
STATUTORY INSTRUMENTS

2009 No. 2376

**MENTAL HEALTH, ENGLAND
MENTAL CAPACITY, ENGLAND**

**The Mental Health and Mental Capacity (Advocacy)
Amendment (England) Regulations 2009**

Made - - - - *2nd September 2009*
Laid before Parliament *7th September 2009*
Coming into force - - *12th October 2009*

The Secretary of State, in exercise of the powers conferred by sections 35(2) and (3) and 64(1) of the Mental Capacity Act 2005(1) and sections 130A(2) and (3) and 130C(5) of the Mental Health Act 1983(2), makes the following Regulations.

Citation, commencement, interpretation and extent

1.—(1) These Regulations may be cited as the Mental Health and Mental Capacity (Advocacy) Amendment (England) Regulations 2009 and shall come into force on 12th October 2009.

(2) In these Regulations—

“the 2006 Regulations” means the Mental Capacity Act 2005 (Independent Mental Capacity Advocates) (General) Regulations 2006(3);

“the 2008 Regulations” means the Mental Health Act 1983 (Independent Mental Health Advocates) (England) Regulations 2008(4).

(3) These Regulations apply in relation to England only.

Amendment of the 2006 Regulations

2.—(1) The 2006 Regulations are amended as follows.

(2) For regulation 5(3) substitute—

(1) [2005 c.9](#). Section 64(1) is cited because of the meaning it gives to “prescribed”.
(2) [1983 c.20](#). Section 130A is inserted by section 30 of the Mental Health Act [2007 \(c.12\)](#). Section 130C(5) is cited because of the meaning it gives to the “appropriate national authority” which makes provision as to the appointment of advocates under section 130A of the Act.
(3) [S.I. 2006/1832](#).
(4) [S.I. 2008/3166](#).

“(3) Before a determination is made in relation to any person for the purposes of paragraph (2)(b), there must be obtained, in respect of that person, an enhanced criminal record certificate issued pursuant to section 113B of the Police Act 1997(5) which includes—

- (a) where the determination is in respect of a person’s appointment as an IMCA for a person who has not attained the age of 18, suitability information relating to children (within the meaning of section 113BA of the Police Act 1997(6));
- (b) where the determination is in respect of a person’s appointment as an IMCA for a person who has attained the age of 18, suitability information relating to vulnerable adults (within the meaning of section 113BB of that Act(7)).”.

Amendment of the 2008 Regulations

3.—(1) The 2008 Regulations are amended as follows.

(2) For regulation 6(5) substitute—

“(5) For the purposes of the condition referred to in paragraph (2)(b) there must be obtained, in respect of that person, an enhanced criminal record certificate issued pursuant to section 113B of the Police Act 1997 which includes—

- (a) where the qualifying patient has not attained the age of 18, suitability information relating to children (within the meaning of section 113BA of the Police Act 1997);
- (b) where the qualifying patient has attained the age of 18, suitability information relating to vulnerable adults (within the meaning of section 113BB of that Act).”.

Signed by authority of the Secretary of State.

2nd September 2009

Phil Hope
Minister of State,
Department of Health

(5) Section 113B is inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 (c.15). It is amended by paragraph 14 of Schedule 9 to the Safeguarding Vulnerable Groups Act 2006 (c.47), paragraph 149 of Schedule 16 to the Armed Forces Act 2006 (c.52), sections 79 and 80 of the Protection of Vulnerable Groups (Scotland) Act 2007 (asp 14) and by S.I. 2009/203, articles 2 and 4.

(6) Section 113BA of the Police Act 1997 (c.50) is inserted by paragraph 14(1) and (4) of Schedule 9 to the Safeguarding Vulnerable Groups Act 2006.

(7) Section 113BB is inserted by paragraph 14(1) and (4) of Schedule 9 to the Safeguarding Vulnerable Groups Act 2006.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Mental Capacity Act 2005 (Independent Mental Capacity Advocates) (General) Regulations 2006 ([S.I. 2006/1832](#)) and the Mental Health Act 1983 (Independent Mental Health Advocates) (England) Regulations 2008 ([S.I. 2008/3166](#)).

The effect of these amendments is that, for the purposes of deciding whether a person satisfies the requirement as to integrity and good character in connection with their appointment as an Independent Mental Capacity Advocate or an Independent Mental Health Advocate, an enhanced criminal record certificate which includes suitability information relating to vulnerable adults or children must be obtained.

A person who acts as an Independent Mental Capacity Advocate or an Independent Mental Health Advocate will engage in a regulated activity relating to vulnerable adults or children under the provisions of the Safeguarding Vulnerable Groups Act 2006 ([c.47](#)) (“the 2006 Act”). Suitability information relating to children and vulnerable adults will disclose whether a person is barred by the Independent Safeguarding Authority under the 2006 Act from engaging in such regulated activity as they are considered unsuitable to work with children or vulnerable adults.