

Mental Capacity Act Update

edition 8 | June 2006

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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.

For more information on the Mental Capacity Act, please visit <http://www.dca.gov.uk/capacity/index.htm>

Consultations

Draft Code of Practice for the Mental Capacity Act

The consultation on the draft Code of Practice for the Mental Capacity Act closed on 2 June. The Department for Constitutional Affairs (DCA) received over 150 responses which we are now analysing and we expect to publish the Government's response at the end of the Summer. We are grateful to everyone who took the time to respond.

If you would like a copy of the draft Code of Practice please contact the Communications Team by calling 020 7210 0039 or emailing makingdecisions@dca.gsi.gov.uk. More information is available on our website at <http://www.dca.gov.uk/capacity/index.htm>

Forms and guidance for making a Lasting Power of Attorney

The DCA received over 100 responses to this consultation which closed on 14 April. The responses are being analysed and we expect to publish the Government's response in July.

Rules for the Court of Protection

The Court Rules that will provide for the practice and procedure to be followed in the new Court of Protection from next year are being drafted. We plan to launch a consultation on these rules in July and will notify you as soon as we do.

You will have an opportunity to comment on proposals for the fees for both the Court of Protection and the Office of the Public Guardian in a separate consultation which the DCA plans to issue this Autumn.

Research Regulations for the Mental Capacity Act

On 13 June the Department of Health launched a consultation on the content of the research regulations for the Mental Capacity Act.

The draft regulations and a detailed explanation of the policy intention are

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

available on the Department of Health website at www.dh.gov.uk/consultations. An accessible version of the consultation, which gives a broader background about research and mental capacity, is also available. Please email MCA.ResearchRegs@dh.gsi.gov.uk for further information.

The consultation closes on **5 September 2006**.

Independent Mental Capacity Advocate Service

IMCA Implementation in England and Wales

The Mental Capacity Act 2005 includes the provision of a statutory right to advocacy for people who lack the capacity to make their own decisions about serious medical treatment or significant changes in their care arrangements and have no family or friends to support them. This advocacy service is called the Independent Mental Capacity Advocate (IMCA) service.

Regulations

Following the publication of the Government's response to the consultation on the IMCA service on 18 April (available at http://www.dh.gov.uk/Consultations/ResponsesToConsultations/ResponsesToConsultationsDocumentSummary/fs/en?CONTENT_ID=4133896&chk=GdRwgd), work is progressing on developing regulations for the IMCA service and we currently expect to lay the regulations before Parliament before the end of July.

The regulations will include:

- details on how IMCAs will be appointed
- the requirements for approval of IMCAs (including training and Criminal Records Bureau (CRB) checks)
- the functions of the IMCA
- how the IMCA can challenge decisions
- the definition of serious medical treatment.

The regulations will also give Local Authorities discretion to extend the IMCA service to care reviews and to adult protection procedures.

The Welsh Assembly Government's Minister for Health and Social Services has agreed the policy proposals for the IMCA Service. Local Health Boards, Local Authorities and NHS Trusts have been notified. The final policy and summary of responses to the consultation can be found at:

<http://www.information.wales.gov.uk/content/decisionreports/health/health-e.asp>. The Assembly will also be consulting on the draft IMCA Regulations from 28 July 2006.

If you would like more information on the implementation of the IMCA Service in Wales, or if you would like to be included on the consultation list for the IMCA Regulations in Wales, please email Sarah.Austin@wales.gsi.gov.uk.

Commissioning

The Department of Health (DH) has written to all Local Authorities in England about commissioning the new IMCA service. These letters provide initial commissioning guidance and confirm the financial allocation for each Local Authority.

The Welsh Assembly Government plans to introduce joint local commissioning arrangements between Local Authorities and Local Health Boards with funding being allocated via Local Health Boards. The Assembly will be providing guidance to commissioners shortly.

Training

Work is continuing on the feasibility of developing a national advocacy qualification for IMCAs in England and Wales. However, it is unlikely that this qualification will be available by April 2007 so DH intends to develop an induction package for training people who are appointed to act as IMCAs in England and Wales. This pack is currently scheduled to be ready by January 2007.

DH is in the process of developing a training programme and materials for this induction package. This may form the basis of the IMCA pathway/unit for the national qualification although final decisions

about tendering for the development of the training materials for the national qualification will be taken later in the year.

The DH website (www.dh.gov.uk) now has dedicated IMCA pages containing background to the new service, information about the IMCA pilots, the IMCA consultation response and commissioning arrangements. We will continue to add and modify the web pages to support the development of this new service. You can visit the site at www.dh.gov.uk/imca.

Training and awareness for health and social care practitioners

Training materials

The Department of Health working with SCIE (Social Care Institute for Excellence) has commissioned the University of Central Lancashire to produce training materials on the Mental Capacity Act for health and social care practitioners in England and Wales. The training materials will be made available electronically and in hard copy at the end of this year. In the next month, DH also plans to disseminate a self-assessment tool that is intended to help test an organisation's readiness to implement the Act and inform the work to be done.

Care Service Implementation Partnership (CSIP) Regional Leads

The Department of Health is working closely with CSIP to create nine regional leads, one in each CSIP region in England, to support the implementation of the Act. They will promote and support events and activities that raise awareness of the Act, and assist with the education and training of those affected. Five regional leads are now in post and a sixth will be in post in early July. Recruitment for posts in the North East, East Midlands and London continues. The contact details for the regional leads are:

West Midlands

Dora Jonathan
dora.jonathan@nimhe.wmids.nhs.uk
Tel: 0121 678 4851

North West

Paul Greenwood
Paul.Greenwood@northwest.csip.org.uk
Tel: 07795 963 509

Yorkshire and Humberside

Bruce Bradshaw
Bruce.Bradshaw@RotherhamPCT.nhs.uk or
bruce.bradshaw@virgin.net
Tel: 07747101100

South East

Keith Nieland
Keithnieland@aol.com
Tel: 01256 376394

South West

David Pennington
david.pennington@nimhesw.nhs.uk
Tel: 07799 627244

East

Lou Brewster
lou.brewster@nemhpt.nhs.uk
Tel: 01206 287541
In post in early July

Training funds

In England, DH is currently finalising the criteria for the allocation of funds to support individual organisations to raise the awareness of and train their staff in the implications of the Act.

In Wales, the Welsh Assembly Government will shortly make available training to each Local Health Board, Local Authority and NHS Trust in Wales to assist each organisation in training their staff in their duties and responsibilities under the Act. If you would like any more information on training for health and social care practitioners in Wales, please email Sarah.Austin@wales.gsi.gov.uk.

Public Guardian Board

The Act creates a new Public Guardian Board, an advisory body which will review the way in which the Public Guardian discharges his functions and report on this to the Lord Chancellor. We are keen to encourage applications from suitably qualified people for appointment to this board, and will be sending you separate details in July when the recruitment campaign for this takes place.

Working with stakeholders

In May we held an event in London for organisations that represent the interests of Black and Minority Ethnic (BME) groups. The aim of this event was to raise awareness of the Mental Capacity Act 2005 amongst BME communities and provide an opportunity for those who attended to feedback their views on the draft Code of Practice.

Raising awareness of the Mental Capacity Act

We recently asked for your input on ways of maximising general awareness of the Act and received some very helpful responses, which we are grateful for. We will contact those who responded directly during the next month. The responses we received broadly supported our approach to raising awareness of the Act. On this basis we are producing an information leaflet aimed at raising general awareness of the Act and a more detailed range of information booklets customised for specific audiences affected by the Act. We will keep you informed of further awareness raising activities, events and products in future newsletters.

Leaflet

The leaflet is aimed at organisations that work with or represent people who will be affected by the Mental Capacity Act. It will be available in electronic and hard copy format during July and we plan to distribute it widely. If you would like to receive copies of this, please email the Communications Team at makingdecisions@dca.gsi.gov.uk detailing your preference of electronic or hard copies, how many leaflets you would like and where you would like them sent.

Booklets

We will be producing a range of information booklets aimed at different audiences affected by the Act, including people who may lack capacity, people who want to plan ahead for a time when they may lack capacity, family carers, and health and social care practitioners. These booklets will be more substantial than the leaflet we are producing but much less detailed than the Code of Practice and they will provide simple, introductory information and guidance on the provisions of the Act and how to access the new services. We plan to have these available in October.

Stakeholder involvement

Please let us know if you could raise awareness of the Act at appropriate events you may be arranging or through existing forms of communication you have with your audiences, membership or contacts. Please call 020 7210 0038/0039 or email makingdecisions@dca.gsi.gov.uk (*Marking your email "Raising awareness of the MCA"*).

Contact details

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