

**202X No.xxx (C. xx)**

**MENTAL CAPACITY**

**The Mental Capacity (Amendment) Act 2019 (Commencement,  
Transitional and Savings Provisions) Regulations 202X**

Made - - - - 202X

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 6(3) and (5) of the Mental Capacity (Amendment) Act 2019(a).

**PART 1  
PRELIMINARY**

**Citation**

1. These Regulations may be cited as the Mental Capacity (Amendment) Act 2019 (Commencement, Transitional and Savings Provisions) Regulations 202X.

**Interpretation**

2. In these Regulations—

“the Act” means the Mental Capacity Act 2005(b);

“the 2019 Act” means the Mental Capacity (Amendment) Act 2019;

“the operative day” means [ ].

**PART 2  
COMMENCEMENT**

**Coming into force of the 2019 Act**

3.—(1) Except for the excluded provisions, the 2019 Act comes into force in so far as it is not already in force in accordance with paragraphs (3) and (4)

(2) The excluded provisions are section 1(4) of, and Schedule 1 to, the 2019 Act in so far as they relate to the following provisions of Schedule AA1 to the Act—

(a) in paragraph 17, sub-paragraph (b) and the “or” immediately preceding it;

(b) paragraph 19;

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(a) 2019 c.18.  
(b) 2005 c.9.

- (c) paragraph 20;
  - (d) in paragraph 21, sub-paragraphs (5), (6) and (10)(a);
  - (e) in paragraph 22, sub-paragraph (3);
  - (f) in paragraph 23(1), paragraph (a) and in paragraph (b), “otherwise,”;
  - (g) in paragraph 33, sub-paragraph (b) and the “or” immediately preceding it;
  - (h) paragraph 35;
  - (i) paragraph 36;
  - (j) in paragraph 38, sub-paragraph (1) (in so far as that sub-paragraph applies to care home managers) and sub-paragraph (9).
- (3) Except as specified in paragraph (4), the 2019 Act comes into force on the operative day.
- (4) The following provisions of the 2019 Act come into force on [ ]—
- (a) section 1(4) and Schedule 1 in so far as they relate to paragraphs 39 and 40(1)(a) and (b), (2), (5) and (6) of Schedule AA1 to the Act; and
  - (b) for the purpose of making regulations under section 35(2) of the Act, paragraph 3 of Schedule 2, paragraph 1 of that Schedule in so far as it relates to that paragraph and section 5(6) in so far as it relates to both those paragraphs.

## PART 3

### TRANSITIONAL PROVISIONS

#### **Interpretation of Part**

4. Terms used in this Part have the meaning they bear in the Act as in force immediately before the operative day.

#### **Standard authorisations in force immediately before the operative day**

5. A standard authorisation which is in force immediately before the operative day continues in force on and after that day until the first to occur of—

- (a) the end of the period for which the authorisation is in force;
- (b) the supervisory body terminating the authorisation pursuant to paragraph 117 of Schedule A1 to the Act; or
- (c) any change in the place of detention of the relevant person.

#### **Standard authorisations suspended immediately before the operative day**

6.—(1) Where a standard authorisation is suspended under paragraph 93 of Schedule A1 to the Act immediately before the operative day, the suspension continues in force on and after that day.

(2) Where a notice is given under paragraph 94 of Schedule A1 to the Act (as saved by regulation 9(4)) in respect of the suspension of a standard authorisation referred to in paragraph (1), the standard authorisation is to be treated as continuing in force on and after the operative day for the purposes of regulation 5.

#### **Requests for standard authorisations in respect of which no decision has been made by the operative day**

7.—(1) This regulation applies in respect of a request for a standard authorisation made before the operative day in respect of which no decision has been made by that day.

(2) The request is to be treated on and after the operative day as a request for arrangements to be authorised in relation to a cared-for person in accordance with Schedule AA1 to the Act.

(3) Paragraph (4) applies where the supervisory body to which the request was made is not the responsible body for the purpose of Schedule AA1 to the Act.

(4) The supervisory body must give to the responsible body all information necessary for the responsible body to deal with the request.

#### **Urgent authorisations in force immediately before the operative day**

**8.**—(1) An urgent authorisation which is in force immediately before the operative day continues in force on and after that day until the end of the period for which the authorisation is in force.

(2) The reference to an urgent authorisation in paragraph (1) includes a reference to an urgent authorisation—

- (a) which has been extended before the operative day in accordance with paragraph 77 of Schedule A1 to the Act;
- (b) in respect of which the managing authority has requested an extension before that day and that request is granted on or after that day.

## **PART 4**

### **SAVINGS PROVISIONS**

**9.**—(1) Paragraphs (2) and (4) apply notwithstanding regulation 3.

(2) The Act and the Mental Health Act 2007<sup>(a)</sup> continue to apply in relation to—

- (a) a standard authorisation continuing in force by virtue of regulation 5 or 6(2); and
- (b) an urgent authorisation continuing in force by virtue of regulation 8(1),

as if the amendments made to those Acts by Schedule 2 to the 2019 Act were not in force.

(3) Paragraph (2) applies until those authorisations cease to be in force under those regulations.

(4) Paragraphs 94 to 96 of Schedule A1 to the Act apply in relation to a standard authorisation in respect of which a suspension continues in force by virtue of regulation 6(1).

Date *Name*  
Secretary of State  
Department for Health and Social Care

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations bring the provisions of the Mental Capacity (Amendment) Act 2019 (c.18) (“the 2019 Act”) which are not already in force, into force on [ ] and [ ] in so far as they are not excluded provisions under regulation 3(2).

They also make transitional and savings provision in connection with standard authorisations and urgent authorisations under Schedule A1 to the Mental Capacity Act 2005 (c. 9) which are either in force or suspended immediately before [ ] or which have been requested but not granted immediately before that day.

An impact assessment was produced for the 2019 Act which can be found at [ ]. An impact assessment has therefore not been produced for this instrument.

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(a) 2007 c.12.