

Explanatory notes:

1. All registered medical practitioners are able to issue medical reports for the purpose of LPA Activation/Deactivation; not limited to the list of accredited medical practitioners by the Office of the Public Guardian.
2. "Personal welfare" refers to matters such as deciding where to live and consenting to medical and dental treatment.
3. "Property and affairs", as the name implies, refers to matters concerning the patient's financial affairs and property.
4. Deactivation of LPA is in the event where the patient has regained mental capacity having previously been certified to have lost mental capacity, to repossess control of his/her Personal welfare and/or Property and affairs.

Section 3 of the Mental Capacity Act

- (1) The following principles apply for the purposes of this Act.
- (2) A person must be assumed to have capacity unless it is established that he lacks capacity.
- (3) A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success.
- (4) A person is not to be treated as unable to make a decision merely because he makes an unwise decision.
- (5) An act done, or a decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in his best interests.
- (6) Before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

Section 4 of the Mental Capacity Act

- (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 (other than proceedings for offences under this Act), any question whether a person lacks capacity within the meaning of this Act must be decided on the balance of probabilities.
- (5) Subject to section 21, 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 below 21 years of age.

Section 5 of the Mental Capacity Act

- (1) For the purposes of section 4, a person is unable to make a decision for himself if he is unable —
 - (a) to understand the information relevant to the decision;
 - (b) to retain that information;
 - (c) to use or weigh that information as part of the process of making the decision; or
 - (d) to communicate his decision (whether by talking, using sign language or any other means).
- (2) A person is not to be regarded as unable to understand the information relevant to a decision if he is able to understand an explanation of it given to him in a way that is appropriate to his circumstances (using simple language, visual aids or any other means).
- (3) The fact that a person is able to retain the information relevant to a decision for a short period only does not prevent him from being regarded as able to make the decision.
- (4) The information relevant to a decision includes information about the reasonably foreseeable consequences of —
 - (a) deciding one way or another; or

(b) *failing to make the decision.*