



# Mental Capacity Act 2005

## 2005 CHAPTER 9

### PART 1

#### PERSONS WHO LACK CAPACITY

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

#### **38 Provision of accommodation by NHS body**

- (1) This section applies if an NHS body proposes to make arrangements—
  - (a) for the provision of accommodation in a hospital or care home for a person (“P”) who lacks capacity to agree to the arrangements, or
  - (b) for a change in P’s accommodation to another hospital or care home,and 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 for it to consult in determining what would be in P’s best interests.
- (2) But this section does not apply if P is accommodated as a result of an obligation imposed on him under the Mental Health Act.
- (3) Before making the arrangements, the NHS body must instruct an independent mental capacity advocate to represent P unless it is satisfied that—
  - (a) the accommodation is likely to be provided for a continuous period which is less than the applicable period, or
  - (b) the arrangements need to be made as a matter of urgency.
- (4) If the NHS body—
  - (a) did not instruct an independent mental capacity advocate to represent P before making the arrangements because it was satisfied that subsection (3)(a) or (b) applied, but
  - (b) subsequently has reason to believe that the accommodation is likely to be provided for a continuous period—

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*Status: This is the original version (as it was originally enacted).*

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- (i) beginning with the day on which accommodation was first provided in accordance with the arrangements, and
  - (ii) ending on or after the expiry of the applicable period,it must instruct an independent mental capacity advocate to represent P.
- (5) The NHS body must, in deciding what arrangements to make for P, take into account any information given, or submissions made, by the independent mental capacity advocate.
- (6) “Care home” has the meaning given in section 3 of the Care Standards Act 2000 (c. 14).
- (7) “Hospital” means—
  - (a) a health service hospital as defined by section 128 of the National Health Service Act 1977 (c. 49), or
  - (b) an independent hospital as defined by section 2 of the Care Standards Act 2000.
- (8) “NHS body” has such meaning as may be prescribed by regulations made for the purposes of this section by—
  - (a) the Secretary of State, in relation to bodies in England, or
  - (b) the National Assembly for Wales, in relation to bodies in Wales.
- (9) “Applicable period” means—
  - (a) in relation to accommodation in a hospital, 28 days, and
  - (b) in relation to accommodation in a care home, 8 weeks.