



# Mental Capacity Act 2005

## 2005 CHAPTER 9

### PART 1

#### PERSONS WHO LACK CAPACITY

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

#### 40 Exceptions

[<sup>F1</sup>(1)] The duty imposed by section 37(3), 38(3) or (4) [<sup>F2</sup>, 39(4) or (5), 39A(3), 39C(3) or 39D(2)] [<sup>F2</sup> or 39(4) or (5)] [<sup>F3</sup> 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.

(2) [<sup>F4</sup>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.]

#### Textual Amendments

- F1** 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](#))
- F2** Words in s. 40(1) substituted (16.5.2019 for specified purposes) by [Mental Capacity \(Amendment\) Act 2019 \(c. 18\)](#), s. 6(3), [Sch. 2 para. 8\(a\)](#)
- 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) omitted (16.5.2019 for specified purposes) by virtue of [Mental Capacity \(Amendment\) Act 2019 \(c. 18\)](#), s. 6(3), [Sch. 2 para. 8\(b\)](#)

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*Status: Point in time view as at 16/05/2019.*

*Changes to legislation: Mental Capacity Act 2005, Section 40 is up to date with all changes known to be in force on or before 17 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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#### **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 16/05/2019.

**Changes to legislation:**

Mental Capacity Act 2005, Section 40 is up to date with all changes known to be in force on or before 17 January 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.