

*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

General powers of the court and appointment of deputies

Section 18: Section 16 powers: property and affairs

71. *Subsection (1)* indicates the extent of the court's powers with regard to property and affairs. Again it provides a non-exhaustive, indicative list of the matters within the powers relating to property and affairs. This largely reproduces the list which applies to the original Court of Protection in section 96 of the Mental Health Act 1983. Again, this is not a list of matters which must always go to the new Court of Protection but rather an indication of the types of order the court might make if an application were made. Where property and financial matters are concerned the effect of the general law relating to contract and property will often be to create a need for formal powers. So if the person concerned has lost capacity to enter into a contract for the sale of his house no purchaser is going to accept a contract or Land Registry transfer document signed by someone who is not the registered owner, unless the proposed purchaser sees a document proving that someone else has formal authority to contract to sell and transfer the property on his behalf. Equally, the person's bank will be bound by the terms of its contract with him not to hand his money over to someone else. If he can no longer give a valid instruction or valid receipt to the bank then his money will have to be held by the bank until formal authority is provided. If a valid power of attorney exists then this would probably remove any need for the Court of Protection to make orders. Again, not all of the powers can be given to deputies (see *section 20(3)*). These correspond to matters which, under the current law, always have to be dealt with by the court itself.