



# Mental Capacity Act 2005

## 2005 CHAPTER 9

### PART 1

#### PERSONS WHO LACK CAPACITY

##### *Preliminary*

#### **4 Best interests**

- (1) In determining for the purposes of this Act what is in a person's best interests, the person making the determination must not make it merely on the basis of—
  - (a) the person's age or appearance, or
  - (b) a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about what might be in his best interests.
- (2) The person making the determination must consider all the relevant circumstances and, in particular, take the following steps.
- (3) He must consider—
  - (a) whether it is likely that the person will at some time have capacity in relation to the matter in question, and
  - (b) if it appears likely that he will, when that is likely to be.
- (4) He must, so far as reasonably practicable, permit and encourage the person to participate, or to improve his ability to participate, as fully as possible in any act done for him and any decision affecting him.
- (5) Where the determination relates to life-sustaining treatment he must not, in considering whether the treatment is in the best interests of the person concerned, be motivated by a desire to bring about his death.
- (6) He must consider, so far as is reasonably ascertainable—
  - (a) the person's past and present wishes and feelings (and, in particular, any relevant written statement made by him when he had capacity),

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*Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, Section 4. (See end of Document for details)*

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- (b) the beliefs and values that would be likely to influence his decision if he had capacity, and
  - (c) the other factors that he would be likely to consider if he were able to do so.
- (7) He must take into account, if it is practicable and appropriate to consult them, the views of—
- (a) anyone named by the person as someone to be consulted on the matter in question or on matters of that kind,
  - (b) anyone engaged in caring for the person or interested in his welfare,
  - (c) any donee of a lasting power of attorney granted by the person, and
  - (d) any deputy appointed for the person by the court,
- as to what would be in the person's best interests and, in particular, as to the matters mentioned in subsection (6).
- (8) The duties imposed by subsections (1) to (7) also apply in relation to the exercise of any powers which—
- (a) are exercisable under a lasting power of attorney, or
  - (b) are exercisable by a person under this Act where he reasonably believes that another person lacks capacity.
- (9) In the case of an act done, or a decision made, by a person other than the court, there is sufficient compliance with this section if (having complied with the requirements of subsections (1) to (7)) he reasonably believes that what he does or decides is in the best interests of the person concerned.
- (10) “Life-sustaining treatment” means treatment which in the view of a person providing health care for the person concerned is necessary to sustain life.
- (11) “Relevant circumstances” are those—
- (a) of which the person making the determination is aware, and
  - (b) which it would be reasonable to regard as relevant.

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**Modifications etc. (not altering text)**

- C1** S. 4 applied by SI 2010/781 reg. 18 (as substituted (18.6.2012) by [The Health and Social Care Act 2008 \(Regulated Activities\) \(Amendment\) Regulations 2012 \(S.I. 2012/1513\)](#), regs. 1(2)(a), **5**)
- C2** S. 4(1)-(7) applied (E.) (1.6.2010) by [The National Health Service \(Direct Payments\) Regulations 2010 \(S.I. 2010/1000\)](#), **art. 1(3)**
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**Commencement Information**

- II** S. 4 wholly in force at 1.10.2007; s. 4 not in force at Royal Assent see s. 68(1)-(3); s. 4 in force for certain purposes at 1.4.2007 by [S.I. 2007/563](#), arts. 1(2)(3), **2(2)(d)(3)** and s. 4 in force otherwise at 1.10.2007 by [S.I. 2007/1897](#), **art. 2(2)(d)**

**Changes to legislation:**

There are currently no known outstanding effects for the Mental Capacity Act 2005, Section 4.