

Explanatory Memorandum

Mental Capacity (Deprivation of Liberty: Assessments, Standard Authorisations and Disputes about Residence) (Wales) Regulations 2009

This Explanatory Memorandum has been prepared by the Mental Health, Vulnerable Groups and Offenders Branch of the Department for Health and Social Services and is laid before the National Assembly for Wales in accordance with Standing Order 24.1

- i. **Description** – These Regulations deal with assessments under the Deprivation of Liberty Safeguards, namely the eligibility and selection of persons to undertake those assessments and the timescales for completion. The Regulations also deal with the information requirements placed on managing authorities in requesting an authorisation under the safeguards. Finally the Regulations provide for arrangements relating to disputes over ordinary residence in relation to local authorities.
- ii. **Matters of special interest to the Subordinate Legislation Committee** – None
- iii. **Legislative Background** – The Welsh Ministers have the required powers under sections 65(1) of, and paragraphs 31, 33(4), 47(1), 70, 129(3), 130(2), (3) and (5) and 183(6) and (7) of Schedule A1 to, the Mental Capacity Act 2005. This Statutory Instrument is being made under the affirmative resolution procedure.
- iv. **Purpose and intended effect of legislation** – Part 2 of the Regulations are concerned with the general eligibility of persons to carry out assessments under the Deprivation of Liberty Safeguards, including such provision as relevant professional qualifications or experience. Part 3 of the Regulations makes provision in respect of selection of assessors in respect of an individual who may become subject to an authorisation of a deprivation of liberty. Part 4 of the Regulations deal with the time frames for such assessments to be completed within, and include transitional provisions for the first month of the safeguards being in force.

Where a request for an authorisation is made by a managing authority, Part 5 of the Regulations prescribes the information which must be included in such a request.

Where a person is receiving care or treatment in a care home, the supervisory body is the local authority for the area where that person is usually resident. Where there is a dispute about the residence of the person in question, Part 6 makes provision for the determination of the matter to be made by the Welsh Ministers, and also for the arrangements that must be made during such a process of seeking resolution.
- v. **Implementation** – It is intended these Regulations should come into force on 1 April 2009. Parallel legislation has also been made in respect of England which will come into force on the same day.
- vi. **Consultation** – These regulations were subject to consultation between the 5 of November 2007 and the 28 of January 2008, alongside a wider consultation on six statutory instruments relating to the Mental Health Act 1983.

During these period workshops, study days and consultation events were held, and support was also given to Learning Disability Wales to run workshops with service users and carers.

23 written responses to the consultation document were received, from a variety of stakeholders, including service user representative bodies, NHS organisations, local authorities and professional bodies.

- vii. **Regulatory Impact Assessment** – A full impact assessment has not been produced for this instrument as no significant impact on the private or voluntary sector is foreseen. Also a full Regulatory Impact Assessment for the Mental Health Bill (later the Mental Health Act 2007) was prepared by the Department of Health (June 2007). The 2007 Act introduced the Deprivation of Liberty Safeguards into the Mental Capacity Act 2005.