

# Mental Capacity Act Update

edition 13 | May 2007

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Welcome to edition 13 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](mailto:mcaupdate@guardianship.gsi.gov.uk) to subscribe.

## What's new?

### **NEW** Ministry of Justice formed on 9<sup>th</sup> May

On the 9 May 2007 a new government department the Ministry of Justice (MoJ) was created. The new MoJ took over the responsibilities of the Department for Constitutional Affairs (DCA), The Prison Service, the National Offender Management Service (NOMS) and will host the Office for Criminal Justice Reform (OCJR). The Public Guardianship Office (PGO) is an executive agency of the MoJ. The Office of the Public Guardian (OPG), when formed in October 2007, will also have the same status.

For further information on the MoJ please go to <http://www.justice.gov.uk>

### **NEW** Response to Court of Protection (CoP) and Public Guardianship Office (PGO) fees consultation

On the 30 April 2007 the Government published its response to the fees consultation. The consultation sought people's views of the proposed fees that the OPG and CoP will charge. This included the exemptions and remissions policy and levels of supervision for deputies.

The response to CoP and PGO fees consultation can be read in full online at <http://www.dca.gov.uk/consult/court-protection-rules/cp2306.htm#resp>

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

Ministry of  
**JUSTICE**



## Mental Capacity Act Code of Practice formally issued 23<sup>rd</sup> April 2007.

On 23 April 2007 the Lord Chancellor formally issued the Mental Capacity Act Code of Practice. The Code of Practice supports the Act by providing guidance and information on how it will work on a day-to-day basis for those who work with or care for people who may lack the capacity to make a decision. The Code is statutory guidance and certain people must have regard to it when acting on behalf of an individual who lacks capacity. It provides statutory guidance for those currently involved in the provision of IMCAs in England or for the purposes of the criminal offence.

The Code of Practice is available to download from:

[http://www.opsi.gov.uk/acts/en2005/ukpgaen\\_20050009\\_en\\_cop.pdf](http://www.opsi.gov.uk/acts/en2005/ukpgaen_20050009_en_cop.pdf)

Hard Copies can be ordered from The Stationery Office (TSO)

Online: <http://www.tsoshop.co.uk/bookstore.asp?FO=1160007>

Phone: 0870 242 2345 (9am – 5pm Monday –Friday)

Textphone: 0870 240 3701 (9am – 5pm Monday –Friday)

Email: [esupport@tso.co.uk](mailto:esupport@tso.co.uk)

## In depth

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### Lasting Power of Attorneys (LPA)

On the 17 April 2007, the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations were laid before Parliament. There are 48 regulations and 8 schedules, which include forms for making an LPA for Property and Affairs, Personal Welfare and the registration of an LPA and EPA after 1 October 2007.

An LPA is a new legal form, which from 1 October 2007 allows you to choose someone else to manage your affairs on your behalf if you are unable to do so. There are two types of LPAs, a **property and affairs LPA** allowing your chosen person to make decisions relating to financial and property matters (which can be used even if you still have capacity) or a **personal welfare LPA** allowing your chosen person to make decisions regarding your health and personal welfare, such as where you should live or medical treatment received (which can only be used when you do not have capacity). After 1 October 2007, the new LPA system will replace the existing system of Enduring Powers of Attorney (EPA), providing more protection and extra options.

A quick guide to the differences between an EPA and an LPA is available online at

[http://www.guardianship.gov.uk/downloads/Quick\\_Guide\\_to\\_EPAs\\_and\\_LPAs.Mar07.pdf](http://www.guardianship.gov.uk/downloads/Quick_Guide_to_EPAs_and_LPAs.Mar07.pdf)

## Health and Social Care update

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### Training Materials

The DH training materials for health and social care staff have now been published. 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

are available online at:

[http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_074491](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_074491)

If you quote the title numbers given on the DH web page you can order hard copies and CD Rom formats of the training materials from:

### DH Publications

Post: PO Box 777, London SE1 6XH

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

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

Fax: 01623 724 524

Email: [dh@prolog.uk.com](mailto: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	<a href="mailto:Bruce.Bradshaw@nimheneyh.nhs.uk">Bruce.Bradshaw@nimheneyh.nhs.uk</a>	07940 361335
North West	<a href="mailto:Paul.Greenwood@northwest.csip.org.uk">Paul.Greenwood@northwest.csip.org.uk</a>	07795 963 509
East Midlands	<a href="mailto:Sylvia.Manson@eastmidlands.csip.nhs.uk">Sylvia.Manson@eastmidlands.csip.nhs.uk</a>	07810 636 462
Eastern	<a href="mailto:Lou.Brewster@nemhpt.nhs.uk">Lou.Brewster@nemhpt.nhs.uk</a>	01206 287541
South East	<a href="mailto:Keithnieland@aol.com">Keithnieland@aol.com</a>	07711 980 057
London	<a href="mailto:Sarah.Haspel@londondevelopmentcentre.org">Sarah.Haspel@londondevelopmentcentre.org</a>	07890 191361
South West	<a href="mailto:David.Pennington@nimhesw.nhs.uk">David.Pennington@nimhesw.nhs.uk</a>	07799 627244
West Midlands	<a href="mailto:Colin.Vines@csip.org.uk">Colin.Vines@csip.org.uk</a> <a href="mailto:Richard.Bartholomew@csip.org.uk">Richard.Bartholomew@csip.org.uk</a>	07748 703 687 07748 541956

For more information and contact details for the regional leads in Wales please contact [sarah.austin@wales.gsi.gov.uk](mailto:sarah.austin@wales.gsi.gov.uk).

### Implementing the Mental Capacity Act

In early 2007, following a tendering exercise, the Department of Health funded a number of organisations to develop small projects to support the implementation of the Mental Capacity Act.

Funds were allocated for three purposes

- Awareness raising of the Act
- Specialised guidance
- Studies of the immediate impact of the Act

A number of events have already been held, specialised guidance will shortly be available and some studies have commenced.

Published guidance documents, or links to them, will be made available, on this webpage [www.dh.gov.uk/mentalcapacityact](http://www.dh.gov.uk/mentalcapacityact)

### Tenders Supporting the Implementation of the MCA 2005

No	Name of Organisation	Training/Events/Guidance/Studies of the Act
1	Age Concern England	<b>EVENTS</b> -Awareness raising training events for Age Concern Information & Advice staff.
2	Alzheimer's Society	<b>GUIDANCE</b> -Two sets of guidance materials aimed at both: (i) people with dementia and (ii) carers, relatives, careworkers and employees/volunteers at the Alzheimer's Society including guidance on advance decisions
3	Alzheimer's Society	<b>EVENTS</b> - Series of awareness raising events throughout the Society's three regions in England.
4	ASW National Network	<b>EVENTS</b> - An event to bring together all those in lead roles in mental health in social care and in ASW work to understand the implications of the Act for their work.
5	BILD	<b>EVENTS</b> - A seminar series that focuses on the implications of the Act for people in the learning disability community.
6	Care and Health Law	<b>EVENTS</b> - A pod cast download incorporating a lecture on the main aspects of the Act and an experts' discussion thereof.
7	Dignity in Dying	<b>GUIDANCE</b> - to give healthcare professionals practical information to enable them to fulfil their responsibilities under the Act with respect to advance decisions
8	ECCA - Loughborough University	<b>GUIDANCE</b> - Guidance for care home staff and care staff in the community. This will be developed into on-line briefings on an accessible website.
9	Embrace-learning	<b>GUIDANCE</b> - To develop the UCLAN training materials into an e-learning package
10	NHS End of Life Care Programme	<b>EVENTS</b> - A series of national awareness raising events for advance care planning and end of life care.
11	Ethox - The Oxford Foundation for Ethics and Communication in Health Care Practice	<b>GUIDANCE / EVENTS</b> - A web based resource and supporting workshops for clinical ethics committees. The project would be a joint project between the Ethox Foundation, the Ethox Centre and the UK Clinical Ethics Network.
12	Headway	<b>EVENTS</b> - Series of events and seminars for Headway staff to offer specialist training and to offer families, carers and brain injury survivors awareness raising
13	Help The Hospices	<b>GUIDANCE</b> - Specialised e-learning guidance around the Act for hospice and palliative care service providers
14	Institute of Neuropalliative Rehabilitation	<b>GUIDANCE</b> - Assessing mental capacity in adults with complex neurological disabilities in rehabilitation services; assessing mental capacity in adults with complex neurological disabilities for inclusion in research programmes
15	Intensive Care Society	<b>EVENTS/GUIDANCE</b> - Development of guidance and events to promote the guidance for the "intensive care" community

16	Mental Health Foundation	<b>STUDIES</b> - What guidance is available or being developed to support implementation and a comparison of assessments of capacity in a variety of settings before and after the Act.
17	Mental Health Act Commission	<b>EVENTS / GUIDANCE</b> - Training events for all Second Opinion Approved Doctors and development of guidance for SOADs in interface between MCA and MH Act 1983
18	Mid Trent Cancer Network	<b>EVENTS/GUIDANCE</b> - Development of an Advance Decisions to Refuse Treatment Policy in the East Midlands with a view to its adoption as a “national” template and the development of accompanying training and clinical effectiveness tools including a DVD
19	National Autistic Society	<b>GUIDANCE / EVENTS</b> - An information sheet for National Autistic Society for professionals, parents, carers and people with Autism Spectrum Disorders and a conference.
20	National Forum for People with Learning Difficulties	<b>EVENTS</b> - An event for the members of the National Forum for People with Learning Difficulties.
21	NCA - National Care Association	<b>EVENTS</b> - A series of national events for providers of private and voluntary sector residential, domiciliary and social care.
22	Northern Housing Consortium	<b>EVENTS</b> - A series of information events for housing, care and support providers.
23	SCOPE	<b>EVENTS / STUDIES</b> - A series of awareness raising events for staff of Scope and other “disability” organisations and to carry out baseline measures in the area of independent living for disabled people in order to effect a comparison with practice following the implementation of the Act.
24	SHARP Records & Plans and the University of the West of England	<b>STUDIES</b> - An event to increase the knowledge of staff in care homes for older people about the Act and a research project that investigates the extent to which advanced care planning wishes are requested, recorded and actioned.
25	Skills for People	<b>EVENTS</b> - A series of events about advocating for those who lack capacity
26	Speakup Self Advocacy	<b>EVENTS</b> - A series of events to raise the awareness of the Act for people with learning difficulties
27	Stonham	<b>EVENTS</b> - Development of “national” implementation tools for “housing” staff.
28	Sue Ryder Care	<b>EVENTS</b> - A training programme to support awareness raising of the Act for its staff and volunteers.
29	SW regional - CSCI	<b>EVENTS</b> - A conference that will cover the Act and its implications for staff and service users in regulated services.
30	The British Psychological Society	<b>GUIDANCE</b> - The development of a shorter reference guide leaflet and a more detailed set of professional practice guidelines for psychologists and psychiatrists

31	The British Psychological Society jointly with Estia	<b>GUIDANCE</b> - Additional guidance in relation to both clarifying the types of factors, which might need to be considered in making a decision, and in considering the process of best interests decision-making. This guidance would be useful both for those chairing best interests meetings and for those participating in them, which will include a review of relevant case law.
32	The National Council for Palliative Care	<b>GUIDANCE / STUDIES</b> - Complete revision & updating of NCPC's existing Guidance on the Act; a brief accessible short summary of the Act; specialised guidance on templates for policies & procedures; a study on the impact of the Act in hospices, specialist palliative care units & care homes
33	The Relatives and Residents Association	<b>EVENTS / GUIDANCE</b> - Two national conferences; a newsletter focussed solely on the Act; a website page wholly devoted to the Act and a simple leaflet that explains the Act to relatives of people in care homes
34	The Royal College of Psychiatrists	<b>EVENTS / GUIDANCE</b> - Training events for Academy of Medical Colleges; CPD on-line learning - 60 minute module and a practical handbook for psychiatrists on the Act
35	Together (Working for Wellbeing)	<b>EVENTS</b> - Events in a number of regional locations to raise awareness.
36	University of Cambridge	<b>STUDIES</b> - Collecting baseline data for measuring the impact of the Act "in connection with the care or treatment" of general hospital patients
37	University of Central Lancashire	<b>STUDIES</b> - A study of the impact of the Act on mental health and social care providers in the independent and public sectors; a study on the Act's implementation across different groups of service users including BME groups; a study on the threshold for a wise and / or an unwise decision.
38	University of the West of England, Bristol	<b>GUIDANCE</b> - Specialised guidance: Using audiovisual documentation during the consent process when involving people with dementia in research
39	Values Into Action	<b>EVENTS</b> - A series of awareness raising events in conjunction with regional Valuing People Support Teams

If you wish to know more about any of the work the successful organisations are carrying out, or to be put in contact with them, email: [IMCA@dh.gsi.gov.uk](mailto:IMCA@dh.gsi.gov.uk)

## IMCA service update

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

### IMCA service in England

IMCA services have been operating in all 150 Councils with Social Services Responsibilities (CSSRs) since 1<sup>st</sup> April 2007. In the majority of these areas there is a single independent IMCA provider and consortium arrangements in a few. A list of IMCA providers and their contact details are on the DH IMCA webpage.

All IMCAs undertake a five-day standard training course. Additional courses will be provided as new IMCAs come into post. IMCA managers should contact Action for Advocacy to request places on the additional courses.

The following link provides a list of IMCA providers in England

[http://www.dh.gov.uk/en/Policyandguidance/Healthandsocialcaretopics/Socialcare/IMCA/DH\\_4135874](http://www.dh.gov.uk/en/Policyandguidance/Healthandsocialcaretopics/Socialcare/IMCA/DH_4135874)

More detailed information on implementing the IMCA service in England is available at [www.dh.gov.uk/imca](http://www.dh.gov.uk/imca) or by emailing [IMCA@dh.gsi.gov.uk](mailto:IMCA@dh.gsi.gov.uk).

### IMCA training in England and Wales

Training can be booked online at [www.actionforadvocacy.org.uk](http://www.actionforadvocacy.org.uk) or you can email [training@actionforadvocacy.org.uk](mailto:training@actionforadvocacy.org.uk) to get a booking form.

### IMCA service in Wales

Reports setting out progress on training and awareness raising among staff and partner organisations and with the commissioning of IMCA services in Wales have been received from the majority of Wales Local Health Boards (LHBs) Trusts and Local Authorities. These reports have been analysed and a summary report is available from [Sarah.Austin@wales.gsi.gov.uk](mailto:Sarah.Austin@wales.gsi.gov.uk).

For information on the Act relating to Wales, please go to: [http://new.wales.gov.uk/topics/health/nhswales/healthservice/mental\\_health\\_services/mentalcapacityact/?lang=en](http://new.wales.gov.uk/topics/health/nhswales/healthservice/mental_health_services/mentalcapacityact/?lang=en) or by emailing [sarah.austin@wales.gsi.gov.uk](mailto:sarah.austin@wales.gsi.gov.uk).

## Communications and Events

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### A message from Bharti Haria

#### PGO Communications & Marketing Manager

This is the first newsletter produced by the PGO's Communications and Marketing Team. More than 3,000 organisations and individuals now receive this newsletter and from the feedback we've had, I know that it is well received. We at the PGO therefore want to build on the good work started by Toby Williamson and the Mental Capacity Implementation Team in producing MCA Update.

The PGO Communications and Marketing Team are also busy with other communications activities in the run up to October 2007, when the Mental Capacity Act will be fully implemented. Work is on going to produce guidance, forms and other literature, which will support the services of the OPG and the CoP. Development of a new OPG website is also progressing well. In addition, along with DH and CSIP colleagues, we continue to exhibit or have speakers at a range of conferences and events with the aim of increasing awareness about the Act, and for us, particularly, the services of the OPG and the CoP. In April, we exhibited at the Royal College of Nursing Annual Conference and about 2,000 visitors stopped by at our stand. In May, we were at the Pensioners' Parliament and in the coming months, amongst other events, we'll be at Learning Disability Today, the Retirement Show and Mental Health Today.

## Information leaflet and booklets

Booklet 5 – Making Decisions: An Easy Read Guide is now available, completing the suite of Making Decisions Booklets. This booklet is aimed specifically at people who may have difficulties understanding other information about the Act. It is written in the form of easy to understand stories, looking at how the Act might affect different individuals in their lives. The other booklets provide introductory information on the Act and how to access new services and are customised for other key audiences affected by the Act.

The Making Decisions booklet series and an information leaflet are available to download online at <http://www.dca.gov.uk/legal-policy/mental-capacity/publications.htm>

Hard copies can be ordered by contacting our Publications Orderline on 0238 087 8038 or emailing [reorder@inprintlitho.com](mailto:reorder@inprintlitho.com).

## Consultations and responses to consultations

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/publications.htm> or contact us by emailing [mcaupdate@guardianship.gsi.gov.uk](mailto:mcaupdate@guardianship.gsi.gov.uk)

## Jargon box

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 <http://www.csip.org.uk/>

**CSSRs** – Councils with Social Services Responsibilities

**EPAs** – Enduring Power of Attorney

**DH** - Department of Health. For more information go to <http://www.dh.gov.uk/>

**IMCA** - Independent Mental Capacity Advocate. For more information go to [www.dh.gov.uk/imca](http://www.dh.gov.uk/imca)

**LPA** - Lasting Powers of Attorney – only available from October 2007

**MCIP** - Mental Capacity Implementation Programme - a joint Programme between government departments. For more information go to <http://www.justice.gov.uk/whatwedo/mentalcapacity.htm>

**MoJ**- Ministry of Justice. For more information go to <http://www.justice.gov.uk>

**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 go to <http://www.guardianship.gov.uk>

**WAG** - Welsh Assembly Government. For more information go to <http://www.wales.gov.uk/>

## Contact details

Public Guardianship Office

12th Floor Archway Tower

2 Junction Road

London N19 5SZ

Tel: 0845 330 2900 (local call rate)

Fax: 0870 739 5780

Email: [MCAUPDATE@guardianship.gsi.gov.uk](mailto:MCAUPDATE@guardianship.gsi.gov.uk)

Website: [www.justice.gov.uk/whatwedo/mentalcapacity.htm](http://www.justice.gov.uk/whatwedo/mentalcapacity.htm)