

**Making decisions about your
health, welfare and finances...**

Who decides when you can't?



There is a new law that can help

Do you have an illness, injury or disability that may cause you difficulties in making decisions?

Do you care for, work with, or know someone who has difficulties in making decisions?

Do you want to plan ahead in case you are unable to make important decisions for yourself in the future?

There is a new law that can help.

The Mental Capacity Act 2005

Every day we make decisions about lots of things in our lives. The ability to make decisions is called **mental capacity**. People may have difficulties making some decisions either all or some of the time. This could be because they have:

- a learning disability
- dementia
- a mental health problem
- a head injury or a stroke

And any of us might plan ahead in case we lack mental capacity in the future, because of an accident for example.

The **Mental Capacity Act** is planned to come into force in April 2007 in England and Wales, and will affect people in these situations. It will also affect their families, carers, health and social care staff, and other people who may have contact with them. It could cover all sorts of major decisions where a person may lack capacity, about things like financial, social care, medical treatment and research arrangements, as well as everyday decisions.

The Act will generally only affect people aged 16 or over.

How the Act could affect you

If you are unable to make some decisions the Act explains:

- you should have as much help as possible to make your own decisions
- how an **assessment of capacity** should be made about whether you are able to make a particular decision at a particular time
- that even if you do not have the capacity to make a very complicated decision for yourself this does not mean that you are unable to make more straightforward decisions
- that even if someone has to make a decision on your behalf you must still be involved in this as much as possible
- that anyone making a decision on your behalf must do so in your **best interests**
- that there is a new safeguard, the **Independent Mental Capacity Advocate (IMCA)**, to represent you if you lack capacity to make certain important decisions and there is no one else who can be consulted.

If you want to plan ahead for the future the Act:

- allows you to make a **Lasting Power of Attorney (LPA)** enabling you to appoint someone to make decisions about your finances and property or your health care and welfare should you ever lack the capacity to make these decisions yourself

- enables you to make an ‘**advance decision to refuse treatment**’ if there is a particular medical treatment you would not wish to receive at a time in the future when you may lack capacity to refuse it.

If you are a family or other unpaid carer the Act:

- will help you understand how and when you can act on behalf of someone who lacks capacity to make decisions – and the safeguards and limitations if you are doing this
- says that you should be consulted by professionals when, for example, a doctor makes a decision about treatment for a family member who lacks capacity.

If you work in health and social care the Act:

- provides a framework for assessing a person’s mental capacity and determining their best interests if they lack capacity to make a decision
- has safeguards and limitations for when you are working with someone who lacks the capacity to consent to receiving care or treatment.

If you work in the legal, banking or advice sectors the Act:

- creates a single, coherent framework for dealing with mental capacity issues and an improved system for settling disputes, dealing with health and welfare issues, and the financial affairs of people who lack capacity.

The Act creates important safeguards:

- A new **Court of Protection** that will have the power to make declarations about whether someone lacks capacity, make orders or appoint deputies to act and make decisions on behalf of someone who lacks capacity. On many occasions, there may be other ways of dealing with difficult situations without having to go to Court, such as via existing complaints procedures
- A new public official called the **Public Guardian** who will have several duties under the Act including registering LPAs and supervising court-appointed deputies. The Public Guardian will be supported in carrying out these duties by a new Office of the Public Guardian (OPG) which will replace the existing Public Guardianship Office (PGO)
- A new **criminal offence** of ill treatment or wilful neglect of a person who lacks capacity.

A **Code of Practice**, published in December 2006, will explain how the new law will work. The Act says professionals and paid carers, among others, must have regard to the Code.

How will the Act affect existing arrangements?

If you are a receiver for someone who lacks capacity:

- you will retain your powers after April 2007 but will be treated as a deputy, appointed by the new Court of Protection. The Public Guardianship Office will contact all current receivers so that the necessary administration arrangements can be made. You do not need to contact us.

If you have made an Enduring Power of Attorney (EPA) or are acting on someone's behalf under an EPA:

- it will still be valid after April 2007, even if it is not yet registered, unless the person who made the EPA decides to destroy it and replace it with an LPA instead.

Before April 2007

These changes should not however, prevent you from taking the necessary action now to plan for the future or to manage the financial affairs of someone who lacks capacity.

For more information contact the Public Guardianship Office at:

email: custserv@guardianship.gsi.gov.uk

telephone: 0845 330 2900

Or visit the website at: www.guardianship.gov.uk

Further Information about the new Act

Towards the end of 2006 we will be producing more detailed information booklets (free of charge) for the following groups of people affected by the Act:

1. People who may lack capacity or wish to plan ahead for the future
2. Family and other unpaid carers
3. Staff working in health and social care
4. Lawyers and advice workers
5. People with learning disabilities

If you would like to receive these booklets please contact us via our website or at the address on the back of this leaflet, indicating those you would like to receive. If you want other information about the Act, including a free newsletter that tells you how it is being implemented, please visit our website at: www.dca.gov.uk/capacity/index.htm

Contact and information details

post: Mental Capacity Implementation
Programme
Department for Constitutional Affairs
5th floor, Steel House
11 Tothill Street
London
SW1H 9LH

tel: 020 7210 0037/0038

fax: 020 7210 0007

email: makingdecisions@dca.gsi.gov.uk

website: www.dca.gov.uk/capacity/index.htm

This leaflet is available in other languages and alternative formats on request.

Information on the new Mental Capacity Act is brought to you by the following organisations:



Llywodraeth Cynulliad Cymru
Welsh Assembly Government



public
guardianship
office

dca

Department for
Constitutional Affairs
Justice, rights and democracy