

Countdown to the Mental Capacity Act 5 – A New Criminal Offence

In addition to the implementation of the IMCA service in England, with effect from 1 April 2007 the new Criminal offence contained within Section 44 of the Mental Capacity Act will come into force.

The Act introduces a new offence of ill treatment or wilful neglect of a person who lacks capacity. Ill treatment or neglect are not defined in the Act but are likely to be given their ordinary English meanings by the Courts.

The offence may arise in respect of a person who lacks capacity or who the Defendant reasonably believes lacks capacity. The offence can therefore arise where it is subsequently held that the individual did not in fact lack capacity.

The offence applies to:

- (a) A person who has the care of an incapacitated individual. What amounts to having the care of a person is not defined.

- (b) The donee of a lasting Power of Attorney.
- (c) The donee of an Enduring Power of Attorney.
- (d) A deputy appointed by the Court.

The penalty for ill-treatment or neglect under Section 44 is a fine and/or a term of imprisonment up to 12 months/5 years depending upon how the offence is prosecuted.

For more information on the Mental Capacity Act 2005, please contact the following:

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