

## SCHEDULES

### SCHEDULE 9

#### AMENDMENTS RELATING TO NEW SECTION 4A OF, & SCHEDULE A1 TO, MENTAL CAPACITY ACT 2005

##### PART 1

##### OTHER AMENDMENTS TO MENTAL CAPACITY ACT 2005

###### *Section 38: IMCAs and provision of accommodation by NHS body*

- 4 (1) Section 38 is amended as follows.
- (2) After subsection (2) insert—
- “(2A) And this section does not apply if—
- (a) an independent mental capacity advocate must be appointed under section 39A or 39C (whether or not by the NHS body) to represent P, and
  - (b) the hospital or care home in which P is to be accommodated under the arrangements referred to in this section is the relevant hospital or care home under the authorisation referred to in that section.”
- (3) After subsection (9) insert—
- “(10) For the purposes of subsection (1), a person appointed under Part 10 of Schedule A1 to be P's representative is not, by virtue of that appointment, engaged in providing care or treatment for P in a professional capacity or for remuneration.”

**Changes to legislation:**

There are currently no known outstanding effects for the Mental Health Act 2007, Cross  
Heading: Section 38: IMCAs and provision of accommodation by NHS body.