

MENTAL CAPACITY ACT 2005

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Persons Who Lack Capacity

Independent mental capacity advocate service

Section 35: Appointment of independent mental capacity advocates

109. *Sections 35 to 41* create a new scheme designed to provide the input of an independent mental capacity advocate (“IMCA”) where certain decisions need to be taken for particularly vulnerable people who lack capacity. This may include older people with dementia who have lost contact with all friends and family, or people with severe learning disabilities or long term mental health problems who have been in residential institutions for long periods and lack outside contacts. Such people will be represented and provided with support when decisions are to be made about serious medical treatment or significant changes of residence provided by public bodies.
110. *Subsection (1)* places a duty on the appropriate authority to make arrangements for the provision of a new independent mental capacity advocacy service. The appropriate authority is, in relation to England, the Secretary of State and, in relation to Wales, the National Assembly for Wales.
111. *Subsection (2)* allows the appropriate authority to make regulations setting out how the IMCA will be appointed. This will ensure that an individual will need to meet common standards in order to be approved as an IMCA. *Subsection (4)* provides that, as far as practicable, the IMCA should be independent of the person who is making the decision concerned. *Subsection (5)* provides that the arrangements may include provision for payments to be made to, or in relation to, the IMCA. *Subsection (6)* stipulates that an IMCA must be able to meet the person concerned in private and see relevant health, social services and care home records. This is to enable the IMCA to be able to perform properly his function of representing and supporting the person who lacks capacity.