
DRAFT STATUTORY INSTRUMENTS

2008 No.

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

PART 2

Eligibility to carry out assessments

Eligibility to carry out a best interests assessment

5.—(1) A person is eligible to carry out a best interests assessment⁽¹⁾ 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⁽²⁾;
 - (d) an occupational therapist registered in Part 6 of the register maintained under article 5 of the Health Professions Order 2001⁽³⁾; 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⁽⁴⁾.
- (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⁽⁵⁾ 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

(1) A best interests assessment is an assessment carried out under paragraph 38 of Schedule A1 to the Act.
(2) *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*).
(3) *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*).
(4) The British Psychological Society is at St Andrews House, 48 Princess Road East, Leicester, LE1 7DR.
(5) Approved courses can be found at <http://www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityActDeprivationofLibertySafeguards/index.htm>.

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.