



Mental Capacity Act 2005

2005 CHAPTER 9

PART 1

PERSONS WHO LACK CAPACITY

Miscellaneous and supplementary

42 Codes of practice

- (1) The Lord Chancellor must prepare and issue one or more codes of practice—
- (a) for the guidance of persons assessing whether a person has capacity in relation to any matter,
 - (b) for the guidance of persons acting in connection with the care or treatment of another person (see section 5),
 - (c) for the guidance of donees of lasting powers of attorney,
 - (d) for the guidance of deputies appointed by the court,
 - (e) for the guidance of persons carrying out research in reliance on any provision made by or under this Act (and otherwise with respect to sections 30 to 34),
 - (f) for the guidance of independent mental capacity advocates,
 - (fa) [^{F1}for the guidance of persons exercising functions under Schedule AA1,]
 - (fb) [^{F1}for the guidance of appropriate persons within paragraph 42(5) of Schedule AA1,]
 - ^{F2}(g) with respect to the provisions of sections 24 to 26 (advance decisions and apparent advance decisions), and
 - (h) with respect to such other matters concerned with this Act as he thinks fit.

[^{F3}(1A) Guidance about what kinds of arrangements for enabling the care or treatment of a person fall within paragraph 2(1)(b) of Schedule AA1 must be included in the code, or one of the codes, issued under subsection (1).]

- (2) The Lord Chancellor may from time to time revise a code.

[^{F4}(2A) Before the end of each review period the Lord Chancellor must—

Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, Section 42. (See end of Document for details)

- (a) review each code for the guidance of persons exercising functions under Schedule AA1, and
- (b) lay a report of the review before Parliament.

But this does not affect the Lord Chancellor’s functions under subsection (2).

(2B) A review period is—

- (a) in relation to the first review, the period of 3 years beginning with the day on which this subsection comes into force, and
 - (b) in relation to subsequent reviews, each period of 5 years beginning with the day on which the report of the previous review was laid before Parliament.]
- (3) The Lord Chancellor may delegate the preparation^{F5}, review] or revision of the whole or any part of a code so far as he considers expedient.
- (4) It is the duty of a person to have regard to any relevant code if he is acting in relation to a person who lacks capacity and is doing so in one or more of the following ways—
- (a) as the donee of a lasting power of attorney,
 - (b) as a deputy appointed by the court,
 - (c) as a person carrying out research in reliance on any provision made by or under this Act (see sections 30 to 34),
 - (d) as an independent mental capacity advocate,
 - (da) ^{F6}in the exercise of functions under Schedule AA1,]
 - (db) ^{F6}as an appropriate person within paragraph 42(5) of Schedule AA1,]
 - ^{F7}(e) in a professional capacity,
 - (f) for remuneration.
- (5) If it appears to a court or tribunal conducting any criminal or civil proceedings that—
- (a) a provision of a code, or
 - (b) a failure to comply with a code,
- is relevant to a question arising in the proceedings, the provision or failure must be taken into account in deciding the question.
- (6) A code under subsection (1)(d) may contain separate guidance for deputies appointed by virtue of paragraph 1(2) of Schedule 5 (functions of deputy conferred on receiver appointed under the Mental Health Act).
- (7) In this section and in section 43, “code” means a code prepared or revised under this section.

Textual Amendments

- F1** S. 42(1)(fa)(fb) substituted (16.5.2019 for specified purposes) by [Mental Capacity \(Amendment\) Act 2019 \(c. 18\)](#), s. 6(3), [Sch. 2 para. 9\(2\)](#)
- F2** S. 42(1)(fa)(fb) inserted (1.4.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 50, 56, [Sch. 9 para. 8\(2\)](#); [S.I. 2008/745](#), [art. 4\(b\)](#)
- F3** S. 42(1A) inserted (16.5.2019 for specified purposes) by [Mental Capacity \(Amendment\) Act 2019 \(c. 18\)](#), [ss. 4\(2\)](#), 6(3)
- F4** S. 42(2A)(2B) inserted (16.5.2019 for specified purposes) by [Mental Capacity \(Amendment\) Act 2019 \(c. 18\)](#), [ss. 4\(3\)](#), 6(3)
- F5** Word in s. 42(3) inserted (16.5.2019 for specified purposes) by [Mental Capacity \(Amendment\) Act 2019 \(c. 18\)](#), [ss. 4\(4\)](#), 6(3)

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- F6** S. 42(4)(da)(db) substituted (16.5.2019 for specified purposes) by [Mental Capacity \(Amendment\) Act 2019 \(c. 18\)](#), s. 6(3), [Sch. 2 para. 9\(3\)](#)
- F7** S. 42(4)(da)(db) inserted (1.4.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 50, 56, [Sch. 9 para. 8\(3\)](#); [S.I. 2008/745](#), [art. 4\(b\)](#)

Commencement Information

- I1** S. 42 wholly in force at 1.10.2007; s. 42 not in force at Royal Assent see s. 68(1)-(3); s. 42(1)(2)(3)(6)(7) in force for E.W. and s. 42(4)(5) in force for certain purposes for E. at 1.4.2007 by [S.I. 2007/563](#), arts. 1(2)(3), [2\(2\)\(e\)\(3\)](#); s. 42(4)(5) in force for all purposes at 1.10.2007 by [S.I. 2007/1897](#), [art. 2\(2\)\(e\)](#)

Changes to legislation:

There are currently no known outstanding effects for the Mental Capacity Act 2005, Section 42.