

AN OVERVIEW OF THE MCA 2005 FOR DEPUTIES

The Mental Capacity Act 2005 ('the Act') came into force in 2007 and governs all of England and Wales. The Act has two primary purposes:

1. To protect, safeguard and empower those who are deemed to lack capacity
2. To set out the rules and guidelines for people who wish to plan for a time when they may lack capacity

Any person appointed as Deputy or any person working with or caring for an incapacitated person, must comply with the Act.

SUMMARY OF THE ACT

The Act is made up of 3 main parts. The first deals with Persons who lack capacity, the second deals with issues regarding the Court of Protection and the Public Guardian and the third deals with Miscellaneous and General Provisions.

The important sections for Deputies to be aware of are:

- **Sections 1 - 8** which set out the 5 key principles and addresses issues in relation to the assessment of capacity and best interests decisions, acts in relation to care or treatment and limitations and the payment of necessary goods or services and expenditure
- **Sections 15 - 21** which set out the general powers of the Court and appointment of Deputies
- **Sections 27 - 29** which set out circumstances whereby the Deputy cannot make decisions for the incapacitated person or 'excluded decisions'
- **Sections 35 - 41** which details the Independent Mental Capacity Advocate (IMCA) service
- **Sections 45 - 61** which set out details of the Court of Protection, supplementary powers, practice and procedure, fees and costs, the Public Guardian and Court of Protection visitors

THE 5 KEY PRINCIPLES

Section 1 describes the five statutory principles that provide a benchmark for all Deputies or decision makers. These principles are:

1. **A presumption of capacity** – every adult has the right to make their own decisions and a presumption of capacity exists until it is proven otherwise
2. **Individuals must be supported to make their own decisions** - every effort must be made to assist a person in making a decision before a person is deemed to lack the necessary capacity to make that decision. (This may include the use of communication aides, interpreters etc.)
3. **Individuals have the right to make an unwise decision** – a person cannot be treated as lacking capacity simply because the decision appears to be unwise or eccentric
4. **Best interests** – every decision made must be in the incapacitated person's best interests
5. **Less restrictive option** – any decision made for or on behalf of an incapacitated person must be the least restrictive of their basic rights and freedoms and consideration must be given to whether there may be a less restrictive action that may be taken

This factsheet provides general guidance. Your Wills and Trust lawyer will be able to provide specific advice based on your circumstances. Wolferstans has taken all reasonable care to ensure that this factsheet was accurate on the stated date of publication or last modification.

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