



Mental Capacity Act 2005

2005 CHAPTER 9

PART 1

PERSONS WHO LACK CAPACITY

Independent mental capacity advocate service

35 Appointment of independent mental capacity advocates

- (1) The [^{F1}responsible authority] must make such arrangements as it considers reasonable to enable persons (“independent mental capacity advocates”) to be [^{F2}available to represent and support persons to whom acts or decisions proposed under sections 37, 38 and 39 relate or persons who fall within section 39A, 39C or 39D.][^{F2}available to—
 - (a) represent and support persons to whom acts or decisions proposed under sections 37, 38 and 39 relate,
 - (b) represent and support cared-for persons where paragraph 42 of Schedule AA1 applies, and
 - (c) support appropriate persons where paragraph 43 of Schedule AA1 applies.]
- (2) The appropriate authority may make regulations as to the appointment of independent mental capacity advocates.
- (3) The regulations may, in particular, provide—
 - (a) that a person may act as an independent mental capacity advocate only in such circumstances, or only subject to such conditions, as may be prescribed;
 - (b) for the appointment of a person as an independent mental capacity advocate to be subject to approval in accordance with the regulations.
- (4) In making arrangements under subsection (1), the [^{F3}responsible authority] must have regard to the principle that a person to whom a proposed act or decision relates should, so far as practicable, be represented and supported by a person who is independent of any person who will be responsible for the act or decision.

Status: Point in time view as at 16/05/2019.

Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, Section 35. (See end of Document for details)

- (5) The arrangements may include provision for payments to be made to, or in relation to, persons carrying out functions in accordance with the arrangements.
- (6) For the purpose of enabling him to carry out his functions, an independent mental capacity advocate—
- (a) may interview in private the person whom he has been instructed to represent, and
 - (b) may, at all reasonable times, examine and take copies of—
 - (i) any health record,
 - (ii) any record of, or held by, a local authority and compiled in connection with a social services function, and
 - (iii) any record held by a person registered under Part 2 of the Care Standards Act 2000 (c. 14) [^{F4}, Chapter 2 of Part 1 of the Health and Social Care Act 2008 or Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2)],
 which the person holding the record considers may be relevant to the independent mental capacity advocate's investigation.
- [^{F5}(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.]
- [^{F5}(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.]
- (7) In this section, section 36 and section 37, “the appropriate authority” means—
- (a) in relation to the provision of the services of independent mental capacity advocates in England, the Secretary of State, and
 - (b) in relation to the provision of the services of independent mental capacity advocates in Wales, the National Assembly for Wales.

Textual Amendments

- F1** Words in s. 35(1) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 5 para. 134\(a\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F2** Words in s. 35(1) substituted (16.5.2019 for specified purposes) by [Mental Capacity \(Amendment\) Act 2019 \(c. 18\), s. 6\(3\), Sch. 2 para. 3](#)
- F3** Words in s. 35(4) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 5 para. 134\(b\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F4** Words in s. 35(6)(b)(iii) substituted (2.4.2018) by [The Regulation and Inspection of Social Care \(Wales\) Act 2016 \(Consequential Amendments\) Regulations 2018 \(S.I. 2018/195\), regs. 2\(1\), 28](#)
- F5** S. 35(6A)(6B) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 5 para. 134\(c\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Modifications etc. (not altering text)

- C1** S. 35 extended (E.) (1.11.2006 for certain purposes and otherwise 1.4.2007) by [The Mental Capacity Act 2005 \(Independent Mental Capacity Advocates\) \(Expansion of Role\) Regulations 2006 \(S.I. 2006/2883\), regs. 1\(2\), 2-4](#)

Status: Point in time view as at 16/05/2019.

Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, Section 35. (See end of Document for details)

Commencement Information

- II** S. 35 wholly in force at 1.10.2007; s. 35 not in force at Royal Assent see s. 68(1)-(3); s. 35 in force for E. at 1.11.2006 for certain purposes and otherwise 1.4.2007 by [S.I. 2006/2814](#), **art. 5**; s. 35 in force at 1.10.2007 for W. by [S.I. 2007/856](#), **art. 5**

Status:

Point in time view as at 16/05/2019.

Changes to legislation:

There are currently no known outstanding effects for the Mental Capacity Act 2005, Section 35.