

*These notes refer to the Mental Capacity Act (Northern Ireland)  
2016 (c.18) which received Royal Assent on 9 May 2016*

# Mental Capacity Act (Northern Ireland) 2016

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 2 – Lack of Capacity: Protection from Liability, and Safeguards**

#### *Chapter 5 – Additional Safeguard: Independent Mental Capacity Advocate*

#### *Sections 35 and 36 – Independent mental capacity advocate*

Sections 35 and 36 have the effect that, where Part 2 requires an intervention to be authorised or where, although not requiring authorisation, it is a serious compulsory intervention, the independent mental capacity advocate conditions must be met (and any other safeguards that apply) for the defence in section 9 to apply, unless the situation is an emergency, or P has made a declaration declining the services of the independent mental capacity advocate (explained further in Part 4 of the Act). The independent mental capacity advocate must be in place to represent and support P when the question of what is in P's best interests is being determined by D. Where practicable and appropriate, D must consult the independent mental capacity advocate and take account of the advocate's views in relation to what would be in P's best interests (see section 7(7)).