



Mental Capacity Act 2005

2005 CHAPTER 9

PART 1

PERSONS WHO LACK CAPACITY

Independent mental capacity advocate service

[^{F1}40] Exceptions

[^{F2}(1^{F2})] The duty imposed by section 37(3), 38(3) or (4) [^{F3}, 39(4) or (5), 39A(3), 39C(3) or 39D(2)]^{F3} does not apply where there is—

- (a) a person nominated by P (in whatever manner) as a person to be consulted on matters to which that duty relates,
- (b) a donee of a lasting power of attorney created by P who is authorised to make decisions in relation to those matters, or
- (c) a deputy appointed by the court for P with power to make decisions in relation to those matters.

[^{F4}(2)] A person appointed under Part 10 of Schedule A1 to be P's representative is not, by virtue of that appointment, a person nominated by P as a person to be consulted in matters to which a duty mentioned in subsection (1) relates.^{F4F1}]]

Textual Amendments

F1 S. 40 substituted (1.10.2007) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 49, 56](#); S.I. 2007/2798, [art. 2\(h\)](#)

F2 S. 40 renumbered as s. 40(1) (1.4.2009) by virtue of [The Mental Health Act 2007 \(c. 12\)](#), [ss. 50, 56](#), [Sch. 9 para. 7\(2\)](#); S.I. 2009/139, [art. 2\(e\)](#) (with [art. 3](#))

F3 Words in s. 40(1) substituted (1.4.2009) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 50, 56](#), [Sch. 9 para. 7\(3\)](#); S.I. 2009/139, [art. 2\(e\)](#) (with [art. 3](#))

F4 S. 40(2) inserted (1.4.2009) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 50, 56](#), [Sch. 9 para. 7\(4\)](#); S.I. 2009/139, [art. 2\(e\)](#) (with [art. 3](#))

Status: Point in time view as at 01/04/2009. This version of this provision has been superseded.

Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, Section 40. (See end of Document for details)

Commencement Information

- II** S. 40 wholly in force at 1.10.2007; s. 40 not in force at Royal Assent see s. 68(1)-(3); s. 40 in force for E. at 1.11.2006 for certain purposes and otherwise 1.4.2007 by [S.I. 2006/2814](#), **art. 5**; s. 40 in force at 1.10.2007 for W. by [S.I. 2007/856](#), **art. 5**

Status:

Point in time view as at 01/04/2009. This version of this provision has been superseded.

Changes to legislation:

There are currently no known outstanding effects for the Mental Capacity Act 2005, Section 40.