

*These notes refer to the Mental Capacity Act 2005  
(c.9) which received Royal Assent on 7 April 2005*

# MENTAL CAPACITY ACT 2005

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part 1: Persons Who Lack Capacity**

##### **Independent mental capacity advocate service**

##### *Section 36: Functions of independent mental capacity advocates*

112. This section allows the appropriate authority to make regulations setting out the functions of IMCAs. *Subsection (2)* provides that those regulations may set out the steps which an IMCA needs to take in fulfilling those functions. These steps should ensure that the IMCA supports the person to participate as fully as possible in the decision; obtains and evaluates relevant information; ascertains and represents the person's wishes, feelings, beliefs and values; finds out about all the available options; and seeks a second medical opinion if necessary. *Subsection (3)* provides that the regulations may also set out the circumstances in which the IMCA may challenge the decision-maker on behalf of the person, if appropriate.