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STATUTORY INSTRUMENTS

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**2008 No. 1315**

**The Mental Capacity (Deprivation of Liberty: Appointment of Relevant Person's Representative) Regulations 2008**

**PART 2**

**Appointment of representatives**

**Commencement of appointment procedure**

- 10.** The procedure for appointing a representative must begin as soon as—
- (a) a best interests assessor is selected by the supervisory body for the purposes of a request for a standard authorisation; or
  - (b) a relevant person's representative's appointment terminates, or is to be terminated, under regulation 14 and the relevant person remains subject to a standard authorisation.

**Appointment of representative**

**11.** Except where regulation 9 applies, a supervisory body may not appoint a representative unless the person is recommended to it under regulations 7 or 8.

**Formalities of appointing a representative**

- 12.—(1)** The offer of an appointment to a representative must be made in writing and state—
- (a) the duties of a representative to —
    - (i) maintain contact with the relevant person,
    - (ii) represent the relevant person in matters relating to, or connected with, the deprivation of liberty, and
    - (iii) support the relevant person in matters relating to, or connected with, the deprivation of liberty; and
  - (b) the length of the period of the appointment.
- (2) The representative must inform the supervisory body in writing that they are willing to accept the appointment and that they have understood the duties set out in sub-paragraph (1)(a).
- (3) The appointment must be made for the period of the standard authorisation.
- (4) The supervisory body must send copies of the written appointment to—
- (a) the appointed person;
  - (b) the relevant person;
  - (c) the relevant person's managing authority;
  - (d) any donee or deputy of the relevant person;

- (e) any independent mental capacity advocate<sup>(1)</sup> appointed in accordance with sections 37 to 39D of the Act<sup>(2)</sup>, involved in the relevant person's case; and
- (f) every interested person named by the best interests assessor in their report as somebody the assessor has consulted in carrying out the assessment.

### **Termination of representative's appointment**

- 13.** A person ceases to be a representative if—
- (a) the person dies;
  - (b) the person informs the supervisory body that they are no longer willing to continue as representative;
  - (c) the period of the appointment ends;
  - (d) a relevant person who has selected a family member, friend or carer under regulation 5(1) who has been appointed as their representative informs the supervisory body that they object to the person continuing to be a representative;
  - (e) a donee or deputy who has selected a family member, friend or carer of the relevant person under regulation 6(1) who has been appointed as a representative informs the supervisory body that they object to the person continuing to be a representative;
  - (f) the supervisory body terminates the appointment because it is satisfied that the representative is not maintaining sufficient contact with the relevant person in order to support and represent them;
  - (g) the supervisory body terminates the appointment because it is satisfied that the representative is not acting in the best interests of the relevant person; or
  - (h) the supervisory body terminates the appointment because it is satisfied that the person is no longer eligible or was not eligible at the time of appointment, to be a representative.

### **Formalities of termination of representative's appointment**

- 14.—**(1) Where a representative's appointment is to be terminated for a reason specified in paragraphs (c) to (h) of regulation 13, the supervisory body must inform the representative of—
- (a) the pending termination of the appointment;
  - (b) the reasons for the termination of the appointment; and
  - (c) the date on which the appointment terminates.
- (2) The supervisory body must send copies of the termination of the appointment to—
- (a) the relevant person;
  - (b) the relevant person's managing authority;
  - (c) any donee or deputy of the relevant person;
  - (d) any independent mental capacity advocate appointed in accordance with sections 37 to 39D of the Act, involved in the relevant person's case; and
  - (e) every interested person named by the best interests assessor in their report as somebody the assessor has consulted in carrying out the assessment.

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(1) "independent mental capacity advocate" is defined in section 64(1) of the Act.

(2) Sections 39B to 39D were inserted by section 50 of and Schedule 9 to the Mental Health Act 2007.

### **Payment to a representative**

**15.** A supervisory body may make payments to a representative appointed following a selection under regulation 9.