

*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

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2 – Lack of Capacity: Protection from Liability, and Safeguards**

##### *Chapter 2 – Additional Safeguards for Serious Interventions*

##### *Sections 13 – 14 - Formal assessments of capacity*

Section 13 provides that the formal assessment of capacity safeguard applies to an act that is, or is part of, a serious intervention. In these cases, a formal capacity assessment must be carried out and a statement of incapacity made, otherwise D will not be able to avail of the protection from liability under section 9. The section makes it clear that a belief by D that P lacks capacity in relation to such acts is not a reasonable one for the purposes of section 9 if a formal capacity assessment has not been carried out where the Act requires it. In addition, the formal capacity assessment must be carried out recently enough so as to be relevant and meaningful. This safeguard does not apply where the situation is an emergency (see sections 65 and 66).

“Formal capacity assessment” is defined in section 14 as an assessment carried out by a “suitably qualified person” to be defined in regulations. “Statement of incapacity” is also defined in section 14. It means a statement in writing by the assessor, certifying that in the assessor’s opinion, P lacks capacity in relation to the serious intervention. The statement must also specify, among other things, which of the functional aspects of the capacity test set out in section 4 P is not able to do because of an impairment or disturbance in the functioning of P’s mind or brain. Also, importantly, the statement must specify any help or support given to P, without success, to enable P to make the decision for him or herself.