

*These notes refer to the Mental Capacity Act 2005  
(c.9) which received Royal Assent on 7 April 2005*

# MENTAL CAPACITY ACT 2005

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## EXPLANATORY NOTES

### SUMMARY AND BACKGROUND

#### *The Act*

6. The Act is divided into 3 parts.

#### **Part 1: Persons who lack capacity**

7. **Part 1** contains provisions defining “persons who lack capacity”. It contains a set of key principles and sets out a checklist to be used in ascertaining a person’s best interests. It deals with liability for actions in connection with the care or treatment of a person who lacks capacity to consent to what is done. Part 1 also establishes a new statutory scheme for “lasting” powers of attorney which may extend to personal welfare (including health care) matters. It sets out the jurisdiction of the new Court of Protection to make declarations and orders and to appoint substitute decision-makers (“deputies”), where a person lacks capacity. This Part also sets out rules about advance decisions to refuse medical treatment and creates new safeguards controlling many types of research involving people who lack capacity. It establishes a system for providing independent mental capacity advocates for particularly vulnerable people. It also provides for codes of practice to give guidance about the legislation and creates a new offence of neglect or ill-treatment.

#### **Part 2: The Court of Protection and the Public Guardian**

8. **Part 2** establishes a new superior court of record, to be known as the Court of Protection, and provides for its judges and procedures. It also establishes a new statutory official, the Public Guardian, to support the work of the court. Provision is also made for Court of Protection Visitors.

#### **Part 3: Miscellaneous and General**

9. **Part 3** deals with private international law and transitional and other technical provisions and includes a declaratory provision that nothing in the Act is to be taken to affect the law relating to unlawful killing or assisting suicide. ECHR issues arise in relation to a number of provisions.