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STATUTORY INSTRUMENTS

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**2008 No. 1858**

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

**PART 2**

Eligibility to carry out assessments

**Eligibility – general**

**3.—(1)** In addition to any requirement in regulations 4 to 9, a person is eligible to carry out an assessment where paragraphs (2) to (4) are met.

(2) The person must—

- (a) be insured in respect of any liabilities that might arise in connection with carrying out the assessment; and
- (b) satisfy the supervisory body<sup>(1)</sup> that he or she has such insurance.

(3) The supervisory body must be satisfied that the person has the skills and experience appropriate to the assessment to be carried out which must include, but are not limited to, the following—

- (a) an applied knowledge of the Mental Capacity Act 2005 and related Code of Practice<sup>(2)</sup>; and
- (b) the ability to keep appropriate records and to provide clear and reasoned reports in accordance with legal requirements and good practice.

(4) 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<sup>(3)</sup> (enhanced criminal record certificates); 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<sup>(4)</sup> (criminal record certificates).

**Eligibility to carry out a mental health assessment**

**4.—(1)** A person is eligible to carry out a mental health assessment<sup>(5)</sup> if paragraphs (2) and (3) are met.

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(1) The identity of the supervisory body is determined in accordance with paragraphs 128, 180 and 182 of Schedule A1 to the Mental Capacity Act 2005.

(2) Published by The Stationery Office, ISBN 978 0 11 7037465. The current Code of Practice can also be found at [www.publicguardian.gov.uk/mca/code-of-practice.htm](http://www.publicguardian.gov.uk/mca/code-of-practice.htm).

(3) [1997 \(c.50\)](#). Section 113B was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 ([c.15](#)).

(4) Section 113A was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005.

(5) A mental health assessment is an assessment carried out under paragraph 35 of Schedule A1 to the Act.

- (2) The person must be—
- (a) approved under section 12 of the Mental Health Act 1983<sup>(6)</sup>; or
  - (b) a registered medical practitioner who the supervisory body is satisfied has at least three years post registration experience in the diagnosis or treatment of mental disorder.
- (3) The supervisory body must be satisfied that the person has successfully completed the Deprivation of Liberty Safeguards Mental Health Assessors training programme made available by the Royal College of Psychiatrists<sup>(7)</sup>.
- (4) Except in the 12 month period beginning with the date the person has successfully completed the programme referred to in paragraph (3), the supervisory body must be satisfied that the person has, in the 12 months prior to selection, completed further training relevant to their role as a mental health assessor.

### **Eligibility to carry out a best interests assessment**

- 5.—(1) A person is eligible to carry out a best interests assessment<sup>(8)</sup> if paragraphs (2) and (3) are met.
- (2) The person must be one of the following—
- (a) an approved mental health professional;
  - (b) a social worker registered with the General Social Care Council;
  - (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<sup>(9)</sup>;
  - (d) an occupational therapist registered in Part 6 of the register maintained under article 5 of the Health Professions Order 2001<sup>(10)</sup>; or
  - (e) a chartered psychologist who is listed in the British Psychological Society's Register of Chartered Psychologists and who holds a relevant practising certificate issued by that Society<sup>(11)</sup>.
- (3) The supervisory body must be satisfied that the person—
- (a) is not suspended from the register or list relevant to the person's profession mentioned in paragraph (2);
  - (b) has at least two years post registration experience in one of the professions mentioned in paragraph (2);
  - (c) has successfully completed training that has been approved by the Secretary of State<sup>(12)</sup> to be a best interests assessor;
  - (d) except in the 12 month period beginning with the date the person has successfully completed the training referred to in sub-paragraph (c), the supervisory body must be satisfied that the person has, in the 12 months prior to selection, completed further training relevant to their role as a best interests assessor; and
  - (e) has the skills necessary to obtain, evaluate and analyse complex evidence and differing views and to weigh them appropriately in decision making.

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<sup>(6)</sup> 1983 (c.20). Section 12 was amended by section 16 of the Mental Health Act 2007.

<sup>(7)</sup> The Royal College of Psychiatrists is at 17 Belgrave Square, London SW1X 8PG.

<sup>(8)</sup> A best interests assessment is an assessment carried out under paragraph 38 of Schedule A1 to the Act.

<sup>(9)</sup> S.I. 2002/253. The register is divided into parts in accordance with articles 2 and 3 of and Schedule 1 to the Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004 (S.I. 2004/1765).

<sup>(10)</sup> S.I. 2002/254. The register is divided into parts in accordance with articles 2 and 3 of and Schedule 1 to the Health Professions (Parts of and Entries in the Register) Order in Council 2003 (S.I. 2003/1571).

<sup>(11)</sup> The British Psychological Society is at St Andrews House, 48 Princess Road East, Leicester, LE1 7DR.

<sup>(12)</sup> Approved courses can be found at <http://www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityActDeprivationofLibertySafeguards/index.htm>.

### **Eligibility to carry out a mental capacity assessment**

6. A person is eligible to carry out a mental capacity assessment(13) if that person is eligible to carry out—

- (a) a mental health assessment; or
- (b) a best interests assessment.

### **Eligibility to carry out an eligibility assessment**

7. A person is eligible to carry out an eligibility assessment(14) if that person is—

- (a) approved under section 12 of the Mental Health Act 1983 and is eligible to carry out a mental health assessment; or
- (b) an approved mental health professional and is eligible to carry out a best interests assessment.

### **Eligibility to carry out an age assessment**

8. A person is eligible to carry out an age assessment(15) if that person is eligible to carry out a best interests assessment.

### **Eligibility to carry out a no refusals assessment**

9. A person is eligible to carry out a no refusals assessment(16) if that person is eligible to carry out a best interests assessment.

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(13) A mental capacity assessment is an assessment carried out under paragraph 37 of Schedule A1 to the Act.

(14) An eligibility assessment is an assessment carried out under paragraph 46 of Schedule A1 to the Act.

(15) An age assessment is an assessment carried out under paragraph 34 of Schedule A1 to the Act.

(16) A no refusals assessment is an assessment carried out under paragraph 48 of Schedule A1 to the Act.