

Mental Capacity Act [2005]

1 The principles

- (1) The following principles apply for the purposes of this Act.
- (2) A person must be assumed to have capacity unless it is established that he lacks capacity.
- (3) A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
- (4) A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
- (5) An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.
- (6) Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

2 People who lack capacity

- (1) For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.
- (2) It does not matter whether the impairment or disturbance is permanent or temporary.
- (3) A lack of capacity cannot be established merely by reference to—
 - (a) a person's age or appearance, or
 - (b) a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about his capacity.

3 Inability to make decisions

- (1) For the purposes of section 2, a person is unable to make a decision for himself if he is unable—
 - (a) to understand the information relevant to the decision,
 - (b) to retain that information,
 - (c) to use or weigh that information as part of the process of making the decision, or
 - (d) to communicate his decision (whether by talking, using sign language or any other means).

4 Best interests

- (1) In determining for the purposes of this Act what is in a person's best interests, the person making the determination must not make it merely on the basis of—
 - (a) the person's age or appearance, or
 - (b) a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about what might be in his best interests.
- (2) The person making the determination must consider all the relevant circumstances and, in particular, take the following steps.
- (3) He must consider—
 - (a) whether it is likely that the person will at some time have capacity in relation to the matter in question, and
 - (b) if it appears likely that he will, when that is likely to be.
- (4) He must, so far as reasonably practicable, permit and encourage the person to participate, or to improve his ability to participate, as fully as possible in any act done for him and any decision affecting him.
- (5) Where the determination relates to life-sustaining treatment he must not, in considering whether the treatment is in the best interests of the person concerned, be motivated by a desire to bring about his death.

- (6) He must consider, so far as is reasonably ascertainable—
- (a) the person's past and present wishes and feelings (and, in particular, any relevant written statement made by him when he had capacity),
 - (b) the beliefs and values that would be likely to influence his decision if he had capacity, and
 - (c) the other factors that he would be likely to consider if he were able to do so.
- (7) He must take into account, if it is practicable and appropriate to consult them, the views of—
- (a) anyone named by the person as someone to be consulted on the matter in question or on matters of that kind,
 - (b) anyone engaged in caring for the person or interested in his welfare,
 - (c) any donee of a lasting power of attorney granted by the person, and
 - (d) any deputy appointed for the person by the court, as to what would be in the person's best interests and, in particular, as to the matters mentioned in subsection (6).

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Effect of advance decisions

(1)

If P has made an advance decision which is—

- (a) valid, and
- (b) applicable to a treatment, the decision has effect as if he had made it, and had had capacity to make it, at the time when the question arises whether the treatment should be carried out or continued.

The Mental Capacity Act 2005 (Independent Mental Capacity Advocates) (General) Regulations 2006

Meaning of serious medical treatment

4.—(1) This regulation defines serious medical treatment for the purposes of section 37 of the Act.

(2) Serious medical treatment is treatment which involves providing, withdrawing or withholding treatment in circumstances where—

- (a) in a case where a single treatment is being proposed, there is a fine balance between its benefits to the patient and the burdens and risks it is likely to entail for him,
- (b) in a case where there is a choice of treatments, a decision as to which one to use is finely balanced, or
- (c) what is proposed would be likely to involve serious consequences for the patient.

Appointment of independent mental capacity advocates

5.—(1) No person may be appointed to act as an IMCA for the purposes of sections 37 to 39 of

the Act, or regulations made by virtue of section 41 of the Act, unless—

- (a) he is for the time being approved by a local authority on the grounds that he satisfies the appointment requirements, or
- (b) he belongs to a class of persons which is for the time being approved by a local authority on the grounds that all persons in that class satisfy the appointment requirements.

(2) The appointment requirements, in relation to a person appointed to act as an IMCA, are that—

- (a) he has appropriate experience or training or an appropriate combination of experience and training;
- (b) he is a person of integrity and good character; and
- (c) he is able to act independently of any person who instructs him.