

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

# MENTAL CAPACITY ACT 2005

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1: Persons Who Lack Capacity**

##### **Preliminary**

##### *Section 8: Expenditure*

46. This is to be read with *sections 5* and *7*. It allows a person who is acting under *section 5* and who arranges something for P's care or treatment that costs money to do certain things. He can promise that P will pay, use money which P has in his possession and pay himself back from P's money in his possession or consider himself owed by P. This restates existing common law rules which provide that a person acting as an "agent of necessity" for another person should not be out of pocket as a result. A carer might, acting in P's best interests, arrange the delivery of disability aids or household items. Nothing in this section allows a carer to gain access to P's funds where they are held by a third party such as a bank or building society. The bank or building society would remain bound by contractual obligations to P until formal steps were taken (for example, registering a relevant power of attorney, or obtaining a court order).
47. *Subsection (3)* recognises that some people may have control over P's money or property by other routes, for example under the [Social Security \(Claims and Payments\) Regulations 1987 \(SI 1987/1968\)](#) or by way of banking arrangements.