



# Mental Capacity Act 2005

## 2005 CHAPTER 9

### PART 1

#### PERSONS WHO LACK CAPACITY

##### *Independent mental capacity advocate service*

#### **[<sup>F1</sup>39D Person subject to Schedule A1 without paid representative**

- (1) This section applies if—
  - (a) an authorisation under Schedule A1 is in force in relation to a person (“P”),
  - (b) P has a representative (“R”) appointed under Part 10 of Schedule A1, and
  - (c) R is not being paid under regulations under Part 10 of Schedule A1 for acting as P’s representative.
- (2) The supervisory body must instruct an independent mental capacity advocate to represent P in any of the following cases.
- (3) The first case is where P makes a request to the supervisory body to instruct an advocate.
- (4) The second case is where R makes a request to the supervisory body to instruct an advocate.
- (5) The third case is where the supervisory body have reason to believe one or more of the following—
  - (a) that, without the help of an advocate, P and R would be unable to exercise one or both of the relevant rights;
  - (b) that P and R have each failed to exercise a relevant right when it would have been reasonable to exercise it;
  - (c) that P and R are each unlikely to exercise a relevant right when it would be reasonable to exercise it.
- (6) The duty in subsection (2) is subject to section 39E.

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*Status: Point in time view as at 01/04/2009. This version of this provision has been superseded.*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 39D. (See end of Document for details)*

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- (7) If an advocate is appointed under this section, the advocate is, in particular, to take such steps as are practicable to help P and R to understand the following matters—
- (a) the effect of the authorisation;
  - (b) the purpose of the authorisation;
  - (c) the duration of the authorisation;
  - (d) any conditions to which the authorisation is subject;
  - (e) the reasons why each assessor who carried out an assessment in connection with the request for the authorisation, or in connection with a review of the authorisation, decided that P met the qualifying requirement in question;
  - (f) the relevant rights;
  - (g) how to exercise the relevant rights.
- (8) The advocate is, in particular, to take such steps as are practicable to help P or R—
- (a) to exercise the right to apply to court, if it appears to the advocate that P or R wishes to exercise that right, or
  - (b) to exercise the right of review, if it appears to the advocate that P or R wishes to exercise that right.
- (9) If the advocate helps P or R to exercise the right of review—
- (a) the advocate may make submissions to the supervisory body on the question of whether a qualifying requirement is reviewable;
  - (b) the advocate may give information, or make submissions, to any assessor carrying out a review assessment.
- (10) In this section—
- “relevant rights” means—
- (a) the right to apply to court, and
  - (b) the right of review;
- “right to apply to court” means the right to make an application to the court to exercise its jurisdiction under section 21A;
- “right of review” means the right under Part 8 of Schedule A1 to request a review.]

#### **Textual Amendments**

**F1** Ss. 39A-39E inserted (1.4.2009) by [Mental Health Act 2007 \(c. 12\)](#), ss. 50, 56, [Sch. 9 para. 6](#); [S.I. 2009/139](#), [art. 2\(e\)](#) (with [art. 3](#))

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