



# Mental Capacity Act 2005

## 2005 CHAPTER 9

### PART 1 **E+W**

#### PERSONS WHO LACK CAPACITY

##### *Independent mental capacity advocate service*

#### **39A Person becomes subject to Schedule A1 **E+W****

[<sup>F1</sup>(1) This section applies if—

- (a) a person (“P”) becomes subject to Schedule A1, and
- (b) the managing authority of the relevant hospital or care home 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 to consult in determining what would be in P's best interests.

(2) The managing authority must notify the supervisory body that this section applies.

(3) The supervisory body must instruct an independent mental capacity advocate to represent P.

(4) Schedule A1 makes provision about the role of an independent mental capacity advocate appointed under this section.

(5) This section is subject to paragraph 161 of Schedule A1.

(6) 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.]

#### **Textual Amendments**

- F1** Ss. 39A-39E omitted (16.5.2019 for specified purposes) by virtue of [Mental Capacity \(Amendment\) Act 2019 \(c. 18\), s. 6\(3\), Sch. 2 para. 7](#)

**Status:**

Point in time view as at 16/05/2019.

**Changes to legislation:**

Mental Capacity Act 2005, Section 39A is up to date with all changes known to be in force on or before 31 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.