

Frequently asked questions

1) What is the Making Decisions Alliance?

The Making Decisions Alliance is made up of a wide range of organisations and groups – to press for new legislation on mental capacity. The Alliance's main concern is about the gap in the current legal framework, leaving it unclear who has the legal right to take day to day welfare, healthcare or financial decisions on behalf of people who lack the capacity to make decisions independently. This includes those who may need support to make their own decisions, such as people with a learning disability, dementia, mental health problems or any illness or disability. The law should reinforce the right for people to make their own decisions.

The two broad aims of the Alliance are to:

- lobby the Government to introduce mental capacity legislation in the next Queen's Speech, by November 2003
- increase awareness of the need for new legislation.

2) What is meant by 'mental capacity'?

'Mental capacity' describes the ability to make decisions about some or all aspects of your life. Some people may experience difficulty in making decisions at different

points in time. Every step should be taken to support a person to make these decisions.

3) How do you know if someone has capacity?

There is no legal definition of who does and who does not have capacity to make day to day decisions. As a result, there is no consistent process for supporting people to make their own decisions.

4) Isn't there existing legislation about capacity?

There is no comprehensive legal framework for England, Wales and Northern Ireland on mental capacity. However, Scotland introduced new legislation on mental capacity in 2000. The Alliance is campaigning for similar legislation in England and Wales.

5) Doesn't the Mental Health Act deal with capacity?

The current Mental Health Act (1983), which covers England and Wales, does not contain any provisions relating to a person's capacity to make decisions for themselves. And proposals for new mental health legislation only do so in extremely limited situations. This is in spite of the recommendation of the expert committee, appointed by the

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Government in 1998 to review the 1983 Act, that a capacity 'test' should be included whenever someone was subject to legislation.

6) Who is affected by the lack of legislation on mental capacity?

This is an issue that can affect us all. Sudden illness (e.g. stroke) or an accident (e.g. severe head injury) could temporarily or permanently affect a person's ability to make decisions. Certain other groups are also particularly affected – for example, people with dementia, people with a learning disability, autism, or severe mental health problems. Some people in these groups will permanently lack capacity; it may fluctuate for others.

7) How are people affected?

The current law does not provide sufficient protection for those who lack capacity or those who look after them. The law is fragmented and confusing. There is a risk that people will be presumed unable to make decisions for themselves and so will not be supported to make those decisions. Carers are also uncertain about decisions they can and cannot make. The law needs to clarify what carers can do for the people they look after. It also affects families and friends, who have no legal right to be involved in making decisions on important welfare, medical and financial matters on behalf of someone who does not have capacity.

8) Won't legislation on capacity mean legalising euthanasia?

No, euthanasia is illegal. The Alliance is not asking for any changes in the law on euthanasia. We believe that new mental capacity legislation will improve the quality of life for all people who have difficulty making or communicating decisions.

9) Aren't there already legal means that enable someone to make decisions on behalf of someone else?

There is current legislation that deals with making financial decisions on behalf of an adult who does not have capacity. This includes something called an Enduring Power of Attorney (EPA). But the EPA cannot deal with medical treatment and welfare decisions.

10) What is an EPA – Enduring Power of Attorney?

EPA is a legal process by which you hand over to someone else the legal power to decide what is done with your financial affairs and property. The person you appoint as your legal representative is known as the 'attorney'. They can use the power straight away if that is what you want. Or you can make clear that the EPA is only to be used if you become mentally incapacitated and unable to manage your affairs in the future. An EPA must be registered with the Public Guardianship

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Office (PGO) once the person has lost mental capacity. If someone loses their mental capacity, a representative of the Secretary of State for Work and Pensions (usually the benefits supervisor in the local Benefits Agency or Pensions Service Office) may be asked to assign an appointee to collect and spend that person's benefits on their behalf. An appointee is usually a relative or someone who lives close by and should only be appointed when the Benefits Agency representative is satisfied that the person is not able to manage their own affairs and that the nominated appointee is a suitable person. In practice, the Benefits Agency finds it difficult to monitor the actions of appointees.

11) What is the PGO – Public Guardianship Office?

The PGO provides financial protection services for people who are not able to manage their financial affairs because of mental incapacity. It also supports their families, often after someone has applied to the Court of Protection to manage the incapacitated person's financial affairs (where the person has not previously made an EPA). When the Court of Protection has considered the application, it may appoint someone, called a 'receiver', to manage and administer the person's affairs when they are unable to do so themselves. If you are the receiver the PGO will assist and support you in completing your duties and work with you to safeguard the best interests of

the person with mental incapacity. As a last resort, when the Court of Protection cannot find anyone else willing or suitable to become the receiver, the PGO may act as receiver itself.

12) What does the Government say about the need for legal reform on mental capacity?

The Government agrees that reform is needed and that the law in this area is out of date and inadequate. The government published *Making Decisions* in 1999. This sets out proposals for new legislation to include a new test of capacity and new powers of attorney for health and welfare decisions. The Government is committed to introducing legislation when parliamentary time allows. However, the Alliance feels that this is not a high enough priority for the Government.

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