

Family Factsheets

The Mental Capacity Act and Liberty Protection Safeguards

As your child approaches adulthood, you will need to think about the shift towards their legal status as decision-makers and your role as parent/ parent carer in supporting them to make decisions.

The Mental Capacity Act

In England and Wales

In England and Wales, professionals and families should be aware of the legal implications of the Mental Capacity Act (MCA) (2005).

- The MCA applies to everyone involved in the care, treatment and support of people aged 16 and over who are unable to make all or some decisions for themselves.
- The MCA is designed to protect and restore power to those vulnerable people who lack capacity.
- The MCA also supports those who have capacity and choose to plan for their future – this is everyone in the general population who is over the age of 18.

The MCA encourages everyone to assume a person has capacity. If they are found to lack capacity, the person most directly

involved in their care, such as a family member, will continue to make decisions in that person's best interests and involve their relative when doing so. Best interests decisions should take into account all the things that the person who lacks capacity would consider important, if they were able to make the decisions themselves. The Act states that anyone over 16 years of age must be assumed to be competent to make their own decisions and that they must be given any support they need from professionals in order to do so.

Power of Attorney (LPA) is legal documentation that lets anyone over 18 years of age appoint a person to decide matters on their behalf. It is made in preparation for the future, before a loss of capacity. If an individual is not competent to make their own decisions, and does not have an LPA, professionals will make decisions on their behalf, on the basis of "best interests". In this situation, whilst family members will be consulted on their views, these are not legally binding and

treatments/ interventions not felt to be medically appropriate cannot be demanded. This process can be very challenging for families.

If your child over the age of 16 years lacks capacity to make decisions about their healthcare, the responsibility for making best interests decisions sits with the health care team looking after them unless you have been appointed as a personal welfare deputy. The court will usually only appoint a personal welfare deputy if:

- there's doubt whether decisions will be made in someone's best interests, for example if the family disagree about care
- someone needs to be appointed to make decisions about a specific issue over time, for example where someone will live

A deputyship is a last resort when you lose decision-making capacity, and no one has the legal authority to do it on your behalf.

Without an LPA or a personal welfare deputy, the appointed decision-maker from the health care team must involve your son or daughter in the decision-making process and you can support this by sharing what you know about their preferences and wishes. You will always have a vital role in keeping your son or daughter involved in all the decisions made in their life.

At all times, the five principles of the Mental Capacity Act must be observed:

1. Everyone is believed to have capacity to make decisions unless it can be proved that they do not.
2. All appropriate help and support must be given to a person to help them make a decision before it is decided that they are unable to.

3. A person should not be treated as unable to make a decision just because the decision they make is unwise or unusual.
4. Any act or decision made on behalf of a person who lacks capacity must be done or made in their best interests.
5. Before any act or decision is made, regard must be given as to whether it could be achieved any other way which maintains their basic rights and freedom of action.

It is important to think about these changes in the law as your son or daughter approaches adulthood and in good time so that plans can be made in good time. A useful guide for families and carers on the Mental Capacity Act is available at www.gov.uk/make-decisions-for-someone.

In Scotland

The Adults with Incapacity (Scotland) Act 2000 provides the statutory framework for the medical treatment of incapacitated adults, from the age of 16. You can read a short guide to this Act here:

<https://www.gov.scot/publications/adults-with-incapacity-act-principles/>

In Northern Ireland

Decision-making is governed by the common law and the Northern Ireland Assembly under the 2016 Mental Capacity Act. Information on the Act is available at <https://www.health-ni.gov.uk/mca>

If you have concerns about how the Mental Capacity Act will impact on you as a family and your future decisions, do speak with a member of your care team.

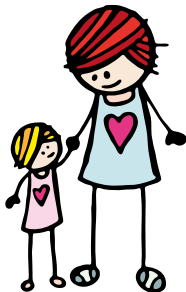
Liberty Protection Safeguards

The Liberty Protection Safeguards provide protection for people aged 16 and above who are, or who need to be, deprived of their liberty in order to enable their care or treatment, and who lack the mental capacity to consent to their arrangements.

The Liberty Protection Safeguards were introduced in the Mental Capacity (Amendment) Act 2019 and will replace the Deprivation of Liberty Safeguards (DoLS) system. There are some key changes made including the introduction of 3 assessments that form the basis of the authorisation of Liberty Protection Safeguards and greater involvement of families. The scheme has also been extended to include 16 and 17 year olds.

www.gov.uk/government/publications/liberty-protection-safeguards-factsheets/liberty-protection-safeguards-what-they-are

You can read more about the Mental Capacity Act, Liberty Protection Safeguards and transition to adult services in our Stepping Up Guide.



Family Support Hub
Helpline & Live Chat: 9am-4pm, Monday to Friday

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