

Mental Capacity Act Update

edition 10 | **November 2006**

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Welcome to the edition 10 of the *Mental Capacity Act Update*.

If you know anyone who is interested in the Mental Capacity Act, or who may be affected by this new law, please forward this newsletter to them.

If you would like to get future editions of Update please email makingdecisions@dca.gsi.gov.uk to subscribe. Likewise, to unsubscribe please email us.

What's new?

Bournewood safeguards

The Mental Health Bill was introduced to Parliament on 16th November. The Bill is mainly about making changes to the Mental Health Act 1983 but it is also being used to amend the Mental Capacity Act 2005 by introducing the 'Bournewood' safeguards.

The material will be developed by A4A and a consortium of partner agencies who plan to consult with a range of users and providers of advocacy services as well as health and social care professionals.

For more information go to the *In depth* section of this newsletter or go to www.dh.gov.uk.

Information booklets on the Mental Capacity Act

The Department for Constitutional Affairs (DCA) has commissioned the Advice Services Alliance's (ASA) Advice Now project to write an information booklet on the Mental Capacity Act for legal professionals and advice workers.

We have recently produced a booklet for people who work in health and social care which was written by the National Care Association. We have also produced a booklet for people who may lack capacity or who wish to plan ahead, and one for family and other unpaid carers which were both written by the Making Decisions Alliance.

This update is a joint communication from the Mental Capacity Implementation Programme whose members are:

For the details of other information products that are now available please look at the Communications and Events section of this newsletter or go to www.dca.gov.uk/legal-policy/mental-capacity/publications.htm#booklets

IMCA service update

In England:

The IMCA commissioning guidance

Turning Point, funded by the Department of Health, has recently produced guidance for commissioners on the Independent Mental Capacity Advocate (IMCA) service. A steering group chaired by Turning Point, which includes advocacy practitioners, commissioners and representatives from the Department of Health, oversaw all the stages of the project.

To download the guidance please go to

<http://www.turning-point.co.uk/Information+Resources/Publications/Publications.htm>.

Action for Advocacy has also produced a guide to bidding for IMCA contracts aimed specifically at advocacy organisations. The guide contains a checklist of ideas and issues for schemes that may be thinking about becoming IMCA providers. To download the guide, please go to www.actionforadvocacy.org.uk.

For more information on the IMCA service including early lessons learnt from the IMCA pilots and Department of Health information on planning to provide and commission the IMCA service please go to www.dh.gov.uk/imca.

IMCA regulations

There are two sets of Regulations on the IMCA service in England. The regulations outline how the IMCA service will be set up and extended.

- **The 'Expansion of Role' Regulations 2006**, were approved by Parliament and became law on 30 October 2006. They give local authorities working in partnership with NHS bodies the discretion to extend the IMCA service to care reviews and adult protection cases. These are available online at <http://www.opsi.gov.uk/si/dsis2006.htm> (search under Mental Capacity).
- **The 'General' Regulations 2006**, were laid before Parliament on 13 July 2006. They set out the details on how the IMCA will be appointed and the functions of the IMCA, including their role in challenging the decision-maker. They also include a definition of 'serious medical treatment'. These are available online at <http://www.opsi.gov.uk/si/si200618.htm> (search under Mental Capacity). The House has 40 days to scrutinise these Regulations.

In Wales:

The IMCA Commissioning guidance

The Welsh Assembly Government has recently issued guidance for commissioners on the Independent Mental Capacity Advocate (IMCA) service. For more information please go to http://new.wales.gov.uk/topics/health/nhswales/healthservice/mental_health_services/mentalcapacityact/?lang=en or email sarah.austin@wales.gsi.gov.uk.

IMCA regulations

The Welsh Assembly Government received 19 responses to the consultation. These have been analysed and are forming the content of a submission to the Health and Social Services Minister. The IMCA and Research Regulations are also being scrutinised by the Health and Social Services Committee on 13 December and are scheduled to be debated by the Assembly Plenary on 13 March 2007.

In England:

Resources to support the implementation of the Mental Capacity Act

The Department of Health (DH) is making resources available to enable Councils with Social Services Responsibilities (CSSRs) to:

- **train staff** across their Implementation Network to understand the implications of the Act and to act accordingly
- **commission an Independent Mental Capacity Advocate (IMCA) service** to be in place when the Act becomes law
- **increase the staff time** needed for assessments of capacity and best interests decisions.

For a detailed breakdown of the resources available, please go to <http://www.dh.gov.uk/PublicationsAndStatistics/LettersAndCirculars> and look at Local Authority Circular no 15.

Regional leads to support the implementation of the Act

All the CSIP regional leads have now been appointed and are in post. Their role is to support the implementation of the Act by holding and supporting awareness raising activities and events and assisting with the education and training of health and social care staff who will be affected by the Act.

The contacts for the regional leads are:

CSIP Region	Email contact details	Telephone
North East, Yorkshire and Humber	Bruce.Bradshaw@nimheneyh.nhs.uk	07940 361335
North West	Paul.Greenwood@northwest.csip.org.uk	07795 963509
East Midlands	Sylvia.Manson@eastmidlands.csip.nhs.uk	07810 636462
Eastern	Lou.Brewster@nemhpt.nhs.uk	01206 287541
South East	Keithnieland@aol.com	07711 980057
London	Sarah.Haspel@londondevelopmentcentre.org	07768 045166
South West	David.Pennington@nimhesw.nhs.uk	07799 627244
West Midlands	Colin.Vines@csip.org.uk Richard.Bartholomew@csip.org.uk	07748 703687 07748 541956

In Wales:

Resources to support the implementation of the Mental Capacity Act

In Wales, the Welsh Assembly Government is making training grants available worth £9,000 for each Local Health Board, Local Authority and NHS Trust to assist each organisation in training their staff in their duties and responsibilities under the Act. Resources for Local Authorities and Local Health Boards to commission the IMCA service and to increase staff time needed for assessments of capacity and best interests decisions will be announced shortly. For more information please go to

http://new.wales.gov.uk/topics/health/nhswales/healthservice/mental_health_services/mentalcapacityact/?lang=en or email sarah.austin@wales.gsi.gov.uk.

‘Bournewood’ safeguards

The Mental Health Bill was introduced to Parliament on 16th November. The Bill is mainly about making changes to the Mental Health Act 1983 but it is also being used to amend the Mental Capacity Act 2005 by introducing the ‘Bournewood’ safeguards.

Bournewood is the name of a hospital where a man with autism who did not have capacity to consent to being in hospital was detained. His detention was challenged and the European Court of Human Rights ruled in 2004 that his detention amounted to an unlawful deprivation of liberty under the European Convention of Human Rights. After the ruling was published Government announced it would consult on how the law should be changed to meet the requirements of the Court’s ruling. Department of Health undertook a public consultation in spring 2005 and published its response in June 2006 with an indication of the safeguards Government was proposing to introduce. To view the consultation and response to the consultation, please go to http://www.dh.gov.uk/Consultations/ResponsesToConsultations/ResponsesToConsultationsDocumentSummary/fs/en?CONTENT_ID=4136791&chk=MVn7jF.

The ‘Bournewood’ safeguards will be for people who lack capacity to decide about their care, are deprived of their liberty to protect them from harm and are not covered by the Mental Health Act. These safeguards will prevent arbitrary decisions to deprive a person of their liberty and will also give rights of appeal. They will only apply to a small number of people, particularly older people with more advanced dementia and people with more severe learning disabilities who lack the capacity to decide about, or give consent to the care and protection they require, which involves being detained in a care home, nursing home or hospital to protect them from harm. The safeguards will ensure human rights compatibility.

For more information on the Mental Health Bill and to download the Bournewood proposals briefing sheet, please go to www.dh.gov.uk.

Communications and Events

Information on the Mental Capacity Act

Booklets

Information booklets on the Mental Capacity Act are now available. These booklets provide introductory information on the Act and how to access new services and they are customised for key audiences affected by the Act:

- A guide for people who may lack capacity and people who wish to plan ahead (booklet 1)
- A guide for family, friends and other unpaid carers (booklet 2)
- A guide for people who work in health and social care (booklet 3)

We also working on producing a booklet for legal professionals and advice workers and one for people with learning disabilities.

Leaflet

An information leaflet on the Mental Capacity Act is also available. It is aimed at increasing public awareness of the Act through organisations who work with or represent people who will be affected by the Mental Capacity Act.

To download the leaflet and booklets please go to <http://www.dca.gov.uk/legal-policy/mental-capacity/publications.htm>. To order hard copies, please contact our Communications Team by calling 020 7210 0038/39 or emailing makingdecisions@dca.gsi.gov.uk.

October workshops

The Mental Capacity Implementation Programme (MCIP) held three workshops in October to bring you up to date with recent developments, advise you of the plans for the next few months of implementation and to receive your feedback on the work we are doing. The events were held in Leeds, London and Cardiff. We are grateful to all who came and provided valuable input which will inform our planning for the next few months of implementation.

Consultations and responses to consultations

We are currently consulting on:

- the Court of Protection and Office of the Public Guardian fees - which will close on **29 November**

We will be consulting on:

- the Welsh Language Scheme for the Office of the Public Guardian (OPG). This will start in late November. It will be available online at www.guardianship.gsi.gov.uk or you can email ravina.kotecha@guardianship.gsi.gov.uk to request a hard copy.

We have issued a response to:

- the consultation on the draft Code of Practice for the Mental Capacity Act on **29 September**

For more information or to view a copy of a consultation or response document please go to <http://www.dca.gov.uk/legal-policy/mental-capacity/index.htm> or contact the Communications Team by calling 0207 210 0038/39 or emailing makingdecisions@dca.gsi.gov.uk.

Jargonbox

Your guide to abbreviations and terminology used in Update

A4A - Action for Advocacy - a central point of information on advocacy for advocacy providers and the voluntary sector. For more information go to www.actionforadvocacy.org.uk

ASA - Advice Services Alliance - is the independent umbrella body for independent advice organisations in the UK. Their members are national networks of not-for-profit organisations providing advice and help on the law access to services and related issues. For more information go to www.asauk.org.uk

Advice Now - Established by the ASA to improve the range and quality of information on the law and rights available via the Internet. For more information go to www.advicenow.org.uk

CSIP - Care Services Improvement Partnership. For more information go to www.csip.org.uk

DCA - Department for Constitutional Affairs. For more information go to www.dca.gov.uk

DH - Department of Health. For more information go to www.dh.gov.uk

IMCA - Independent Mental Capacity Advocate - a new safeguard introduced by the Mental Capacity Act to protect the rights of the most vulnerable. They will be appointed to support and represent people who lack capacity to make decisions about serious medical treatment or changes in their long-term accommodation and who have no family or friends to support them. For more information go to www.dh.gov.uk/imca

MCIP - Mental Capacity Implementation Programme - a joint Programme between the DCA, DH, the PGO and WAG, established to implement the organisation, process and procedures to launch the Mental Capacity Act in 2007.

MDA - Making Decisions Alliance - an alliance of national and regional organisations who represent older people and people with disabilities. For more information go to <http://www.makingdecisions.org.uk/>

NCA - National Care Association. Represents the interests of over 2,000 independent care providers. For more information go to <http://www.nca.gb.com>.

For more information go to <http://www.dca.gov.uk/legal-policy/mental-capacity>

PGO - Public Guardianship Office. For more information to www.guardianship.gov.uk

WAG - Welsh Assembly Government. For more information go to www.wales.gov.uk

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website: www.dca.gov.uk/legal-policy/mental-capacity/index.htm