



# Mental Capacity Act 2005

## 2005 CHAPTER 9

### PART 1

#### PERSONS WHO LACK CAPACITY

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

VALID FROM 01/04/2009

#### **[<sup>F1</sup>39C Person unrepresented whilst subject to Schedule A1**

- (1) This section applies if—
  - (a) an authorisation under Schedule A1 is in force in relation to a person (“P”),
  - (b) the appointment of a person as P's representative ends in accordance with regulations made under Part 10 of Schedule A1, and
  - (c) 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) Paragraph 159 of Schedule A1 makes provision about the role of an independent mental capacity advocate appointed under this section.
- (5) The appointment of an independent mental capacity advocate under this section ends when a new appointment of a person as P's representative is made in accordance with Part 10 of Schedule A1.

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*Status: Point in time view as at 01/07/2007. This version of this provision is not valid for this point in time.*

*Changes to legislation: Mental Capacity Act 2005, Section 39C is up to date with all changes known to be in force on or before 22 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)*

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(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.]

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**Textual Amendments**

**F1** Ss. 39A-39E inserted (1.4.2009) by [Mental Health Act 2007 \(c. 12\)](#), ss. 50, 56, [Sch. 9 para. 6](#); [S.I. 2009/139](#), [art. 2\(e\)](#) (with [art. 3](#))

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