

Mental Capacity Act 2005



An easy read guide



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If people find reading **difficult**, they will need lots of **support** to read and understand this guide.



1. Introduction

This document has been created to help you understand the Mental Capacity Act 2005.



The Mental Capacity Act is the law for people over the age of 16 and is about making sure that people have the support they need to make as many decisions as possible.



Some people are able to make every decision about their own lives.

Some people are able to make some decisions.

A small number of people cannot make any decisions.



Being unable to make a decision is called “lacking capacity.” Although a person may lack capacity to make a decision they can still share what they would like to happen.

2. Decisions

If there is an important decision to make about someone's life, a mental capacity assessment will be done to check their understanding to make a specific decision. It covers all decisions from big and small. Here are a few decisions that we all may make as part of everyday life.



What to wear



To let someone help you in the bath



Where to live



Whether to go to the doctor about a health problem

3. Capacity

Having capacity to make a decision is being able to understand information and make a decision for yourself.

A capacity assessment will be a conversation to find out if someone can make a decision for themselves. It is to find out if they:

- Understand information
- Remember the information
- Think about the information
- Communicate their decision



A person's ability to do this may be affected by things like learning disability, dementia or a mental health problem.



A person with epilepsy may not be able to make a decision during the day after a seizure.



Someone with a mental health problem may not be able to make a decision now, but in a week's time they may feel much better.



A Mental Capacity assessment can be completed by anyone, as long as they are involved in the particular decision.

There are some decisions that can never be made under the Mental Capacity Act for someone who lacks capacity.

- Whether to get married or have a civil partnership
- Whether to have sex
- Placing a child for adoption
- Voting at an election

4. Five rules

There are five important rules of the Mental Capacity Act.

1) Assume that people are able to make decisions, unless it is shown that they are not



Everyone is different and every decision is different.



Somebody may **not** be able to decide whether to move house. They need people to help them make this decision, or to make this decision for them if they can't.



But they may be able to decide what to wear and what to eat. They must be allowed to make those decisions.

2) Give people as much support as they need to make decisions.



If a person finds it hard to understand words, it is not enough to just talk to them about the decision. It is not okay to say that it is too hard to involve people.



They may be able to make the decision.
It is just that they need help with communication.



Information about the decision could be given to them using sign language, photos or symbols.



People who know them well should be there to help them to understand and communicate their decision.



Decisions are time specific, so it is important that they are given the opportunity to learn and understand the information relevant to the decision.



For example: Some people say 'yes' and 'no' by pointing their eyes in different directions. They may be able to make their own decisions, so they need people around them who understand.

3) Unwise decisions.



If a person makes unwise decisions, this is OK, as long as they understand what they are doing.

People cannot assume they lack capacity because they could not make the decision in the past.



Adults have the right to make decisions that other people disagree with.

Some examples:

- Going for a walk in the pouring rain
- Spending too much money on a new TV
- Staying up until 4am



- Smoking 20 cigarettes a day

If the person can decide these things, and understand the decision, they must be allowed to go ahead.

4) Best interests.



This means that the decision must be what is best for the person, not for anyone else. They must listen and make sure they are involved.



If someone is not able to make a decision, then the people helping them must only make decisions in their 'best interests.'

They must think about the 'best interests' checklist:

- Can the decision wait, until a time when the person can make it themselves?
- How can the person be helped to make the decision themselves?
- What do other people who know the person think?

5) Find the least restrictive way of doing what needs to be done.



When a decision is made for somebody, it must give them as much freedom as possible.



An example:

There is a man who like to be outdoors. He falls over and hurts himself a lot. Should his staff:

- Keep him indoors all the time where he is safe
- Let him go outside, but wearing protective clothes, to stop him getting hurt?

The answer is b).

It would be wrong to stop him doing the things he enjoys, if there is another way to keep him safe that is 'less restrictive.'

5. Limits to "Best Interests"

There are limits to what carers can do, even if it is in the person's best interests.

They must not:

1) Use too much restraint.

Example:

Holding someone still for an injection that they do not want **is restraint**. Holding someone's arm still for an injection that they are happy to have is **not** restraint.



2) Carers must not take away people's freedom without proper approval.



Example:

If a supported living provider needs to control where a person lives or the things they are allowed to do, then they must ask the Court of Protection for permission.

3) Carers must not go against the wishes of someone who is legally allowed to make decisions on the person's behalf.



For example:

John needs an operation. He cannot decide for himself whether to have it. A Court said that John's brother is allowed to take decisions about his health, which John cannot make himself. John's dad thinks that John should have an operation. John's brother does not think the operation is in John's best interests.

Because the Court has said John's brother can decide for him, John does not have the operation.

4) Carers must not go against an 'advance decision' to refuse medical treatment.

An advance decision is when the person being cared for has already let people know what they want to happen.



6. Independent Mental Capacity Advocate



If a person cannot make big decisions, like whether to move house or have medical treatment, they might need an Independent Mental Capacity Advocate (IMCA).

IMCAs do not make decisions about their care. They are there to support them.

Warwickshire County Council has a duty under the Mental Capacity Act to provide an IMCA for people, if they lack capacity and have no known relatives or friends to speak and act on their behalf.

If they have a Lasting Power of Attorney or deputy an IMCA will not be provided.

Thank you for reading. If you need more information, please contact your allocated worker or the Warwickshire County Council Customer Service Centre on 01926 410410.

Warwickshire County Council would like to acknowledge and thank People First Dorset for their resources to make this booklet.

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