

*These notes refer to the Mental Capacity Act 2005  
(c.9) which received Royal Assent on 7 April 2005*

# MENTAL CAPACITY ACT 2005

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1: Persons Who Lack Capacity**

##### **Powers of the court in relation to lasting powers of attorney**

##### *Section 22: Powers of court in relation to validity of lasting powers of attorney*

80. This section and *section 23* set out what the Court of Protection can do in relation to LPAs. The powers are similar to those in section 8 of the Enduring Powers of Attorney Act 1985, except that administrative functions connected with registration will be performed by the Public Guardian.
81. The court can determine questions about validity and revocation (*subsection (2)*). It can direct that an instrument should not be registered or (if it is unregistered) revoke it on the grounds set out in *subsection (3)* (fraud or undue pressure, or misbehaviour by the attorney).
82. *Subsection (5)* provides that where there is more than one donee the court may revoke the instrument or the LPA so far as it relates to any of them.

##### *Section 23: Powers of court in relation to operation of lasting powers of attorney*

83. This allows the court to decide questions about the meaning or effect of an LPA (or an instrument purporting to create an LPA) and to give directions to attorneys where the donor lacks capacity. The court may also give the attorney directions about producing reports, accounts, records and information and about his remuneration and expenses. The court has power to relieve a donee from some or all of the liabilities arising from a breach of duty (cf Enduring Powers of Attorney Act 1985, section 8(2)(f)). It may also authorise gifts beyond the scope of what is permitted by *section 12(2)* (for example, for tax planning purposes).