

Family Factsheets

The Mental Capacity Act

As your child approaches adulthood you will need to think about the shift towards their legal status as decision-makers and your role as parent carers in supporting them to make decisions

In England and Wales

As your son or daughter approaches adulthood, you will need to know about the Mental Capacity Act. This will affect you if you live in England and Wales and are the family carer of someone aged 16 or older who is unable to make some decisions. As your child's nearest relative you know them really well, their likes and dislikes and how they communicate their wishes. However the law says that every adult has the right to make their own decisions wherever possible. Through the Mental Capacity Act every adult is supported to take as much control over their own lives as possible.

The Mental Capacity Act came into force in 2007 – it says important things about how to decide if your son or daughter is able to make their own decisions (described as having capacity). The Act encourages everyone to assume a person has capacity. If they are found to lack capacity the person most

directly involved in their care, such as a family member, will continue to make the decisions in that person's best interests and involve their relative when doing so. Best interests decisions should take into account all the things that the person who lacks capacity would consider important, if they were able to make the decisions themselves.

If your relative lacks capacity to make decisions about their healthcare, the responsibility for making best interests decisions sits with the health care team looking after them unless you have been appointed as a personal welfare deputy. The appointed decision-maker from the health care team must involve your son or daughter in the decision-making process and you can support this by sharing what you know about their preferences and wishes. You will always have a vital role in keeping your son or daughter involved in all the decisions made in their life.

At all times, the five principles of the Mental Capacity Act must be observed:

1. Everyone is believed to have capacity to make decisions unless it can be proved that they do not.
2. All appropriate help and support must be given to a person to help them make a decision before it is decided that they are unable to.
3. A person should not be treated as unable to make a decision just because the decision they make is unwise or unusual.
4. Any act or decision made on behalf of a person who lacks capacity must be done or made in their best interests.
5. Before any act or decision is made, regard must be given as to whether it could be achieved any other way which maintains their basic rights and freedom of action.

It is important to think about these changes in the law as your son or daughter approaches adulthood and in good time so that plans can be made in good time.

A useful guide for families and carers on the Mental Capacity Act is available at www.gov.uk/make-decisions-for-someone.

In Scotland

The Adults with Incapacity (Scotland) Act 2000, provides the statutory framework for the medical treatment of incapacitated adults, from the age of 16. You can read a short guide to this Act at www.gov.scot/Resource/Doc/217194/0058194.pdf.

In Northern Ireland

Decision-making is governed by the common law and the Northern Ireland Assembly is working towards statutory provisions for treating adults lacking mental capacity.

If you have concerns about how the Mental Capacity Act will impact on you as a family and your future decisions, do speak with a member of your care team.



Together for Families Helpline
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