

# MENTAL CAPACITY ACT 2005

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

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

#### **General powers of the court and appointment of deputies**

#### *Section 20: Restrictions on deputies*

75. This sets a number of limitations on the powers of deputies. *Subsection (1)* specifies that a deputy cannot act where the person concerned is able to act for himself. In some cases the person may have fluctuating capacity, for example as a result of mental health problems, and it is not acceptable for a deputy to carry on making substitute decisions when the person concerned has in fact recovered. *Subsection (6)* reiterates that a deputy must act in accordance with *section 1* (principles) and *section 4* (best interests).
76. *Subsections (2) and (3)* relate back to *sections 16 to 17* and list certain matters which must always be dealt with by the court, not a deputy. The powers to prohibit a person from having contact with an adult lacking capacity or to direct a person responsible for his health care to allow a different person to take over are, of course, powers which have to be exercised by the court itself. As under the current law, deputies will also be restricted from making certain financial decisions in connection with wills and trusts.
77. *Subsection (4)* makes it clear that a deputy cannot be given power to “trump” an attorney (who will have been chosen by the donor himself, at a time when he had capacity). If there is a concern or a dispute about the way an attorney is behaving the court must use its powers in *sections 22 and 23*, rather than seeking to appoint a deputy.
- Subsection (5)* restricts deputies from refusing consent to the carrying out or continuation of treatment that is necessary to sustain life. *Subsection (6)* clarifies that the principles in *section 1* and the considerations as to best interests as set out in *section 4* apply to deputies.
78. *Subsections (7) to (11)* impose limitations on deputies in relation to restraint, matching those imposed in relation to “section 5 acts” by *section 6* and on attorneys by *section 11*. A deputy will have to be acting within the scope of an authority expressly conferred on him by the court. Restraint can only be used to prevent harm and must be proportionate. *Subsection (13)* makes clear that for *section 20* a deprivation of liberty within the ECHR meaning amounts to more than mere restraint.