



Mental Capacity Act 2005

2005 CHAPTER 9

PART 1

PERSONS WHO LACK CAPACITY

Independent mental capacity advocate service

37 Provision of serious medical treatment by NHS body

- (1) This section applies if an NHS body—
 - (a) is proposing to provide, or secure the provision of, serious medical treatment for a person (“P”) who lacks capacity to consent to the treatment, and
 - (b) is satisfied that there is no person, other than one engaged in providing care or treatment for P in a professional capacity or for remuneration, whom it would be appropriate to consult in determining what would be in P's best interests.
- (2) But this section does not apply if P's treatment is regulated by Part 4 [F1 or 4A]^{F1} of the Mental Health Act.
- (3) Before the treatment is provided, the NHS body must instruct an independent mental capacity advocate to represent P.
- (4) If the treatment needs to be provided as a matter of urgency, it may be provided even though the NHS body has not been able to comply with subsection (3).
- (5) The NHS body must, in providing or securing the provision of treatment for P, take into account any information given, or submissions made, by the independent mental capacity advocate.
- (6) “Serious medical treatment” means treatment which involves providing, withholding or withdrawing treatment of a kind prescribed by regulations made by the appropriate authority.
- (7) “NHS body” has such meaning as may be prescribed by regulations made for the purposes of this section by—

Status: Point in time view as at 03/11/2008.

Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, Section 37. (See end of Document for details)

- (a) the Secretary of State, in relation to bodies in England, or
- (b) the National Assembly for Wales, in relation to bodies in Wales.

Textual Amendments

- F1** Words in s. 37(2) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 35\(6\), 56](#); [S.I. 2008/1900](#), [art. 2\(k\)](#) (with [art. 3](#), [Sch.](#))

Commencement Information

- II** S. 37 wholly in force at 1.10.2007; s. 37 not in force at Royal Assent see s. 68(1)-(3); s. 37 in force for E. at 1.11.2006 for certain purposes and otherwise 1.4.2007 by [S.I. 2006/2814](#), [art. 5](#); s. 37 in force at 1.10.2007 for W. by [S.I. 2007/856](#), [art. 5](#)

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