

*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

SCHEDULES

Schedule 2: Property and affairs: supplementary provisions

167. This contains detailed provisions relating to the court's powers in relation to property and affairs, in particular the making of wills and settlements. *Paragraphs 1 to 4* deal with wills that can be made on behalf of an adult lacking capacity. These are generally known as "statutory wills" when made under the Mental Health Act 1983, Part 7. *Paragraphs 5 and 6* concern settlements, that is putting a person's property into a trust. *Paragraph 7* enables the court to direct the transfer of stocks to a person appointed outside England and Wales.
168. *Paragraph 10* specifies that only a representative appointed by the Court of Protection may exercise the powers which the person concerned has as patron of a benefice. A benefice is a freehold office in the Church of England, such as the vicar or rector of a parish, and the patron of a benefice has the right to present a priest for admission to that benefice. The representative must be an individual capable of appointment by a patron as his representative under section 8(1)(b) of the Patronage (Benefices) Measure 1986. This means he must be a communicant member of the Church of England (or of a Church in communion with it) or a clerk in Holy Orders. The representative will discharge the person's functions as patron of the benefice not only presenting a priest to a vacant benefice, but also performing other functions of the patron such as acting as a consultee when there is a proposal to suspend presentation under section 67 of the Pastoral Measure 1983. In discharging his functions, the representative is subject to the provisions of the 1986 Measure in the same way that a representative appointed by a patron with capacity would be.