

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

MENTAL CAPACITY ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Persons Who Lack Capacity

Lasting powers of attorney

Section 12: Scope of lasting powers of attorney: gifts

59. This is similar to section 3(5) of the Enduring Powers of Attorney Act 1985 and deals with an attorney's power to make gifts of the donor's property. The attorney can only do something that is in the donor's best interests but this section operates as a specific restriction in relation to gifts. It allows modest gifts proportionate to the donor's assets to people related or connected to the donor (including himself) on "customary occasions", as defined; and to charities (subject to any conditions or restrictions in the LPA itself). The court has power to authorise more substantial gifts (see [section 23\(4\)](#)) if satisfied this would be in the donor's best interests. For example, if an older person has substantial assets then tax planning might be a reason for the making of gifts.