



Department for
Constitutional Affairs
Justice, rights and democracy

Mental Capacity Act 2005

'Frequently Asked Questions'

What does the Mental Capacity Act do?

The Act governs decision-making on behalf of adults who lack mental capacity, both where they lose capacity at some point in their lives, and where the incapacitating condition has been present since birth. It covers all decisions, including personal welfare and financial matters, and covers decision-making on their behalf by attorneys, or court-appointed "deputies". It also clarifies the position if formal process has not been adopted.

Why do we need this Act?

The current law on decision-making for adults who lack capacity has evolved bit by bit. Existing attorneys or receivers only make decisions on financial matters. The Act provides clarity about who can make decisions and how to do it. It protects vulnerable people, carers and professionals.

Who will this legislation help?

Millions of people – including those who lack capacity, the estimated 6 million people who care for them and professionals who have contact with them. It will also help those who wish to prepare for a time when they might lose capacity.

Why has it taken so long for this legislation?

The Act is a result of many years of consultation and work. The Law Commission began the process in 1989, producing a report and draft Bill in 1995. The Government responded in 1997 with a green paper, and a policy statement in 1999. A draft Mental Incapacity Bill was published in June 2003 and examined by a Joint Committee of both Houses of Parliament. The re-named Mental Capacity Bill was introduced to Parliament on 17 June 2004 and received Royal Assent on 7 April 2005, and it became law.

What is an independent mental capacity advocate (IMCA)?

When a person who lacks mental capacity has to make a serious decision about treatment or where they live, an independent mental capacity advocate (IMCA) is appointed to support and represent them. The IMCA voices the person's wishes, feelings, beliefs and values and they make the decision maker aware of all relevant information. They can also challenge the decision maker.

Who gets an independent mental capacity advocate (IMCA)?

An IMCA will be provided when someone lacks capacity but has no one to speak for them, is faced with a decision about a serious medical treatment or their accommodation. The Government has made a clear commitment to consult with external partners on extending the service to other groups and situations.

What is a Lasting Power of Attorney (LPA)?

A Lasting Power of Attorney (LPA) is a new statutory form of power of attorney created by the Mental Capacity Act. Anyone who has capacity to do so may choose a person (an “attorney”) to take decisions on their behalf if they subsequently lose capacity. The LPA will replace the Enduring Power of Attorney (EPA) currently provided for by the Enduring Powers of Attorney Act 1985. Unlike an EPA, an LPA can extend to personal welfare matters as well as property and affairs.

Can I apply for an LPA now?

No. This will not be possible until the Act is implemented because we need time to make the necessary regulations and to establish the Public Guardian who will be the registering authority.

What will happen to my EPA?

Although the Enduring Powers of Attorney Act 1985 will be repealed on implementation of the Mental Capacity Act, the legal effect of an EPA already made under the current law will be preserved.

Can I change my EPA to an LPA?

No. You will need to draw up a separate LPA, although you will be able to go on using an EPA even after the Act is implemented.

What is a living will?

A living will is not a legal term. It is referred to in the Mental Capacity Act as an advance decision to refuse treatment. It means that you can make a decision now, about treatment you would not want in future when you have lost capacity. An advance decision must be in writing, signed and witnessed, and if it applies to life-sustaining treatment there must be a statement that the decision stands even if life is at risk.