

For example, from **April 2007** it will be against the law to badly treat someone who may lack capacity that you care for or look after.



This is called a criminal offence.



Code of Practice

There will be a Code of Practice that will tell people how to make sure they are following the Mental Capacity Act.



Some people - like nurses, doctors, social workers or anyone who is getting paid for the job they do - will have a **duty** to pay attention to the code. They will need to know what the code says.



We will encourage families, carers and others to read the code and use it as advice about treating people who do not have mental capacity. The final code will be ready in **April 2007**.



When Will the Mental Capacity Act Start to Work?

The Act will not start to work until 2007.

Some parts of the Act, like IMCAs and the new criminal offence will start in April 2007.

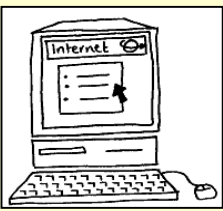
The rest will start in October 2007.

The Department for Constitutional Affairs and the Department of Health and the Welsh Assembly Government have to do a lot of work before it starts.

For example:

- we will be making new booklets to help tell people about the new Act and how it might affect them
- they need to set up a new Court of Protection and talk to people about the rules for the new Independent Mental Capacity Advocacy Service
- this is part of the planning that needs to be done to make sure the law works well





E-mail

address: makingdecisions@dca.gsi.gov.uk



Postal address:


**Mental Capacity Implementation
Team**

5th Floor, Steel House

11 Tothill Street

London

SW1H 9LH

 **020 7210 0037 or 020 7210 0025**

This is only a short summary of the Mental Capacity Act.

A summary is a short handbook about the main ideas in the act.

We would like to know what you think about this summary and if you have any questions about the act.

You could get someone to help you to contact us.

The pictures in this summary are from the CHANGE and Inspired Services picture bank.

Thank you to all the people from CHANGE and the Learning Disability Action Group in the Disability Rights Commission who helped us with this summary.