



Mental Capacity Act 2005

2005 CHAPTER 9

PART 1

PERSONS WHO LACK CAPACITY

Independent mental capacity advocate service

36 Functions of independent mental capacity advocates

- (1) The appropriate authority may make regulations as to the functions of independent mental capacity advocates.
- (2) The regulations may, in particular, make provision requiring an advocate to take such steps as may be prescribed for the purpose of—
 - (a) providing support to the person whom he has been instructed to represent^[F1] or support so that that person] may participate as fully as possible in any relevant decision;
 - (b) obtaining and evaluating relevant information;
 - (c) ascertaining what ^[F2]the wishes and feelings of the person the advocate has been instructed to represent (“P”) would be likely to be, and the beliefs and values that would be likely to influence P, if he had capacity;
 - (d) ascertaining what alternative courses of action are available in relation to P;
 - ^[F3](da) in the case of an advocate instructed to support an appropriate person where paragraph 43 of Schedule AA1 applies, supporting that person to ascertain—
 - (i) what the wishes and feelings of the cared-for person who that appropriate person represents and supports would be likely to be and the beliefs and values that would be likely to influence the cared-for person;
 - (ii) what alternative courses of action are available in relation to the cared-for person who that appropriate person represents and supports;]
 - (e) obtaining a further medical opinion where treatment is proposed and the advocate thinks that one should be obtained.

Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act 2005, Section 36. (See end of Document for details)

- (3) The regulations may also make provision as to circumstances in which the advocate may challenge, or provide assistance for the purpose of challenging, any relevant decision.

Textual Amendments

- F1** Words in s. 36(2)(a) substituted (16.5.2019 for specified purposes) by [Mental Capacity \(Amendment\) Act 2019 \(c. 18\)](#), s. 6(3), [Sch. 2 para. 4\(2\)](#)
- F2** Words in s. 36(2)(c) substituted (16.5.2019 for specified purposes) by [Mental Capacity \(Amendment\) Act 2019 \(c. 18\)](#), s. 6(3), [Sch. 2 para. 4\(3\)](#)
- F3** S. 36(2)(da) inserted (16.5.2019 for specified purposes) by [Mental Capacity \(Amendment\) Act 2019 \(c. 18\)](#), s. 6(3), [Sch. 2 para. 4\(4\)](#)
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Commencement Information

- II** S. 36 wholly in force at 1.10.2007; s. 36 not in force at Royal Assent see s. 68(1)-(3); s. 36 in force for E. at 1.11.2006 for certain purposes and otherwise 1.4.2007 by [S.I. 2006/2814](#), [art. 5](#); s. 36 in force at 1.10.2007 for W. by [S.I. 2007/856](#), [art. 5](#)

Changes to legislation:

There are currently no known outstanding effects for the Mental Capacity Act 2005, Section 36.