



Mental Capacity Act 2005

2005 CHAPTER 9

PART 1

PERSONS WHO LACK CAPACITY

Independent mental capacity advocate service

39 Provision of accommodation by local authority

- (1) This section applies if a local authority propose to make arrangements—
- (a) for the provision of residential accommodation for a person (“P”) who lacks capacity to agree to the arrangements, or
 - (b) for a change in P’s residential accommodation,
- and are satisfied that there is no person, other than one engaged in providing care or treatment for P in a professional capacity or for remuneration, whom it would be appropriate for them to consult in determining what would be in P’s best interests.
- (2) But this section applies only if the accommodation is to be provided in accordance with—
- (a) section 21 or 29 of the National Assistance Act 1948 (c. 29), or
 - (b) section 117 of the Mental Health Act,
- as the result of a decision taken by the local authority under section 47 of the National Health Service and Community Care Act 1990 (c. 19).
- (3) This section does not apply if P is accommodated as a result of an obligation imposed on him under the Mental Health Act.
- [^{F1}(3A) 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 local authority) to represent P, and
 - (b) the place 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.]

Status: Point in time view as at 01/04/2009. This version of this provision has been superseded.

Changes to legislation: Mental Capacity Act 2005, Section 39 is up to date with all changes known to be in force on or before 20 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- ^{F1}(4) Before making the arrangements, the local authority must instruct an independent mental capacity advocate to represent P unless they are satisfied that—
- (a) the accommodation is likely to be provided for a continuous period of less than 8 weeks, or
 - (b) the arrangements need to be made as a matter of urgency.
- (5) If the local authority—
- (a) did not instruct an independent mental capacity advocate to represent P before making the arrangements because they were satisfied that subsection (4)(a) or (b) applied, but
 - (b) subsequently have reason to believe that the accommodation is likely to be provided for a continuous period that will end 8 weeks or more after the day on which accommodation was first provided in accordance with the arrangements,
- they must instruct an independent mental capacity advocate to represent P.
- (6) The local authority must, in deciding what arrangements to make for P, take into account any information given, or submissions made, by the independent mental capacity advocate.
- ^{F2}(7) 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.^{F2}]

Textual Amendments

- F1** S. 39(3A) inserted (1.4.2009) by [Mental Health Act 2007 \(c. 12\)](#), ss. 50, 56, [Sch. 9 para. 5\(2\)](#); [S.I. 2009/139](#), [art. 2\(e\)](#) (with [art. 3](#))
- F2** S. 39(7) inserted (1.4.2009) by [Mental Health Act 2007 \(c. 12\)](#), ss. 50, 56, [Sch. 9 para. 5\(3\)](#); [S.I. 2009/139](#), [art. 2\(e\)](#) (with [art. 3](#))
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Commencement Information

- I1** S. 39 wholly in force at 1.10.2007; s. 39 not in force at Royal Assent see s. 68(1)-(3); s. 39 in force for E. at 1.11.2006 for certain purposes and otherwise 1.4.2007 by [S.I. 2006/2814](#), [art. 5](#); s. 39 in force at 1.10.2007 for W. by [S.I. 2007/856](#), [art. 5](#)

Status:

Point in time view as at 01/04/2009. This version of this provision has been superseded.

Changes to legislation:

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