

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

MENTAL CAPACITY ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Persons Who Lack Capacity

Independent mental capacity advocate service

Section 37: Provision of serious medical treatment by NHS body

113. This section applies where “serious medical treatment” is to be provided or arranged by the NHS for a person who lacks capacity, and there is no one for the treatment-provider to discuss it with. If there is neither a person from the list in *section 40* (such as an attorney under an LPA or deputy) nor a non-professional carer or friend whom it is appropriate to consult, then an IMCA is to be instructed.
114. The role of the IMCA will be both to represent and to support the person in accordance with the regulations made under *section 36*. The information and submissions provided by the IMCA must be taken into account by the decision-maker.
115. *Subsection (2)* provides that where the person’s treatment is regulated under Part 4 of the Mental Health Act 1983, the IMCA does not need to be instructed under *section 37(3)*. That Act already contains its own safeguards.
116. *Subsection (4)* makes provision in relation to urgent treatment. *Subsection (6)* provides that the types of “serious medical treatment” to be covered will be set out in regulations. *Subsection (7)* provides that regulations will also define the particular NHS bodies who will become subject to the duties. The intention is that this will cover the bodies responsible for direct provision or funding of treatment as appropriate.