

2006 No. 2814 (C. 95)

MENTAL CAPACITY, ENGLAND

**The Mental Capacity Act 2005 (Commencement No.1) Order
2006**

Made - - - - *20th October 2006*

The Secretary of State for Health makes this Order in exercise of the powers conferred upon her by section 68(2)(a) and (3) of the Mental Capacity Act 2005(a):

Citation, application and interpretation

1.—(1) This Order may be cited as the Mental Capacity Act 2005 (Commencement No. 1) Order 2006.

(2) This Order applies in relation to England.

(3) In this Order “the Act” means the Mental Capacity Act 2005.

Appointed day

2. Subject to Articles 3 and 4, sections 30 to 34 (research) of the Act come into force on 1 April 2007.

3. Sections 30 to 34 come into force on 1 February 2007 for the purpose of enabling applications for approval in relation to research to be made to, and determined by, an appropriate body.

4. Sections 30 to 34 of the Act come into force on 1 April 2008 in respect of any research which is carried out as part of a research project which —

(a) began before 1 April 2007; and

(b) was approved before 1 April 2007 by a committee established to advise on, or on matters which include, the ethics of research in relation to people who lack capacity to consent to it.

5. Sections 35 to 41 (independent mental capacity advocate service) of the Act come into force on —

(a) 1 November 2006 for the purposes of enabling the Secretary of State to make arrangements under section 35 of the Act and for enabling local authorities to approve independent mental capacity advocates in accordance with the Mental Capacity Act 2005 (Independent Mental Capacity Advocates)(General) Regulations 2006(b);

(b) 1 April 2007 for all other purposes.

Signed by authority of the Secretary of State for Health

20th October 2006

Rosie Winterton
Minister of State
Department of Health

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is the first commencement order under the Mental Capacity Act 2005 (c.9) (“the Act”).

Article 2 brings sections 30 (research), 31 (requirements for approval), 32 (consulting carers), 33 (additional safeguards) and 34 (loss of capacity during research project) of the Act into force on 1 April 2007 in respect of any research carried out as part of a project begun on or after 1 April 2007.

Article 3 brings sections 30 to 34 into force on 1 February 2007 for the purpose of enabling research applications to be made to, and determined by, an appropriate body.

Article 4 provides that where a research project has begun before 1 April 2007 and was approved before that date then sections 30 to 34 do not come into force until 1 April 2008.

Section 30 provides that intrusive research on or in relation to people without capacity is unlawful unless certain conditions, set out in that section and in sections 31 to 34, are complied with.

Article 5 brings sections 35 to 41 into force on 1 November 2006 for two purposes. The first is to enable the Secretary of State for Health to make arrangements under section 35 (appointment of independent mental capacity advocates) to enable independent mental capacity advocates to be available. The second is to enable local authorities to appoint independent mental capacity advocates in accordance with the Mental Capacity Act 2005 (Independent Mental Capacity Advocates) (General) Regulations 2006.

Article 5 brings sections 35 to 41 fully into force on 1 April 2007.

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