

# **Unit 21: Understand the Mental Capacity Act 2005**

**Unit reference number: Y/616/7560**

**Level: 4**

**Unit type: Optional**

**Credit value: 4**

**Guided learning hours: 30**

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## **Unit summary**

The Mental Capacity Act 2005 is designed to protect and empower individuals who may lack the mental capacity to make their own decisions about their care and treatment. It is a law that applies to individuals aged 16 and over.

So that anyone involved in supporting vulnerable adults works within the law (which protects both them and those whom they support), it is essential that they understand the Mental Capacity Act 2005 and the Mental Capacity Act 2005 Code of Practice.

This unit will give you an understanding of the key elements of the Mental Capacity Act 2005 and Code of Practice. The unit focuses on the rights of individuals and the ways in which the Act is used to support and promote their best interests.

Familiarising yourself with this legislation and Code of Practice will enable you to understand what Adult Care Workers need to know and what they are required to do when following the guidance and regulations set out in the Act. You will explore the types of situation that require appropriate restraint and you will develop an understanding of when it is lawful for people to be deprived of their basic human right to liberty.

## Learning outcomes and assessment criteria

To pass this unit, the learner needs to demonstrate that they can meet all the learning outcomes for the unit. The assessment criteria outline the requirements the learner is expected to meet to achieve the unit.

Learning outcomes	Assessment criteria
1 Understand the purpose of the Mental Capacity Act 2005	1.1 Explain why legislation is necessary to protect the rights of individuals who may lack the capacity to make decisions for themselves 1.2 Identify factors which may lead to an individual lacking the capacity to make decisions for themselves 1.3 Explain how the Mental Capacity Act 2005: <ul style="list-style-type: none"><li>• empowers people to make decisions for themselves</li><li>• safeguards people who lack capacity by placing them at the heart of the decision-making process</li></ul> 1.4 Explain why effective communication is important when working with individuals who may not be able to make decisions for themselves

Learning outcomes	Assessment criteria
<p>2 Understand key elements of the Mental Capacity Act 2005</p>	<p>2.1 Outline the five key principles included in the Mental Capacity Act 2005</p> <p>2.2 As defined in the Mental Capacity Act 2005, explain</p> <ul style="list-style-type: none"> <li>• capacity</li> <li>• best interests</li> </ul> <p>2.3 Identify people responsible for assessing an individual's capacity and best interests</p> <p>2.4 Explain actions to be taken to ensure adult care workers act in best interests of individuals</p> <p>2.5 Discuss day-to-day decisions adult care workers make on behalf of individuals who lack capacity to make decisions themselves</p> <p>2.6 Outline situations when adult care workers must comply with the Mental Capacity Act 2005</p> <p>2.7 Explain ways legal protection is given to adult care workers who provide care and treatment to individuals who lack capacity</p> <p>2.8 Explain circumstances when Independent Mental Capacity Advocates (IMCA) should be appointed</p> <p>2.9 Explain how the provisions of the Mental Capacity Act 2005 supports individuals to make plans for a time when s/he may not have capacity to make certain decisions</p>

Learning outcomes	Assessment criteria
<p>3 Understand 'restraint' as defined in the Section 6(4) of the Mental Capacity Act 2005</p>	<p>3.1 Identify the range of actions that amount to restraint</p> <p>3.2 Identify factors which make restraint lawful under the Mental Capacity Act 2005</p> <p>3.3 Explain the Deprivation of Liberty safeguards</p> <p>3.4 Describe circumstances where Deprivation of Liberty safeguards may be applied</p> <p>3.5 Explain reasons adult care workers should raise concerns with supervisors/managers when they consider an individual may be unlawfully deprived of their liberty</p>
<p>4 Understand the importance of complying with the Mental Capacity Act 2005 Code of Practice when working with individuals who lack capacity</p>	<p>4.1 Explain the legal status of the Mental Capacity Act 2005, Code of Practice</p> <p>4.2 Explain the purpose of the Mental Capacity Act 2005, Code of Practice</p> <p>4.3 Evaluate how the Mental Capacity Act 2005 Code of Practice affects day-to-day activities of adult care workers who make decisions for individuals who lack the capacity to make decisions for themselves</p>

## Content

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### What needs to be learned

#### Learning outcome 1: Understand purpose of the Mental Capacity Act 2005

##### Individual

- Someone requiring care or support; it will usually mean the person or people supported by the learner.

##### Reasons for legislation

- Protection from abuse.
- Maintaining human rights.
- Prevention of harm.

##### Factors which affect mental capacity

- Functional impairment in mind or brain (permanent or temporary).
- Functional disturbance in mind or brain (permanent or temporary).
- Emotional.
- Biological.

##### Empowerment

- Choice.
- Control.
- Safeguarding.

##### Communication

- Verbal in appropriate language, e.g. own language, simplified language
- Non-verbal, e.g. sign language
- Other means, e.g. communication boards
- Effective communication, understand information, retain information, communicate wishes

#### Learning outcome 2: Understand key elements of the Mental Capacity Act 2005

##### Five key principles

- The presumption of capacity.
- Individuals must be supported to make their own decisions.
- Individuals must have freedom to make unwise decisions.
- Acts and decisions must be in best interests of the individual.
- Care and treatment should be delivered in ways which are least restrictive to the individual's rights and freedom of action.

##### Individuals required to comply with the Mental Capacity Act 2005

- Family carers.
- Other carers.

## What needs to be learned

### **Professionals legally required to comply with the Mental Capacity Act 2005 and follow the Code of Practice set out in the Act**

- An attorney under a lasting power of attorney (LPA).
- A deputy appointed by the new Court of Protection.
- Independent Mental Capacity Advocates (IMCA).
- Those carrying out research approved in accordance with the Act.
- Professionals acting in their official role (doctors, dentists, nurses, therapists, radiologists, paramedics).
- Social care staff, including social workers, care managers/care assistants, domiciliary care workers.
- Others, including housing staff and police officers.
- Contractors who are being paid to carry out acts for or in relation to an individual who lacks capacity.

### **Key themes**

#### **Capacity**

- Determined by two-stage test:
  - Stage 1 – proof of impairment that affects the way an individual’s mind or brain works, e.g. physical or medical conditions that cause confusion, drowsiness or loss of consciousness
  - Stage 2 – whether an individual is able to make a specific decision when required by understanding and retaining relevant information, using that information to make a decision and communicating their decision (by any means)
  - Assessment of capacity by person directly concerned with the individual at the time the decision needs to be made.

#### **Legal protection**

- Protection from liability.
- Limitations to this protection, e.g. unlawful deprivation of liberty or disproportionate restraint.

#### **Best interests**

- Unbiased comprehensive assessment of all relevant circumstances, including past and present feelings.
- Any relevant written statement made by the individual when s/he had capacity such as advance decisions, their beliefs and values, the views of anyone named by the person as someone to be consulted.
- Decisions concerning life-sustaining treatment.
- Likelihood and time of future capacity.
- Encouraging the individual to participate or improve his/her ability to participate.

## What needs to be learned

### Assessment of mental capacity by individuals

- Family members.
- Carers.
- Care workers.
- Healthcare and social care staff.
- Attorneys appointed under a lasting power of attorney or registered as having enduring power of attorney.
- Deputies appointed by the court to make decisions on behalf of someone who lacks capacity, and the Court of Protection.
- All aspects of financial, personal welfare and healthcare.
- Role of Independent Mental Capacity Advocate (IMCA).

### Planning ahead

- Role of lasting power of attorney (LPA).
- Role of enduring power of attorney (EPA).
- Role of attorneys, to include duties and responsibilities, standards required.
- Measures for dealing with attorneys who do not meet appropriate standards.

### Learning outcome 3: Understand 'restraint' as defined in Section 6(4) of the Mental Capacity Act 2005

#### Meaning of restraint

- Use of or threat of force to secure the completion of an act which the individual resists.
- Restriction of liberty of movement.

#### Use of lawful restraint

- To protect individuals from harm, proportionate to risk.
- Limits on lawful restraint.

#### Deprivation of liberty

- Amendments under the Mental Health Act 2007 Section 50.
- Deprivation of Liberty Safeguards.
- Difference between actions that restrict an individual's liberty and those that result in deprivation of liberty.
- European Court of Human Rights (ECHR) decisions on degree of intensity, to include the type of care provided, duration, effects of use of restraint, reasons for need to implement restraint.
- When responding to a relevant legal decision concerning personal welfare, to include provision of life-sustaining treatment, to carry out any vital act.
- Best interests, including when making decisions or carrying out an action on behalf of an individual who is assessed as lacking capacity to make that decision.

## What needs to be learned

### Reasons for concern about use of restraint

- Where it constitutes a breach of an individual's human rights.
- Judgements have been made by European Court of Human Rights, to include: type of restraint used, such as sedation, used on individuals who resist.
- Professionals have complete and effective control over care and movement for a significant period.
- Professionals exercise control over assessments, treatment, contacts and residence.
- Individuals are prevented from resisting, if they made a meaningful attempt to do so.
- A request by carers for the individual to be discharged to their care is refused.
- The individual is unable to maintain social contacts because of restrictions placed on access to other people.
- The individual loses autonomy because they are under continuous supervision and control.

### Learning outcome 4: Understand the importance of complying with the Mental Capacity Act 2005 Code of Practice when working with individuals who lack capacity

#### Duties of adult care workers

- Legal duty to comply with the law.
- Professional duty.
- Duty of care.

#### Responsibilities of adult care workers

- To enable person-centred care and ensure safe practice.

## Information for tutors

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### Suggested resources

#### Books

Eales M – *Mental Capacity Act and Deprivation of Liberty Workbook* (Create Space Independent Publishing Platform, 2013) ISBN 9781491268933

Graham M – *A Practical Guide to the Mental Capacity Act 2005: Putting the Principles of the ACT into Practice* (Jessica Kingsley Publishers, 2015) ISBN 9781849055208

Great Britain Ministry of Justice – *Deprivation of liberty safeguards: code of practice to supplement the main Mental Capacity Act 2005 code of practice (Final Edition)* (Stationery Office, 2008) ISBN 9780113228157

#### Websites

<a href="http://www.legislation.gov.uk">www.legislation.gov.uk</a>	UK government site.
<a href="http://www.mentalhealth.org.uk">www.mentalhealth.org.uk</a>	Mental Health Foundation – charity providing information, resources and tools to address mental health issues.
<a href="http://www.mind.org.uk">www.mind.org.uk</a>	Mind – mental health charity with resources to help make choices about treatment, understand your rights or find sources of support.
<a href="http://www.nhs.co.uk">www.nhs.co.uk</a>	The National Health Service – Reference website providing up-to-date health and care information.
<a href="http://www.sane.org.uk">www.sane.org.uk</a>	Sane - mental health charity which provides emotional support and provides information on research and campaigns.
<a href="http://www.scie.org.uk">www.scie.org.uk</a>	Social Care Institute of Excellence – provides accredited training, consultancy, research and resources for the social care and health sectors.

## **Assessment**

This guidance should be read in conjunction with the associated qualification specification for this unit.

This unit is internally assessed. To pass this unit, the evidence that the learner presents for assessment must demonstrate that they have met the required standard specified in the learning outcomes and assessment criteria, and the requirements of the assessment strategy.

To ensure that the assessment tasks and activities enable learners to produce valid, sufficient, authentic and appropriate evidence that meets the assessment criteria, centres should follow the guidance given in *Section 8 Assessment* of the associated qualification specification and meet the requirements from the assessment strategy given below.

Wherever possible, centres should adopt an holistic approach to assessing the units in the qualification. This gives the assessment process greater rigour and minimises repetition, time and the burden of assessment on all parties involved in the process.

### **Unit assessment requirements**

This unit must be assessed in accordance with the assessment strategy (principles) in *Annexe A* of the associated qualification specification.

Assessment of all learning outcomes may take place in or outside of a real work environment.