
DRAFT STATUTORY INSTRUMENTS

2008 No.

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

PART 3

Selection of Assessors

Selection of assessors – relatives

- 10.**—(1) A supervisory body must not select a person to carry out an assessment if the person is—
- (a) a relative of the relevant person⁽¹⁾; or
 - (b) 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” means—
- (a) a spouse, ex-spouse, civil partner or ex-civil partner;
 - (b) a person living with the relevant person as if they were a spouse or a civil partner;
 - (c) a parent or child;
 - (d) a brother or sister;
 - (e) a child of a person falling within sub-paragraphs (a), (b) or (d);
 - (f) a grandparent or grandchild;
 - (g) a grandparent-in-law or grandchild-in-law;
 - (h) an uncle or aunt;
 - (i) a brother-in-law or sister-in-law;
 - (j) a son-in-law or daughter-in-law;
 - (k) a first cousin; or
 - (l) a half-brother or half-sister.
- (3) For the purposes of this regulation—
- (a) the relationships in paragraph (2)(c) to (k) include step relationships;
 - (b) references to step relationships and in-laws in paragraph (2) are to be read in accordance with section 246 of the Civil Partnership Act 2004⁽²⁾; and
 - (c) financial interest has the meaning given in regulation 11.

(1) “relevant person” is defined in paragraph 7 of Schedule A1 to the Act.

(2) 2004 (c.33).

Selection of assessors – financial interest

11.—(1) A supervisory body must not select a person to carry out an assessment where the person has a financial interest in the case.

(2) A person has a financial interest in a case where—

- (a) that person is a partner, director, other office-holder or major shareholder of the managing authority that has made the application for a standard authorisation⁽³⁾; and
- (b) the managing authority is a care home⁽⁴⁾ or independent hospital⁽⁵⁾.

(3) A major shareholder means—

- (a) any person holding one tenth or more of the issued shares in the managing authority, where the managing authority is a company limited by shares; and
- (b) in all other cases, any of the owners of the managing authority.

Selection of best interests assessors

12.—(1) A supervisory body must not select a person to carry out a best interests assessment if that person is involved in the care, or making decisions about the care, of the relevant person.

(2) Where the managing authority and supervisory body are both the same body, the supervisory body must not select a person to carry out a best interests assessment who is employed by it or who is providing services to it.

(3) A standard authorisation is defined in paragraph 8 of Schedule A1 to the Act.

(4) “care home” is defined in paragraph 178 of Schedule A1 to the Act.

(5) “independent hospital” is defined in paragraph 175(3) of Schedule A1 to the Act.