Draft Regulations laid before Parliament under section 65(4) of the Mental Capacity Act 2005, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2006 No.

MENTAL CAPACITY, ENGLAND

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

Made - - - -

Coming into force in accordance with regulation 1(2)

The Secretary of State makes these Regulations in exercise of the powers conferred on her by sections 41(1) and (2), 64(1) and 65(1) of the Mental Capacity Act 2005(**1**).

A draft of this instrument has been laid before Parliament in accordance with section 65(4) of the Mental Capacity Act 2005 and approved by resolution of each House of Parliament.

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Mental Capacity Act 2005 (Independent Mental Capacity Advocates) (Expansion of Role) Regulations 2006.

(2) These Regulations shall come into force—

(a) for the purpose of enabling the Secretary of State to make arrangements by virtue of regulation 2, on 1st November 2006, and

(b) for all other purposes, on 1st April 2007.

(3) These Regulations apply in relation to England only.

(4) In these Regulations—

"the Act" means the Mental Capacity Act 2005;

"IMCA" means an independent mental capacity advocate; and

"NHS body" means a body in England which is—

(a) a Strategic Health Authority;

(b) an NHS foundation trust;

(c) a Primary Care Trust;

(d) an NHS Trust; or

(**1**) 2005 c.9. Section 64(1) is cited because of the meaning there given to "prescribed".

(e) a Care Trust.

(5) In the definition of "NHS body" in paragraph (4)—

"Care Trust" means a body designated as a Care Trust under section 45 of the Health and Social Care Act 2001(**2**);

"NHS foundation trust" has the meaning given in section 1 of the Health and Social Care (Community Health and Standards) Act 2003(**3**);

"NHS trust" means a body established under section 5 of the National Health Service and Community Care Act 1990(**4**);

"Primary Care Trust" means a body established under section 16A of the National Health Service Act 1977(**5**); and

"Strategic Health Authority" means a Strategic Health Authority established under section 8 of the National Health Service Act 1977(**6**).

Adjustment of the obligation to make arrangements imposed by section 35 of the Act

2. Arrangements made by the Secretary of State under section 35 of the Act may include such provision as she considers reasonable for the purpose of enabling IMCAs to be available to represent and support persons in the circumstances specified in regulation 3 or 4.

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—

(**2**) 2001 c.15.
(**3**) 2003 c.43.
(**4**) 1990 c.19. Section 5 is amended by paragraph 69(1)(b) and (d) of Schedule 1 to the Health Authorities Act 1995 (c.17), paragraph 65(2) of Schedule 2 to the National Health Service (Primary Care) Act 1997 (c.46) and sections 13(1) and (10) and 14 of the Health Act 1999 (c.8).
(**5**) 1977 c.49. Section 16A is inserted by section 2(1) of the Heath Act 1999.
(**6**) Section 8 of the National Health Service Act 1977 is substituted by section 1(2) of the National Health Service Reform and Health Care Professions Act 2002 (c.17).