

Easy Read Summary



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.

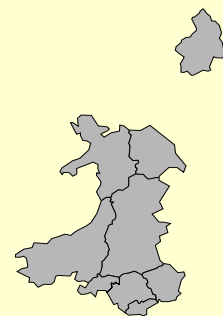


The Mental Capacity Act is a new law and will start later in 2007. This means you cannot start using the Act yet.

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, for example people with learning disabilities or mental health problems. This is called “lacking capacity”.

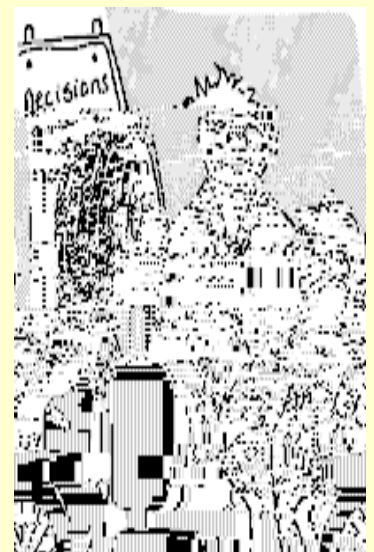


The Act tells people:

| 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.



Other things the Act introduces

The Act also sets out the rules on:

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



All of these will start in October 2007.

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.

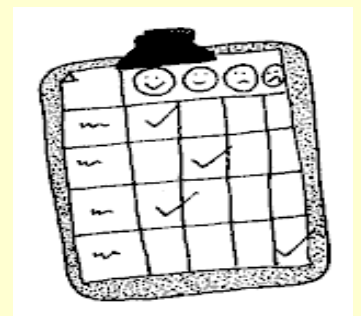


2. Give the person all the support they can to help them make decisions.



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 the person's own freedom and rights as little as possible.



Assessing Capacity

No one can assume you lack capacity because of

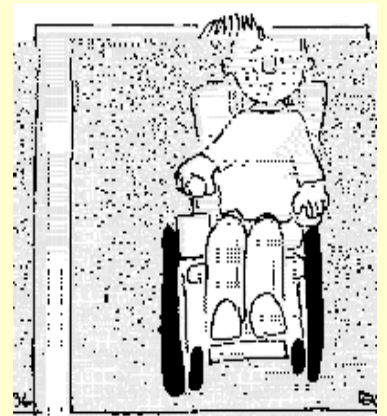
- how old you are
- how you look
- how you behave.



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

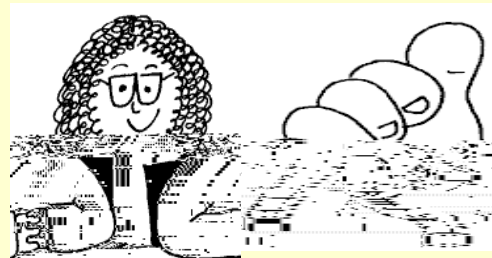
No-one can assume that you cannot make the decision yourself just because:

- 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 because you cannot make it yourself, 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 decide what is in your best interests just because of:

- how old you are
- how you look
- how you behave.



What sort of things are not covered by the Act?

There are some decisions that can never be made under the Act by another person for

Doing things in connection with care or treatment

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. This person is called an **attorney**. 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 w TmP3 Tw [akID w Tm)abTJT1t

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.

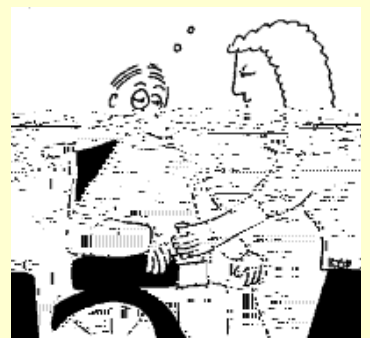
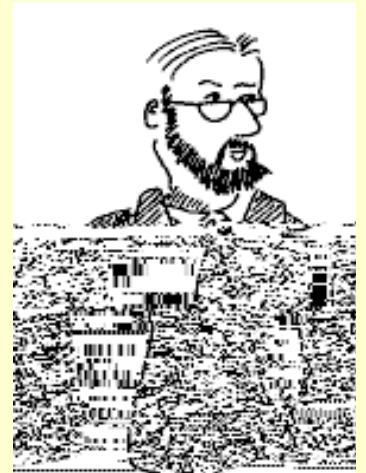
It will not happen if you have made a Lasting Power of Attorney.

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**

New Independent Mental Capacity Advocate (IMCA)

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

In **Wales** it will start in **October 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 such as adult protection and care reviews.

The Act says what the Independent Mental Capacity Advocate service must do. The Government has produced more rules about how the this service should be run.



Research

The Mental Capacity Act has very strict rules about research.

New Court of Protection

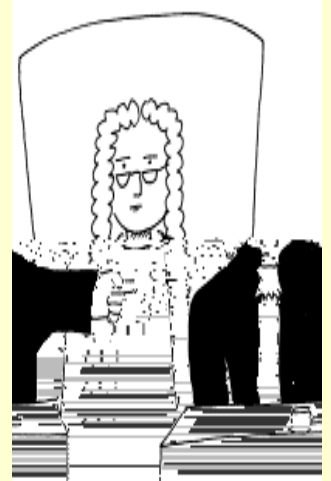
The new Court of Protection is a court. It will deal with everything to do with the Mental Capacity Act. It will help when you cannot say or decide what to do.

There will be a judge, people will discuss difficult 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 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.



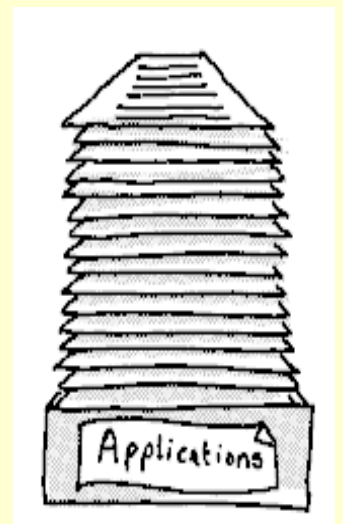
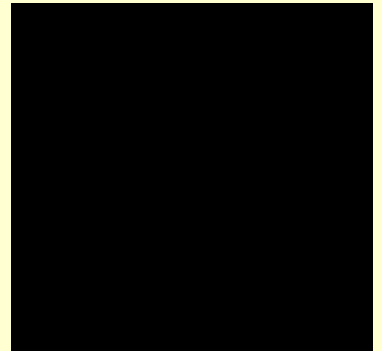
New Public Guardian

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 and the Office of the Public Guardian will start to work from **October 2007**.

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.

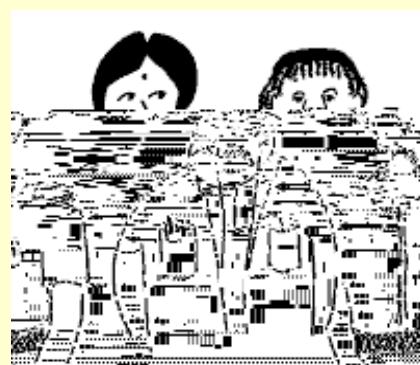


Code of Practice

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

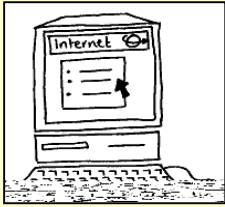


Some people - like nurses, doctors, social workers or anyone who is getting paid for the job they do - will have a **duty** to pay attention to the Code. They will need to know what the Code says.



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**.



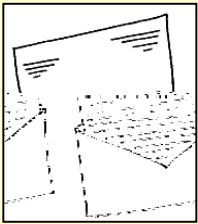


E-mail:

makingdecisions@dca.gsi.gov.uk



Tel: 0845 330 2900



Postal address:

Public Guardianship Office
Archway Tower
2 Junction Road
London N19 5SZ

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

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

For more information you could contact us or get someone to help you 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.