



Mental Capacity Act 2005

2005 CHAPTER 9

PART 1

PERSONS WHO LACK CAPACITY

Independent mental capacity advocate service

35 Appointment of independent mental capacity advocates

- (1) The [^{F1}responsible authority] must make such arrangements as it considers reasonable to enable persons (“independent mental capacity advocates”) to be [^{F2}available to represent and support persons to whom acts or decisions proposed under sections 37, 38 and 39 relate or persons who fall within section 39A, 39C or 39D.][^{F2}available to—
 - (a) represent and support persons to whom acts or decisions proposed under sections 37, 38 and 39 relate,
 - (b) represent and support cared-for persons where paragraph 42 of Schedule AA1 applies, and
 - (c) support appropriate persons where paragraph 43 of Schedule AA1 applies.]
- (2) The appropriate authority may make regulations as to the appointment of independent mental capacity advocates.
- (3) The regulations may, in particular, provide—
 - (a) that a person may act as an independent mental capacity advocate only in such circumstances, or only subject to such conditions, as may be prescribed;
 - (b) for the appointment of a person as an independent mental capacity advocate to be subject to approval in accordance with the regulations.
- (4) In making arrangements under subsection (1), the [^{F3}responsible authority] must have regard to the principle that a person to whom a proposed act or decision relates should, so far as practicable, be represented and supported by a person who is independent of any person who will be responsible for the act or decision.

Status: Point in time view as at 16/05/2019.

Changes to legislation: Mental Capacity Act 2005, Section 35 is up to date with all changes known to be in force on or before 10 June 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)

- (5) The arrangements may include provision for payments to be made to, or in relation to, persons carrying out functions in accordance with the arrangements.
- (6) For the purpose of enabling him to carry out his functions, an independent mental capacity advocate—
- (a) may interview in private the person whom he has been instructed to represent, and
 - (b) may, at all reasonable times, examine and take copies of—
 - (i) any health record,
 - (ii) any record of, or held by, a local authority and compiled in connection with a social services function, and
 - (iii) any record held by a person registered under Part 2 of the Care Standards Act 2000 (c. 14) [^{F4}, Chapter 2 of Part 1 of the Health and Social Care Act 2008 or Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2)],
 which the person holding the record considers may be relevant to the independent mental capacity advocate's investigation.
- [^{F5}(6A) In subsections (1) and (4), “ the responsible authority ” means—
- (a) in relation to the provision of the services of independent mental capacity advocates in the area of a local authority in England, that local authority, and
 - (b) in relation to the provision of the services of independent mental capacity advocates in Wales, the Welsh Ministers.]
- [^{F5}(6B) In subsection (6A)(a), “ local authority ” has the meaning given in section 64(1) except that it does not include the council of a county or county borough in Wales.]
- (7) In this section, section 36 and section 37, “the appropriate authority” means—
- (a) in relation to the provision of the services of independent mental capacity advocates in England, the Secretary of State, and
 - (b) in relation to the provision of the services of independent mental capacity advocates in Wales, the National Assembly for Wales.

Textual Amendments

- F1** Words in s. 35(1) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 5 para. 134\(a\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F2** Words in s. 35(1) substituted (16.5.2019 for specified purposes) by [Mental Capacity \(Amendment\) Act 2019 \(c. 18\), s. 6\(3\), Sch. 2 para. 3](#)
- F3** Words in s. 35(4) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 5 para. 134\(b\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F4** Words in s. 35(6)(b)(iii) substituted (2.4.2018) by [The Regulation and Inspection of Social Care \(Wales\) Act 2016 \(Consequential Amendments\) Regulations 2018 \(S.I. 2018/195\), regs. 2\(1\), 28](#)
- F5** S. 35(6A)(6B) inserted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), s. 306\(4\), Sch. 5 para. 134\(c\)](#); S.I. 2013/160, art. 2(2) (with arts. 7-9)

Modifications etc. (not altering text)

- C1** S. 35 extended (E.) (1.11.2006 for certain purposes and otherwise 1.4.2007) by [The Mental Capacity Act 2005 \(Independent Mental Capacity Advocates\) \(Expansion of Role\) Regulations 2006 \(S.I. 2006/2883\), regs. 1\(2\), 2-4](#)

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Commencement Information

- II** S. 35 wholly in force at 1.10.2007; s. 35 not in force at Royal Assent see s. 68(1)-(3); s. 35 in force for E. at 1.11.2006 for certain purposes and otherwise 1.4.2007 by [S.I. 2006/2814](#), **art. 5**; s. 35 in force at 1.10.2007 for W. by [S.I. 2007/856](#), **art. 5**

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