These notes refer to the Mental Capacity Act 2005 (c.9) which received Royal Assent on 7 April 2005

MENTAL CAPACITY ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Persons Who Lack Capacity

General powers of the court and appointment of deputies

Section 21: Transfer of proceedings relating to people under 18

79. The Act deals with people aged 16 and over (and with the property of younger children – see *section 18(3)*), while the Children Act 1989 deals with people under the age of 18. There will be some overlap between the jurisdictions and the Lord Chancellor is therefore given power by this section to make transfer of proceedings orders. It is intended that the order will indicate that a case should be transferred to the court most suitable to deal with the issues. One factor is likely to be the prospect of a person under 18 who is the subject of a dispute still lacking capacity when an adult. For example, if the parents of a 17-year old with profound learning difficulties are in dispute about residence or contact then it may be more appropriate for the Court of Protection to deal with the case, since an order made under the Children Act 1989 would expire on the child's 18th birthday at the latest.