

# Mental Health Law Briefing

Solicitors

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## Mental Health Act 2007: Amending the Mental Capacity Act

Our previous briefings have outlined the impact of the Mental Health Act 2007 which amends the existing Mental Health Act 1983.

In addition the 2007 Act makes amendments to the Mental Capacity Act 2005 in relation to introducing deprivation of liberty safeguards via Section 50 and Schedule 7, 8 and 9 of that Act. The deprivation of liberty safeguards are planned to come into force on 1 April 2009 but in the meantime a formal consultation is taking place on the draft of the addendum of the Code of Practice in relation to those proposals. The consultation closes on 2 December 2007.

The 2007 Act also makes further amendments to the Mental Capacity Act:

1 The 2007 Act has amended Section 40 of the Mental Capacity Act so that some individuals who would otherwise have been excluded from receiving the health and support of an independent mental capacity advocate are now included. The amended Section 40 came into force on 1 October 2007 and now reads as follows:

“Exceptions

The duty imposed by section 37(3), 38(3) or (4) or 39(4) or (5) does not apply where there is:

- (a) A person nominated by P (in whatever manner) as a person to be consulted on matters to which that duty relates,
- (b) A donee of a lasting power of attorney created by P who is authorised to make decisions in relation to those matters, or
- (c) A deputy appointed by the court for P with power to make decisions in relation to those matters.”

2 The 2007 Act has made a minor amendment to Section 20(11)(a) of the Mental Capacity Act, to replace the word “or” with “and”. This also came into force on 1 October 2007. Section 20(11)(a) limits actions by a deputy appointed by the court unless certain conditions are met. The fourth of these now reads:

“The fourth is that the act is a proportionate response to:

- (a) The likelihood of P’s suffering harm, and
- (b) The seriousness of that Harm”.

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**Government Announces New Regulator**

The government formally announced in the Queen’s speech on 6<sup>th</sup> November the creation of a new regulator, the Care Quality Commission. The regulator will be established via the proposed Health & Social Care Bill and will have powers to regulate health and social services provision. The aim is to create a single inspectorate to regulate the NHS, private clinics, social care services and mental health establishments with the aim of driving up the standard of healthcare and social services.

**The Mental Capacity Act 2005-Plugging the Bournemouth Gap**

The Dept of Health have announced that the Deprivation of Liberty Safeguards will be implemented on 1 April 2009. Guidance on this, which is aimed at Directors of Adult Social Services and Chief Executives of NHS Trusts, has just been published inviting local Mental Capacity Act implementation networks to include work on this issue and its implementation.

The Dept guidance is available at:  
<http://www.dh.gov.uk/en/Policyandguidance/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityAct2005/index.htm>