
WELSH STATUTORY INSTRUMENTS

2007 No. 852

The Mental Capacity Act 2005 (Independent Mental Capacity Advocates) (Wales) Regulations 2007

Appointment of independent mental capacity advocates

5.—(1) Subject to directions that may be given by the Assembly, a Local Health Board must make such arrangements as it considers reasonable to enable IMCAs to be available to act in respect of persons usually resident in the area for which the Local Health Board is established and to whom acts or decisions proposed under sections 37, 38 or 39 of the Act or under these Regulations relate.

(2) In making arrangements under paragraph (1) a Local Health Board may make arrangements with a provider of advocacy services.

(3) No person may be instructed to act as an IMCA unless that person is approved by the Local Health Board or is employed by a provider of advocacy services to act as an IMCA.

(4) Before approving any person under paragraph (3) a Local Health Board must be satisfied that the person satisfies the appointment requirements in paragraph (6).

(5) A Local Health Board must ensure that any provider of advocacy services with whom it makes arrangements under paragraph (2) is required, in accordance with the terms of that arrangement, to ensure that any person employed by that provider of advocacy services and who is made available to be instructed to act as an IMCA satisfies the appointment requirements in paragraph (6).

(6) The appointment requirements in paragraphs (4) and (5) are that a person—

- (a) has appropriate experience or training;
- (b) is of integrity and good character; and
- (c) will act independently of any person who instructs him or her to act as an IMCA and of any person who is responsible for an act or decision proposed under sections 37, 38 or 39 of the Act or under these Regulations.

(7) In determining whether a person meets the appointment requirement in paragraph (6)(a) regard will be had to standards in guidance that may be issued by the Assembly.

(8) Before a determination is made for the purposes of paragraph (6)(b) in relation to any person, there must be obtained in respect of that person—

- (a) an enhanced criminal record certificate issued pursuant to section 113B of the Police Act 1997⁽¹⁾; or
- (b) 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.

(9) In this regulation a person is employed by the provider of advocacy services if that person is—

- (a) employed under a contract of service; or
- (b) engaged under a contract for services.

⁽¹⁾ 1997 c. 50. Sections 113A to 113D are inserted by section 163 of the Serious Organised Crime and Police Act 2005 (c. 14).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.
