

**202X No. 0000**

**MENTAL CAPACITY, ENGLAND**

**The Mental Capacity Act 2005 (Independent Mental Capacity Advocates) (General) (Amendment) Regulations 202X**

<i>Made</i>	- - - -	202X
<i>Laid before Parliament</i>		202X
<i>Coming into force</i>	- -	202X

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 35(2) and (3) and 36 of the Mental Capacity Act 2005(a).

**Citation and commencement**

1. These Regulations may be cited as the Mental Capacity Act 2005 (Independent Mental Capacity Advocates) (General) (Amendment) Regulations 202X and come into force on [ ] 202X.

**Amendment of the Mental Capacity Act 2005 (Independent Mental Capacity Advocates) (General) Regulations 2006**

2.—(1) The Mental Capacity Act 2005 (Independent Mental Capacity Advocates) (General) Regulations 2006(b) are amended as follows.

(2) In regulation 5(c) (appointment of independent mental capacity advocates)—

(a) in paragraph (1)—

(i) after “section 41 of the Act,” insert “or Part 5 of Schedule AA1 to the Act,”;

(ii) in both sub-paragraphs (a) and (b), after “local authority” insert “or, as the case may be, a responsible body,”;

(b) after paragraph (3) insert—

“(4) In paragraph (1)(a) and (b), “responsible body” has the meaning given in paragraph 6 of Schedule AA1 to the Act in so far as that body is not a local authority.”.

(3) In regulation 6 (functions of an independent mental capacity advocate)—

(a) for paragraph (2) substitute—

“(2) “Authorised person” means—

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(a) 2005 c.9. Sections 35 and 36 are amended respectively by paragraphs 3 and 4 of Schedule 2 to the Mental Capacity (Amendment) Act 2019 (c.18). Section 35(7) defines “appropriate authority” as the Secretary of State in relation to England. Section 64(1) defines “prescribed”.

(b) S.I. 2006/1832.

(c) Regulation 5 is amended by S.I. 2009/2376.

- (a) a person who is required or enabled to instruct an IMCA under sections 37 to 39 of the Act or under regulations made by virtue of section 41 of the Act; or
  - (b) the responsible body which may appoint an IMCA under Part 5 of Schedule AA1 to the Act.”;
- (b) after paragraph (4) insert—
- “(4A) Paragraphs (5) to (7) apply only in respect of an IMCA referred to in paragraph (2)(a).”;
- (c) after paragraph (7) insert—
- “(8) Paragraph (9) applies only in respect of an IMCA appointed in a case to which paragraph 42 of Schedule AA1 to the Act applies.
- (9) The functions of an IMCA include—
- (a) assisting P as far as practicable in participating in any decision relating to the arrangements or proposed arrangements;
  - (b) ascertaining P’s past and present wishes and feelings about the arrangements or proposed arrangements and the beliefs and values that would be likely to influence P, if P had capacity in relation to the arrangements or proposed arrangements;
  - (c) ascertaining what alternative courses of action are available in relation to P, including any less restrictive alternatives;
  - (d) where appropriate, preparing a report for the responsible body referred to in paragraph (2)(b) in relation to the arrangements or proposed arrangements, in which such submissions about the arrangements or proposed arrangements as are considered appropriate may be included;
  - (e) maintaining such contact with P throughout the period of the appointment as is practicable and appropriate.
- (10) Paragraph (11) applies only in respect of an IMCA appointed in a case to which paragraph 43 of Schedule AA1 to the Act applies.
- (11) The IMCA must support the appropriate person(a) in—
- (a) assisting P as far as practicable to participate in any decision relating to the arrangements or proposed arrangements;
  - (b) ascertaining P’s past and present wishes and feelings about the arrangements or proposed arrangements, and the beliefs and values that would be likely to influence P, if P had capacity in relation to the arrangements or proposed arrangements;
  - (c) ascertaining what alternative courses of action are available in relation to P, including any less restrictive alternatives;
  - (d) where appropriate, seeking a review of the authorisation under paragraph 38(3)(b) of Schedule AA1 to the Act or making a request for such a review themselves;
  - (e) making representations to the person carrying out the pre-authorisation review under paragraph 24 of Schedule AA1 to the Act;
  - (f) making any representations that are necessary for the purpose of securing P’s rights in relation to the arrangements or proposed arrangements;
  - (g) where appropriate, making an application to the Court of Protection under section 21ZA of the Act.”.

(4) In regulation 7 (challenges to decisions affecting persons who lack capacity), after paragraph (2) insert—

“(3) Where the IMCA is appointed in a case to which paragraph 42 of Schedule AA1 to the Act applies, the IMCA may, in any case where the IMCA considers it appropriate—

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(a) See paragraph 42(5) of Schedule AA1 to the Act.

- (a) assist P in seeking a review of the authorisation under paragraph 38(3)(b) of Schedule AA1 to the Act or to make a request for such a review themselves;
- (b) make representations to the person carrying out the pre-authorisation review under paragraph 24 of Schedule AA1 to the Act;
- (c) make any representations that are necessary for the purpose of securing P’s rights in relation to the arrangements or proposed arrangements;
- (d) make an application to the Court of Protection under section 21ZA of the Act or assist P to do so.”.

Address  
Date

Minister of State  
Department for Health and Social Care

### **EXPLANATORY NOTE**

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

Regulation 2 of these Regulations amends the Mental Capacity Act 2005 (Independent Mental Capacity Advocates) (General) Regulations 2006 (S.I. 2006/1832) in consequence of the implementation of the new system of Liberty Protection Safeguards introduced by the Mental Capacity (Amendment) Act 2019 (c. 18) (“the 2019 Act”).

In particular, the amendments ensure that persons appointed as Independent Mental Capacity Advocates (IMCAs) in the new system will be subject to the same appointment requirements as IMCAs are currently and that those so appointed will be authorised to carry out functions appropriate to the requirements imposed by new legislation.

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.