

*This Statutory Instrument has been made in consequence of a defect in SI 2008/1315 and is being issued free of charge to all known recipients of that Statutory Instrument.*

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STATUTORY INSTRUMENTS

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**2008 No. 2368**

**MENTAL CAPACITY, ENGLAND**

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

<i>Made</i>	- - - -	<i>5th September 2008</i>
<i>Laid</i>		<i>12th September 2008</i>
<i>Coming into force</i>	- -	<i>3rd November 2008</i>

The Secretary of State for Health makes these Regulations in exercise of the powers conferred by section 65(1) of, and paragraphs 138(1), 143 and 144 of Schedule A1 to, the Mental Capacity Act 2005(a).

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the Mental Capacity (Deprivation of Liberty: Appointment of Relevant Person's Representative) (Amendment) Regulations 2008 and shall come into force on 3<sup>rd</sup> November 2008.

(2) These Regulations apply in relation to England only.

**Amendment of regulation 9 of the Mental Capacity (Deprivation of Liberty: Appointment of Relevant Person's Representative) Regulations 2008**

2. In regulation 9 of the Mental Capacity (Deprivation of Liberty: Appointment of Relevant Person's Representative) Regulations 2008(b) (selection by the supervisory body) for paragraph (1)(f) substitute “ (f) is not employed by the supervisory body.”.

Signed by authority of the Secretary of State

5th September 2008

*Ben Bradshaw*  
Minister of State  
Department of Health

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(a) 2005 c.9. Schedule A1 was inserted by section 50(5) of and Schedule 7 to the Mental Health Act 2007 (c.12).  
(b) S.I. 2008/1315.

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

The Mental Capacity Act 2005 provides for the deprivation of liberty of people who lack capacity to consent to arrangements proposed for their care in care homes and hospitals where authorisation under section 4A of and Schedule A1 to the Act exists.

These Regulations amend the provision in regulation 9(1)(f) of the Mental Capacity (Deprivation of Liberty: Appointment of Relevant Person's Representative) Regulations 2008 (SI 2008/1315) that provides that a supervisory body may select a person to be a representative who is not employed to work in the supervisory body that is appointing the representative in a role that is, or could be, related to the relevant person's case. The amendment in these Regulations broadens this restriction by providing that a supervisory body can select a person to be a representative if they are not employed by the supervisory body.

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