Draft Regulations laid before Parliament under section 65(4B) of the Mental Capacity Act 2005, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2009 No. 000

MENTAL CAPACITY, ENGLAND

The Mental Capacity (Deprivation of Liberty: Monitoring and Reporting; and Assessments -Amendment) Regulations 2009

Made - - - -	*2009*
Coming into force - -	*1st April 2009*

The Secretary of State for Health makes these Regulations in exercise of powers conferred by section 65 of, and paragraphs 129(3), 130, 162, 170, 171, 173 and 183(6) and (7) of Schedule A1(**1**) to, the Mental Capacity Act 2005(**2**).

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Mental Capacity (Deprivation of Liberty: Monitoring and Reporting; and Assessments - Amendment) Regulations 2009, and shall come into force on 1st April 2009.

(2) These Regulations apply in relation to England.

(3) In these Regulations—

"the Commission" means the Care Quality Commission established by section 1 of the Health and Social Care Act 2008(**3**); and

"Schedule A1" means Schedule A1 to the Mental Capacity Act 2005.

Duty on Commission to monitor

2. The Commission must monitor the operation of Schedule A1 in relation to England.

Reporting obligation

3. The Commission must report to the Secretary of State on the operation of Schedule A1 in relation to England as the Secretary of State may from time to time request.

(**1**) Inserted into the Mental Capacity Act 2005 by section 50 (5) of the Mental Health Act 2007 (c.12).
(**2**) 2005 c.9. Section 65 was amended by paragraph 11 of Schedule 9 to the Mental Health Act 2007. Section 65(1) was amended by S.I.2006/1016.
(**3**) 2008 c.14.

Powers of the Commission

4. For the purpose of monitoring, or reporting on, the operation of Schedule A1, the Commission may—

(a) visit hospitals and care homes;

(b) visit and interview persons accommodated in hospitals and care homes; and

(c) require the production of, and inspect, records relating to the care or treatment of persons accommodated in hospitals or care homes—

(i) who are the subject of an authorisation under Schedule A1; or

(ii) whom the Commission has reason to consider ought to have been or should be the subject of an assessment under Schedule A1.

Advice and information

5.—(1) The Commission may at any time give the Secretary of State advice or information on the operation of Schedule A1 in relation to England.

(2) When requested to do so by the Secretary of State, the Commission must give the Secretary of State such advice or information on the operation of Schedule A1 in relation to England as may be specified in the request.

Amendment of the Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008

6.—(1) The Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008(**4**) shall be amended as follows—

(2) In regulation 3 (eligibility – general), for paragraph (2) substitute—

"(2) The person must satisfy the supervisory body that there is in force in relation to that person an adequate and appropriate indemnity arrangement which provides cover in respect of any liabilities that might arise in connection with carrying out the assessment.

(2A) For the purposes of this regulation, an "indemnity arrangement" may comprise—

(a) a policy of insurance;

(b) an arrangement made for the purposes of indemnifying a person; or

(c) a combination of a policy of insurance and an arrangement made for the purposes of indemnifying a person.".

(3) In regulation 19 (effect of change in supervisory body)—

(a) in paragraph (1) for "paragraphs (3) to (6)" substitute "paragraphs (3) to (6A)";

(b) in paragraph (2) for "paragraphs (7) to (9)" substitute " paragraphs (7) to (10)";

(c) after paragraph (6) insert—

"(6A) Local authority A or local authority C shall be entitled to recover from local authority B expenditure incurred in exercising functions as the supervisory body.".

(**4**) S.I.2008/1858.