

*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

Preliminary

Section 7: Payment for necessary goods and services

45. This revises and extends the statutory rule in section 3(2) of the Sale of Goods Act 1979 insofar as it applies to people who lack capacity to contract. In general, a contract entered into by a person who lacks capacity to contract is voidable if the other person knew or must be taken to have known of the lack of capacity. This does not apply if “necessaries” are supplied. In those circumstances, the person lacking capacity must still pay a reasonable price. The rule in section 3(2) of the 1979 Act only applies to “necessary” goods, but there is a matching common law rule about “necessary” services. This section combines these rules to set out a single statutory rule to cover “necessary” goods and services. *Subsection (2)* repeats the established legal definition of what is ‘necessary’. Thus, for example, if the milkman carries on delivering milk to the house of someone who has a progressive dementia, he can expect to be paid. If, however, a roofer puts a completely unnecessary new roof on to that person’s house, when all that was required was a minor repair, then the rule will operate to prevent the roofer from being able to recover his charges.