Mental Capacity Act 2005

2005 CHAPTER 9

PART 1

PERSONS WHO LACK CAPACITY

Preliminary

3 Inability to make decisions

(1) For the purposes of section 2, a person is unable to make a decision for himself if he is unable—

(a) to understand the information relevant to the decision,
(b) to retain that information,
(c) to use or weigh that information as part of the process of making the decision, or
(d) to communicate his decision (whether by talking, using sign language or any other means).

(2) A person is not to be regarded as unable to understand the information relevant to a decision if he is able to understand an explanation of it given to him in a way that is appropriate to his circumstances (using simple language, visual aids or any other means).

(3) The fact that a person is able to retain the information relevant to a decision for a short period only does not prevent him from being regarded as able to make the decision.

(4) The information relevant to a decision includes information about the reasonably foreseeable consequences of—

(a) deciding one way or another, or
(b) failing to make the decision.
Annotations:

Modifications etc. (not altering text)

C1  S. 3 applied (1.4.2015) by The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (S.I. 2014/2936), reg. 1(5), 8(3)

Commencement Information

I1  S. 3 wholly in force at 1.10.2007; s. 3 not in force at Royal Assent see s. 68(1)-(3); s. 3 in force for certain purposes at 1.4.2007 by S.I. 2007/563, arts. 1(2)(3), 2(2)(c)(3) and s. 3 in force otherwise at 1.10.2007 by S.I. 2007/1897, art. 2(2)(c)
Changes to legislation:
There are outstanding changes not yet made by the legislation.gov.uk editorial team to Mental Capacity Act 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations.

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:
Whole provisions yet to be inserted into this Act (including any effects on those provisions):
  – s. 4C inserted by 2019 c. 18 s. 1(3)
  – s. 21ZA and cross-heading inserted by 2019 c. 18 s. 3
  – s. 36(2)(da) inserted by 2019 c. 18 Sch. 2 para. 4(4)
  – s. 42(1A) inserted by 2019 c. 18 s. 4(2)
  – s. 42(2A)(2B) inserted by 2019 c. 18 s. 4(3)
  – s. 65(2A) inserted by 2019 c. 18 Sch. 2 para. 12(2)
  – Sch. AA1 inserted by 2019 c. 18 Sch. 1