



# 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) [<sup>F1</sup>for the guidance of persons exercising functions under Schedule AA1,]
  - (fb) [<sup>F1</sup>for the guidance of appropriate persons within paragraph 42(5) of Schedule AA1,]
  - <sup>F2</sup>(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.

[<sup>F3</sup>(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.

[<sup>F4</sup>(2A) Before the end of each review period the Lord Chancellor must—

*Status: Point in time view as at 06/04/2020.*

*Changes to legislation: Mental Capacity Act 2005, Section 42 is up to date with all changes known to be in force on or before 04 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)*

- (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<sup>F5</sup>, 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) <sup>F6</sup>in the exercise of functions under Schedule AA1,]
- (db) <sup>F6</sup>as an appropriate person within paragraph 42(5) of Schedule AA1,]
- <sup>F7</sup>(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\(b\)](#)

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**Commencement Information**

- II** 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\(2\)\(e\)](#)

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