



2016 CHAPTER 18

PART 1  
PRINCIPLES

*Establishing whether a person has capacity*

**Compliance with section 1(2)**

6.—(1) In proceedings under this Act or any other statutory provision, any question whether a person who is 16 or over lacks capacity in relation to a matter (within the meaning of this Act) is to be decided on the balance of probabilities.

(2) Subsection (3) applies where, other than in such proceedings, it falls to a person to determine for any purpose of this Act whether another person who is 16 or over (“P”) lacks capacity in relation to a matter.

(3) If—

(a) the person making the determination has taken reasonable steps to establish whether P lacks capacity in relation to the matter,

(b) the person reasonably believes that P lacks capacity in relation to the matter, and

(c) the principles in section 1(3) to (5) and section 5 have been complied with, for the purposes of section 1(2) the person is to be taken to have sufficiently “established” that P lacks capacity in relation to the matter.

(4) In this section “proceedings” includes proceedings before a tribunal and proceedings of any panel constituted under Schedule 1 or 3.