
STATUTORY INSTRUMENTS

2008 No. 1315

The Mental Capacity (Deprivation of Liberty: Appointment of Relevant Person's Representative) Regulations 2008

PART 1

Selection of representatives

Selection of a person to be a representative - general

3.—(1) In addition to any requirements in regulations 6 to 9 and 11, a person can only be selected to be a representative if they are—

- (a) 18 years of age or over;
- (b) able to keep in contact with the relevant person;
- (c) willing to be the relevant person's representative;
- (d) not financially interested in the relevant person's managing authority⁽¹⁾;
- (e) not a relative of a person who is financially interested in the managing authority;
- (f) not employed by, or providing services to, the relevant person's managing authority, where the relevant person's managing authority is a care home⁽²⁾;
- (g) not employed to work in the relevant person's managing authority in a role that is, or could be, related to the relevant person's case, where the relevant person's managing authority is a hospital⁽³⁾; and
- (h) not employed to work in the supervisory body⁽⁴⁾ that is appointing the representative in a role that is, or could be, related to the relevant person's case.

(2) For the purposes of this regulation a "relative" means—

- (a) a spouse, ex-spouse, civil partner or ex-civil partner;
- (b) a person living with the relevant person as if they were a spouse or a civil partner;
- (c) a parent or child;
- (d) a brother or sister;
- (e) a child of a person falling within sub-paragraphs (a), (b) or (d);
- (f) a grandparent or grandchild;
- (g) a grandparent-in-law or grandchild-in-law;
- (h) an uncle or aunt;
- (i) a brother-in-law or sister-in-law;

(1) The identity of the managing authority is determined in accordance with paragraphs 176, 177 and 179 of Schedule A1 to the Act.

(2) "care home" is defined in paragraph 178 of Schedule A1 to the Act.

(3) "hospital" is defined in paragraph 175 of Schedule A1 to the Act.

(4) The identity of the supervisory body is determined in accordance with paragraphs 128, 180 and 182 of Schedule A1 to the Act.

- (j) a son-in-law or daughter-in-law;
 - (k) a first cousin; or
 - (l) a half-brother or half-sister.
- (3) For the purposes of this regulation—
- (a) the relationships in paragraph (2)(c) to (k) include step relationships;
 - (b) references to step relationships and in-laws in paragraph (2) are to be read in accordance with section 246 of the Civil Partnership Act 2004⁽⁵⁾;
 - (c) a person has a financial interest in a managing authority where—
 - (i) 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
 - (ii) the managing authority is a care home or independent hospital⁽⁶⁾; and
 - (d) a major shareholder means—
 - (i) 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
 - (ii) in all other cases, any of the owners of the managing authority.

⁽⁵⁾ 2004 (c.33).

⁽⁶⁾ “independent hospital” is defined in paragraph 175(3) of Schedule A1 to the Act.