



# Mental Capacity Act 2005

## 2005 CHAPTER 9

### PART 1

#### PERSONS WHO LACK CAPACITY

##### *Miscellaneous and supplementary*

#### **42 Codes of practice**

- (1) The Lord Chancellor must prepare and issue one or more codes of practice—
  - (a) for the guidance of persons assessing whether a person has capacity in relation to any matter,
  - (b) for the guidance of persons acting in connection with the care or treatment of another person (see section 5),
  - (c) for the guidance of donees of lasting powers of attorney,
  - (d) for the guidance of deputies appointed by the court,
  - (e) for the guidance of persons carrying out research in reliance on any provision made by or under this Act (and otherwise with respect to sections 30 to 34),
  - (f) for the guidance of independent mental capacity advocates,
  - (g) with respect to the provisions of sections 24 to 26 (advance decisions and apparent advance decisions), and
  - (h) with respect to such other matters concerned with this Act as he thinks fit.
- (2) The Lord Chancellor may from time to time revise a code.
- (3) The Lord Chancellor may delegate the preparation or revision of the whole or any part of a code so far as he considers expedient.
- (4) It is the duty of a person to have regard to any relevant code if he is acting in relation to a person who lacks capacity and is doing so in one or more of the following ways—
  - (a) as the donee of a lasting power of attorney,
  - (b) as a deputy appointed by the court,

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*Status: This is the original version (as it was originally enacted).*

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- (c) as a person carrying out research in reliance on any provision made by or under this Act (see sections 30 to 34),
  - (d) as an independent mental capacity advocate,
  - (e) in a professional capacity,
  - (f) for remuneration.
- (5) If it appears to a court or tribunal conducting any criminal or civil proceedings that—
- (a) a provision of a code, or
  - (b) a failure to comply with a code,
- is relevant to a question arising in the proceedings, the provision or failure must be taken into account in deciding the question.
- (6) A code under subsection (1)(d) may contain separate guidance for deputies appointed by virtue of paragraph 1(2) of Schedule 5 (functions of deputy conferred on receiver appointed under the Mental Health Act).
- (7) In this section and in section 43, “code” means a code prepared or revised under this section.