

# Mental Capacity Act Update

edition 16 | **October 2007**

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## Welcome to edition 16 of the *Mental Capacity Act Update*.

If you know anyone who is interested in the Mental Capacity Act, or who may be affected by this new law, please forward this newsletter to them.

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## What's new?

### **NEW** Office of the Public Guardian Launched

On the 1<sup>st</sup> October 2007 the Office of the Public Guardian (OPG) became fully operational. The implementation of the Act means the Public Guardianship Office was replaced by the OPG. Read more about this in the In Depth section.

### **NEW** The new Court of Protection Launched

On 1<sup>st</sup> October 2007 the new Court of Protection as created under the Act became fully operational. The new Court of Protection is a superior court of record and will have jurisdiction covering health and welfare and finance and property decisions. To read more about the new Court of Protection, see the In Depth section of edition 15 available on the new OPG Website [www.publicguardian.gov.uk](http://www.publicguardian.gov.uk)

### **NEW** IMCA Service in Wales Launched

On the 1<sup>st</sup> October 2007, the IMCA service became operational in Wales. The IMCA service has been operational in England since April 2007. Read more about this in the IMCA Service Update section.

### **NEW** MCIP Programme handover

The Mental Capacity Implementation Programme (MCIP) closed on the 28<sup>th</sup> September 2007. The Office of the Public Guardian (OPG) will now handle all queries relating to the Act and its operation. Read more about this in the Communications and Events section.

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

Ministry of  
**JUSTICE**



Office of the  
**Public Guardian**

### Office of the Public Guardian

On Monday 1<sup>st</sup> October 2007 the Mental Capacity Act will be fully implemented in England and Wales, which includes the creation of the Office of the Public Guardian (OPG), the new Court of Protection, Lasting Power of Attorneys and the IMCA service in Wales. Some parts of the Act came into operation in April 2007, namely the creation of a new criminal offence of wilful neglect or ill-treatment, the provision of Independent Mental Capacity Advocates (IMCAs) in England, and the Code of Practice.

The implementation of the Act means the Public Guardianship Office (PGO) will be replaced by Office of the Public Guardian (OPG). The Public Guardian is a new statutory office holder with specific powers and duties to supervise and regulate those appointed to make decisions on behalf of those who cannot do so themselves.

The Public Guardian will be the registering authority for Lasting Powers of Attorney. These are similar to the current Enduring Power of Attorney, but allow people to choose an attorney to make health and welfare decisions. In addition the Public Guardian will supervise deputies appointed by the Court and provide information to help the Court make decisions.

The way in which the Public Guardian will supervise deputies will differ from the current approach to the supervision of receivers. Anyone acting as a receiver at the end of September will be treated as a deputy and work is currently in progress regarding issuing orders to receivers to cover transitional issues.

A specialist supervision team will carry out an initial assessment and allocate deputies to a supervision regime. The supervision levels will be allocated on a risk-based approach. For many deputies this will result in a less intrusive approach than the way in which receivers are supervised now. In some instances other activities will be undertaken such as:

- Additional support for deputies;
- A requirement to provide more detailed annual accounts or report (if directed by the Court) in a format determined by the OPG;
- An initial visit followed by an assessment of the need for further visits;
- Confirmation of security bonding as directed by the Court;
- Other records may be requested as set out in the Act and additional financial assessments may take place during the initial period of accounting.
- The Public Guardian will back this tailored approach with the offer of better guidance to new deputies and training.
- An accessible customer support and advice service will also be available.

A significant difference between the Public Guardianship Office and the Office of the Public Guardian will be the emphasis placed on promoting the concept of an assumption of capacity of the clients of the Court of Protection and the understanding that every client has differing levels of capacity. The OPG will work with appointed decision makers and provide support and guidance that will emphasise the need to always act in the best interests of the client.

### **Tender opportunity - Supporting the operation of the Mental Capacity Act 2005**

The Social Care Institute for Excellence (SCIE), the organisation responsible for advancing good practice in social care, and the Department of Health (DH) are commissioning work to support the operation of the Mental Capacity Act 2005.

SCIE and DH are inviting organisations to tender to provide:

- Awareness raising events
- Specialised guidance
- Studies of the Mental Capacity Act's immediate impact.

SCIE and DH are particularly interested in studies around:

- Assessments of capacity
- The best interests in decision making
- The integration of assessments of capacity and best interests
- Decision making into health and social care record keeping and care planning
- The work of independent mental capacity advocates in adult protection cases
- The impact of the Mental Capacity Act 2005 on the work of research ethics committees.

SCIE and DH welcome proposals from research teams, voluntary and independent organisations or collaborative groups working across different institutions and sectors.

Organisations should demonstrate experience in the delivering the practical aspects of their bid, for example producing guidance or organising events.

Submissions are due by 5pm on 19 October 2007

For more information and the commissioning brief visit [www.scie.org.uk/commissions/index.asp](http://www.scie.org.uk/commissions/index.asp) or contact Lynette Bolitho on 020 7089 6840 or [lynette.bolitho@scie.org.uk](mailto:lynette.bolitho@scie.org.uk)

### **Deprivation of Liberty Safeguards**

The Mental Health Act 2007 has amended the Mental Capacity Act 2005 in relation to introducing deprivation of liberty safeguards via s50 and Schedules 7, 8 and 9 of that Act. [http://www.opsi.gov.uk/acts/acts2007/pdf/ukpga\\_20070012\\_en.pdf](http://www.opsi.gov.uk/acts/acts2007/pdf/ukpga_20070012_en.pdf)

The deprivation of liberty safeguards are planned to come into force on 1 October 2008.

### **Deprivation of Liberty Safeguards Formal Consultation.**

A formal consultation, in England and Wales, on the draft of the addendum of the Code of Practice in relation to the deprivation of liberty safeguards proposals and a formal consultation for the use, in England, of regulation-making powers contained in the new legislation have both commenced. [http://www.dh.gov.uk/en/Consultations/Liveconsultations/DH\\_078052](http://www.dh.gov.uk/en/Consultations/Liveconsultations/DH_078052)

Views are sought from all interested stakeholders on the Code addendum. This is intended for the guidance of those who have to implement the safeguards, and for the information of those who may become subject to the safeguards, and their relatives, friends and carers.

Views are also sought on proposals for the use, in England, of regulation-making powers, particularly in relation to the new roles of assessors and representatives.

The consultation closes on 2 December 2007.

## Regional leads to support the implementation of the Act

The role of the regional leads, contact details below, is to support awareness raising activities and events, assisting with the education and training of health and social care staff who will be affected by the Act, and supporting the provision of IMCA services.

CSIP Region	Email	Telephone
North East, Yorkshire and Humber	<a href="mailto:Bruce.Bradshaw@nimheneyh.nhs.uk">Bruce.Bradshaw@nimheneyh.nhs.uk</a>	07940 361335
North West	<a href="mailto:Paul.Greenwood@csip.org.uk">Paul.Greenwood@csip.org.uk</a>	07795 963509
East Midlands	<a href="mailto:Sylvia.Manson@eastmidlands.csip.nhs.uk">Sylvia.Manson@eastmidlands.csip.nhs.uk</a>	07810 636462
Eastern	<a href="mailto:Lou.Brewster@csip.org.uk">Lou.Brewster@csip.org.uk</a>	01206 287541
South East	<a href="mailto:Keithnieland@aol.com">Keithnieland@aol.com</a>	07711 980057
London	<a href="mailto:Sarah.Haspel@londondevelopmentcentre.org">Sarah.Haspel@londondevelopmentcentre.org</a>	07890 191361
South West	<a href="mailto:David.Pennington@nimhesw.nhs.uk">David.Pennington@nimhesw.nhs.uk</a>	07799 627244
West Midlands	<a href="mailto:Colin.Vines@csip.org.uk">Colin.Vines@csip.org.uk</a> <a href="mailto:Richard.Bartholomew@csip.org.uk">Richard.Bartholomew@csip.org.uk</a>	07748 703687 07748 541956

For more information and contact details for the regional leads in Wales please contact [Sarah.Austin@wales.gsi.gov.uk](mailto:Sarah.Austin@wales.gsi.gov.uk)

## IMCA service update

The IMCA service is now operational in England and Wales. The Mental Health Act 2007 has amended s40 of the Mental Capacity Act so that some people who would have otherwise been excluded from receiving help and support of an Independent Mental Capacity Advocate are now included. The amended provisions of s40 will commence on 1<sup>st</sup> October 2007 at the same time as the rest of the Act. [http://www.opsi.gov.uk/acts/acts2007/pdf/ukpga\\_20070012\\_en.pdf](http://www.opsi.gov.uk/acts/acts2007/pdf/ukpga_20070012_en.pdf)

### IMCA service in England

The following link provides a list of IMCA providers in England

<http://www.dh.gov.uk/en/Policyandguidance/Healthandsocialcaretopics/Socialcare/IMCA/index.htm>

More detailed information on the IMCA service in England is available at

[www.dh.gov.uk/imca](http://www.dh.gov.uk/imca) or by emailing [IMCA@dh.gsi.gov.uk](mailto:IMCA@dh.gsi.gov.uk)

### IMCA training in England and Wales

Training can be booked online at [www.actionforadvocacy.org.uk](http://www.actionforadvocacy.org.uk) or you can email

[training@actionforadvocacy.org.uk](mailto:training@actionforadvocacy.org.uk) to get a booking form.

### IMCA service in Wales

IMCA commissioning across Wales is now complete and all services will be in place when the new statutory service begins on 1st October. In Wales IMCAs will be trained by Welsh trainers who have satisfactorily completed the Training the Trainers Programme. The Welsh Assembly Government and Action for Advocacy are jointly running this programme.

For further information on the Act in Wales, please contact [Sarah.Austin@wales.gsi.gov.uk](mailto:Sarah.Austin@wales.gsi.gov.uk) or go to our website [http://new.wales.gov.uk/topics/health/nhswales/healthservice/mental\\_health\\_services/mentalcapacityact/?lang=e](http://new.wales.gov.uk/topics/health/nhswales/healthservice/mental_health_services/mentalcapacityact/?lang=e)

### Handover from the Mental Capacity Implementation Programme (MCIP)

From 1 October all queries relating to the Act and its operation should be made to the Office of the Public Guardian.

MCIP, a joint government programme between the Ministry of Justice (former DCA), Department of Health, the Public Guardianship Office and the Welsh Assembly Government, established to implement the Mental Capacity Act in 2007, will remain in a limited form to complete programme closedown.

We would like to take this opportunity to thank all members of the MCIP team, past and present, for all their hard work to enable the successful implementation of the Mental Capacity Act 2005.

### New OPG Website

The Office of the Public Guardian website has been launched as part of the OPG launch. The new website [www.publicguardian.gov.uk](http://www.publicguardian.gov.uk), has been designed to be accessible and usable ensuring that it engages visitors and clearly and logically communicates information on the Act and the services of the OPG.

The site is bold, vivid and intuitive in design, and users will find the journey around the site quick and practical.

Some key features to look out for on the new OPG website:

- A new search facility,
- Easy to navigate pages, which have been designed to conform to the AAA accessibility rating.
- All forms and guidance available to download
- New application packs
- An electronic copy of the Code of Practice available to download.

### Media Campaign

As part of preparation for the launch of the Office of the Public Guardian, the PGO Marketing and Communications Team took over responsibility for increasing awareness of the Mental Capacity Act earlier this year. In addition to the Mental Capacity Act information booklets, marketing leaflet and the new OPG guidance and website, we have contracted Amazon PR, a Public Relations agency, to work with us on a media campaign.

The campaign started in early September and focuses on increasing awareness of the Act, the new safeguards it introduces and the opportunities and choices it offers to people to plan ahead for the future. It will also raise the profile of Office of the Public Guardian and promote the website and Customer Contact Centre as a key point of contact for more information.

In early September we launched a media enquiries page on the PGO website. This page contains key information for journalists in the form of snapshot guides and will be moved over to the OPG website from 1 October. In the first 2 weeks of September, Amazon PR contacted over 130 individual journalists direct and provided them with the snapshot media guides and other information on the Act that their respective audiences will find relevant.

As a direct result of the campaign, the following media coverage has been generated:

- Beginners guide to making a Power of Attorney in the Financial Times on Saturday 15 September
- BBC Radio 4 - MoneyBox Live feature on LPAs and EPAs with members of the public calling in to ask questions on Monday 17 September

## Jargonbox

Your guide to abbreviations and terminology used in Update

**CoP** - Court of Protection - a new Court of Protection that is able to make decisions on both property and personal welfare issues.

**CSIP** - Care Services Improvement Partnership. For more information go to [www.csip.org.uk](http://www.csip.org.uk)

**DH** - Department of Health. For more information go to [www.dh.gov.uk/mentalcapacityact](http://www.dh.gov.uk/mentalcapacityact)

**IMCA** - Independent Mental Capacity Advocate. For more information go to [www.dh.gov.uk/imca](http://www.dh.gov.uk/imca)

**OPG** - Office of the Public Guardian - a new public office supporting the work of the Public Guardian from October 2007.

### Contact details

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website: [www.publicguardian.gov.uk](http://www.publicguardian.gov.uk)