

MENTAL CAPACITY ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Persons Who Lack Capacity

General powers of the court and appointment of deputies

Section 16: Powers to make decisions and appoint deputies: general

66. This sets out the core jurisdiction of the court, which is to make decisions about personal welfare or property and affairs for persons lacking capacity or to appoint a deputy to do so.
67. *Subsection (3)* confirms that the principles in *section 1* and the best interests checklist will govern the court's exercise of its powers.
68. *Subsection (4)* requires the court to consider two additional principles, further emphasising the "least restrictive intervention" principle mentioned in *section 1(6)*. The first additional principle is that a decision of the court is preferable to the appointment of a deputy and the second is that, if a deputy is appointed, the appointment should be as limited in scope and duration as is reasonably practicable in the circumstances. In welfare (including health care) matters a deputy is never required in order for care or treatment to be given to a person because *section 5* provides sufficient scope for carers and professionals to act. Nevertheless, a deputy may be particularly helpful in cases of dispute. For matters concerning property and affairs, a deputy may be needed in order to provide the authority to deal with contractual matters and where there is an on-going need for such decisions to be taken. *Subsection (5)* enables the court to grant the deputy powers or impose duties on him as it thinks necessary to avoid repeated applications to the court. However, it also enables the court to require the deputy to seek consent before taking certain actions. *Subsection (6)* gives the court an "own motion" power to make whatever order is in the person's best interests.
69. The court can always vary or discharge its orders and *subsection (8)* provides that it has power to take away or alter a deputy's powers if the deputy is overstepping his powers or not adhering to his best interests obligations.