
DRAFT STATUTORY INSTRUMENTS

2010 No.

**The Health and Social Care Act 2008
(Consequential Amendments No.2) Order 2010**

Amendments of the Mental Capacity Act 2005

17.—(1) The Mental Capacity Act 2005(1) is amended as follows.

(2) In section 35 (appointment of independent mental capacity advocates)(2), in subsection (6)(b)(iii), after “Care Standards Act 2000 (c. 14)” insert “or Chapter 2 of Part 1 of the Health and Social Care Act 2008”.

(3) In section 38 (provision of accommodation by NHS body)(3), for subsection (7) substitute—

“(7) “Hospital” means—

(a) in relation to England, a hospital as defined by section 275 of the National Health Service Act 2006; and

(b) in relation to Wales, a health service hospital as defined by section 206 of the National Health Service (Wales) Act 2006 or an independent hospital as defined by section 2 of the Care Standards Act 2000.”.

(4) In section 49 (power to call for reports), in subsection (7)(c), after “Care Standards Act 2000 (c. 14)” insert “or Chapter 2 of Part 1 of the Health and Social Care Act 2008”.

(5) In section 58 (functions of the Public Guardian), in subsection (5)(c), after “Care Standards Act 2000 (c. 14)” insert “or Chapter 2 of Part 1 of the Health and Social Care Act 2008”.

(6) In section 61 (Court of Protection Visitors), in subsection (5)(c), after “Care Standards Act 2000 (c. 14)” insert “or Chapter 2 of Part 1 of the Health and Social Care Act 2008”.

(7) In Schedule A1 (hospital and care home residents: deprivation of liberty)(4)—

(a) in Part 9 (assessments under this Schedule), in paragraph 131(c), after “Care Standards Act 2000” insert “or Chapter 2 of Part 1 of the Health and Social Care Act 2008”; and

(b) in Part 13 (interpretation)—

(i) for paragraph 175(3) substitute—

“(3) Independent hospital”—

(a) in relation to England, means a hospital as defined by section 275 of the National Health Service Act 2006 that is not an NHS hospital; and

(b) in relation to Wales, means a hospital as defined by section 2 of the Care Standards Act 2000 that is not an NHS hospital.”,

(ii) for paragraph 177, substitute—

(1) 2005 c. 9.

(2) There are amendments to section 35 which are not relevant to this Order.

(3) Section 38(7) was amended by the National Health Service (Consequential Provisions) Act 2006 (c. 43), Schedule 1, paragraph 278.

(4) Schedule A1 was inserted by the Mental Health Act 2007 (c. 12), Schedule 7.

“177. “Managing authority”, in relation to an independent hospital, means—

- (a) in relation to England, the person registered, or required to be registered, under Chapter 2 of Part 1 of the Health and Social Care Act 2008 in respect of regulated activities (within the meaning of that Part) carried on in the hospital, and
- (b) in relation to Wales, the person registered, or required to be registered, under Part 2 of the Care Standards Act 2000 in respect of the hospital.”.

(iii) for paragraph 179, substitute—

“179. “Managing authority”, in relation to a care home, means—

- (a) in relation to England, the person registered, or required to be registered, under Chapter 2 of Part 1 of the Health and Social Care Act 2008 in respect of the provision of residential accommodation, together with nursing or personal care, in the care home, and
- (b) in relation to Wales, the person registered, or required to be registered, under Part 2 of the Care Standards Act 2000 in respect of the care home.”.