

*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

### COMMENTARY ON SECTIONS

#### **Part 1: Persons Who Lack Capacity**

##### **Lasting powers of attorney**

##### *Section 11: Lasting powers of attorney: restrictions*

57. *Subsections (1) to (4)* place restrictions on the use of restraint by attorneys, matching those applying in relation to “*section 5* acts” (see *section 6*) and deputies (see *section 20*). Restraint can only be used to prevent harm, and must be proportionate. *Subsection (6)* makes clear that for *section 11* a deprivation of liberty within the ECHR meaning amounts to more than mere restraint.
58. Further restrictions are set out in *subsection (7)*. An attorney cannot act where the donor has capacity, or where the donor has made a qualifying advance decision (see *sections 24 to 26*). *Subsection 7(c)* has to be read with *subsection (8)*. Thus, although an attorney may give or refuse consent to the carrying out or continuation of health care, this would not extend to refusing life-sustaining treatment unless the LPA expressly said so, and is subject to any conditions or restrictions in the LPA.