

*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 39: Provision of accommodation by local authority

121. This section applies to long-stay accommodation (8 weeks or more) arranged by a local authority or a change in such accommodation. It applies to residential accommodation provided in accordance with *section 21* or 29 of the National Assistance Act 1948. This may be accommodation in a care home, nursing home, ordinary and sheltered housing, housing association or other registered social housing, or in private sector housing provided by a local authority or in hostel accommodation. The IMCA safeguard will also apply to people accommodated following discharge under section 117 of the Mental Health Act 1983.
122. The IMCA is to be instructed where a person lacks capacity to agree to the arrangements and there is no other person to discuss it with. Again the role of the IMCA is both to support and to represent the person concerned. Any information or submissions from the IMCA must be taken into account by the local authority.
123. *Subsection (3)* provides that the IMCA does not need to be instructed where the person is to be required under the Mental Health Act 1983 to live in the accommodation in question (for example, as a requirement of conditional discharge). *Subsection (4)* makes provision in relation to urgent placements.
124. *Subsection (5)* is intended to ensure that an IMCA is involved in relation to people whose residence is initially intended to be less than 8 weeks if the period is later extended.