



## 2016 CHAPTER 18

### PART 1 PRINCIPLES

#### *Establishing whether a person has capacity*

#### **Meaning of “unable to make a decision”**

4.—(1) For the purposes of this Part a person is “unable to make a decision” for himself or herself about a matter if the person—

- (a) is not able to understand the information relevant to the decision;
- (b) is not able to retain that information for the time required to make the decision;
- (c) is not able to appreciate the relevance of that information and to use and weigh that information as part of the process of making the decision; or
- (d) is not able to communicate his or her decision (whether by talking, using sign language or any other means);

and references to enabling or helping a person to make a decision about a matter are to be read accordingly.

(2) In subsection (1) “the information relevant to the decision” includes information about the reasonably foreseeable consequences of—

- (a) deciding one way or another; or
- (b) failing to make the decision.

(3) For the purposes of subsection (1)(a) the person is not to be regarded as “not able to understand the information relevant to the decision” if the person is able to understand an appropriate explanation of the information.

(4) An appropriate explanation means an explanation of the information given to the person in a way appropriate to the person's circumstances (using simple language, visual aids or any other means).