

Mental Capacity Act Update

edition 1/2010

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update**
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**Health and Social
Care update**

Contact Details



Llywodraeth Cynulliad Cymru
Welsh Assembly Government



Office of the
Public Guardian

Welcome to the first edition of 2010 of *Mental Capacity Act Update*.

If you know anyone who is interested in, or affected by the Mental Capacity Act (MCA) please forward this newsletter to them.

If you would like to get future editions of *Update* please email mcaupdate@publicguardian.gsi.gov.uk to subscribe.

News

OPG announces 'amendments to secondary legislation' consultation

As mentioned in the last e-bulletin, the Office of the Public Guardian has announced a new consultation paper. This consultation paper is part of the review process for the new Act. It focuses on areas of the Act that have not happened in the way that was intended.

The proposed changes below will in practice help the Act meet its aims and objectives. The OPG intends to implement them on the 1st April 2010 and is now seeking your views. Specifically it will look at:

- Reducing the security bond discovery period after the client's death from 7 to 2 years;
- Expanding the list of benefits that would qualify a customer for exemption from payment of OPG fees;
- Enabling the Public Guardian to investigate EPA attorneys together with other interested parties;
- Clarifying that a certified copy of an EPA will only be accepted if the original cannot be produced due to its being lost or destroyed;
- Amending the 'Application for registering of an EPA' form to allow for the registration of a certified copy only if the original cannot be produced due to its being lost or destroyed;
- Amending the 'Notice of intention to apply for registration of an Enduring Power of Attorney' form to require attorneys who are not joining in the application to register an EPA to be named

The full consultation also includes some proposals for the long term. To read a complete copy of the consultation paper please visit the link below.

<http://www.justice.gov.uk/consultations/opg-amendments-legislation-consultation.htm>

MCA Update – Survey Results

Thank you to everyone who took part in the recent survey of readers of this newsletter. The next issue will reflect many of the changes and improvements you suggested. The main changes will be:

- A new design which clearly separates between the information from different departments;
- Case Studies – a large number of respondents requested examples of case law. We are preparing a number of case studies and will start to introduce these over the coming issues;
- Statistics. Many respondents requested statistics. We've taken this to mean waiting times for LPA registrations and the Court of Protection. If you would like to see any other statistics then please let us know.
- Increasing distribution – several people suggested sending the newsletter to more people. We would like to hear from you if you know anyone you think would benefit from receiving this newsletter.

IMCA Service Updates

Independent Mental Capacity Advocacy Service - Annual Report for England Published

The 2nd IMCA annual report for England was published on 23rd December 2009

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_110523

Other News

Deprivation of Liberty Safeguards in England

Activity levels are running at about a third of those projected before the safeguards were implemented but approximately half of the assessments are resulting in authorisations rather than the quarter predicted. This suggests that the training and awareness raising carried out has contributed to a reduction in the number of “unnecessary” assessments.

There appears to be a better understanding of the complexities of the case law in relation to the circumstances that may constitute a deprivation of liberty than it was anticipated there would be at this early stage of implementation. However, there are significant variations in activity levels and, notwithstanding the success of the training and awareness raising, it is almost certainly the case that activity levels continue to be lower than could be reasonably expected in some areas.

The Department of Health's implementation team continues to work closely with all supervisory bodies, (PCTs and local authorities) and local multi agency implementation networks to ensure that managing authorities (hospitals and care homes) are aware of and complying with the statutory requirement to seek an MCA DOLS assessment in all relevant cases.

The Information Centre for health and social care will be providing its first published analysis of the first three quarters of activity data in late March 2010, its report on the last quarter in June 2010 and providing a first annual report, with more commentary, in July 2010. It will publish quarterly data in 2010/11 and half-yearly data in 2011/12, and additionally in each year an annual report and an annual report in 2012/13 and thereafter.

The DH will shortly publish on its website a briefing into the significant case law judgments handed down since the Safeguards came into force.

SCIE Social Care TV mental capacity films

SCIE has produced a series of mental capacity films. Three are available, with a fourth to follow shortly here: <http://www.scie.org.uk/socialcaretv/default.asp>

Care Quality Commission

The CQC have updated their guidance on the Mental Capacity Act and introduced guidance on the Deprivation of Liberty Safeguards for providers of registered care, treatment and support services here: http://www.cqc.org.uk/guidanceforprofessionals/socialcare/careproviders/guidance.cfm?widCall1=customWidgets.content_view_1&cit_id=34918

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