



Mental Capacity Act 2005

2005 CHAPTER 9

PART 1

PERSONS WHO LACK CAPACITY

Preliminary

2 People who lack capacity

- (1) For the purposes of this Act, a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain.
- (2) It does not matter whether the impairment or disturbance is permanent or temporary.
- (3) A lack of capacity cannot be established merely by reference to—
 - (a) a person's age or appearance, or
 - (b) a condition of his, or an aspect of his behaviour, which might lead others to make unjustified assumptions about his capacity.
- (4) In proceedings under this Act or any other enactment, any question whether a person lacks capacity within the meaning of this Act must be decided on the balance of probabilities.
- (5) No power which a person ("D") may exercise under this Act—
 - (a) in relation to a person who lacks capacity, or
 - (b) where D reasonably thinks that a person lacks capacity, is exercisable in relation to a person under 16.
- (6) Subsection (5) is subject to section 18(3).