



# Mental Capacity Act 2005

## 2005 CHAPTER 9

### PART 1

#### PERSONS WHO LACK CAPACITY

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

#### [<sup>F1</sup>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.<sup>F1]</sup>

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Point in time view as at 01/10/2007. This version of this provision has been superseded.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

Mental Capacity Act 2005, Section 40 is up to date with all changes known to be in force on or before 01 April 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.