



Mental Capacity Act 2005

2005 CHAPTER 9

PART 1

PERSONS WHO LACK CAPACITY

Independent mental capacity advocate service

[^{F1}40] Exceptions

The duty imposed by section 37(3), 38(3) or (4) or 39(4) or (5) 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.^{F1]}

Textual Amendments

F1 S. 40 substituted (1.10.2007) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 49, 56](#); [S.I. 2007/2798](#), [art. 2\(h\)](#)

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](#)

Status:

Point in time view as at 01/10/2007. This version of this provision has been superseded.

Changes to legislation:

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