



Mental Capacity Act

The Mental Capacity Act 2005 makes important changes which will affect many people, including the elderly, and those who may not be in a position to manage their own affairs.

In October 2007, the Act finally came fully into force and the new Lasting Power of Attorney was introduced (replacing Enduring Powers of Attorney for new such powers). Under the Act there are five key points:

- Every adult has the right to make his or her own decisions and must be assumed to have capacity to make them, unless it is proved otherwise.
- A person must be given all practicable help before anyone treats them as not being able to make their own decisions.
- Just because an individual makes what might be seen as an unwise decision, they should not be treated as lacking capacity to make that decision.
- Anything done or any decision made on behalf of a person who lacks capacity must be done in their best interests.
- Anything done for, or on behalf of, a person who lacks capacity should be the least restrictive of their basic rights and freedoms.

Ian Macara, Partner in Bennett Griffin LLP's Private Client Team, says:

"The reason for this Press Release is that some of our local clients and their families may be unaware of the potential relevance of the provisions of the Mental Capacity Act. It is wise to enter into a lasting power of attorney so that your affairs can be handled by those you trust if you lose capacity. In addition, the Act includes a new criminal offence of neglect or ill-treatment of a person who lacks capacity. The act aims to ensure that decisions that are made on the person's behalf are in their best interests. It also provides a checklist of things that decision makers must use and it introduces a Code of Practice for people such as attorneys and healthcare workers who support people who have lost the capacity to make their own decisions".

The Mental Capacity Act also set up a new service, the Independent Mental Capacity Advocate (IMCA) service. This aims to help people make decisions about their lives when they are vulnerable, such as those with dementia, Alzheimer's disease, brain injury or a very severe learning disability. It is for those who do not have any relatives or friends to determine matters for them or voice their views.

If you need any advice in this area, want to set up a lasting power of attorney or work with the elderly or vulnerable and need an update on the latest changes call **Ian Macara**, Partner, on 01903 706955 or one of the **Private Client Team**, on 01903 229999.