

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

MENTAL CAPACITY ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Persons Who Lack Capacity

The principles

Section 1: The principles

20. This sets out key principles applying to decisions and actions taken under the Act. The starting point is a presumption of capacity. A person must be assumed to have capacity until it is proved otherwise. A person must also be supported to make his own decision, as far it is practicable to do so. The Act requires “all practicable steps” to be taken to help the person. This could include, for example, making sure that the person is in an environment in which he is comfortable or involving an expert in helping him express his views. It is expressly provided that a person is not to be treated as lacking capacity to make a decision simply because he makes an unwise decision. This means that a person who has the necessary ability to make the decision has the right to make irrational or eccentric decisions that others may not judge to be in his best interests (see [section 3](#)). Everything done, or decision made, under the Act for a person who lacks capacity must be done in that person’s best interests. This principle is expanded upon in [section 4](#). In addition, the “least restrictive option” principle must always be considered. The person making the decision or acting must think whether it is possible to decide or act in a way that would interfere less with the rights and freedom of action of the person who lacks capacity.