

Twelve things **you** need to know about the *Mental Capacity Act 2005*

- 1 The Mental Capacity Act 2005 comes into force in two stages: **1st of April 2007** Independent Mental Capacity Advocate, criminal offence, sections 1-4, Code of Practice; **1st October** all other parts of the Act e.g. Power of Attorney, Court of Protection, Public Guardian, Advance Decisions etc.
- 2 This Act provides a legal framework for acting and **making decisions** on behalf of people aged 16 and over who **lack the mental capacity** to do these acts or make these decisions for themselves and **replaces existing common law** governing the treatment of people without capacity. The Act covers a **range** of choices from **day-to day** decisions such as what to wear or eat, through to **serious** decisions about where to **live**, having **medical treatment** or what to do with a person's **finances** and **property**.
- 3 **Everyone** working with and/or caring for **people who lack capacity** must **comply** with the Act.
- 4 This Act is supported by the '**Mental Capacity Act 2005 Code of Practice**' and doctors, nurses, social workers and others working in a professional or any paid role are under **a legal duty 'to have regard'** to this Code of Practice. **You** must be prepared to give reasons to explain non-compliance with this Code and should record these reasons at the same time as you make the decision not to follow the Code. Find the Code at: <http://www.dca.gov.uk/menincap/legis.htm#codeofpractice>
- 5 Five principles are set out in section 1 of the Act that all decisions and actions carried out under this Act must be tested against. **You** must know these principles and **measure your decisions and actions against them** as failure to take them into account could be **cited in legal proceedings** as evidence of unlawful conduct.
- 6 The Act gives a **definition** of a person who lacks capacity (s. 2) and sets out the **test** for determining whether a person is unable to make a particular decision and therefore lacks capacity (s.3). If **you** have doubts about a person's capacity and are contemplating making a decision on their behalf you must know these sections of the Act, apply them and **fully record** both your decision **and** the reasoning behind your decision in the relevant clinical and practice record.
- 7 If **you** are making a decision or carrying out an act for a person without capacity you must consider the **checklist** of factors set out in section 4 to assess whether the act or decision is in the '**best interests**' of the person

without capacity. As all such acts done or decisions made must be in the 'best interests' of the person without capacity a **full record** of the 'best interests' **assessment** must be made in the relevant clinical and practice record.

- 8 The Act introduces **designated decision-makers** who can make decisions, including welfare and treatment choices, on behalf of a person without capacity i.e. a person with a **Lasting Power of Attorney** (s.9) and a **Court appointed Deputy** (s. 16). It also creates the role of **Independent Mental Capacity Advocate** (s. 35) who is someone appointed to **support** a person who lacks capacity and has no one to speak for them e.g. relatives. **You** must understand the legal role that such people have in treatment decisions, know when it is **appropriate** to involve them, **how** to involve them, how much **access to confidential information** they must be allowed and **record their involvement** in the relevant clinical and practice record.
- 9 The Act gives **statutory force to advance decisions** to refuse treatment that allow a person to make a decision in advance to refuse specified treatment if they lose capacity in the future. **You** must be aware when an advance decision is **valid** and **applicable**, **follow** it and **record the** existence of an advance decision in the relevant clinical and practice record.
- 10 The Act defines '**restraint**' and sets out guidance on when restraint is **lawfully permitted** (s. 6). This is one of several areas where this statute may **overlap** with the provisions of the **Mental Health Act 1983**. **You** need to know about all of them!
- 11 The Act creates a **new criminal offence** of ill treatment or neglect of a person who lacks capacity. A person found guilty of such an offence may be liable to a fine, a term of imprisonment not exceeding five years or both.
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 - ▶ You can get more information from:
 - ▶ <http://www.oxfordshire.gov.uk/links/public/mentalcapacity> (general public)
 - ▶ <http://www.oxfordshire.gov.uk/links/public/mentalcapacityinfo> (for professionals outside Oxfordshire County Council)
 - ▶ <http://intranet.oxfordshire.gov.uk/links/intranet/mentalcapacityact> (for Oxfordshire County Council staff)
 - ▶ Rachel Griffiths, Mental Capacity Act Lead for Oxfordshire, email: rachel.griffiths@oxfordshire.gov.uk

Look out for briefing sessions!