

Status: This version of this part contains provisions that are prospective.
Changes to legislation: There are currently no known outstanding effects for the
Mental Capacity (Amendment) Act 2019, Part 1. (See end of Document for details)

PROSPECTIVE

SCHEDULES

SCHEDULE 2

MINOR AND CONSEQUENTIAL AMENDMENTS

PART 1

AMENDMENTS TO THE MENTAL CAPACITY ACT 2005

- 1 The Mental Capacity Act 2005 is amended as follows.
- 2 Omit—
- (a) section 16A;
 - (b) section 21A and the italic heading before it;
 - (c) Schedules A1 and 1A.
- 3 In section 35(1) (appointment of independent mental capacity advocates), for “available to” to the end substitute “available to—
- (a) represent and support persons to whom acts or decisions proposed under sections 37, 38 and 39 relate,
 - (b) represent and support cared-for persons where paragraph 42 of Schedule AA1 applies, and
 - (c) support appropriate persons where paragraph 43 of Schedule AA1 applies.”
- 4 (1) Section 36 (functions of independent mental capacity advocates) is amended as follows.
- (2) In subsection (2)(a) leave out “(“P”) so that P” and insert “ or support so that that person ”.
 - (3) In subsection (2)(c) leave out “P’s wishes and feelings” and insert “ the wishes and feelings of the person the advocate has been instructed to represent (“P”) ”.
 - (4) After subsection (2)(d) insert—
 - “(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;”.

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- 5 (1) Section 38 (provision of accommodation by NHS body) is amended as follows.
- (2) For subsection (2A) substitute—
- “(2A) And this section does not apply if—
- (a) an independent mental capacity advocate is appointed under paragraph 42 of Schedule AA1 to represent and support P, and
- (b) the arrangements which are authorised or proposed under Schedule AA1 in respect of P include arrangements for P to be accommodated in the hospital or care home referred to in this section.”
- (3) In subsection (3), in the opening words, after “arrangements” insert “ mentioned in subsection (1) ”.
- (4) Omit subsection (10).
- 6 (1) Section 39 (provision of accommodation by local authority) is amended as follows.
- (2) For subsection (3A) substitute—
- “(3A) And this section does not apply if—
- (a) an independent mental capacity advocate is appointed under paragraph 42 of Schedule AA1 to represent and support P, and
- (b) the arrangements which are authorised or proposed under Schedule AA1 in respect of P include arrangements for P to be accommodated in the residential accommodation referred to in this section.”
- (3) In subsection (4), in the opening words, after “arrangements” insert “ mentioned in subsection (1) ”.
- (4) Omit subsection (7).
- 7 Omit sections 39A to 39E.
- 8 In section 40 (exceptions)—
- (a) in subsection (1), for “, 39(4) or (5), 39A(3), 39C(3) or 39D(2)” substitute “ or 39(4) or (5) ”;
- (b) omit subsection (2).
- 9 (1) Section 42 (codes of practice) is amended as follows.
- (2) In subsection (1) for paragraphs (fa) and (fb) substitute—
- “(fa) for the guidance of persons exercising functions under Schedule AA1,
- (fb) for the guidance of appropriate persons within paragraph 42(5) of Schedule AA1,”.
- (3) In subsection (4) for paragraphs (da) and (db) substitute—
- “(da) in the exercise of functions under Schedule AA1,
- (db) as an appropriate person within paragraph 42(5) of Schedule AA1,”.
- 10 In section 50 (applications to the Court of Protection) for subsection (1A) substitute—
- “(1A) Nor is permission required for an application to the court under section 21ZA by any independent mental capacity advocate or appropriate

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- person representing and supporting the cared-for person (see Part 5 of Schedule AA1).”
- 11 In section 64 (interpretation), in subsection (1)—
- (a) omit the entry relating to authorisation under Schedule A1, and
 - (b) in the definition of “local authority”, for “Schedule A1” substitute “Schedule AA1”.
- 12 (1) Section 65 (rules, regulations etc) is amended as follows.
- (2) After subsection (2) insert—
- “(2A) Any statutory instrument containing regulations made by the Welsh Ministers under Schedule AA1 is subject to annulment in pursuance of a resolution of the National Assembly for Wales.”
- (3) Omit subsections (4A) to (4C).

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