



# Mental Capacity Act 2005

## 2005 CHAPTER 9

### PART 1

#### PERSONS WHO LACK CAPACITY

##### *Preliminary*

## **2 People who lack capacity**

- (1) For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.
- (2) It does not matter whether the impairment or disturbance is permanent or temporary.
- (3) A lack of capacity cannot be established merely by reference to—
  - (a) a person's age or appearance, or
  - (b) a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about his capacity.
- (4) In proceedings under this Act or any other enactment, any question whether a person lacks capacity within the meaning of this Act must be decided on the balance of probabilities.
- (5) No power which a person (“D”) may exercise under this Act—
  - (a) in relation to a person who lacks capacity, or
  - (b) where D reasonably thinks that a person lacks capacity, is exercisable in relation to a person under 16.
- (6) Subsection (5) is subject to section 18(3).

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*Status: Point in time view as at 02/12/2019.*

*Changes to legislation: Mental Capacity Act 2005, Section 2 is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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**Modifications etc. (not altering text)**

- C1** S. 2 applied (temp.) (1.4.2015) by [The Health and Social Care Act 2008 \(Regulated Activities\) Regulations 2014 \(S.I. 2014/2936\)](#), regs. 1(5)(6), **8(3)**

**Commencement Information**

- I1** S. 2 wholly in force at 1.10.2007; s. 2 not in force at Royal Assent see s. 68(1)-(3); s. 2 in force for certain purposes at 1.4.2007 by [S.I. 2007/563](#), arts. 1(2)(3), **2(2)(b)(3)** and s. 2 in force otherwise at 1.10.2007 by [S.I. 2007/1897](#), **art. 2(2)(b)**

**Status:**

Point in time view as at 02/12/2019.

**Changes to legislation:**

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