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WELSH STATUTORY INSTRUMENTS

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**2009 No. 783**

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

**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<sup>(1)</sup>; 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>(2)</sup>.

**Eligibility to carry out mental health assessment**

- 4.** A person is eligible to carry out a mental health assessment<sup>(3)</sup> if that person is —
- (a) approved under section 12 of the Mental Health Act 1983<sup>(4)</sup>; or
  - (b) a registered medical practitioner who the supervisory body is satisfied has relevant experience in the diagnosis or treatment of mental disorder.

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(1) 1997 c. 50. Section 113B was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 (c. 15).  
(2) Section 113A was inserted by section 163(2) of the Serious Organised Crime and Policy Act 2005.  
(3) A mental health assessment is an assessment carried out under paragraph 35 of Schedule A1 to the Act.  
(4) 1983 c. 20. Section 12 was amended by section 16 of the Mental Health Act 2007.

### **Eligibility to carry out best interests assessments**

- 5.—(1) A person is eligible to carry out a best interests assessment<sup>(5)</sup> 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<sup>(6)</sup> or an eligibility assessment<sup>(7)</sup> if they are eligible to carry out —
- (a) a mental health assessment; or
  - (b) a best interests assessment.

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<sup>(5)</sup> A best interests assessment is an assessment carried out under paragraph 38 of Schedule A1 to the Act.

<sup>(6)</sup> A mental capacity assessment is an assessment carried out under paragraph 37 of Schedule A1 to the Act.

<sup>(7)</sup> An eligibility assessment is an assessment carried out under Schedule 1A to the Act.