2016 CHAPTER 18

PART 1

PRINCIPLES

Establishing whether a person has capacity

Supporting person to make decision

5.—(1) A person is not to be regarded for the purposes of section 1(4) as having been given all practicable help and support to enable him or her to make a decision unless, in particular, the steps required by this section have been taken so far as practicable.

(2) Those steps are—

(a) the provision to the person, in a way appropriate to his or her circumstances, of all the information relevant to the decision (or, where it is more likely to help the person to make a decision, of an explanation of that information);

(b) ensuring that the matter in question is raised with the person—

(i) at a time or times likely to help the person to make a decision; and

(ii) in an environment likely to help the person to make a decision;

(c) ensuring that persons whose involvement is likely to help the person to make a decision are involved in helping and supporting the person.

(3) The information referred to in subsection (2)(a) includes information about the reasonably foreseeable consequences of—

(a) deciding one way or another; or

(b) failing to make the decision.

(4) For the purposes of providing the information or explanation mentioned in subsection (2)(a) in a way appropriate to the person's circumstances it may, in particular, be appropriate—

(a) to use simple language or visual aids; or

(b) to provide support for the purposes of communicating the information or explanation.

(5) The reference in subsection (2)(c) to persons whose involvement is likely to help the person to make a decision may, in particular, include a person who provides support to help the person communicate his or her decision.

(6) Nothing in this section is to be taken as in any way limiting the effect of section 1(4).