



---

OFFERYNNAU STATUDOL  
CYMRU

---

---

WELSH  
STATUTORY INSTRUMENTS

---

**2009 Rhif 783 (Cy.69)**

**2009 No. 783 (W.69)**

**GALLUEDD MEDDYLIOL,  
CYMRU**

**MENTAL CAPACITY,  
WALES**

Rheoliadau Galluedd Meddyliol  
(Amddifadu o Ryddid: Asesiadau,  
Awdurdodiadau Safonol ac  
Anghydfodau ynghylch  
Preswyliaeth) (Cymru) 2009

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

**NODYN ESBONIADOL**

**EXPLANATORY NOTE**

*(Nid yw'r nodyn hwn yn rhan o'r Rheoliadau.)*

*(This note is not part of the Regulations)*

1. Mae Deddf Galluedd Meddyliol 2005 ("y Ddeddf") yn darparu ar gyfer amddifadu o'u rhyddid bobl sydd heb y galluedd i gydsynio i'r trefniadau a wnaed ar gyfer eu gofal neu eu triniaeth, sy'n derbyn gofal neu driniaeth mewn cartrefi gofal ac ysbytai, pan fo awdurdodiad o dan adran 4A o'r Ddeddf ac Atodlen A1 ("Atodlen A1") iddi yn bodoli.

1. The Mental Capacity Act 2005 ("the Act") provides for the deprivation of liberty of people lacking capacity to consent to the arrangements made for their care or treatment, who are receiving care or treatment in care homes and hospitals, where authorisation under section 4A of and Schedule A1 to the Act ("Schedule A1") exists.

2. Pan ymddengys fod person sydd heb alluedd yn cael ei gadw'n gaeth, neu ei fod yn debygol o gael ei gadw'n gaeth, mewn cartref gofal neu ysbyty, rhaid i awdurdod rheoli'r cartref gofal neu'r ysbyty geisio awdurdodiad gan y corff goruchwylio. Mae awdurdod rheoli ("managing authority") wedi'i ddiffinio ym mharagraffau 128, 180 a 182 o Atodlen A1. Yn achos cartref gofal, y corff goruchwylio fel rheol fydd yr awdurdod lleol lle mae'r person yn preswyl fel arfer ac yn achos ysbyty, y corff goruchwylio fel rheol fydd y Bwrdd Iechyd Lleol perthnasol ar gyfer yr ardal lle mae'r ysbyty wedi'i leoli neu'r Bwrdd Iechyd Lleol sy'n comisiynu'r gofal neu'r driniaeth.

2. Where it appears that a person who lacks capacity is detained, or is likely to be detained, in a care home or hospital, the managing authority of the care home or hospital must request an authorisation from the supervisory body. "Managing authority" is defined in paragraphs 128, 180 and 182 of Schedule A1. In the case of a care home, the supervisory body will usually be the local authority in which the person is ordinarily resident and in the case of a hospital, it will usually be the relevant Local Health Board for the area in which the hospital is situated or the Local Health Board that commissions the care or treatment.

3. Pan gaiff gais am awdurdodiad safonol mae'n ofynnol i gorff goruchwylio drefnu i amrywiol asesiadau gael eu gwneud mewn perthynas â'r unigolyn o dan sylw er mwyn penderfynu a yw'n briodol rhoi'r awdurdodiad. Rhaid i'r corff goruchwylio ddethol pobl i wneud yr asesiadau hynny yn unol â pharagraff 129 o Atodlen A1 ac ni chaiff ddethol neb ond pobl sy'n gymwys yn unol â'r Rheoliadau hyn.

3. On receiving a request for standard authorisation a supervisory body is required to arrange for various assessments to be carried out in relation to the individual concerned in order to determine whether it is appropriate to grant the authorisation. The supervisory body must select people to carry out those assessments in accordance with paragraph 129 of Schedule A1 and may only select people who are eligible in accordance with these Regulations.

4. Mae Rheoliadau 3 i 8, ynghyd â'r Ddeddf, yn darparu'r gofynion cymhwysedd ar gyfer pobl sy'n gwneud yr asesiadau. Mae'r Rheoliadau hyn yn ei gwneud yn ofynnol—

- (a) bod y corff goruchwyllo wedi'i fodloni fod pob asesydd wedi'i yswirio, bod ganddo'r sgiliau priodol a'i fod wedi'i wirio gan y Swyddfa Cofnodion Troseddol (rheoliad 3);
- (b) mai dim ond person a gymeradwywyd o dan adran 12 o Ddeddf Iechyd Meddwl 1983 ("y Ddeddf Iechyd Meddwl") neu ymarferyddion meddygol cofrestredig sydd â phrofiad perthnasol o ddiagnosis neu drin anhwylder meddyliol a gaiff wneud asesiadau iechyd meddwl (rheoliad 4);
- (c) mai dim ond gweithiwr cymdeithasol, nyrs, therapydd galwedigaethol neu seicolegydd a gaiff wneud asesiadau lles pennaf a rhaid i'r corff goruchwyllo fod wedi'i fodloni fod ganddynt y sgiliau sy'n ofynnol i wneud asesiadau o'r fath;
- (ch) mai dim ond pobl sy'n gymwys i wneud asesiad iechyd meddwl neu asesiad lles pennaf a gaiff wneud asesiadau galluedd meddyliol ac asesiadau cymhwystra (rheoliad 6);
- (d) nad oes gan yr asesydd fuddiant ariannol yng ngofal y person y mae'n ei asesu neu nad yw'r asesydd yn berthynas y person hwnnw (rheoliad 7);
- (dd) nad yw'r asesydd lles pennaf yn ymwneud â gofal a thriniaeth, nac yn gwneud penderfyniadau ynghylch gofal a thriniaeth, y person y mae'n ei asesu (rheoliad 8).

5. Mae Rheoliadau 9, 10 ac 11 yn cynnwys darpariaethau ynghylch y terfynau amser y mae'n rhaid cwblhau asesiadau o'u mewn. Pan geir cais am awdurdodiad safonol—

- (a) ac eithrio mewn achos pan fo asesydd wedi'i gyfarwyddo cyn 30 Ebrill 2009, rhaid i asesydd gwblhau'r asesiad o fewn 21 niwrnod o gael ei gyfarwyddo, ac eithrio pan fo awdurdodiad brys rhaid iddo gael ei gwblhau o fewn 5 niwrnod (rheoliad 9);
- (b) yn achos asesiad i benderfynu a fu amddifadiad o ryddid heb ei awdurdodi rhaid cwblhau'r asesiad o fewn 5 niwrnod (rheoliad 10);
- (c) pan fo'r asesiad yn cael ei wneud cyn 30 Ebrill 2009 rhaid cwblhau'r asesiad o fewn 42 o ddiwrnodau (rheoliad 11).

6. Pan nad yr un person yw'r asesydd cymhwystra a'r asesydd lles pennaf, mae Rheoliad 12 yn darparu bod rhaid i'r asesydd cymhwystra geisio gwybodaeth berthnasol oddi wrth yr asesydd lles pennaf.

4. Regulations 3 to 8, together with the Act, provide the eligibility requirements for people who carry out the assessments. These Regulations require that—

- (a) the supervisory body is satisfied that all assessors are insured, have appropriate skills and have undergone a Criminal Record Bureau check (regulation 3);
- (b) mental health assessments may only be carried out by a person approved under section 12 of the Mental Health Act 1983 ("the Mental Health Act") or registered medical practitioners who have relevant experience in diagnosis or treatment of mental disorder (regulation 4);
- (c) best interests assessments can only be carried out by a social worker, nurse, occupational therapist or psychologist and the supervisory body must be satisfied that they have the skills required to make such assessments (regulation 5);
- (d) mental capacity assessments and eligibility assessments may only be carried out by people who are eligible to carry out a mental health assessment or a best interests assessment (regulation 6);
- (e) the assessor does not have a financial interest in the care of the person they are assessing or a relative of that person. (regulation 7);
- (f) the best interests assessor must not be involved in the care or treatment, or in making decisions about the care or treatment, of the person he or she is assessing (regulation 8).

5. Regulations 9, 10 and 11 contain provisions about the time limits in which assessments must be completed. Where a request for a standard authorisation is received—

- (a) except in the case where the assessor is instructed before 30 April 2009, an assessor must complete the assessment within 21 days of being instructed, except that where there is an urgent authorisation it must be completed within 5 days (regulation 9);
- (b) in the case of an assessment to decide whether there is an unauthorised deprivation of liberty, the assessment must be completed within 5 days (regulation 10);
- (c) where the assessment is carried out before 30 April 2009 the assessment must be completed within 42 days (regulation 11).

6. Regulation 12 provides that where the eligibility assessor and best interests assessor are not the same person the eligibility assessor must request relevant information from the best interests assessor.

7. Mae Rheoliad 13 yn pennu'r wybodaeth y mae'n rhaid i'r awdurdod rheoli ei darparu pan fo'n gwneud cais am awdurdodiad safonol.

8. Mae Rheoliadau 14, 15 ac 16 yn gwneud darpariaethau sy'n awdurdodi awdurdodau lleol i weithredu fel corff goruchwyllo mewn achosion pan fo anghydfod ynghylch preswyliaeth y person sy'n wrthrych y cais am awdurdodiad safonol. Mae paragraff 183(3) o Atodlen A1 i'r Ddeddf yn darparu mai Gweinidogion Cymru sydd i benderfynu ar unrhyw gwestiwn ynghylch preswyliaeth arferol mewn achosion o'r fath.

9. Pan fo awdurdod lleol yn herio honiad mai ef yw'r corff goruchwyllo priodol, mae Rheoliad 15 yn darparu bod rhaid i'r awdurdod lleol sy'n cael y cais am awdurdodiad safonol weithredu fel y corff goruchwyllo hyd nes y bydd y cwestiwn ynghylch preswyliaeth arferol wedi cael ei benderfynu. Fodd bynnag, os bydd awdurdod lleol arall yn cytuno i weithredu fel corff goruchwyllo yna'r awdurdod lleol hwnnw fydd y corff goruchwyllo hyd nes y penderfynir ar y cwestiwn. Pan fydd y cwestiwn wedi cael ei benderfynu, yr awdurdod a ddynodwyd fel y corff goruchwyllo fydd y corff goruchwyllo.

10. Mae rheoliad 16 yn gosod y trefniadau ac yn gosod pwy sy'n atebol pan gaiff y cais am awdurdodiad safonol ei drosglwyddo o un awdurdod lleol i un arall.

7. Regulation 13 specifies the information that must be provided by the managing authority when making a request for a standard authorisation.

8. Regulations 14, 15 and 16 make provisions authorising local authorities to act as supervisory body in cases where there is dispute about the residence of the person who is the subject of the request for standard authorisation. Paragraph 183(3) of Schedule A1 to the Act provides that any question about ordinary residence in such cases is to be determined by Welsh Ministers.

9. Regulation 15 provides that where a local authority disputes that it is the appropriate supervisory body the local authority who receives the request for standard authorisation must act as supervisory body until the question about the ordinary residence is determined. However if another local authority agrees to act as supervisory body then that local authority will be the supervisory body until the question is determined. When the question has been determined then the local authority identified as the supervisory body will become the supervisory body.

10. Regulation 16 sets out the arrangements and where liability lies where the request for standard authorisation is transferred from one local authority to another.

**2009 Rhif 783 (Cy.69)**

**GALLUEDD MEDDYLIOL,  
CYMRU**

Rheoliadau Galluedd Meddyliol  
(Amddifadu o Ryddid: Asesiadau,  
Awdurdodiadau Safonol ac  
Anghydfodau ynghylch  
Preswyliaeth) (Cymru) 2009

*Gwnaed* 24 Mawrth 2009

*Gosodwyd gerbron Cynulliad  
Cenedlaethol Cymru* 11 Chwefror 2009

*Yn dod i rym* 1 Ebrill 2009

Mae Gweinidogion Cymru yn gwneud y Rheoliadau hyn drwy arfer y pwerau a roddwyd gan adran 65(1) o Ddeddf Galluedd Meddyliol 2005 a pharagraffau 31, 33(4), 47(1), 70, 129(3), 130(2), (3) a (5) a 183(6) a (7) o Atodlen A1 iddi(1).

Mae drafft o'r offeryn hwn wedi'i osod gerbron Cynulliad Cenedlaethol Cymru yn unol ag adran 50(11) o Ddeddf Iechyd Meddwl 2007(2), a'i gymeradwyo drwy benderfyniad Cynulliad Cenedlaethol Cymru.

**RHAN 1**

**Cyffredinol**

**Enwi, cychwyn a chymhwyso**

1.—(1) Enw'r Rheoliadau hyn yw Rheoliadau Galluedd Meddyliol (Amddifadu o Ryddid: Asesiadau, Awdurdodiadau Safonol ac Anghydfodau ynghylch Preswyliaeth) (Cymru) 2009 a deuant i rym ar 1 Ebrill 2009.

---

(1) 2005 p.9. Mewnosodwyd Atodlen 1A gan adran 50(5) o Ddeddf Iechyd Meddwl 2007 (p.12).

(2) 2007 p.12.

**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.

---

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

(2) 2007 c.12.

(2) Mae'r Rheoliadau hyn yn gymwys o ran Cymru.

(2) These Regulations apply in relation to Wales.

## Dehongli

2.—(1) Yn y Rheoliadau hyn—

ystyr "asesydd cymhwystra" ("*eligibility assessor*") yw person a ddetholwyd i wneud yr asesiad cymhwystra o dan baragraff 46 o Atodlen A1 i'r Ddeddf.

ystyr "asesydd lles pennaf" ("*best interests assessor*") yw person a detholwyd i wneud asesiad lles pennaf o dan baragraff 38 o Atodlen A1 i'r Ddeddf;

mae i "Cyngor Gofal Cymru" yr ystyr a roddir i "*Care Council for Wales*" gan adran 54(1) o Ddeddf Safonau Gofal 2000;

ystyr "y Ddeddf" ("*the Act*") yw Deddf Galluedd Meddyliol 2005;

ystyr "gweithiwr proffesiynol iechyd meddwl a gymeradwywyd" ("*approved mental health professional*") yw person a gymeradwywyd o dan adran 114(1) o Ddeddf Iechyd Meddwl 1983(1).

(2) At ddibenion y Rheoliadau hyn mae "corff goruchwylio" ("*supervisory body*") yn cynnwys Bwrdd Iechyd Lleol sy'n arfer swyddogaethau goruchwylio yn unol â rheoliad 3 o Reoliadau Galluedd Meddyliol (Amddifadu o Ryddid: Penodi Cynrychiolydd Perthnasol) (Cymru) 2009(2).

## Interpretation

2.—(1) In these Regulations—

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

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

"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(2).

## RHAN 2

### Cymhwystra i gynnal asesiadau

#### Cymhwystra — cyffredinol

3.—(1) Yn ddarostyngedig i ofynion ychwanegol yn rheoliadau 4 i 8 nid yw person yn gymwys i wneud asesiad, ac eithrio asesiad oedran, ond pan fo'r corff goruchwylio wedi'i fodloni fod y person hwnnw—

- (a) wedi'i yswirio mewn perthynas ag unrhyw atebolrwydd a ddichon godi mewn cysylltiad â gwneud yr asesiad; a
- (b) yn meddu ar y sgiliau a'r profiad perthnasol ar gyfer yr asesiad y mae i'w wneud, sy'n gorfod cynnwys y sgiliau canlynol, ond heb fod yn gyfyngedig iddynt—
  - (i) y gallu i gyfathrebu'n effeithiol gyda golwg ar ganfod nodweddion a phriodweddau person sy'n berthnasol i anghenion y person hwnnw, a

## 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

(1) 1983 p.20. Amnewidiwyd adran 114 gan adran 18 o Ddeddf Iechyd Meddwl 2007.

(2) O.S. 2009/266 (Cy.29).

(1) 1983 c.20. Section 114 was substituted by section 18 of the Mental Health Act 2007.

(2) S.I. 2009/266 (W.29).

- (ii) y gallu i weithredu'n annibynnol ar unrhyw berson sy'n ei benodi i wneud asesiad ac ar unrhyw berson sy'n darparu gofal neu driniaeth i'r person y mae i'w asesu.

(2) Rhaid i'r corff goruchwyllo fod wedi'i fodloni bod yna mewn perthynas â'r person—

- (a) tystysgrif cofnod troseddol fanwl wedi'i dyroddi o dan adran 113B o Ddeddf yr Heddlu 1997(1); neu
- (b) os nad yw'r diben y mae'r dystysgrif yn ofynnol amdano yn un a ragnodir o dan adran (2) o'r adran honno, tystysgrif cofnod troseddol a ddyroddwyd yn unol ag adran 113A o'r Ddeddf honno(2).

### Cymhwysra i gynnal asesiad iechyd meddwl

4. Mae person yn gymwys i gynnal asesiad iechyd meddwl(3) os yw'r person hwnnw—

- (a) wedi'i gymeradwyo o dan adran 12 o Ddeddf Iechyd Meddwl 1983(4); neu
- (b) yn ymarferydd meddygol cofrestredig y mae'r corff goruchwyllo yn fodlon fod ganddo brofiad perthnasol mewn diagnosisio neu drin anhwylder meddyliol.

### Cymhwysra i gynnal asesiadau lles pennaf

5.—(1) Mae person yn gymwys i gynnal asesiad lles pennaf(5) os yw'r person hwnnw—

- (a) yn weithiwr proffesiynol iechyd meddwl a gymeradwywyd;
- (b) yn weithiwr cymdeithasol a gofrestrwyd gyda Chyngor Gofal Cymru;
- (c) yn nyrs lefel gyntaf, a gofrestrwyd yn Is-Ran 1 o Ran y Nyrsys yn y Gofrestr a gedwir o dan erthygl 5 o'r Gorchymyn Nyrsio a Bydwreigiaeth 2001;
- (ch) yn therapydd galwedigaethol a gofrestrwyd yn Rhan 6 o'r gofrestr a gedwir o dan erthygl 5 o Orchymyn Proffesiynau Iechyd 2001; neu
- (d) yn seicolegydd siartredig a restrir yng Nghofrestr Seicolegwyr Siartredig Cymdeithas Seicolegol Prydain ac sy'n dal tystysgrif ymarfer a ddyroddwyd gan y Gymdeithas honno.

(1) 1997 p.50. Mewnosodwyd adran 113B gan adran 163(2) o Ddeddf Troseddu Cyfundrefnol Difrifol a'r Heddlu 2005 (p.15).

(2) Mewnosodwyd adran 113A gan adran 163(2) o Ddeddf Troseddu Cyfundrefnol Difrifol a'r Heddlu 2005.

(3) Mae asesiad iechyd meddwl yn asesiad a gynhelir o dan baragraff 35 o Atodlen A1 i'r Ddeddf.

(4) 1983 p.20. Diwygiwyd adran 12 gan adran 16 o Ddeddf Iechyd Meddwl 2007.

(5) Mae asesiad lles pennaf yn asesiad a gynhelir o dan baragraff 38 o Atodlen A1 i'r Ddeddf.

- (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(1); 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(2).

### Eligibility to carry out mental health assessment

4. A person is eligible to carry out a mental health assessment(3) if that person is —

- (a) approved under section 12 of the Mental Health Act 1983(4); or
- (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(5) 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.

(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.

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

(2) Rhaid i'r corff goruchwyllo fod wedi'i fodloni hefyd fod gan y person y gallu i gymryd i ystyriaeth sylwadau unrhyw berson sydd â buddiant yn lles y person sydd i'w asesu a'r gallu i asesu perthnasedd a phwysigrwydd y sylwadau hynny wrth wneud asesiad.

### **Cymhwysra i gynnal asesiad galluedd meddyliol neu asesiad cymhwystra**

6. Mae person yn gymwys i wneud asesiad galluedd meddyliol(1) neu asesiad cymhwystra(2) os yw'n gymwys i gynnal—

- (a) asesiad iechyd meddwl; neu
- (b) asesiad lles pennaf.

## **RHAN 3**

### **Dethol Aseswyr**

#### **Dethol aseswyr — cyffredinol**

7.—(1) Dim ond os yw'r canlynol yn wir y caiff corff goruchwyllo ddethol person i gynnal asesiad mewn unrhyw achos unigol—

- (a) nad oes gan y person fuddiant ariannol yn y gwaith o ofalu am y person perthnasol;
- (b) nad yw'r person yn berthynas i'r person perthnasol; ac
- (c) nad yw'r person yn berthynas i berson sydd â buddiant ariannol yn y gwaith o ofalu am y person perthnasol.

(2) At ddibenion y rheoliad hwn ystyr "perthynas" ("*relative*") yw:

- (a) tad, mam, llystad, llysfam, mab, merch, nain (mam-gu), taid (tad-cu), wŷr neu wyres y person hwnnw, neu o briod, cyn briod, partner sifil neu gyn bartner sifil y person hwnnw; neu
- (b) brawd, chwaer, ewythr, modryb, nith, nai, neu gefnder cyfan (p'un ai o waed cyfan neu hanner gwaed neu drwy briodas neu bartneriaeth sifil) y person hwnnw neu briod, cyn briod, partner sifil neu gyn bartner sifil y person hwnnw.

(3) At ddibenion y rheoliad hwn—

- (a) mae "priod" ("*spouse*") neu "partner sifil" ("*civil partner*") yn cynnwys person nad yw'n briod â neu mewn partneriaeth sifil â'r person hwnnw ond sy'n byw gyda'r person hwnnw fel petai felly;

---

(1) Mae asesiad galluedd meddyliol yn asesiad a gynhelir o dan baragraff 37 o Atodlen A1 i'r Ddeddf.

(2) Mae asesiad cymhwystra yn asesiad a gynhelir o dan Atodlen A1 i'r Ddeddf.

(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(1) or an eligibility assessment(2) 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—

- (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

---

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

(2) An eligibility assessment is an assessment carried out under Schedule 1A to the Act.

- (b) mae gan berson fuddiant ariannol mewn cartref gofal neu ysbyty annibynnol os yw'r person hwnnw yn bartner, yn gyfarwyddwr, yn ddeiliaid swydd arall neu'n gyfranddaliwr sylweddol yn y cartref gofal neu'r ysbyty annibynnol sydd wedi gwneud y cais am awdurdodiad safonol;
- (c) ystyr "cyfranddaliwr sylweddol" ("*major shareholder*") yw—
  - (i) unrhyw berson sy'n dal y ddegfed ran neu fwy o'r cyfrannau a ddyroddwyd yn y cartref gofal neu'r ysbyty annibynnol, os yw'r cartref gofal neu'r ysbyty annibynnol yn gwmni cyfyngedig trwy gyfrannau, a
  - (ii) ym mhob achos arall, unrhyw berchen neu berchnogion ar y cartref gofal neu'r ysbyty annibynnol.

- (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.

#### **Dethol aseswyr lles pennaf**

8. Dim ond person nad yw'n ymwneud â gofal neu driniaeth, nac yn ymwneud â phenderfyniadau ynghylch gofal neu driniaeth, y person perthnasol y caiff corff goruchwyllo ei ddedd i gynnal asesiad lles pennaf.

#### **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.

### **RHAN 4**

#### **Asesu**

#### **Yr amserlen ar gyfer asesiadau**

9.—(1) Yn ddarostyngedig i baragraff (2) ac i reoliad 11, rhaid i asesydd gwblhau'r asesiad o fewn 21 niwrnod o'r dyddiad y caiff ei gyfarwyddo gan y corff goruchwyllo.

(2) Pan fo'r awdurdod rheoli wedi rhoi awdurdodiad brys o dan baragraff 76 o Atodlen A1 i'r Ddeddf ac yn gwneud cais am awdurdodiad safonol, rhaid i'r asesydd gwblhau'r asesiad o fewn 5 niwrnod i'r dyddiad y mae'n cael ei gyfarwyddo gan y corff goruchwyllo.

#### **Y terfyn amser ar gyfer cynnal asesiad i benderfynu a fu amddifadiad o ryddid heb ei awdurdodi**

10. Yn ddarostyngedig i baragraff 69(4) a (5) o Atodlen A1 i'r Ddeddf, rhaid i asesiad sy'n ofynnol o dan baragraff 69 o Atodlen A1 i'r Ddeddf gael ei gwblhau o fewn 5 niwrnod i'r dyddiad y mae'r asesydd yn cael ei gyfarwyddo gan y corff goruchwyllo.

### **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



## **Darpariaethau Trosiannol ar gyfer Awdurdodiadau Safonol**

**11.**—(1) Mae'r rheoliad hwn yn gymwys pan gaiff asesydd gyfarwyddyd gan y corff goruchwyllo ar 30 Ebrill 2009 neu cyn hynny.

(2) Rhaid cwblhau'r asesiad o fewn 42 o ddiwrnodau o'r dyddiad y rhoddir y cyfarwyddyd.

## **Gwybodaeth berthnasol am gymhwysra**

**12.**—(1) Mae'r rheoliad hwn yn gymwys pan fo unigolyn yn cael ei asesu ac nad yr un person yw'r asesydd cymhwysra a'r asesydd lles pennaf.

(2) Rhaid i'r asesydd cymhwysra ofyn i'r asesydd lles pennaf ddarparu iddo unrhyw wybodaeth berthnasol am gymhwysra a all fod ym meddiant yr asesydd lles pennaf.

(3) Rhaid i'r asesydd lles pennaf gydymffurfio ag unrhyw gais a wneir o dan y rheoliad hwn.

## **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.

## **RHAN 5**

### **Cais am awdurdodiad safonol**

#### **Yr wybodaeth sydd i'w darparu mewn cais am awdurdodiad safonol**

**13.**—(1) Rhaid i gais am awdurdodiad safonol gynnwys yr wybodaeth ganlynol—

- (a) enw'r person perthnasol a'r cyfeiriad lle mae'r person hwnnw'n preswyllo ar y pryd;
- (b) enw, cyfeiriad a rhif ffôn yr awdurdod rheoli;
- (c) y rhesymau pam mae'r awdurdod rheoli o'r farn bod y person perthnasol yn cael, neu yn mynd i gael, ei gadw'n gaeth dan amodau sy'n cyfateb i amddifadiad o ryddid.
- (ch) y rhesymau pam mae'r awdurdod rheoli o'r farn bod y person perthnasol yn bodloni'r gofynion cymhwys o dan baragraff 12 o Atodlen A1 i'r Ddeddf;
- (d) manylion unrhyw awdurdodiad brys a roddwyd yn unol â pharagraff 76 o Atodlen A1 i'r Ddeddf;

(2) Yn ddarostyngedig i baragraff (3), rhaid i gais am awdurdodiad safonol gynnwys yr wybodaeth ganlynol os yw ar gael neu os oes modd rhesymol ei sicrhau—

- (a) unrhyw wybodaeth neu ddogfennau sy'n ategu'r rhesymau a roddwyd ym mharagraff (1) (ch);
- (b) enw, cyfeiriad a rhif ffôn unrhyw berson sydd â buddiant yn lles y person perthnasol;

## **PART 5**

### **Request for a standard authorisation**

#### **Information to be provided in a request for a standard authorisation**

**13.**—(1) A request for a standard authorisation must include the following information—

- (a) the name of the relevant person and the address at which that person is currently residing;
- (b) the name, address and telephone number of the managing authority;
- (c) the reasons why the managing authority consider that the relevant person is being or will be detained in circumstances which amount to a deprivation of liberty;
- (d) the reasons why the managing authority consider that the relevant person satisfies the qualifying requirements under paragraph 12 of Schedule A1 of the Act;
- (e) details of any urgent authorisation given in accordance with paragraph 76 of Schedule A1 to the Act;

(2) Subject to paragraph (3), a request for a standard authorisation must include the following information if available or can reasonably be obtained—

- (a) any information or documents in support of the reasons given in paragraphs (1)(d);
- (b) the name, address and telephone number of any person who has an interest in the welfare of the relevant person;

- (c) manylion unrhyw benderfyniad dilys a chymwys sy'n berthnasol ac a wnaed ymlaen llaw gan y person perthnasol.

(3) Pan fo—

- (a) awdurdodiad safonol presennol mewn grym mewn perthynas â chadw'r person perthnasol yn gaeth, a
- (b) yr awdurdod rheoli yn gwneud cais yn unol â pharagraff 29 o Atodlen A1 i'r Ddeddf am awdurdodiad safonol pellach mewn perthynas â'r un person perthnasol,

nid oes rhaid i'r cais gynnwys unrhyw un o'r eitemau gwybodaeth a grybwyllwyd ym mharagraff (2) os yw'r wybodaeth honno'n aros yr un fath â'r hyn a nodwyd yn y cais am yr awdurdodiad safonol presennol.

(4) Yn y rheoliad hwn mae i "awdurdodiad safonol presennol" yr un ystyr ag sydd i "existing standard authorisation" ym mharagraff 29 o Atodlen A1 i'r Ddeddf.

- (c) details of any relevant valid and applicable advance decision made by the relevant person.

(3) Where—

- (a) there is an existing standard authorisation in force in relation to the detention of the relevant person, and
- (b) the managing authority makes a request in accordance with paragraph 29 of Schedule A1 to the Act for a further standard authorisation in relation to the same relevant person,

the request does not have to include any of the information mentioned in paragraph (2) if that information remains the same as stated in the request for the existing standard authorisation.

(4) In this regulation "existing standard authorisation" ("*awdurdodiad safonol presennol*") has the same meaning as in paragraph 29 of Schedule A1 to the Act.

## RHAN 6

### Cyrff goruchwylio: cartrefi gofal

Anghydfod ynghylch y Man Preswyliaeth Arferol

#### Cymhwyso Rhan 6

14. Mae'r Rhan hon yn gymwys pan fo—

- (a) awdurdod lleol ("*awdurdod lleol A*") (1) yn cael cais —
  - (i) gan gartref gofal am awdurdodiad safonol o dan baragraffau 24, 25 neu 30 o Atodlen A1 i'r Ddeddf;
  - (ii) o dan baragraff 68 o Atodlen A1 i'r Ddeddf gan berson cymwys i benderfynu a oes amddifadiad o ryddid heb ei awdurdodi mewn cartref gofal ai peidio.
- (b) awdurdod lleol A yn dymuno herio honiad mai ef yw'r corff goruchwylio priodol; ac
- (c) cwestiwn ynghylch preswyliaeth arferol y person perthnasol i'w benderfynu gan Weinidogion Cymru yn unol â pharagraff 183(3) o Atodlen A1 i'r Ddeddf.

#### Y trefniadau pan fo cwestiwn ynghylch preswyliaeth arferol

15.—(1) Rhaid i awdurdod lleol A weithredu fel corff goruchwylio mewn perthynas ag unrhyw gais am awdurdodiad safonol hyd nes y penderfynir unrhyw gwestiwn ynghylch preswyliaeth arferol y person perthnasol.

(1) Diffinnir "*local authority*" ym mharagraff 182(5) (o ran Cymru) a pharagraff 182(4) (o ran Lloegr) o Atodlen A1 i'r Ddeddf.

## PART 6

### Supervisory bodies: care homes

Dispute about the Place of Ordinary Residence

#### Application of Part 6

14. This Part applies where —

- (a) a local authority ("*local authority A*") (1) receives a request —
  - (i) from a care home for a standard authorisation under paragraphs 24, 25 or 30 of Schedule A1 to the Act;
  - (ii) under paragraph 68 of Schedule A1 to the Act from an eligible person to decide whether or not there is an unauthorised deprivation of liberty in a care home.
- (b) local authority A wishes to dispute that it is the appropriate supervisory body; and
- (c) a question as to the ordinary residence of the relevant person is to be determined by the Welsh Ministers in accordance with paragraph 183(3) of Schedule A1 to the Act.

#### Arrangements where there is a question as to the ordinary residence

15.—(1) Local authority A must act as supervisory body in relation to the request for a standard authorisation until the determination of any question as to the ordinary residence of the relevant person.

(1) "Local authority" is defined in paragraph 182(4) (in relation to England) and paragraph 182(5) (in relation to Wales) of Schedule A1 to the Act.

(2) Ond os yw awdurdod lleol arall yn cytuno i weithredu fel corff goruchwylio yn lle awdurdod lleol A, yr awdurdod lleol hwnnw fydd y corff goruchwylio hyd nes y penderfynir unrhyw gwestiwn ynghylch preswyliaeth arferol y person perthnasol.

(3) Pan fydd y cwestiwn ynghylch preswyliaeth arferol y person perthnasol wedi'i benderfynu, yr awdurdod lleol ("awdurdod lleol B") a ddynodwyd fel y corff goruchwylio fydd y corff goruchwylio.

### **Effaith newid o ran corff goruchwylio ar ôl penderfynu unrhyw gwestiwn ynghylch preswyliaeth arferol**

16.—(1) Mae'r rheoliad hwn yn gymwys os yw awdurdod lleol B wedi cael ei ddynodi yn unol â rheoliad 14, ac mai'r awdurdod lleol hwnnw yw'r corff goruchwylio yn unol â rheoliad 15(3).

(2) Mae unrhyw beth a wnaed gan neu mewn perthynas ag awdurdod lleol A mewn cysylltiad â'r awdurdodiad neu'r cais, yn ôl y digwydd, yn cael effaith, cyn belled ag y bo'n angenrheidiol parhau ei effaith ar ôl y newid, fel petai wedi'i wneud gan neu mewn perthynas ag awdurdod lleol B.

(3) Caniateir i unrhyw beth sy'n ymwneud â'r awdurdodiad neu'r cais ac sydd wrthi'n cael ei wneud gan neu mewn perthynas ag awdurdod lleol A adeg y newid gael ei barhau gan neu mewn perthynas ag awdurdod lleol B.

(4) Ond—

(a) nid yw awdurdod lleol A, yn rhinwedd y rheoliad hwn, yn peidio â bod yn atebol am unrhyw beth a wnaed ganddo mewn cysylltiad â'r awdurdodiad neu'r cais cyn y newid; a

(a) nid yw awdurdod lleol B, yn rhinwedd y rheoliad hwn, yn dod yn atebol am unrhyw beth o'r fath.

(5) Caiff awdurdod lleol A adennill gwariant a dynnwyd mewn cysylltiad â'r awdurdodiad neu'r cais oddi wrth awdurdod lleol B.

(2) But where another local authority agrees to act as the supervisory body in place of local authority A, that local authority will become the supervisory body until the determination of any question as to the ordinary residence of the relevant person.

(3) When the question about the ordinary residence of the relevant person has been determined, the local authority ("local authority B") which has been identified as the supervisory body will become the supervisory body.

### **Effect of change in supervisory body following determination of any question about ordinary residence**

16.—(1) This regulation applies where local authority B has been identified in accordance with regulation 14, and that local authority is the supervisory body in accordance with regulation 15(3).

(2) Anything done by or in relation to local authority A in connection with the authorisation or request, as the case may be, has effect, so far as is necessary for continuing its effect after the change, as if done by or in relation to local authority B.

(3) Anything which relates to the authorisation or request and which is in the process of being done by or in relation to local authority A at the time of the change may be continued by or in relation to local authority B.

(4) But—

(a) local authority A does not, by virtue of this regulation cease to be liable for anything done by it in connection with the authorisation or request before the change; and

(b) local authority B does not, by virtue of this regulation become liable for any such thing.

(5) Local authority A may recover expenditure incurred in connection with the authorisation or request from local authority B.

*Edwina Hart*

Y Gweinidog dros Iechyd a Gwasanaethau Cymdeithasol, un o Weinidogion Cymru

Minister for Health and Social Services, one of the Welsh Ministers

24 Mawrth 2009

24 March 2009

©© Hawlfraint y Goron 2009

© Crown copyright 2009

Argraffwyd a chyhoeddwyd yn y Deyrnas Unedig gan The Stationery Office Limited o dan awdurdod ac arolygiaeth Carol Tullo, Rheolwr Gwasg Ei Mawrhydi ac Argraffydd Deddfau Seneddol y Frenhines.

Printed and Published in the UK by the Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

---

OFFERYNNAU STATUDOL  
CYMRU

---

**2009 Rhif 783 (Cy.69)**

**GALLUEDD MEDDYLIOL,  
CYMRU**

Rheoliadau Galluedd Meddyliol  
(Amddifadu o Ryddid: Aseidiadau,  
Awdurdodiadau Safonol ac  
Anghydfodau ynghylch  
Preswyliaeth) (Cymru) 2009

---

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

**£5.50**

W457/04/09

ON