



Gateway number: 11240

This information replaces the information previously issued, which has now been withdrawn..

This version contains new information in relation to the increased number of universities able to provide, or approve providers of, training.

The Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008 have been approved by Parliament.

http://www.opsi.gov.uk/si/si2008/pdf/uksi_20081858_en.pdf
http://www.opsi.gov.uk/si/si2008/em/uksiem_20081858_en.pdf

A formal consultation has been completed on the monitoring regulations
http://www.dh.gov.uk/en/Consultations/Liveconsultations/DH_092048

Those draft regulations also amend regulation 3 of the Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008. Regulation 3 currently sets out that one of the requirements for a person to be eligible to carry out a Mental Capacity Act Deprivation of Liberty Safeguards (MCA DOLS) assessment is that they must be insured in respect of any liabilities arising in connection with carrying out the assessment. The draft regulations were laid last month and state that assessors will be eligible if they have satisfied the supervisory body that they have adequate and appropriate insurance and / or indemnity arrangements in place. The regulations will be debated during this month in both Houses of Parliament.

The draft regulations can be accessed here:
http://www.opsi.gov.uk/si/si2009/draft/ukdsi_9780111474242_en_1

Background

In late 2008 and early 2009, various informal consultation events took place and various discussion documents were circulated that outlined, for example, possible competences for best interests assessors or suggested that courses might, for example, be at Masters level. **All such draft or discussion documents should now be disregarded.**

Universities, local authorities and primary care trusts have delivered or are currently delivering the training of best interests assessors in time for the introduction of the Deprivation of Liberty Safeguards on 1st April 2009. In order to do so they need to rely on the information contained here, in the Regulations themselves and in the Code of Practice available at

http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_085476

The information contained here lists all the requirements.

1. Eligible professionals

The Regulations state:

A person is eligible to carry out a best interests assessment if they are either

- an approved mental health professional or
- a social worker registered with the General Social Care Council or
- 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 or
- an occupational therapist registered in Part 6 of the register maintained under article 5 of the Health Professions Order 2001 or
- 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
- is not suspended from the register or list relevant to the person's profession and
- has at least two years post registration experience in that profession

Additional information:

A best interests assessment is to establish, firstly, whether deprivation of liberty is occurring or is going to occur and, if so, whether:

- it is the best interests of the relevant person (the relevant person is the person who may be deprived of liberty)
- it is necessary for them to be deprived of liberty in order to prevent harm to themselves
- deprivation of liberty is a proportionate response to the likelihood of the relevant person suffering harm and the seriousness of that harm.

2. Insurance / indemnity

The draft amendment to the regulations state:

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

1.7. In regulation 3 of the Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008⁸ (eligibility – general) for paragraph (2) substitute—

“(2) The person must satisfy the supervisory body that there is in force in relation to themselves an adequate and appropriate indemnity arrangement which provides cover in respect of any liabilities that might arise in connection with carrying out the assessment.

(2A) For the purposes of this regulation, an “indemnity arrangement” may comprise—

- (a) a policy of insurance;
- (b) an arrangement made for the purposes of indemnifying a person; or
- (c) a combination of a policy of insurance and an arrangement made for the purposes of indemnifying a person.”.

⁸
() S.I.2008/1858

Additional information:

A supervisory body is either a local authority (where the managing authority is a care home) or a PCT (where the managing authority is a hospital))

3. **Checks**

The Regulations state:

The supervisory body must be satisfied that there is in respect of the person—

- an enhanced criminal record certificate issued under section 113B of the Police Act 1997 (enhanced criminal record certificates); or
- 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 (criminal record certificates).

4. **Skills and Experience**

Paragraph 129 (2) (a) of Mental Health Act 2007 (c. 12) Schedule 7 — Mental Capacity Act 2005: new Schedule A1 states:

The supervisory body must not select a person to carry out an assessment unless the person — appears to the supervisory body to be suitable to carry out the assessment (having regard, in particular, to the type of assessment and the person to be assessed)

The Regulations state:

The supervisory body must be satisfied that the person has the skills and experience appropriate to the assessment to be carried out which must include, but are not limited to, the following—

- an applied knowledge of the Mental Capacity Act 2005 and related Code of Practice and
- the ability to keep appropriate records and to provide clear and reasoned reports in accordance with legal requirements and good practice.
- has the skills necessary to obtain, evaluate and analyse complex evidence and differing views and to weigh them appropriately in decision making

5. **Training**

The Regulations state:

The supervisory body must be satisfied that the person—

- has successfully completed training that has been approved by the Secretary of State to be a best interests assessor and
- except in the 12 month period beginning with the date the person has successfully completed the training referred to immediately above, the supervisory body must be satisfied that the person has, in the 12 months prior to selection, completed further training relevant to their role as a best interests assessor
- The regulations state that courses of training approved by the Secretary of State will appear on this webpage.

<http://www.dh.gov.uk/en/SocialCare/Deliveringadultsocialcare/MentalCapacity/MentalCapacityActDeprivationofLibertySafeguards/index.htm>

Additional information:

The courses of best interests assessor training approved by the Secretary of State are those

- of any university approved by the General Social Care Council (GSCC) to provide social work mental health or adult post qualifying (PQ) training or
- of any provider approved by such a university.

Universities approved by the GSCC include:

Birmingham	City	Kings College	Salford
Southampton Solent	De Montfort	Kingston	Bournemouth
London Metropolitan	East Anglia	Brighton	Staffordshire
Hertfordshire	Goldsmiths	Manchester	West England
Canterbury Christ Church	Greenwich	Middlesex	Warwick
Birmingham City	Brunel	Northampton	Wolverhampton
Gloucestershire	Huddersfield	Northumbria	Teeside
Leeds Metropolitan	UEL	Bradford	Chester
Sheffield Hallam	Chichester	UCLAN	Cumbria
Buckinghamshire New	Lincoln		

Where any doubt exists in relation to whether a university is or should be on the list the GSCC should be contacted on 01788 532400.

Four universities have recently been added to the list of those eligible:

Gloucestershire	Buckinghamshire New	Sheffield Hallam	UCLAN
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It is not yet known, by the DH, if any of these universities intend to provide, or approve providers of, the training. Nor have they provided the DH with contact details.

The following have not indicated an interest in providing best interests assessor training:

Brunel	Greenwich	Huddersfield	Kings College
Chichester	City	Warwick	Staffordshire

The following have indicated they are interested in providing training in the longer term, but not in the immediate future, and contact details of those who have provided that information on behalf of those universities is also included:

Goldsmiths	j.fletcher@gold.ac.uk
De Montfort	JMartin02@dmu.ac.uk

The following had indicated that they would be providing training in time for best interests assessors to have completed the training by April 2009 but are now no longer doing so.

Teesside	Wade.Tovey@tees.ac.uk
Northampton	Lesley.Best@northampton.Ac.Uk

The following have indicated that they will not be directly providing training in time for best interests assessors to have completed the training by April 2009, may provide such training later in 2009 but have approved another provider in time for best interests assessors to have completed the training via that approved provider by April 2009:

UEA	ann.mcdonald@uea.ac.uk
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Best interests assessor training courses are expected to prepare a best interests assessor for any other assessment that they are eligible to provide.

The following have provided or are providing training before April 2009.

1	Middlesex	H.Cosis-Brown@mdx.ac.uk
2	Canterbury Christ Church	Mary.MacDonald@kent.gov.uk
3	Kingston	ibyford@hscs.sgul.ac.uk, i.byford@kingston.ac.uk
4	Wolverhampton	A.Murr@wlv.ac.uk, K.Lees@wlv.ac.uk
5	Birmingham	r.e.e.bowl@bham.ac.uk
6	Manchester	angela.downing@manchester.ac.uk
7	Hertfordshire	l.de-chenu@herts.ac.uk
8	Bournemouth	kbrown@bournemouth.ac.uk
9	Northumbria	sarah.beck@unn.ac.uk
10	Chester	m.schofield@chester.ac.uk
11	Brighton	J.Stroud@bton.ac.uk
12	West England	Karen7.Jones@uwe.ac.uk
13	Salford	S.E.Pugh@salford.ac.uk
14	London Metropolitan	e.carter@londonmet.ac.uk
15	Southampton Solent	gill.tunney@solent.ac.uk
16	UEL	c.p.parkinson@uel.ac.uk
17	Leeds Met	K.Karban@leedsmet.ac.uk
18	Bradford	P.C.Baldwin@Bradford.ac.uk
19	Birmingham City	Robert.Wu@bcu.ac.uk
20	Cumbria	Lynn.Heath@Cumbria.ac.uk
21	Lincoln	jrogers@lincoln.ac.uk

Universities awaiting GSCC approval

The following have:

- yet to be confirmed as being approved by the GSCC to provide social work mental health or adult post qualifying (PQ) training (although that process has commenced and is expected to be concluded in the near future)
- indicated that they are interested in and **still** expect to provide training in time for best interests assessors to have completed the training by April 2009:

The following have:

- yet to be confirmed as being approved by the GSCC to provide social work mental health or adult post qualifying (PQ) training
- indicated that they are interested in and / or expect to provide training during 2009 but not in time for best interests assessors to have completed the training by April 2009:

Bedfordshire	Michael.Preston-Shoot@beds.ac.uk
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6. **Successful completion of training approved by the Secretary of State**

Between April and September 2009, a supervisory body may be satisfied that a best interests assessor has successfully completed training approved by the Secretary of State if they have attended all the required teaching provided by an eligible university, or by its approved provider and submitted all the required assignments and / or sat all required examinations.

From October 2009, a supervisory body may be satisfied that a best interests assessor has successfully completed a course of study approved by the Secretary of State if they have attended all the required teaching provided by an eligible university, or by its approved provider, and achieved a satisfactory standard in all the required assignments and / or examinations.

7. **Funding**

The Area Based Grant has, via local authorities, provided social care and healthcare services with set up funds to prepare for the implementation of the Safeguards.

http://www.dh.gov.uk/en/Publicationsandstatistics/Lettersandcirculars/LocalAuthorityCirculars/AllLocalAuthority/DH_085168

The DH is providing funding to all the universities providing best interests assessors training and that will be made available to them via the GSCC. The GSCC has written to all the universities listed, in this document, as providing or expecting to provide training before April 2009.

7. **Additional requirements**

Supervisory bodies may require an assessor to have skills or experience not listed in the regulations to satisfy themselves that a best interests assessor meets their additional requirements. The supervisory body may set local standards, for example, the minimum length of a training course that is acceptable to them or individual universities may set different academic requirements. The regulations have set the minimum national standards that must be met.

8. **Future regulation**

It is possible that in the future the GSCC may regulate best interests assessor training, as they currently do with Approved Mental Health Professional training, but this will require primary legislation to be approved by Parliament.

9. **Eligibility to carry out other assessments**

The Regulations state:

- A person who is eligible to carry out a best interests assessment is also eligible to carry out a mental capacity assessment and / or a no refusals assessment and / or an age assessment.
- A person who is eligible to carry out a best interests assessment who is also an AMHP is also eligible to carry out an eligibility assessment

(NB: Only certain doctors can carry out a mental health assessment)

10. **Ineligible professionals**

a) **Professional relationships**

The Regulations state:

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.

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.

b) **Personal relationships**

A supervisory body must not select a person to carry out an assessment if the person is either:

- a relative of the relevant person (the relevant person is the person who is now deprived of their liberty) or
- a relative of a person who is financially interested in the care of the relevant person.

For these purposes, a “relative” means either:

- a spouse, ex-spouse, civil partner or ex-civil partner or their child or
- a person living with the relevant person as if they were a spouse or a civil partner or their child, or

(all of the following includes step relationships)

- a parent or child or
- a brother or sister or their child or
- a grandparent or grandchild or
- a grandparent-in-law or grandchild-in-law or
- an uncle or aunt or
- a brother-in-law or sister-in-law or
- a son-in-law or daughter-in-law or
- a first cousin or
- a half-brother or half-sister.

11. **Conflict of interests**

The Regulations state:

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

A person has a financial interest in a case where

- 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; and
- the managing authority is a care home or independent hospital

A major shareholder means 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 in all other cases, any of the owners of the managing authority.

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

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

For further information contact:

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