
STATUTORY INSTRUMENTS

2006 No. 2883

The Mental Capacity Act 2005 (Independent Mental Capacity Advocates) (Expansion of Role) Regulations 2006

Review of arrangements as to accommodation

- 3.—(1) The circumstances specified in this regulation are where—
- (a) qualifying arrangements have been made by an NHS body or local authority as to the accommodation of a person (“P”) who lacks capacity to agree to the arrangements;
 - (b) a review of the arrangements is proposed or in progress (whether under a care plan or otherwise);
 - (c) the NHS body is satisfied, or the local authority are satisfied, that there is no person, other than a person 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;
 - (d) none of the following exist—
 - (i) a person nominated by P (in whatever manner) as a person to be consulted in matters affecting his interests,
 - (ii) a donee of a lasting power of attorney created by P,
 - (iii) a deputy appointed by the Court of Protection for P, or
 - (iv) a donee of an enduring power of attorney (within the meaning of Schedule 4 to the Act) created by P; and
 - (e) sections 37, 38 and 39 of the Act do not apply.
- (2) In this regulation—
- “accommodation” means—
- (a) accommodation in a care home or hospital, or
 - (b) residential accommodation provided in accordance with—
 - (i) section 21 or 29 of the National Assistance Act 1948(1), or
 - (ii) section 117 of the Mental Health Act 1983(2),

(1) 1948 c.29 (11&12 Geo 6). Section 21 is amended by paragraph 2(1) of Schedule 23 and Schedule 30 to the Local Government Act 1972 (c.70), paragraph 44 of Schedule 4 and Schedule 5 to the National Health Service Reorganisation Act 1973 (c.32), the Schedule to the Housing (Homeless Persons) Act 1977 (c.48), paragraph 13(1) of Schedule 14 to the National Health Service Act 1977, paragraph 11(1) of Schedule 13 to the Children Act 1989 (c.41), section 42(1) of, and paragraph 5(1) to (3) of Schedule 9 and Schedule 10 to, the National Health Service and Community Care Act 1990, section 1 of the Community Care (Residential Accommodation) Act 1998 (c.19), section 116 of the Immigration and Asylum Act 1999 (c. 33), section 53 of the Health and Social Care Act 2001 and section 45(5) of the Nationality, Immigration and Asylum Act 2002 (c.41). Section 29 of the National Assistance Act 1948 is amended by section 1(2) of the National Assistance (Amendment) Act 1959 (c.30) (7&8 Eliz 2), paragraph 2(4) of Schedule 23 and Schedule 30 to the Local Government Act 1972, paragraph 3 of Schedule 3 to the Employment and Training Act 1973 (c.50), paragraph 6 of Schedule 15 to the National Health Service Act 1977, Part 1 of Schedule 10 to the Health and Social Services and Social Security Adjudications Act 1983 (c.41), paragraph 11(2) of Schedule 13 to the Children Act 1989 and section 44(7) of the National Health Service and Community Care Act 1990. There are other amendments to section 29 of the National Assistance Act 1948 but none is relevant to these Regulations.

(2) 1983 c.20. Section 117 is amended by paragraph 107(1) and (8) of Schedule 1 to the Health Authorities Act 1995, paragraph 15 of Schedule 1 to the Mental Health (Patients in the Community) Act 1995 (c.52), paragraph 12(17) of the Crime (Sentences)

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as the result of a decision taken by a local authority under section 47 of the National Health Service and Community Care Act 1990(3);

“care home” and “hospital” have the same meaning as in section 38 of the Act; and

“qualifying arrangements” means arrangements—

- (a) under which accommodation has been provided for P for a continuous period of 12 weeks or more, and
- (b) which are not made as a result of an obligation imposed on P under the Mental Health Act 1983.

Act 1997 (c.43) and paragraphs 42 and 47 of Schedule 2 to the National Health Service Reform and Health Care Professions Act 2002.

(3) Section 47 of the National Health Service and Community Care Act 1990 is amended by paragraphs 65 and 81 of Schedule 1 to the Health Authorities Act 1995 and paragraphs 53 and 56 of Schedule 2 to the National Health Service Reform and Health Care Professions Act 2002.