WELSH STATUTORY INSTRUMENTS

2009 No. 783 (W.69)

MENTAL CAPACITY, WALES

The Mental Capacity (Deprivation of Liberty: Assessments, Standard Authorisations and Disputes about Residence) (Wales) Regulations 2009

Made - - - -	*24 March 2009*
Laid before that National Assembly for Wales - -	*11 February 2009*
Coming into force - -	*1 April 2009*

The Welsh Ministers make these Regulations in exercise of the powers conferred by section 65(1) of, and paragraphs 31, 33(4), 47(1), 70, 129(3), 130 (2), (3) and (5) and 183(6) and (7) of Schedule A1 to, the Mental Capacity Act 2005(**1**).

A draft of this instrument, has been laid before the National Assembly for Wales in accordance with section 50(11) of the Mental Health Act 2007(**2**), and approved by resolution of the National Assembly for Wales.

PART 1

General

Title, commencement and application

1.—(1) These Regulations are called the Mental Capacity (Deprivation of Liberty: Assessments, Standard Authorisations and Disputes about Residence) (Wales) Regulations 2009 and come into force on 1 April 2009.

(2) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations—

"the Act" ("*y Ddeddf*") means the Mental Capacity Act 2005;

(**1**) 2005 c. 9. Schedule A1 was inserted by section 50(5) of the Mental Health Act 2007 (c. 12).
(**2**) 2007 c. 12.

"approved mental health professional" ("*gweithiwr proffesiynol iechyd meddwl a gymeradwywyd*") means a person approved under section 114(1) of the Mental Health Act 1983(**3**)

"best interests assessor" ("*asesydd lles pennaf*") means a person selected to carry out a best interests assessment under paragraph 38 of Schedule A1 to the Act;

"Care Council for Wales" ("*Cyngor Gofal Cymru*") has the meaning given by section 54(1) of the Care Standards Act 2000;

"eligibility assessor" ("*asesydd cymhwystra*") means a person selected to carry out the eligibility assessment under paragraph 46 of Schedule A1 to the Act.

(2) For the purpose of these Regulations "supervisory body" ("*corff goruchwylio*") includes a Local Health Board exercising supervisory functions in accordance with regulation 3 of the Mental Capacity (Deprivation of Liberty: Appointment of Relevant Representative) (Wales) Regulations 2009(**4**).

PART 2

Eligibility to carry out assessments

Eligibility — general

3.—(1) Subject to additional requirements in regulations 4 to 8 a person is only eligible to carry out an assessment, other than an age assessment, where the supervisory body is satisfied that the person—

(a) is insured in respect of any liabilities that might arise in connection with carrying out the assessment; and

(b) has the skills and experience appropriate to the assessment he or she is to carry out which must include, but is not limited to, the following skills—

(i) the ability to communicate effectively with a view to identifying characteristics and attributes of a person that are relevant to that person's needs, and

(ii) the ability to act independently of any person who appoints him or her to carry out an assessment and of any person who is providing care or treatment to the person he or she is to assess.

(2) The supervisory body must be satisfied that there is in respect of the person—

(a) an enhanced criminal record certificate issued under section 113B of the Police Act 1997(**5**); or

(b) if the purpose for which the certificate is required is not one prescribed under subsection (2) of that section, a criminal record certificate issued pursuant to section 113A of that Act(**6**) .

Eligibility to carry out mental health assessment

4. A person is eligible to carry out a mental health assessment(**7**) if that person is —

(a) approved under section 12 of the Mental Health Act 1983(**8**); or

(**3**) 1983 c. 20. Section 114 was substituted by section 18 of the Mental Health Act 2007.
(**4**) S.I.2009/266 (W.29).
(**5**) 1997 c. 50. Section 113B was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 (c. 15).
(**6**) Section 113A was inserted by section 163(2) of the Serious Organised Crime and Policy Act 2005.
(**7**) A mental health assessment is an assessment carried out under paragraph 35 of Schedule A1 to the Act.
(**8**) 1983 c. 20. Section 12 was amended by section 16 of the Mental Health Act 2007.

(b) a registered medical practitioner who the supervisory body is satisfied has relevant experience in the diagnosis or treatment of mental disorder.

Eligibility to carry out best interests assessments

5.—(1) A person is eligible to carry out a best interests assessment(**9**) if that person is—

(a) an approved mental health professional;

(b) a social worker registered with the Care Council for Wales;

(c) a first level nurse, registered in Sub-Part 1 of the Nurses' Part of the Register maintained under article 5 of the Nursing and Midwifery Order 2001;

(d) an occupational therapist registered in Part 6 of the register maintained under article 5 of the Health Professions Order 2001; or

(e) a chartered psychologist listed in the British Psychological Society's Register of Chartered Psychologists and who holds a practising certificate issued by that Society.

(2) The supervisory body must also be satisfied that a person has the ability to take account of the views of any person who is interested in the welfare of the person to be assessed and the ability to assess the relevance and importance of those views in making an assessment.

Eligibility to carry out mental capacity assessment or eligibility assessment

6. A person is eligible to carry out a mental capacity assessment(**10**) or an eligibility assessment(**11**) if they are eligible to carry out —

(a) a mental health assessment; or

(b) a best interests assessment.

PART 3

Selection of Assessors

Selection of assessors — general

7.—(1) A supervisory body may only select a person to carry out an assessment in any individual case where the person is—

(a) not financially interested in the care of the relevant person;

(b) not a relative of the relevant person; and

(c) not a relative of a person who is financially interested in the care of the relevant person.

(2) For the purposes of this regulation a "relative" ("*perthynas*") means:

(a) the father, mother, stepfather, stepmother, son, daughter, grandmother, grandfather, grandson or granddaughter of that person or of that person's spouse, former spouse, civil partner or former civil partner; or

(b) the brother, sister, uncle, aunt, niece, nephew or first cousin (whether of the full blood or of the half blood or by marriage or civil partnership) of that person or of that person's spouse, former spouse, civil partner or former civil partner.

(3) For the purposes of this regulation—

(**9**) A best interests assessment is an assessment carried out under paragraph 38 of Schedule A1 to the Act.
(**10**) A mental capacity assessment is an assessment carried out under paragraph 37 of Schedule A1 to the Act.
(**11**) An eligibility assessment is an assessment carried out under Schedule 1A to the Act.

(a) "Spouse" ("*priod*") or "civil partner" ("*partner sifil*") includes a person who is not married to or in a civil partnership with a person but is living with that person as if they were; and

(b) a person has a financial interest in a care home or independent hospital where that person is a partner, director, other office-holder or major shareholder of the care home or independent hospital that has made the request for a standard authorisation.

(c) "major shareholder" ("*cyfranddaliwr sylweddol*") means—

(i) any person who holds one tenth or more of the issued shares in the care home or independent hospital, where the care home or independent hospital is a company limited by shares, and

(ii) in all other cases, any of the owners of the care home or independent hospital.

Selection of best interests assessors

8. A supervisory body may only select a person to carry out a best interests assessment where that person is not involved in the care or treatment, or in making decisions about the care or treatment, of the relevant person.

PART 4

Assessment

Time frame for assessments

9.—(1) Subject to paragraph (2) and to regulation 11, the assessor must complete the assessment within 21 days from the date he or she is instructed by the supervisory body.

(2) Where the managing authority has given an urgent authorisation under paragraph 76 of Schedule A1 to the Act and makes a request for a standard authorisation, the assessor must complete the assessment within 5 days from the date on which he or she is instructed by the supervisory body.

Time limit for carrying out an assessment to decide whether or not there is an unauthorised deprivation of liberty

10. Subject to paragraph 69(4) and (5) of Schedule A1 to the Act, an assessment required under paragraph 69 of Schedule A1 to the Act must be completed within 5 days from the date on which the assessor is instructed by the supervisory body

Transitional Provisions for Standard Authorisations

11.—(1) This regulation applies where an assessor is instructed by the supervisory body on or before the 30 April 2009.

(2) The assessment must be completed within 42 days from the date of instruction.

Relevant eligibility information

12.—(1) This regulation applies where an individual is being assessed and the eligibility assessor and the best interests assessor are not the same person.

(2) The eligibility assessor must request that the best interests assessor provide him or her with any relevant eligibility information that the best interests assessor may have.

(3) The best interests assessor must comply with any request made under this regulation.