

**Department of Health
and Social Care**

**Capacity Policy Consultation
Explainer Document**

August 2020

Consultation dates: 21st August to the 2nd October



**Isle of Man
Government**

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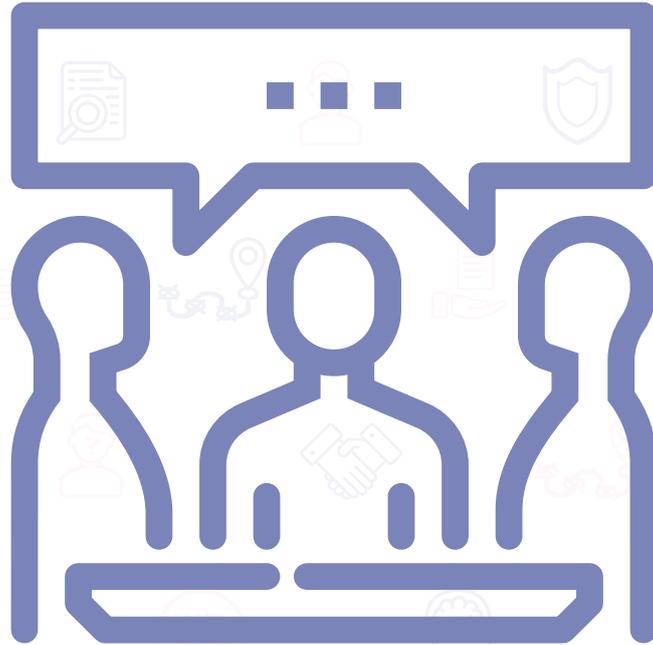
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We are thinking about changing the rules about decision making, and this leaflet explains what the plan is. We want to know if you like this plan, or if there is anything you think would make it better.

If there is anything you want to say you can do it here <https://consult.gov.im/health-and-social-care/capacity-bill-2021-principles>



What do we mean by mental capacity?



- △ Some people are not able to make decisions about their own lives
- △ This is because they lack the capacity to do so. A person's capacity can be affected if they have for example; learning difficulties, learning disabilities, mental health problems or suffer from dementia
- △ Suffering a head injury or a stroke can affect capacity and mean people need support for a period of time until they are better
- △ A capacity policy will help people to make decisions about things that affect them
- △ It will also create a system where other people can make decisions for them in a clear and transparent manner

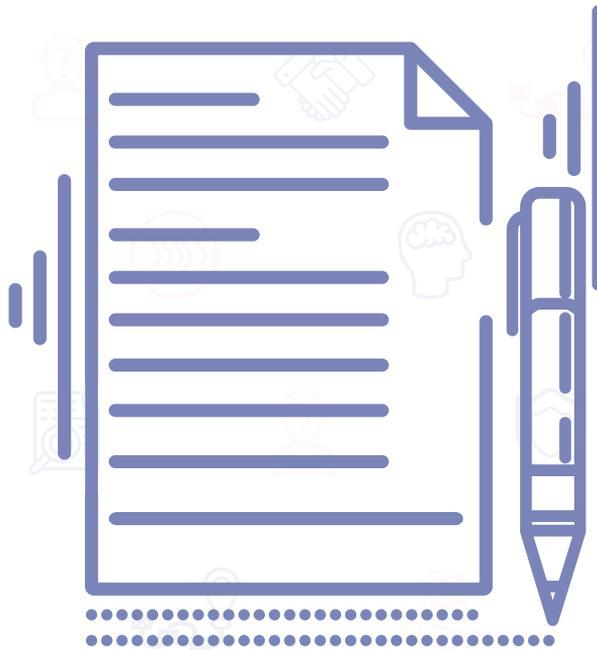


Why is developing a policy important?



A Policy will help signpost and inform our new legislation to help people to make decisions about things that affect them.

- △ People may want to plan for a time when they may in the future no longer have capacity
- △ Ensures that when a person makes a decision other people think is unwise, it does not necessarily mean they lack capacity.
- △ Where a person has some capacity they can often be supported to make a decision about their own life affairs which include health, welfare and finances.
- △ Anyone making a decision for another person must make sure it is in their best interests

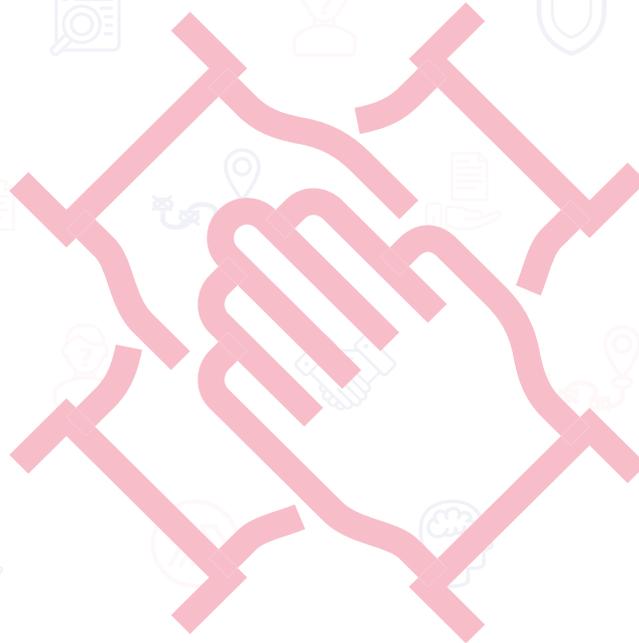


When the Policy develops into a Capacity Bill how will it help individuals?



It will:

- △ Give rights to people who cannot make decisions for themselves
- △ Clarify how to help a person make their own decisions about something
- △ Explain how to work out if a person can make their own decisions
- △ Provide options if a person cannot make decisions about something





A new policy needs to be based on a set of principles which will include:

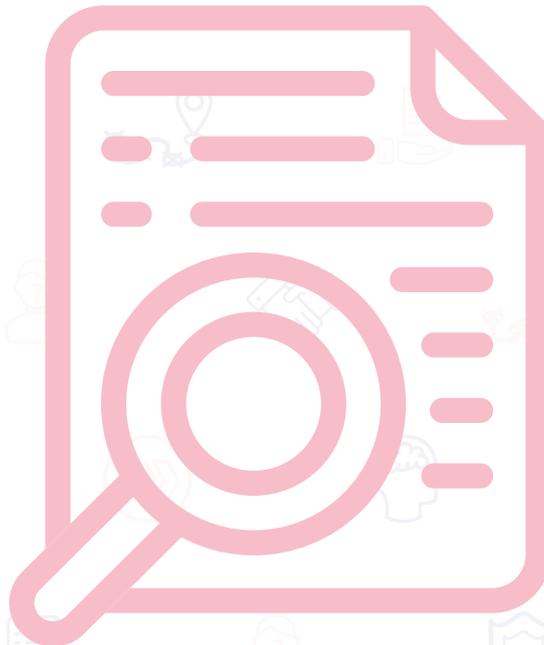
- △ When a person makes a decision other people think is unwise, it does not necessarily mean they lack capacity.
- △ No one can assume a person lacks capacity – it has to be proven
- △ Where a person has some capacity they can often be supported to make a decision about their own life
- △ Anyone making a decision for another person must make sure it is in their best interests



How will a person's capacity be assessed?



- △ It is accepted that a person may be able to make a decision about one matter but not another
- △ A person's capacity will be assessed at a particular time when a decision has to be made
- △ There will be a two phased approach to decide if someone is able to make decisions for themselves, phase two has a four stage test
- △ Qualified practitioners will be part of the evaluation process





No one can assume you lack capacity because of:

- △ how old you are
- △ how you look
- △ how you act

No-one can assume that you cannot make the decision yourself just because:

- △ you have a disability
- △ you cannot make complicated decisions
- △ you have not been able to make decisions like that in the past



Protecting a person's best interests:



- △ If someone has to make a decision for another person, they must decide what is in their best interest
- △ They must listen to what that person wants, ask people who know them and make sure they are involved
- △ They will help the person lacking capacity to speak up for themselves





Lasting Power of Attorney (LPA) is a legally enforceable document where you can state in writing who can make certain decisions for you, if you can't make them for yourself. You can only make this legal document at a time that you understand what it means.

This new LPA can include decisions about:

- △ Health – such as whether you should have an operation
- △ Welfare – including deciding where it is best for you to live
- △ Property - if you need to sell your house
- △ Finances - looking after your money so it is kept safe



Who can act on behalf of another person?

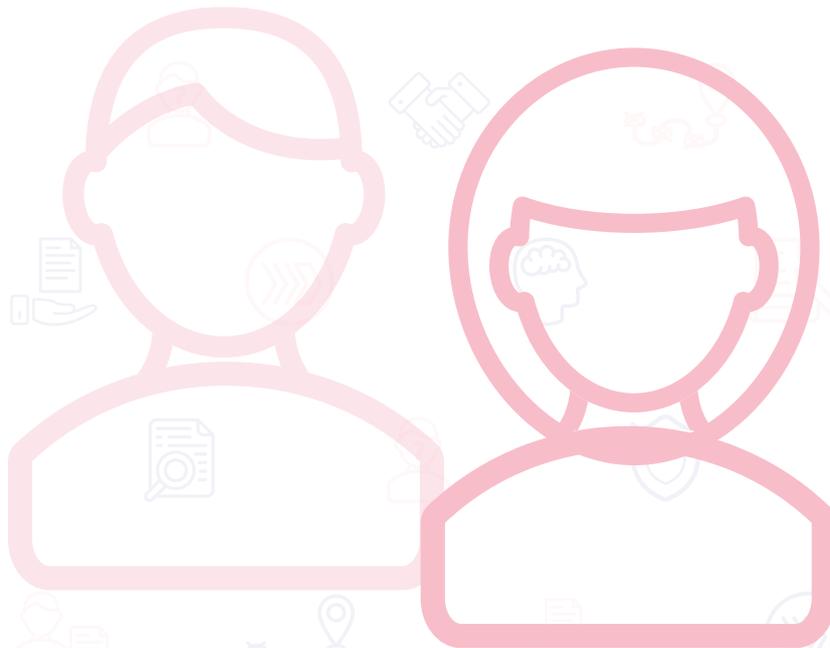


It is expected that the Capacity Legislation will set out who can and cannot make decisions on behalf of another person if a Lasting Power of Attorney has been set up.

The person making those decisions, referred to as a Donee, must be aged 18 or over and have the knowledge, skills and experience to act in someone else's best interests.

A number of safeguards are proposed:

- △ people who have been convicted of certain serious offences cannot be the Donee of an LPA
- △ someone cannot be appointed as Donee for an LPA about property and financial matters if they are bankrupt or have an outstanding debt judgment or award against them



What is an advance decision? And how can it benefit me?



- △ An advance decision is when someone who has mental capacity decides that they do not want a particular type of treatment if they lack capacity in the future. This is sometimes called a living will
- △ Advance decisions will help clinicians understand a patient's wishes – and a doctor must respect them
- △ An advance decision must be about treatment you want to refuse and when you want to refuse it
- △ People have to think very carefully before making an advance decision
- △ You are free to make an advance decision if you want to, but no one should force you to make it. It is your choice and you must understand what it means.

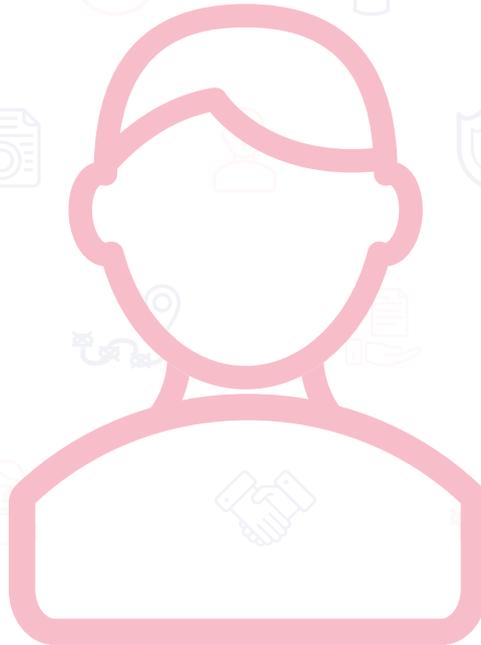


Excluded Decisions



There are some very personal decisions which we believe cannot be made on behalf of another person.

The proposed Capacity Bill will not allow decisions on the areas listed to be made by anyone other than the person directly involved





- △ It will be against the law to badly treat someone you care for or look after who may lack capacity
- △ A proposed criminal offence of ill treatment or wilful neglect would apply to anyone with responsibility for the care of a person lacking capacity
- △ A code of practice would ensure anyone who is paid for their work in a support role understands their duties



Next steps:



We will listen to what you and others have said and make some changes.

We will ask for your views again later this year before this becomes part of a new law.

When we have drafted the Capacity Bill we will then:

- △ go out for another round of consultation with the public and stakeholders in late 2020, which in turn will provide:
- △ data for further evaluation, insights and comments informing the final Capacity Bill for presentation to Tynwald during 2021



Contact

If you have any queries about this consultation or wish to request a paper copies of the consultation (including larger print) please contact:

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