

Mental Capacity Act Update

edition 14 | July 2007

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Welcome to edition 14 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 Court of Protection Fees and the Public Guardian Fees Orders laid in Parliament

The CoP Fees and the PG Fees Orders were laid in Parliament on 19th July (http://www.publications.parliament.uk/pa/cm/cmtoday/cmwmws/archive/070719.htm#hddr_17). The Orders set out the fees to be charged for matters coming to the new Court, and for the services provided by the Public Guardian.

NEW Court of Protection Rules laid in Parliament

The CoP Rules were laid in Parliament on 4th July (<http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070704/wmstext/70704m0001.htm#0707053000005>). The Rules govern applications to and procedures in the new Court of Protection (CoP).

NEW Commencement Order for Transitional and Consequential amendments to the Act

The **Commencement Order for Transitional and Consequential amendments to the Act** was laid in Parliament on 4th July (<http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070704/wmstext/70704m0001.htm#0707053000005>). The Order included transitional provisions for advance decisions - read more about these provisions in the Health and Social Care section of the newsletter.

NEW Public Guardian Board Regulations laid in Parliament on 21st June 2007 and Public Guardian Board appointed

On the 21 June, the Public Guardian Board Regulations were laid in Parliament (<http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070621/wmstext/70621m0002.htm>). The 21 June also saw Baroness

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

Ministry of
JUSTICE

 **Department
of Health**


Llywodraeth Cynulliad Cymru
Welsh Assembly Government


public
guardianship
office

Ashton, announce the appointment of the seven inaugural members of the Public Guardian Board. The Board is a new non-Executive Board set up under the Mental Capacity Act to scrutinise and review the way in which the Public Guardian discharges his functions. For more information about the Public Guardian Board and its members please use the following link <http://www.justice.gov.uk/news/newsrelease200607b.htm>

In depth

Amendments to the Deprivation of Liberty Safeguards (Bournewood)

The Mental Health Bill was introduced to Parliament on 16th November 2006. It completed its passage through Parliament on 4th July 2007, and Royal Assent for what is now the Mental Health Act 2007 was given on 19th July 2007. The Act mainly makes changes to the Mental Health Act 1983, but it is also being used to amend the Mental Capacity Act 2005 by introducing deprivation of liberty safeguards (previously referred to as “Bournewood” safeguards). Background on the new safeguards was included in edition 10 of the MCA newsletter. Additional material for the MCA Code of Practice, and draft regulations for both England and Wales covering the appointment of assessors and representatives, will be subject to consultation that is planned for later this year.

Amendments have been made to the new deprivation of liberty safeguards during the passage of the Mental Health Bill through Parliament. These amendments are summarised below:

- **Right of Third Parties to Request Assessment of Whether a Person is Deprived of Liberty** - These amendments would enable someone who is concerned that there is an unauthorised deprivation of liberty taking place, and who is not able to resolve this to their satisfaction with the care home or hospital, to apply to the Local Authority or Primary Care Trust (the supervisory body) to assess whether the person is deprived of liberty. If the outcome of this assessment is that there is an unauthorised deprivation of liberty, then the full assessment process would be completed as if an authorisation had been applied for. This is in addition to the possibility of pursuing the organisation’ formal complaints process or of applying to the Court of Protection to hear the case.
- **Information about Unauthorised Deprivation of Liberty** - This amendment strengthens the arrangements for dealing with a case where deprivation of liberty is not authorised because it is not found to be in the person’s best interests, but the best interests assessor reports that the person is in fact already being deprived of their liberty. The supervisory body will be required to inform in writing the person concerned, the managing authority of the care home or hospital, any IMCA involved and every interested person consulted in the best interests assessment, that an unauthorised deprivation of liberty is taking place.
- **Maximum Authorisation Period** - A person must only be deprived of liberty for the shortest time necessary to protect them from harm. The time period of an authorisation will be set on a case-by-case basis on the best interests assessor’s recommendation, subject to a maximum of one year. The assessor will look at the person’s circumstances and the likelihood of change and make a recommendation, which is based on the person’s best interests. This amendment introduces a power to make regulations reducing the maximum length of standard deprivation of liberty authorisations, if evidence that it is necessary to do so arises from future monitoring of the safeguards.
- **Advocacy for a Person Deprived of Liberty Under an Authorisation** - These amendments give the person deprived of liberty or the friend or family member appointed as their representative the statutory right of access to an IMCA. The role of the IMCA will be to explain the authorisation to them, what it means, why it has been granted, why it is considered that the person meets the criteria for authorisation, how long it will last and how to trigger a review or challenge in the Court of Protection. The IMCA can help and support them with a review or with an application to the Court.

For more information on the Mental Health Bill and to download the “Bournewood” deprivation of liberty safeguards briefing sheet, please go to: http://www.dh.gov.uk/en/Policyandguidance/Healthandsocialcaretopics/Mentalhealth/DH_076637

Health and Social Care update

Advance Decisions – life-sustaining treatment

The Transitional Order laid in Parliament on 4th July includes arrangements for some advance decisions, refusing life-sustaining treatments that are made before 1 October 2007. Advance decisions, made before 1st October 2007, may still be valid when the MCA comes into force if they meet the provisions of the Act. Most advance decisions, refusing life-sustaining treatments, made before October 2007 are unlikely to meet the specific requirements of the Act. Additionally, from that date some people will lack the capacity to amend their advance decision so that it does meet the Act’s requirements.

There will be limited protection for some advance decisions, made before 1st October 2007. This will allow a smooth transition from the current arrangements to the new ones introduced by the MCA. The arrangements mean that the new provisions relating to life-sustaining treatment in the MCA are not applied to advance decisions made before October, where there is a reasonable belief that the advance decision was made before 1 October and that the person has lacked capacity since 1 October. The advance decision must meet all other provisions of the Act. More details can be found on the DH website www.dh.gov.uk/consent

Anyone who has already made an advance decision should check that it meets the new rules, particularly if it deals with life-sustaining treatment. Organisations are encouraged to pass this advice on to their members as appropriate.

Guidance on nominating a consultee for research involving adults who lack capacity

Draft guidance on how to identify an appropriate consultee for the purposes of section 32 of the Mental Capacity Act 2005 was issued on 22nd June 2007. The guidance indicates how researchers should go about identifying an appropriate person to consult when they wish to carry out research which involves someone who lacks capacity to consent to take part. The closing date for responses is 14th September 2007.

Link to the guidance http://www.dh.gov.uk/en/Consultations/Liveconsultations/DH_076216

Training materials

During May 2007 the Department of Health, in partnership with the Welsh Assembly Government and the Social Care Institute for Excellence (SCIE), published five sets of training materials to support the implementation of the Mental Capacity Act 2005.

The training materials have been produced by the University of Central Lancashire and the Social Care Workforce Research Unit at King’s College, London.

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

Each set comes in two versions that include hyperlinks to the Act, to the Code of Practice and to other key documents, case studies and exercises. The core set includes a PowerPoint presentation. The larger of the two files for each set features recordings of service users’ and carers quotations that you can click on to hear their words spoken, but these are very large files; the smaller of the two files does not contain that feature, and will be quicker to download.

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 contact details	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	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

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

There are some CSIP Regional events being held in the up coming weeks:

- North West Region: 23rd July at Manchester City Stadium – CSIP contact Paul Greenwood or Haley Hilson (Admin) 0161 3514926; email Hayley.hillson@csip.org.uk
- Yorkshire/North East & Humber Region: 23rd and 24th July, venue to be confirmed – CSIP contact Bruce Bradshaw or Samantha Vokes (Admin) 07799 343356; email Samantha.vokes@nimheneyh.nhs.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.

Data from 650 IMCA referrals have been entered into the national IMCA database. The IMCA service is very pleased that referrals are being made and that IMCAs are supporting and representing people all over the country.

IMCA service in England

IMCA services have been operating in all 150 Councils with Social Services Responsibilities (CSSRs) since 1st 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/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.

IMCA service in Wales

The first IMCA Network Support Group meeting is being held for potential and actual providers of IMCA services on July 9th.

The group, which contains potential and actual IMCA providers, will meet bi-monthly to share issues, problems and solutions in relation to the provision of IMCA services in Wales.

An advertisement seeking expressions of interest for the IMCA Train the Trainer work has been issued to MCA Lead Officers and the voluntary sector. Expressions of interest to deliver the IMCA training are to be returned by 27th July.

Draft Assessing Capacity guidance has been issued to the NHS and local government for comment before a final version is issued next month

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=en

Communications and Events

Forms and Guidance

The PGO is aiming to make new Enduring Power of Attorney and Lasting Power Attorney forms and guidance, and new Court of Protection forms and guidance available to stakeholders and professionals via the PGO website from August 2007. This is intended to help in preparation of systems and in training for implementation of the Act. These documents will be made more widely available, including in hardcopy, from September 2007.

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

These documents will be made more widely available, including in hardcopy, from September 2007.

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 - 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

PGO - Public Guardianship Office. For more information to www.guardianship.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 5789
email: mcaupdate@guardianship.gsi.gov.uk
website: www.justice.gov.uk/whatwedo/mentalcapacity.htm