



**Explanatory notes:**

1. *“Personal welfare” refers to matters such as deciding where to live and consenting to medical and dental treatment.*
2. *“Property and affairs”, as the name implies, refers to matters concerning the patient’s financial affairs and property.*

**Section 3 of the Mental Capacity Act**

- (1) *The following principles apply for the purposes of this Act.*
- (2) *A person must be assumed to have capacity unless it is established that he lacks capacity.*
- (3) *A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.*
- (4) *A person is not to be treated as unable to make a decision merely because he makes an unwise decision.*
- (5) *An act done, or a decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.*
- (6) *Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person’s rights and freedom of action.*

**Section 4 of the Mental Capacity Act**

- (1) *For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.*
- (2) *It does not matter whether the impairment or disturbance is permanent or temporary.*
- (3) *A lack of capacity cannot be established merely by reference to —*
  - (a) *a 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 his capacity.*
- (4) *In proceedings under this Act (other than proceedings for offences under this Act), any question whether a person lacks capacity within the meaning of this Act must be decided on the balance of probabilities.*

- (5) *Subject to section 21, no power which a person (“D”) may exercise under this Act —*
- (a) *in relation to a person who lacks capacity; or*
  - (b) *where D reasonably thinks that a person lacks capacity, is exercisable in relation to a person below 21 years of age.*

**Section 5 of the Mental Capacity Act**

- (1) *For the purposes of section 4, a person is unable to make a decision for himself if he is unable —*
- (a) *to understand the information relevant to the decision;*
  - (b) *to retain that information;*
  - (c) *to use or weigh that information as part of the process of making the decision; or*
  - (d) *to communicate his decision (whether by talking, using sign language or any other means).*
- (2) *A person is not to be regarded as unable to understand the information relevant to a decision if he is able to understand an explanation of it given to him in a way that is appropriate to his circumstances (using simple language, visual aids or any other means).*
- (3) *The fact that a person is able to retain the information relevant to a decision for a short period only does not prevent him from being regarded as able to make the decision.*
- (4) *The information relevant to a decision includes information about the reasonably foreseeable consequences of —*
- (a) *deciding one way or another; or*
  - (b) *failing to make the decision.*