



# Mental Capacity Act 2005

## 2005 CHAPTER 9

### PART 1

#### PERSONS WHO LACK CAPACITY

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

#### **39 Provision of accommodation by local authority**

- (1) This section applies if a local authority propose to make arrangements—
  - (a) for the provision of residential accommodation for a person (“P”) who lacks capacity to agree to the arrangements, or
  - (b) for a change in P’s residential accommodation,and are 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 them to consult in determining what would be in P’s best interests.
- (2) But this section applies only if the accommodation is to be provided in accordance with—
  - (a) section 21 or 29 of the National Assistance Act 1948 (c. 29), or
  - (b) section 117 of the Mental Health Act,as the result of a decision taken by the local authority under section 47 of the National Health Service and Community Care Act 1990 (c. 19).
- (3) This section does not apply if P is accommodated as a result of an obligation imposed on him under the Mental Health Act.
- (4) Before making the arrangements, the local authority must instruct an independent mental capacity advocate to represent P unless they are satisfied that—
  - (a) the accommodation is likely to be provided for a continuous period of less than 8 weeks, or
  - (b) the arrangements need to be made as a matter of urgency.

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*Status: This is the original version (as it was originally enacted).*

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- (5) If the local authority—
- (a) did not instruct an independent mental capacity advocate to represent P before making the arrangements because they were satisfied that subsection (4)(a) or (b) applied, but
  - (b) subsequently have reason to believe that the accommodation is likely to be provided for a continuous period that will end 8 weeks or more after the day on which accommodation was first provided in accordance with the arrangements,
- they must instruct an independent mental capacity advocate to represent P.
- (6) The local authority must, in deciding what arrangements to make for P, take into account any information given, or submissions made, by the independent mental capacity advocate.