

The Mental Capacity Act 2005

The Act will generally only affect people aged 16 or over and provides a statutory framework to empower and protect people who may lack capacity to make some decisions for themselves, for example, people with dementia, learning disabilities, mental health problems, or stroke or head injuries who may lack capacity to make certain decisions. Alternatively, it may be because at the time the decision needs to be made, they are unconscious or barely conscious whether due to an accident or being under anaesthetic or their ability to make a decision may be affected by the influence of alcohol or drugs.

The Act has five statutory principles and sets out a single clear test for assessing capacity for specific decisions at a particular time. An act done or decision made for or on behalf of a person who lacks capacity must be in that person's best interests. The Act provides a non-exhaustive checklist of factors that decision-makers must work through in deciding what is in a person's best interests.

The Act has introduced

- a new statutory Independent Mental Capacity Advocate service for people in specific situations
- new ways of planning ahead for a time when somebody lacks capacity for both property and affairs and personal welfare via Lasting Powers of Attorney
- advance decisions to refuse treatment
- a new Court of Protection for property and affairs and personal welfare matters
- new Court appointed deputies for property and affairs and personal welfare matters
- a new Public Guardian and a new office of the Public Guardian
- a new offence of ill treatment or wilful neglect of a person lacking capacity
- clear parameters for research

Code of Practice

Anybody working with somebody lacking capacity has a duty of regard to the Code of Practice that was issued by the Lord Chancellor in April 2007.

http://www.opsi.gov.uk/acts/acts2005/related/ukpgacop_20050009_en.pdf

Set up costs for health and social care and operational costs for social care

Funding to support the set up costs of the Act's implementation across health and social care and to meet the operational costs of the Act's implementation across social care has been made available via LAC (2006) 15

http://www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/LocalAuthorityCirculars/AllLocalAuthority/DH_4140232

Operational costs for healthcare

Funding to meet the operational costs of the Act's implementation across health has been made available via a letter to PCTs (Gateway reference number 8309)

http://www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/Dearcolleagueletters/DH_074984

Training materials

The DH has produced a series of training materials:

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_074491

Information booklets

The Mental Capacity Implementation Programme has produced a series of information booklets:

<http://www.guardianship.gov.uk/formsdocuments/publications.htm>

Amendments to the Mental Capacity Act

Amendment in relation to Independent Mental Capacity Advocates

The Mental Health Act 2007 has amended s40 of the Mental Capacity Act so that some people who would have otherwise been excluded from receiving the help and support of an Independent Mental Capacity Advocate are now included. The amended provisions of s40 will be force from 1.10.07. (See the information re The Mental Health Act 2007 (Commencement No. 3) Order 2007 in this week's The Week (Gateway number 8805)

http://www.opsi.gov.uk/acts/acts2007/pdf/ukpga_20070012_en.pdf

Amendment in relation to "and" "or" s20(11)(a) of the Mental Capacity Act 2005

The Mental Health Act 2007 (Commencement No. 2) Order 2007 has made a minor amendment to section 20(11)(a) of the Mental Capacity Act 2005. It replaces the word "or" with "and" and is in force from 1.10.07.

<http://www.opsi.gov.uk/si/si2007/20072635.htm>

Deprivation of Liberty Safeguards

The Mental Health Act 2007 has also amended the Mental Capacity Act 2005 in relation to introducing deprivation of liberty safeguards via s50 and Schedules 7, 8 and 9 of that Act.

http://www.opsi.gov.uk/acts/acts2007/pdf/ukpga_20070012_en.pdf

The deprivation of liberty safeguards are planned to come into force on 1 October 2008.

Deprivation of Liberty Safeguards Formal Consultation

A formal consultation, in England and Wales, on the draft of the addendum of the Code of Practice in relation to the deprivation of liberty safeguards proposals and a formal consultation for the use, in England, of regulation-making powers contained in the new legislation have both commenced.

http://www.dh.gov.uk/en/Consultations/Liveconsultations/DH_078052

Views are sought from all interested stakeholders on the Code addendum. This is intended for the guidance of those who have to implement the safeguards, and for the information of those who may become subject to the safeguards, and their relatives, friends and carers.

Views are also sought on proposals for the use, in England, of regulation-making powers, particularly in relation to the new roles of assessors and representatives.

The consultation closes on 2 December 2007

For further information about the implementation of the Mental Capacity Act contact:
Paul.Gantley@dh.gov.uk