

Mental Capacity Act Update

edition 15 | **September 2007**

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Welcome to edition 15 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 mcaupdate@guardianship.gsi.gov.uk to subscribe.

What's new?

NEW Forms and Guidance supporting the Mental Capacity Act now available

The forms and guidance for making Lasting Powers of Attorney and the draft forms and guidance for the Court of Protection are available on the PGO website (<http://www.guardianship.gov.uk/formsdocuments/forms.htm>) – read more about these forms and guidance in the Communications and Events section.

NEW Deprivation of Liberty Consultations imminent

The Deprivation of Liberty safeguards have been introduced into the Mental Capacity Act through the new Mental Health Act – read more about consultations in relation to these developments in the Health and Social Care Update section.

In depth

New Court of Protection

On Monday 1st October 2007 the Mental Capacity Act (the Act) will be fully implemented in England and Wales, which includes the creation of the Office of the Public Guardian (OPG), the new Court of Protection, Lasting Power of Attorneys and the IMCA service in Wales will come into force. Some parts of the Act came into operation in April 2007, namely the creation of a new criminal offence of wilful neglect or ill-treatment and the provision of Independent Mental Capacity Advocates (IMCAs) in England. The Code of Practice for the Act was issued in April 2007.

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

Ministry of
JUSTICE



The implementation of the Act creates a new Court of Protection, to deal with decision making for adults who lack the capacity to make specific decisions for themselves. It will be a superior court of record and have judiciary led by the senior judge and including 3 or more District Judges. It will have the same powers, rights, privileges and authority as the High Court with jurisdiction covering health and welfare as well as finance and property decisions.

The Court will remain based at Archway but to ensure greater accessibility, it will also have judges in the regions nominated to undertake Court of Protection work.

The new Court of Protection will be the final arbiter for capacity matters. The Act provides for a system of Court appointed deputies to replace and extend the current system of receivership in the Court of Protection. Deputies will be able to take decisions on welfare, healthcare and financial matters as determined by the Court. They will only be appointed if the Court cannot make a one-off decision to resolve the issues.

The Act provides the Court with powers to make a declaration on whether a person has the capacity to make a particular decision, or whether a particular course of action is lawful or not. Most of these decisions will be decided informally without the need to come to Court. However, when there are disagreements by medical experts, family disputes or doubts about whether a course of action such as medical treatment is in the person's best interests, then a court decision may be necessary.

In most cases relating to personal welfare matters the core principles of the Act will be enough to help people to take action or make decisions in the best interests of someone who lacks capacity to make decisions about their own care or treatment or finding ways of settling disagreements about such actions or decisions.

In some circumstances an application to the court will be required, such as when there are disagreements that cannot be resolved, complex or difficult matters, or when ongoing decisions are needed about the personal welfare of someone who lacks capacity to make decisions for themselves.

Whenever it makes an order, the court must apply the statutory principles and follow the best interests checklist set out within the Act. The court is required to always make the least restrictive order possible and must consider making the decision itself instead of appointing a deputy decision maker and when appointing a deputy, limiting the extent of their powers and the length of their appointment as far as possible.

In edition 16 of MCA Update there will a feature on the new Office of the Public Guardian.

Health and Social Care update

Deprivation of Liberty Consultations

September will see the launch of a joint Department of Health (DH) and Ministry of Justice consultation exercise across England and Wales. It concerns the draft Code of Practice guidance and draft regulations relating to the Deprivation of Liberty Safeguards being introduced into the Mental Capacity Act (MCA) through the new Mental Health Act.

The safeguards have been added to protect the human rights of people lacking capacity who need, in their best interests to be deprived of their liberty, in order to be provided with care or treatment. The safeguards are due to be implemented in October 2008.

The task now is to undertake a wider consultation on the draft MCA Code addendum (covering England and Wales) and draft regulations for England only. Wales will consult on their own regulations separately.

The Code of Practice is the vehicle for giving guidance on how to implement the policy on deprivation of liberty safeguards. The Ministry of Justice must manage the formal consultation process, lay the final version of the Code in Parliament and then issue it.

A mailbox has been set up for the exercise for electronic responses, but we also expect to receive a number of “hard copy” responses from stakeholders.

The mailbox address is safeguardsconsultation@guardianship.gsi.gov.uk.

The Ministry of Justice and PGO/OPG, the Department of Health and Welsh Assembly Government will all work together in the analysis and reporting of responses.

Guidance for researchers on applying for approval under the Act

The National Research Ethics Service has issued supporting guidance and forms for applicants regarding applications for approval of research under sections 30 and 34 of the Act. Guidance relating to applications for research involving adults with incapacity is available on the National Research Ethics Service website by using this link <http://www.nres.npsa.nhs.uk/applicants/index.htm#250607>

Training materials

The Department of Health, in partnership with the Welsh Assembly Government and the Social Care Institute for Excellence (SCIE), has published five sets of training materials to support the implementation of the Mental Capacity Act 2005.

The five sets (a core set, a mental health set, a residential accommodation set, a community care and primary care set and an acute hospitals set) can be downloaded at http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_074491

A hard copy of a set can be obtained from the DH Publications orderline by quoting the number and title:

277743 Mental Capacity Act 2005: Core Training Set

277744 Mental Capacity Act 2005: Mental Health Training Set

277745 Mental Capacity Act 2005: Residential Accommodation Training Set

277746 Mental Capacity Act 2005: Community Care and Primary Care Training Set

277747 Mental Capacity Act 2005: Acute Hospitals Training Set

A CD Rom of all sets can be obtained by quoting 277742 Mental Capacity Act: Training Sets.

Contact: DH Publications Orderline

Address: PO Box 777, London SE1 6XH

Phone: 08701 555 455 (8am – 6pm, Monday – Friday)

Textphone: 08700 102 870 (8am – 6pm, Monday – Friday)

Fax: 01623 724 524

Email: dh@prolog.uk.com

Regional leads to support the implementation of the Act

The role of the regional leads, contact details below, is to support awareness raising activities and events, assisting with the education and training of health and social care staff who will be affected by the Act, and supporting the provision of IMCA services

CSIP Region	Email	Telephone
North East, Yorkshire and Humber	Bruce.Bradshaw@nimheneyh.nhs.uk	07940 361335
North West	Paul.Greenwood@csip.org.uk	07795 963509
East Midlands	Sylvia.Manson@eastmidlands.csip.nhs.uk	07810 636462
Eastern	Lou.Brewster@csip.org.uk	01206 287541
South East	Keithnieland@aol.com	07711 980057
London	Sarah.Haspel@londondevelopmentcentre.org	07890 191361
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

For more information and contact details for the regional leads in Wales please contact Sarah.Austin@wales.gsi.gov.uk

IMCA service update

The IMCA service became operational in England on 1st April 2007 and will become operational in Wales on 1st October 2007.

IMCA service in England

The IMCA service is working well. All IMCA providers with the exception of the one in Birmingham are inputting data regularly; this data shows that referrals are steady across the country and IMCAs are responding promptly. There are more social care referrals than health ones.

The following link provides a list of IMCA providers in England

<http://www.dh.gov.uk/en/Policyandguidance/Healthandsocialcaretopics/Socialcare/IMCA/index.htm>

More detailed information on implementing the IMCA service in England is available at www.dh.gov.uk/imca or by emailing IMCA@dh.gsi.gov.uk

IMCA training in England and Wales

Training can be booked online at www.actionforadvocacy.org.uk or you can email training@actionforadvocacy.org.uk to get a booking form.

As part of its implementation programme the Welsh Assembly Government commissioned Action for Advocacy to run a programme to train trainers to deliver the IMCA Training Programme across Wales. This approach is intended to be supportive of the ability of the advocacy sector to build capacity within Wales to meet the training needs of IMCAs in Wales. 10 Expressions of Interest were received and will be assessed by the end of August. Those applicants going forward to receive the training session will do so on 20th September. Once an optimum number of trainers have been trained the Welsh Assembly Government will fund a limited number of free training courses for organisations that have confirmed contracts to provide an IMCA Service. It is anticipated that these courses will run from September until the end of the calendar year. These courses will consist of four taught days and two self-study days and are open to advocates and managers. Free training courses will be provided for 2007/08 only.

IMCA service in Wales

Commissioning of IMCA across Wales is near completion. Contracts have either been confirmed, or are subject to Board approval, in 21 of the 22 Local Health Board areas. It is anticipated that the one remaining Local Health Board will report a successful outcome shortly.

The first of the bi-monthly IMCA Network Support Group meetings took place in July and involved the shadow service providers already appointed to deliver IMCA in Wales. Those that attended considered the meeting useful and helpful. The next meeting is due to be arranged for late September/early October by which time every area in Wales will have appointed an IMCA provider in line with the statutory requirement.

The Welsh Assembly is close to finalising its policy on the Deprivation of Liberty Safeguards before being submitted to the Minister for Health and Social Services for approval. The policy will then be subject to public consultation.

For further information on the Act in Wales, please contact Sarah.Austin@wales.gsi.gov.uk or go to our website http://new.wales.gov.uk/topics/health/nhswales/healthservice/mental_health_services/mentalcapacityact/?lang=e

Communications and Events

Forms and Guidance

The forms and guidance for making Lasting Powers of Attorney and the draft forms and guidance for the Court of Protection are available on the PGO website (<http://www.guardianship.gov.uk/formsdocuments/forms.htm>). The current new forms and guidance available:

- Making a Lasting Power of Attorney
- New Court of Protection forms and guidance
- New Court of Protection Draft Practice Directions

These forms and guidance have been made available to allow professionals and other interested parties an early view of them, to assist with the training of their staff. Hard copies will not be available until September. A CD Rom containing all forms and guidance will shortly be made available.

Please note these forms and guidance are still in draft form and subject to change.

Information leaflet and booklets

The Making Decisions booklet series and an information leaflet are available to download online at <http://www.guardianship.gov.uk/formsdocuments/publications.htm>

Hard copies can be ordered by contacting our Publications Orderline on 0238 087 8038 or emailing reorder@inprintlitho.com

Jargonbox

Your guide to abbreviations and terminology used in Update

CoP - Court of Protection - a new Court of Protection will come into effect from October 2007 and will be able to make decisions on both property and personal welfare issues.

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

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

IMCA - Independent Mental Capacity Advocate. For more information go to www.dh.gov.uk/imca

Ministry of Justice - The Ministry of Justice took over the responsibilities from the Department of Constitutional Affairs, the National Offender Management Service and the Office for Criminal Justice Reform on the 9th May 2007. For more information go to www.justice.gov.uk/index.htm

OPG - Office of the Public Guardian - a new public office supporting the work of the Public Guardian from October 2007.

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

The Act - refers to the Mental Capacity Act 2005.

WAG - Welsh Assembly Government. For more information go to <http://new.wales.gov.uk/?lang=en>

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fax: 0870 739 5789
email: mcaupdate@guardianship.gsi.gov.uk
website: www.justice.gov.uk/whatwedo/mentalcapacity.htm