

*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 1 – Principles

Section 1 – Principles: capacity

This section sets out the guiding principles that must be complied with when a person is making a determination as to whether a person aged 16 or over lacks capacity in relation to a particular matter for any purpose of the Act.

It provides that a person is not to be treated as lacking capacity in relation to the matter unless it is established that the person lacks capacity (as defined in section 3). It also makes clear that the question of whether or not a person is able to make a decision for him or herself is only to be determined by reference to the matters mentioned in section 4. To be clear, it is important that a person who is thinking about carrying out an intervention in reliance on someone's consent does not misinterpret this section as requiring them to assume that the person has capacity to consent. Rather what it seeks to achieve is the placing of the onus on a person intending to carry out an intervention under the Act to have properly established that capacity is really lacking. This is so that no one finds him or herself in the position where they feel they are being asked to prove they have capacity to make the decision. It is not so as to prevent or obviate the need for proper checks to be made where there are doubts about a person's capacity to make a decision. Proceeding on the basis of a mere assumption that the person has capacity to consent could end in liability if in fact the person lacks capacity.

Section 1 also provides that a person is not to be treated as unable to make a decision for him or herself unless all practicable help and support to enable the person to make the decision has been given without success. The practicable steps that must, in particular, be taken to ensure compliance with this principle are expressly set out in section 5.

Section 1 also provides that a person is not to be treated as lacking capacity to make a decision simply because he or she makes what others consider to be an unwise decision.