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WELSH STATUTORY INSTRUMENTS

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**2009 No. 266**

**The Mental Capacity (Deprivation of Liberty: Appointment of Relevant Person's Representative) (Wales) Regulations 2009**

**PART 4**

Selection

**Selection by the relevant person**

7.—(1) This regulation applies where the relevant person has capacity in relation to the question of which person should be his or her representative.

(2) The relevant person may select a person for appointment as his or her representative.

(3) Where the relevant person may select a person in accordance with paragraph (2) but does not do so, regulation 10 applies.

**Selection by a donee or deputy**

8.—(1) This regulation applies where the relevant person does not have capacity in relation to the question of which person should be his or her representative.

(2) Where—

(a) the relevant person has a donee or deputy<sup>(1)</sup>, and

(b) it is within the authority of the donee or deputy to do so,

the donee or deputy may select a person to be appointed as a representative.

(3) Where a donee or deputy may select a person in accordance with paragraph (2) but does not do so, regulation 10 applies.

**Approval by the best interests assessor or supervisory body**

9.—(1) A person selected in accordance with regulations 7(2) or 8(2) must be approved by the best interests assessor or the supervisory body.

(2) Where the best interests assessor or supervisory body does not approve a person selected—

(a) they may approve another person selected in accordance with regulations 7(2) or 8(2); or

(b) the best interests assessor may select a person in accordance with regulation 10.

**Selection by the best interests assessor**

10.—(1) This regulation applies where—

(a) a person has not been selected for appointment as representative in accordance with regulations 7(2) or 8(2), or

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(1) “deputy” is defined in section 64(1) of the Act.

- (b) the best interests assessor or supervisory body has not approved a person in accordance with regulation 9.
- (2) The best interests assessor may select a person to act as a representative for the relevant person.
- (3) If the best interests assessor is unable to select a person for appointment as a representative, regulation 11 applies.

**Selection by the supervisory body**

**11.**—(1) This regulation applies where a person has not been selected in accordance with regulations 7(2), 8(2) or 10(2).

(2) The supervisory body must select a person to be appointed as a representative for the relevant person.

(3) Where a person who is selected in accordance with paragraph (2) will be acting in a professional capacity

- (a) that person must have appropriate training and experience, and
- (b) the supervisory body must be satisfied that there is in respect of that person—
  - (i) an enhanced criminal record certificate issued pursuant to section 113B of the Police Act 1997(2); or
  - (ii) 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.

(4) For the purposes of paragraph (3) a person acting in a professional capacity is a person selected by the best interests assessor or supervisory body who is not a family member, friend or carer of the relevant person.