

*These notes refer to the Mental Capacity Act (Northern Ireland)
2016 (c.18) which received Royal Assent on 9 May 2016*

Mental Capacity Act (Northern Ireland) 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1 – Principles

Section 5 – Supporting person to make decision

This section expressly sets out the sorts of steps that must, where practicable, be taken to ensure compliance with the principle in section 1 which requires all practicable help and support to be given to a person to make a decision for themselves before it can be concluded that he or she is unable to do so.

The steps in this section are not exhaustive but include providing the person with information relevant to the decision in an appropriate way, which includes information about the reasonably foreseeable consequences of deciding one way or another, or failing to make the decision (or an appropriate explanation of such); ensuring the time and environment is as conducive as possible to the decision making process; and involving others likely to help and support the person to make their own decision.

Subsection (4) clarifies that, when providing the person with information, it may be appropriate to use simple language or visual aids or to provide support to help with the communication of the information. Subsection (5) also clarifies that, when involving others in the decision making process, it may be appropriate to involve someone who can provide communication support, for example a Speech and Language Therapist.

This is a significant section in the Act that promotes a key message that the Act aims to get across: that by far the best outcome is for decisions to be made on the basis of informed consent by the person themselves.