

Mental Capacity Act Update

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Contact Details

Please circulate this newsletter to anyone who you think may have an interest in the implementation of the Mental Capacity Act.

If you do not wish to receive future updates, please email makingdecisions@dca.gsi.gov.uk to unsubscribe.

To ensure that the Act works in practice, we want to work with everyone who has an interest in this important piece of legislation, hear your views and keep you updated on the work we are doing.

Appointment of the new Public Guardian

We are delighted to announce that Richard Brook, currently Chief Executive of MIND, will be joining the Department for Constitutional Affairs in February 2006, to take up post as the Public Guardian (designate) and Chief Executive of the new Office of the Public Guardian. Richard is a trained social worker who has extensive experience of dealing with the affairs of people with mental health problems and who lack capacity. As Public Guardian, he will be responsible for regulating people appointed to make finance, health and welfare decisions for those who lack capacity. Baroness Ashton, the DCA Minister responsible for the Mental Capacity Act, welcomed Mr Brook to his new appointment saying

“The new Office of the Public Guardian will be central to the implementation of reforms that will improve the lives of two million people in England and Wales who may lack capacity to make decisions for themselves, and those who live and work with them.”

“Richard Brook brings with him a wealth of experience, knowledge and understanding of the needs and wishes of people who lack capacity or have mental health problems which will prove invaluable in leading and developing the new organisation during its first few years.”

The press notice which gives more information about Richard's background and this appointment can be found at:

<http://www.gnn.gov.uk/environment/detail.asp?ReleaseID=177607&NewsArealD=2&NavigatedFromDepartment=True>

Code of Practice Informal Consultation Workshops

In the October newsletter we provided feedback on the emerging themes in respect of style and format that we received at the informal consultation

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

workshops. We have now had the opportunity to review the wide range of views expressed and have established the following main emerging themes, which will help us shape the development of the Code:

- Provide a holistic approach to assessing capacity and best interests decisions
- Where major or complex decisions are being taken, include an information gathering stage, followed by the recording of reasons for the decisions and the evidence used to support it
- Whilst unpaid carers and family carers can often be the best people to speak on behalf of the person lacking capacity, this must be balanced with the need to ensure that undue influence or pressure is not being exerted
- Do not prescribe what weight to give to differing views but highlight the need to weigh up each factor when reaching a decision
- Seek to reach a decision through consensus but where not possible, identify dispute resolution procedures and 'appeal' mechanisms

Delegates also wanted the Code to spell out more clearly the following key elements of the legislation:

- Emphasise that assessing capacity is an ongoing question and cannot be seen as an isolated "one-off" decision
- Avoid negative assumptions from the environment, presentation and demeanour when assessing capacity
- When assessing capacity include considering the person's past behaviour, known wishes and the views of the those who know them well now and prior to the question of capacity being raised
- Where providing support for those who may be able to reach a decision for themselves, ensure it is tailored to the needs of the individual and does not automatically lead to one answer
- Reflect the need to weigh each factor in the balance when reaching a best interests decision

We are delighted with the high level of interest you have all shown and we are very grateful for detailed comments received both during and after the workshops. The Code will be issued for public consultation in Spring 2006 – details will be published nearer the time.

IMCA implementation in England and Wales

We are in the process of analysing the responses to the consultation on the IMCA service in England which ended on 30 September. We want to look at the detail of the arguments made in the consultation process to gauge public opinion before deciding how to proceed. In particular we want to consider views on how the regulations making powers on the IMCA should be used, and on the operation and implementation of the service. The aim will be to keep statutory regulation to the minimum. The Government will publish the results of the consultation next year.

We are also taking forward a number of other initiatives for implementing the IMCA service:

- We are working closely with the 7 independent advocacy organisations who will be setting up IMCA pilots from January (see October Newsletter).
- We are working closely with colleagues responsible for the Independent Mental Health Act Advocate and with independent advocacy organisations on possible areas of commonality for implementation. For example, such as training qualifications and standards, commissioning and mapping existing advocacy services.
- We are also working with Turning Point who have been awarded a Section 64 grant to develop commissioning guidance for the IMCA service.

We will be using information from the consultation and pilots to identify what additional guidance is needed for independent advocacy organisations who will provide the IMCA service in England. Our intention is to create a toolkit, which can be adapted to suit local need.

The consultation on the IMCA service in Wales ended on 31 October and the Welsh Assembly Government are now considering the responses. A wide range of views were put forward on how the service should be commissioned in Wales and these are now being evaluated. The Assembly Government is also working with colleagues in England on issues around qualifications and standards for advocates.

LPA Consultation

In previous newsletters we said that we were planning to launch a consultation paper on LPA forms and guidance by the end of November. Unfortunately the work on the forms has taken slightly longer than we expected. We have decided to wait until January 2006 to publish this consultation so that the time for you to respond is not shortened by the Christmas break. The consultation will still last 12 weeks from the date of publication.

Mental Capacity Act Standard Presentation

We are pleased to tell you that we have produced a standard presentation resource on the Mental Capacity Act.

This PowerPoint presentation will enable you to present information about the Mental Capacity Act in a clear and consistent way. It is designed to give practical communications support to a wide range of interested parties and help us to support groups that we are unable to visit on an individual basis.

If you would like a copy of this presentation, please contact us at makingdecisions@dca.gsi.gov.uk

**Seasons Greetings and best wishes for 2006
from
The Mental Capacity Act Implementation Team**

Please note that the next update will be circulated at the end of January 2006.

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