



# 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>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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*Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, Section 40. (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](#)

**Changes to legislation:**

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