

*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

Excluded decisions

Section 27: Family relationships etc.

93. This lists certain decisions that can never be made under the Act on behalf of a person who lacks capacity. For example, in relation to adoption, if a birth parent lacks capacity to consent to an adoption order the rules as to dispensing with consent in the adoption legislation will apply. There will be no question of an attorney consenting or of the Court of Protection making an order or appointing a deputy to provide the requisite consent.

Section 28: Mental Health Act matters

94. This deals with the question of people who are detained for psychiatric treatment pursuant to the Mental Health Act 1983. The section ensures that the Mental Capacity Act does not apply to any treatment for mental disorder which is being given in accordance with the rules about compulsory treatment set out in Part 4 of the 1983 Act. The specific statutory safeguards which the 1983 Act gives in relation to compulsory psychiatric treatment must always be afforded to those patients to whom that Act applies.

Section 29: Voting rights

95. This provides that the Act does not apply to decisions on voting.