



Gateway number: 11488

**This information replaces the information previously issued, which has now been withdrawn.**

**This version contains new information in relation to where doctors can register that they have completed either the face to face or on-line training programme made available by the Royal College of Psychiatrists.**

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/pdf/uksi_20081858_en.pdf)  
[http://www.opsi.gov.uk/si/si2008/em/uksiem\\_20081858\\_en.pdf](http://www.opsi.gov.uk/si/si2008/em/uksiem_20081858_en.pdf)

A formal consultation commenced last month on the monitoring regulations  
[http://www.dh.gov.uk/en/Consultations/Liveconsultations/DH\\_092048](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](http://www.opsi.gov.uk/si/si2009/draft/ukdsi_9780111474242_en_1)

### **Background:**

Local authorities and primary care trusts are currently planning the training of mental health assessors in time for the introduction of the Deprivation of Liberty Safeguards in 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](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_085476)

#### **1. Eligible professionals**

The Regulations state:

A person is eligible to carry out a mental health assessment if they are either

- approved under section 12 of the Mental Health Act 1983 or

- a registered medical practitioner who the supervisory body is satisfied has at least three years post registration experience in the diagnosis or treatment of mental disorder.

Additional information:

- The purpose of the mental health assessment is to establish whether the relevant person has a mental disorder within the meaning of the Mental Health Act 1983. That means any disorder or disability of mind, apart from dependence on alcohol or drugs. It includes all learning disabilities. This is not an assessment to determine whether the person requires mental health treatment.

## 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<sup>(8)</sup>**

1.7. In regulation 3 of the Mental Capacity (Deprivation of Liberty: Standard Authorisations, Assessments and Ordinary Residence) Regulations 2008<sup>(8)</sup> (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.”.

<sup>8</sup>  
( ) 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.

## 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 mental health 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 mental health assessor
- The regulations state that the course of training approved by the Secretary of State is the Deprivation of Liberty Safeguards Mental Health Assessors training programme made available by the Royal College of Psychiatrists.

Further information is available at:

<http://www.rcpsych.ac.uk/clinicalservicestandards/educationandtrainingcentre/course/legal/dols.aspx>

## 6. Access to training and costs.

The Royal College of Psychiatrists Deprivation of Liberty Safeguards Mental Health Assessors training programme is now available, free of charge, on-line to all NHS funded doctors in England. Doctors can register at:

<http://www.e-lfh.org.uk/Projects/DoLS/Register.aspx>

The Royal College of Psychiatrists Deprivation of Liberty Safeguards Mental Health Assessors Training Manuals have been available since earlier this month free of charge to all NHS funded organisations in England.

**For further information email [cetc@rcpsych.ac.uk](mailto:cetc@rcpsych.ac.uk) or telephone 020 7977 6657/2.**

LAs and PCTs will need to fund face to face training if it cannot be funded within other local arrangements eg. already planned and funded s12 doctor training programmes.

7. How do doctors register that they have completed the training?

When doctors have received a certificate having completed either a face-to-face course or an on-line training using the training materials provided by the Royal College of Psychiatrists they can register that they have successfully completed the required course of study by contacting the contact person for their region.

The regional contact person will confirm what, if any, details they will need. Much new information may not need to be provided if doctors are already registered as a S12 (2) doctor approved under the Mental Health Act 1983 in that region BUT they will need, as a minimum, to provide evidence of their certificate of completion of Module 2 of either the face to face or on-line training.

Details of the contact person for each region are appended in Appendix 1.

8 **Additional requirements**

Supervisory bodies may require an assessor to have skills or experience not listed in the regulations to satisfy themselves that a mental health assessor meets their requirements. The regulations have set the minimum national standards that must be met.

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

The Regulations state:

- A person who is eligible to carry out a mental health assessment is also eligible to carry out a mental capacity assessment.
- A person who is eligible to carry out a mental health assessment who is also approved under section 12 of the Mental Health Act 1983 is also eligible to carry out an eligibility assessment.

10. **Ineligible professionals**

The Regulations state:

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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Appendix 1

Contact details for regional registration purposes

Appendix 1: Contact details for regional registration purposes

<b>Region</b>	<b>contact person</b>	<b>email</b>	<b>telephone</b>	<b>fax</b>	<b>postal address</b>
North East	Marjorie Wilson	neerap@tevv.nhs.uk	01642 835203	01642 835272	Section 12 (2) Administrator Medical Development St Luke's Hospital, Marton Road Middlesbrough, Cleveland, TS4 3AF
Yorkshire and the Humber	Jane Worden	jane.worden@rdash.nhs.uk	01302 798178	070923825 61	The Opal Centre, St Catherine's, Tickhill Road, Balby, Doncaster, DN4 8QN.
North West	Roberta Constantine	Roberta.Constantine@northwest.nhs.uk	0161 625 7253	0161 237 2264	Room 704, NHS Northwest, Gateway House, Piccadilly South, Manchester, M60 7LP
East Midlands	Jane Worden	jane.worden@rdash.nhs.uk	01302 798178	070923825 61	The Opal Centre, St Catherine's, Tickhill Road, Balby, Doncaster, DN4 8QN.
West Midlands	Heather Waltham	Heather.Waltham@bsmhft.nhs.uk	0121 301 1250	0121 301 1277	Section 12 (2) Co-ordinator Regional Services Birmingham & Solihull Mental Health Foundation Trust Unit 1, B1 50 Summer Hill Road Birmingham B1 3RB
East of England	Geraldine Bushell	Geraldine.bushell@eoe.nhs.uk	01223 597507	01223 597712	NHS East of England, Victoria House, Capital Park, Fulbourn, Cambridge CB21 5XB

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South East Central	Victoria Wickenden  Jason Sym- Choo	victoria.wickenden@southeastcoast.nhs.uk  jason.sym-choon@southeastcoast.nhs.uk	012937 78899	012937 78888	Section 12(2) Administrator NHS South East Coast - Strategic Health Authority, York House 18-20 Massetts Road, Horley Surrey, RH6 7DE
South Central	Clare Hart	clare.hart@nhs.net	01635 275663	01635 33983	NHS South Central South Central Strategic Health Authority, First Floor, Rivergate House, Newbury Business Park London Road, Newbury Berkshire, RG14 2PZ
South West	Hilary Eagles	Hilary.Eagles@southwest.nhs.uk	01249 468350	01249 468356	NHS South West Jenner House Langley Park Estate Chippenham Wiltshire SN15 1GG
London	Bertha Knott	bertha.knott@nhs.net	020 8869 3515	020 8869 3516	Mental Health Unit Northwick Park Hospital Watford Road Harrow HA1 3UJ