
STATUTORY RULES OF NORTHERN IRELAND

2019 No. 199

**The Mental Capacity (Deprivation of Liberty)
(No. 2) Regulations (Northern Ireland) 2019**

PART 2

Formal Assessment of Capacity and Nominated Person

Suitably qualified person to make formal capacity assessments

2.—(1) [^{F1}Subject to regulation 2A, for] the purposes of section 14(4) of the Act a person is a suitably qualified person to make a formal capacity assessment and provide a statement of incapacity if paragraph (2) and (3) are met.

(2) The person must be one of the following—

- (a) a medical practitioner;
- (b) a social worker;
- (c) a registered nurse or midwife;
- (d) a registered dentist;
- (e) an occupational therapist;
- (f) a speech and language therapist; or
- (g) a practitioner psychologist.

(3) The person must—

- (a) have successfully completed training that has been approved by the Department;
- (b) except in the 36 month period beginning with the date the person has successfully completed the training referred to in sub-paragraph (a), in the 36 months prior to the formal capacity assessment, have completed further training relevant to their role as a suitably qualified person to make a formal capacity assessment;
- (c) have two years experience in a professional role, within the previous ten years, working with persons who lack capacity; and
- (d) be appointed by his or her employer as a suitably qualified person to make formal capacity assessments.

Textual Amendments

F1 Words in [reg. 2\(1\)](#) substituted(temp) (2.4.2020) by [The Mental Capacity \(Deprivation of Liberty\) \(Amendment\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/57\)](#), regs. 1(1), **2(b)**

[^{F2}2A.—(1) In an emergency period the requirements in regulation 2(3) do not need to be met.

(2) If a person is acting as a suitably qualified person in reliance on this regulation, he or she must notify P and the nominated person that he or she is so acting.]

Textual Amendments

F2 Reg. 2A inserted(temp) (2.4.2020) by [The Mental Capacity \(Deprivation of Liberty\) \(Amendment\) Regulations \(Northern Ireland\) 2020 \(S.R. 2020/57\)](#), regs. 1(1), **2(c)**

Witnesses and persons unable to sign

3. For the purposes of section 79(2)(b) of the Act a person can only be a witness in relation to the formalities under section 79 of the Act if he or she—

- (a) is unconnected with X; and
- (b) is not X's nominated person.

4. For the purposes of section 79(4) of the Act if X has capacity to make an appointment, revocation or declaration mentioned in section 79(1) of the Act but is physically unable to make a signature, section 79(2)(a) is replaced by—

- “(a) an addition sheet is added to the document containing the appointment, revocation or declaration and the addition sheet must include—
 - (i) a signature in his or her own name by a person who is unconnected with X;
 - (ii) a statement by that person that the signature on the addition sheet is on behalf of X and that in his or her opinion X has capacity to make an appointment, revocation or declaration; and
 - (iii) a signed statement by one witness, in addition to the witness in paragraph (b), who must be unconnected with X stating that in their opinion X—
 - (aa) understands the effect of the appointment, revocation or declaration; and
 - (bb) has not been subject to any undue pressure in relation to the appointment, declaration or revocation.”.

Changes to legislation:

There are currently no known outstanding effects for the The Mental Capacity (Deprivation of Liberty) (No. 2) Regulations (Northern Ireland) 2019, PART 2.