

*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 6 – High Court Powers: Decisions and Deputies

Section 117 – Restrictions on deputies

This section provides that a deputy does not have power to make a decision on behalf of P unless P lacks capacity to make that decision, or the deputy reasonably believes that P lacks capacity. The deputy is subject to the provisions of the Act, in particular provisions relating to principles (sections 1, 2 and 5) and best interests (section 7).

The section provides that a deputy is not permitted to be given power to prohibit a person from having contact with P or to direct that a different person takes over responsibility for P's healthcare. A deputy is also not permitted to be given powers relating to the settlement of P's property, the execution of a will for P or the exercise of a power vested in P whether beneficially or as a trustee or otherwise. Additionally, a deputy may not be given a power to make a decision on behalf of P which is inconsistent with a decision that was made by an attorney under a lasting power of attorney or an enduring power of attorney. Also, a deputy cannot refuse consent to life-sustaining treatment for P or deprive him or her of his or her liberty. A deputy cannot restrain P unless the court has given the deputy scope to do so and the deputy reasonably believes that: P lacks capacity in relation to the matter; there is a risk of harm to P if the deputy does not carry out or authorise the act of restraint; and that carrying out or authorising the act is a proportionate response to the likelihood of harm to P and the seriousness of the harm concerned. Finally, a deputy cannot authorise psychosurgery for P.

The section provides that the Department may, by regulations, extend the types of treatment in respect of which the deputy cannot give consent.