

Changes to legislation: Health and Social Care Act 2012, Cross Heading: Mental Capacity Act 2005 (c. 9) is up to date with all changes known to be in force on or before 12 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

SCHEDULES

SCHEDULE 5

PART 1: AMENDMENTS OF OTHER ENACTMENTS

Mental Capacity Act 2005 (c. 9)

133 The Mental Capacity Act 2005 is amended as follows.

Commencement Information

II Sch. 5 para. 133 in force at 1.4.2013 by [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))

134 In section 35 (appointment of independent mental capacity advocates)—

- (a) in subsection (1), for “appropriate authority” substitute “responsible authority”,
- (b) in subsection (4), for “appropriate authority” substitute “responsible authority”, and
- (c) after subsection (6) insert—
 - “(6A) In subsections (1) and (4), “the responsible authority” means—
 - (a) in relation to the provision of the services of independent mental capacity advocates in the area of a local authority in England, that local authority, and
 - (b) in relation to the provision of the services of independent mental capacity advocates in Wales, the Welsh Ministers.
 - “(6B) In subsection (6A)(a), “local authority” has the meaning given in section 64(1) except that it does not include the council of a county or county borough in Wales.”

Commencement Information

I2 Sch. 5 para. 134 in force at 1.4.2013 by [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))

135 In section 64 (interpretation), in subsection (1) in the definition of “local authority”, after “except in” insert “section 35(6A)(a) and”.

Commencement Information

I3 Sch. 5 para. 135 in force at 1.4.2013 by [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))

136 (1) Schedule A1 (hospital and care home residents: deprivation of liberty) is amended as follows.

(2) In paragraph 176 (meaning of “managing authority”), in sub-paragraph (1)—

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- (a) in paragraph (a) omit “Primary Care Trust,”
 - (b) in that paragraph omit “Strategic Health Authority,”
 - (c) after that paragraph insert—
 - “(aa) in relation to England, if the hospital falls within paragraph (a)(i) or (ii) and no Special Health Authority has responsibility for its administration, the Secretary of State;”,
 - and
 - (d) in paragraph (b) omit “Primary Care Trust.”
- (3) In paragraph 180 (supervisory bodies: hospitals in England)—
- (a) for sub-paragraph (2) substitute—
 - “(2) If the relevant person is ordinarily resident in the area of a local authority in England, the supervisory body are that local authority.”
 - (b) in sub-paragraph (3), after “If” insert “the relevant person is not ordinarily resident in England and”
 - (c) in sub-paragraph (4), for “the Primary Care Trust” substitute “the local authority”
 - (d) after sub-paragraph (4) insert—
 - “(4A) Local authority” means—
 - (a) the council of a county;
 - (b) the council of a district for which there is no county council;
 - (c) the council of a London borough;
 - (d) the Common Council of the City of London;
 - (e) the Council of the Isles of Scilly.”
 - (e) in sub-paragraph (5), for “Primary Care Trusts” substitute “local authorities”.
- (4) In paragraph 181 (supervisory bodies: hospitals in Wales), for sub-paragraph (3) substitute—
- “(3) But if the relevant person is ordinarily resident in the area of a local authority in England, the supervisory body are that local authority.
 - (4) “Local authority” means—
 - (a) the council of a county;
 - (b) the council of a district for which there is no county council;
 - (c) the council of a London borough;
 - (d) the Common Council of the City of London;
 - (e) the Council of the Isles of Scilly.”
- (5) Before paragraph 183 insert the following heading— “ Supervisory bodies: determination of place of ordinary residence ”.
- (6) In that paragraph—
- (a) in sub-paragraph (1), for “paragraph” substitute “paragraphs 180, 181 and”, and
 - (b) in sub-paragraph (2), after “by virtue of sub-paragraph (1)” insert “to any determination of where a person is ordinarily resident for the purposes of paragraph 182”.

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Commencement Information

I4 Sch. 5 para. 136 in force at 1.4.2013 by [S.I. 2013/160](#), **art. 2(2)** (with [arts. 7-9](#))

Changes to legislation:

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Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing SI 2012/1831 art. 10 by [S.I. 2012/2657 art. 15](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 9 Ch. 1B inserted by [2022 c. 31 s. 96](#)
- s. 102(4)(ba) inserted by S.I. 2019/93, Sch. 1 para. 13(3) (as substituted) by [S.I. 2019/1245 reg. 28](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 105(3A)(3B) inserted by [2013 c. 24 Sch. 14 para. 21](#)
- s. 106(3A)(3B) inserted by [2013 c. 24 Sch. 14 para. 22](#)
- s. 250(2)-(2B) substituted for s. 250(2) by [2022 c. 31 s. 95\(2\)\(a\)](#)
- s. 250(6)-(6D) substituted for s. 250(6) by [2022 c. 31 s. 95\(2\)\(d\)](#)
- s. 251251ZA substituted for s. 251 by [2022 c. 31 s. 95\(3\)](#)
- s. 251C(6A) inserted by [2022 c. 31 s. 95\(4\)\(a\)](#)
- s. 259(1)(aa)(b) substituted for s. 259(1)(b) by [2022 c. 31 s. 98\(b\)](#)
- s. 259(1)(aa) words substituted by [S.I. 2023/98 Sch. para. 17\(11\)\(a\)\(iii\)](#) (This amendment comes in force at the same time as 2022 c. 31, s. 98 comes into force)
- s. 259(10A)(10B) inserted by [2022 c. 31 s. 98\(h\)](#)
- s. 304(5)(ja) inserted by [2022 c. 31 s. 95\(5\)](#)